

Commission Regulation (EU) No 389/2013 of 2 May 2013 establishing a Union Registry pursuant to Directive 2003/87/EC of the European Parliament and of the Council, Decisions No 280/2004/EC and No 406/2009/EC of the European Parliament and of the Council and repealing Commission Regulations (EU) No 920/2010 and No 1193/2011 (Text with EEA relevance)

#### TITLE 4

### **SPECIFIC PROVISIONS FOR ACCOUNTING TRANSACTIONS UNDER DECISION No 406/2009**

#### *Article 74*

#### **Creation of AEA**s

1 At the beginning of the compliance period, the central administrator shall create in the EU AEA

s Total Quantity Account a number of AEAs equal to the sum of the annual emission allocations for all Member States for all the years of the compliance period as determined in the Decisions adopted pursuant to Article 3(2) and Article 10 of Decision No 406/2009/EC.

2 The central administrator shall ensure that the Union Registry assigns each AEA a unique unit identification code upon its creation.

#### *Article 75*

#### **Annual emission allocation units**

AEA

s shall be valid only for the purpose of meeting the Member States' greenhouse gas emissions limitation requirements pursuant to Article 3 of Decision No 406/2009/EC and they shall be transferable only pursuant to conditions laid down in Article 3(3), (4), and (5) of that Decision.

#### *Article 76*

#### **Transfer of AEA**s to each ESD Compliance Account

At the beginning of the compliance period, the central administrator shall transfer a quantity of AEA

s corresponding to the annual emission allocation for each Member State for each year as determined in the Decisions adopted pursuant to Articles 3(2) and 10 of Decision No 406/2009/EC, from the EU AEAs Total Quantity Account into the relevant ESD Compliance Account.

#### *Article 77*

#### **Introduction of the relevant greenhouse gas emissions data**

1 In a timely manner, upon availability of the relevant greenhouse gas emissions data for a given year of the compliance period for the majority of Member States, the central

administrator shall enter the total quantity of the relevant greenhouse gas emissions expressed in tonnes of carbon dioxide equivalent for each Member State in its ESD Compliance Account for that given compliance year.

2 The central administrator shall also enter the sum of the relevant greenhouse gas emissions data for all Member States for a given year in the EU AEAs Total Quantity Account.

#### *Article 78*

### **Calculation of the balance of the ESD Compliance Account**

1 Upon introduction of the relevant greenhouse gas emissions data pursuant to Article 77, the central administrator shall ensure that the Union Registry calculates the balance of the respective ESD Compliance Account by subtracting the total quantity of greenhouse gas emissions expressed in tonnes of carbon dioxide equivalent in the respective ESD Compliance Account from the sum of all AEAs in the same ESD Compliance Account.

2 The central administrator shall ensure that the Union Registry displays the balance of each ESD Compliance Account.

#### *Article 79*

### **Determination of the compliance status figures**

1 The central administrator shall ensure that after the introduction of the relevant greenhouse gas emissions data pursuant to Article 77 and after a period of time as set out in Union legislation for the use of flexibilities pursuant to Articles 3 and 5 of Decision No 406/2009/EC, the Union Registry determines the compliance status figure for every ESD Compliance Account by calculating the sum of all AEAs, international credits, tCERs and ICERs less the total quantity of greenhouse gas emissions expressed in tonnes of carbon dioxide equivalent in the same ESD Compliance Account.

2 The central administrator shall ensure that the Union Registry records the compliance status figure for each ESD Compliance Account.

#### *Article 80*

### **Application of Article 7(1) (a) and (c) of Decision No 406/2009/EC**

1 Where the compliance status figure determined pursuant to Article 79 is negative, the central administrator shall ensure that the Union Registry transfers the exceeding quantity of greenhouse gas emissions expressed in tonnes of carbon dioxide equivalent multiplied by the abatement factor specified in Article 7(1) (a) of Decision No 406/2009/EC from a Member State's ESD Compliance Account for the given year to its ESD Compliance Account for the next year.

2 At the same time, the central administrator shall block the ESD Compliance Accounts corresponding to the remaining years of the compliance period, of the Member State concerned.

3 The central administrator shall change the ESD Compliance Account status from blocked to open for all the remaining years of the compliance period as of the year for which the compliance status figure determined pursuant to Article 79 shows compliance.

### *Article 81*

#### **Use of international credits, tCERs and ICERs**

The central administrator shall ensure that, upon request of a Member State, the Union Registry carries out a transfer of international credits, tCERs or ICERs to that Member State's ESD Compliance Account for a given year of the compliance period. Such transfer shall not be carried out where:

- (a) the Member State's request is submitted before the calculation of the balance of the ESD Compliance Account or after the determination of the compliance status figure for the given year; or
- (b) the conditions laid down in Article 5 of Decision No 406/2009/EC are not complied with.

### *Article 82*

#### **Carry forward of AEAs**

The central administrator shall ensure that, upon request of a Member State, the Union Registry carries out a transfer of AEAs to that Member State's ESD Compliance Account for a given year of the compliance period from its ESD Compliance Account for the following year of the compliance period. Such transfer shall not be carried out where:

- (a) the Member State's request is submitted before the calculation of the balance of the ESD Compliance Account or after the determination of the compliance status figure for the given year; or
- (b) the transferred amount exceeds 5 percent of the following year's annual emission allocation as determined pursuant to Article 3(2) of Decision No 406/2009/EC, or a higher percentage if an increased carry forward has been granted by the Commission pursuant to the second subparagraph of Article 3(3) of No Decision 406/2009/EC.

### *Article 83*

#### **Carry over of AEAs**

The central administrator shall ensure that, upon request of a Member State, the Union Registry carries out a transfer of AEAs from that Member State's ESD Compliance Account for a given year of the compliance period to its ESD Compliance Account for any of the following years of the compliance period. Such transfer shall not be carried out where:

- (a) the Member State's request is submitted before the calculation of the balance of the ESD Compliance Account for the given year;
- (b) the transferred amount exceeds the positive balance of the account as calculated pursuant to Article 78; or
- (c) the status of the ESD Compliance Account initiating the transfer does not allow the transfer.

*Article 84***Carry over of the unused credit entitlement**

The central administrator shall ensure that, upon request of a Member State, the Union Registry carries out a transfer of the whole or portions of the unused credit entitlement from that Member State's ESD Compliance Account for a given year of the compliance period to its ESD Compliance Account for any of the following years of the compliance period. Such transfer shall not be carried out where the transfer is initiated before the determination of the compliance status figure for the given year.

*Article 85***Transfers of up to 5 % of a Member State's annual emission allocation**

The central administrator shall ensure that, upon request of a Member State, the Union Registry carries out a transfer of AEAs from the ESD Compliance Account for a given year of that Member State to the ESD Compliance account of another Member State. Such transfer shall not be carried out where:

- (a) the transferred amount exceeds five percent of the given year's annual emission allocation of the initiating Member State as determined pursuant to Article 3(2) of Decision No 406/2009/EC or the remaining amount available;
- (b) the Member State has requested the transfer to an ESD Compliance Account for a year previous than the given year, or
- (c) the status of the ESD Compliance Account initiating the transfer does not allow the transfer.

*Article 86***Transfers after the calculation of the balance of the ESD Compliance Account**

The central administrator shall ensure that, upon request of a Member State, the Union Registry carries out a transfer of AEAs from the ESD Compliance Account for a given year of that Member State to the ESD Compliance Account of another Member State. Such transfer shall not be carried out where:

- (a) the Member State's request is submitted before the calculation of the balance of the account pursuant to Article 78;
- (b) the transferred amount exceeds the positive balance of the account as calculated pursuant to Article 78; or
- (c) the status of the ESD Compliance Account initiating the transfer does not allow the transfer.

### Article 87

#### **Transfer of up to 3 % of the credit entitlement**

The central administrator shall ensure that, upon request of a Member State, the Union Registry carries out a transfer of the whole or a portion of the credit entitlement from the ESD Compliance Account for a given year of that Member State to the ESD Compliance Account of another Member State. Such transfer shall not be carried out where:

- (a) the Member State's request is submitted before the calculation of the compliance status figure for the given year;
- (b) the transferred quantity exceeds a Member State's allowed quantity equal to three percent as specified pursuant to Article 5(6) of Decision No 406/2009/EC less the sum of international credits, tCERs or ICERs held in the ESD Compliance Account at the moment of determination of the compliance status figures pursuant to Article 79 of this Regulation; or
- (c) the status of the ESD Compliance Account initiating the transfer does not allow the transfer.

### Article 88

#### **Adjustments**

1 In case of adjustments pursuant to Article 10 of Decision No 406/2009/EC or of any other modification of the sum specified in Article 74 of this Regulation that would lead to an increase of a Member State's annual emission allocation during the compliance period, the central administrator shall create the corresponding amount of AEs in the EU AEs Total Quantity Account and transfer it in the relevant ESD Compliance Account of the Member State concerned.

2 In case of adjustments pursuant to Article 10 of Decision No 406/2009/EC or of any other modification of the sum specified in Article 74 of this Regulation that would lead to a decrease of a Member State's annual emission allocation during the compliance period, the central administrator shall transfer the corresponding amount of AEs from the Member State's relevant ESD Compliance Account to the ESD Deletion Account.

### Article 89

#### **Replacement of tCERs and ICERs**

1 Where a tCER or a ICER must be replaced while in the Union Registry, the Member State concerned pursuant to Article 5(1) (d) of Decision No 406/2009/EC shall request the transfer of a Kyoto unit from its KP Registry to the relevant Party holding Account in the Union Registry.

2 An expired ICER shall not be considered in the determination of the compliance figure pursuant to Article 79.

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*Status: This is the original version (as it was originally adopted).*

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### *Article 90*

#### **Execution and reversal of transfers**

- 1 For all transfers specified in this Title, Articles 38, 39, 65 and 66 shall apply.
- 2 Transfers to the ESD Compliance Accounts initiated in error may be reversed at the request of the national administrator. In such cases, Article 70(4), (6) and (7) shall apply.