

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 V

### COMMON TECHNICAL PROVISIONS

#### CHAPTER 1

#### *Technical requirements of the registries system*

##### *Section 1*

##### *Availability*

##### *Article 91*

#### **Availability and reliability of the Union Registry and the EUTL**

- 1 The central administrator shall take all reasonable steps to ensure that:
  - a the Union Registry is available for access by account representatives and national administrators 24 hours a day, 7 days a week;
  - b the communication links referred to in Article 7 between the Union Registry, the EUTL and the ITL are maintained 24 hours a day, 7 days a week;
  - c backup hardware and software necessary in the event of a breakdown in operations of the primary hardware and software is provided for;
  - d the Union Registry and the EUTL respond promptly to requests made by account representatives.
- 2 The central administrator shall ensure that the Union Registry and EUTL incorporate robust systems and procedures to safeguard all relevant data and facilitate the prompt recovery of data and operations in the event of failure or disaster.
- 3 The central administrator shall keep interruptions to the operation of the Union Registry and EUTL to a minimum.

##### *Article 92*

#### **Helpdesks**

- 1 National administrators shall provide assistance and support to account holders and account representatives in the Union Registry that are administered by them through national helpdesks.

2 The central administrator shall provide support to national administrators through a central helpdesk for the purposes of helping them to provide assistance in accordance with paragraph 1.

## *Section 2*

### **Security and authentication**

#### *Article 93*

##### **Authentication of the Union Registry and national KP registries**

1 The identity of the Union Registry shall be authenticated by the EUTL having regard to the data exchange and technical specifications provided for in Article 105.

2 The Member States and the Union shall use the digital certificates issued by the Secretariat to the UNFCCC, or an entity designated by it, to authenticate their KP registries to the ITL for the purposes of establishing the communication link referred to in Article 7.

#### *Article 94*

##### **Accessing accounts in the Union Registry**

1 Account representatives shall be able to access their accounts in the Union Registry through the secure area of the Union Registry. The central administrator shall ensure that the secure area of the Union Registry website is accessible through the Internet. The website of the Union Registry shall be available in all official languages of the Union.

2 Following the opening of a platform account pursuant to Article 14(1) or Article 20(1), the central administrator shall establish the connectivity between the platform and the Union Registry. The central administrator shall ensure that accounts in the Union Registry, where access through external trading platforms in accordance with Article 21(4) is enabled and one authorised representative is also the authorised representative of an external trading platform account, are accessible to the external trading platform operated by the holder of that external trading platform account.

3 Communications between authorised representatives or platforms and the secure area of Union Registry shall be encrypted having regard to the security requirements set out in the data exchange and technical specifications provided for in Article 105.

4 The central administrator shall take all necessary steps to ensure that unauthorised access to the secure area of the Union Registry website does not occur.

5 If the security of the credentials of an authorised representative or additional authorised representative has been compromised, the authorised representative or additional authorised representative shall immediately suspend access to the relevant account, inform the administrator of the account thereof and request a replacement.

## Article 95

### **Authentication and authorisation of authorised representatives in the Union Registry**

1 The central administrator shall ensure that the Union Registry issues each authorised representative and additional authorised representative a username and password to authenticate them for the purposes of accessing the registry.

2 An authorised representative or additional authorised representative shall only have access to accounts in the Union Registry for which he is authorised and shall only be able to request the initiation of processes for which he is authorised pursuant to Article 23. That access or request shall take place through a secure area of the website of the Union Registry.

3 In addition to the username and password referred to in paragraph 1, an authorised representative or additional authorised representative shall use secondary authentication to access the Union Registry, having regard to the types of secondary authentication mechanisms set out in the data exchange and technical specifications provided for in Article 105.

4 The administrator of an account may assume that a user who was successfully authenticated by the Union Registry is the authorised representative or additional authorised representative registered under the provided authentication credentials, unless the authorised representative or additional authorised representative informs the administrator of the account that the security of his credentials has been compromised and requests a replacement of his credentials.

5 The authorised representative shall take all necessary measures to prevent the loss, theft or compromise of its credentials. The authorised representative shall immediately report to the national administrator the loss, theft or compromise of its credentials.

## Article 96

### **Suspension of all access due to a security breach or a security risk**

1 The Commission may instruct the central administrator to suspend access to the Union Registry or the EUTL or any part thereof where it has a reasonable suspicion that there is a breach of security of the Union Registry or the EUTL or that there exists a serious security risk to the Union Registry or the EUTL that threatens the integrity of the system, which includes the back-up facilities referred to in Article 91.

2 In the event of a breach of security or a security risk that may lead to suspension of access, a national administrator who becomes aware of the breach or risk shall promptly inform the central administrator of any risks posed to other parts of the Union Registry. The central administrator shall inform all national administrators.

3 If a national administrator becomes aware of a situation that requires the suspension of all access to the accounts that it manages in accordance with this Regulation, it shall inform the central administrator and account holders with such prior notice of the suspension as is practicable. The central administrator shall inform all national administrators as soon as possible.

4 The notice referred to in paragraph 3 shall include the likely duration of the suspension and shall be clearly displayed on the public area of the EUTL's web site.

### Article 97

#### **Suspension of access to allowances or Kyoto units in the case of a suspected fraudulent transaction**

1 A national administrator or a national administrator acting on request of the competent authority may suspend access to allowances or Kyoto units in the part of the Union Registry it administers:

- a for a maximum period of four weeks if it suspects that the allowances or Kyoto units have been the subject of a transaction constituting fraud, money laundering, terrorist financing, corruption or other serious crime, or
- b on the basis of and in accordance with national law provisions that pursue a legitimate objective.

2 The Commission may instruct the central administrator to suspend access to allowances or Kyoto units in the Union Registry or the EUTL for a maximum period of four weeks if it suspects that the allowances or Kyoto units have been the subject of a transaction constituting fraud, money laundering, terrorist financing, corruption or other serious crime.

3 The national administrator or the Commission shall immediately inform the competent law enforcement authority of the suspension.

4 A national law enforcement authority of the Member State of the national administrator may also instruct the administrator to implement a suspension on the basis of and in accordance with national law.

### Article 98

#### **Cooperation with competent authorities and notification of money laundering, terrorist financing or criminal activity**

1 The national administrator, its directors and its employees shall cooperate fully with the relevant competent authorities to establish adequate and appropriate procedures to forestall and prevent operations related to money laundering or terrorist financing.

2 The national administrator, its directors and its employees, shall cooperate fully with the FIU referred to in Article 21 of Directive 2005/60/EC by promptly:

- a informing the FIU, on their own initiative, where they know, suspect or have reasonable grounds to suspect that money laundering, terrorist financing or criminal activity is being or has been committed or attempted;
- b providing the FIU, at its request, with all necessary information, in accordance with the procedures established by the applicable legislation.

3 The information referred to in paragraph 2 shall be forwarded to the financial intelligence unit (FIU) of the Member State of the national administrator. The national measures transposing the compliance management and communication policies and procedures, referred to in Article 34(1) of Directive 2005/60/EC, shall designate the person or persons responsible for forwarding information pursuant to this Article.

4 The Member State of the national administrator shall ensure that the national measures transposing Articles 26 to 29 and Articles 32 and 35 of Directive 2005/60/EC apply to the national administrator.

## *Article 99*

### **Suspension of processes**

1 The Commission may instruct the central administrator to temporarily suspend the acceptance by the EUTL of some or all processes originating from the Union Registry if it is not operated and maintained in accordance with the provisions of this Regulation. It shall immediately notify national administrators concerned.

2 The central administrator may temporarily suspend the initiation or acceptance of some or all processes in the Union Registry for the purposes of carrying out scheduled or emergency maintenance on the Union Registry.

3 A national administrator may request the Commission to reinstate processes suspended in accordance with paragraph 1 if it considers that the outstanding issues that caused the suspension have been resolved. If this is the case, the Commission shall instruct the central administrator to reinstate those processes. It shall otherwise reject the request within a reasonable period and inform the national administrator without delay, stating its reasons and setting out criteria to be fulfilled for a subsequent request to be accepted.

## *Section 3*

### ***Automated checking, recording and completing of processes***

## *Article 100*

### **Automated checking of processes**

1 All processes must conform to the general IT-requirements of electronic messaging that ensure the successful reading, checking and recording of a process by the Union Registry. All processes must conform to the specific process-related requirements set out in this Regulation.

2 The central administrator shall ensure that the EUTL conducts automated checks having regard to the data exchange and technical specifications provided for in Article 105 for all processes to identify irregularities and discrepancies, where a proposed process does not conform to the requirements of Directive 2003/87/EC, Decision No 406/2009/EC and this Regulation.

## *Article 101*

### **Detection of discrepancies**

1 In the case of processes completed through the direct communication link between the Union Registry and the EUTL referred to in Article 7(3), the central administrator shall ensure that the EUTL terminates any processes where it identifies discrepancies upon conducting the automated checks referred to in Article 102(2), and informs thereof the Union Registry and the administrator of the accounts involved in the terminated transaction by returning an automated check response code. The central administrator shall ensure that the Union Registry immediately informs the relevant account holders that the process has been terminated.

2 In case of transactions completed through the ITL referred to in Article 7(1), the ITL shall terminate any processes where discrepancies are identified either by the ITL or the EUTL upon conducting the automated checks referred to in Article 102(2). Following a termination by the ITL, the central administrator shall ensure that the EUTL also terminates the transaction. The ITL informs the administrators of the registries involved of the termination of the transaction by returning an automated check response code. If one of the registries involved is the Union Registry, the central administrator shall ensure that the Union Registry also informs the administrator of the Union Registry accounts involved in the terminated transaction by returning an automated check response code. The central administrator shall ensure that the Union Registry immediately informs the relevant account holders that the process has been terminated.

#### *Article 102*

##### **Detection of discrepancies within the Union Registry and national KP registries**

1 The central administrator and Member States shall ensure that the Union Registry and other KP registries shall contain check input codes and check response codes to ensure the correct interpretation of information exchanged during each process. The check codes shall have regard to those contained in the data exchange and technical specifications provided for in Article 105.

2 The central administrator shall ensure that, prior to and during the execution of all processes, the Union Registry conducts appropriate automated checks to ensure that discrepancies are detected and incorrect processes are terminated in advance of automated checks being conducted by the EUTL.

#### *Article 103*

##### **Reconciliation - detection of inconsistencies by the EUTL**

1 The central administrator shall ensure that the EUTL periodically initiates data reconciliation to ensure that the EUTL's records of accounts, holdings of Kyoto units and allowances match the records of these holdings in the Union Registry. The central administrator shall ensure that the EUTL records all processes.

2 If during the data reconciliation process referred to in paragraph 1, an inconsistency is identified by the EUTL, whereby the information regarding accounts, holdings of Kyoto units and allowances provided by the Union Registry as part of the periodic reconciliation process differs from the information contained in the EUTL, the central administrator shall ensure that the EUTL prevents any further processes to be completed with any of the accounts, allowances or Kyoto units which are the subject of the inconsistency. The central administrator shall ensure that the EUTL immediately informs the central administrator and the administrators of the relevant accounts of any inconsistency.

#### *Article 104*

##### **Finalisation of processes**

1 All transactions communicated to the ITL in accordance with Article 7(1) shall be final when the ITL notifies the EUTL that it has completed the process.

2 All transactions and other processes communicated to the EUTL in accordance with Article 7(3) shall be final when the EUTL notifies the Union Registry that it has completed the processes. The central administrator shall ensure that the EUTL automatically aborts the completion of a transaction or process if it could not be completed within 24 hours of its communication.

3 The data reconciliation process referred to in Article 103(1) shall be final when all inconsistencies between the information contained in the Union Registry and the information contained in the EUTL for a specific time and date have been resolved, and the data reconciliation process has been successfully re-initiated and completed.

#### *Section 4*

### ***Specifications and change management***

#### *Article 105*

### **Data exchange and technical specifications**

1 The Commission shall make available to national administrators data exchange and technical specifications necessary for exchanging data between registries and transaction logs, including the identification codes, automated checks, response codes and data logging requirements, as well as the testing procedures and security requirements necessary for the launching of data exchange.

2 The data exchange and technical specifications shall be drawn up in consultation with the Administrators' Working Group of the Climate Change Committee and shall be consistent with the functional and technical specifications for data exchange standards for registry systems under the Kyoto Protocol elaborated pursuant to Decision 12/CMP.1.

#### *Article 106*

### **Change and release management**

If a new version or release of the Union Registry software is required, the central administrator shall ensure that the testing procedures set out in the data exchange and technical specifications provided for in Article 105 are completed before a communication link is established and activated between the new version or release of that software and the EUTL or ITL.

## *CHAPTER 2*

### ***Records, reports, confidentiality and fees***

#### *Article 107*

### **Processing of information and personal data**

1 The central administrator and Member States shall ensure that the Union Registry, the EUTL and other KP registries only store and process the information concerning the accounts,

account holders and account representatives as set out in Table III-I of Annex III, Tables VI-I and VI-II of Annex VI, Table VII-I of Annex VII, and Table VIII-I of Annex VIII.

2 No special categories of data as defined in Article 8 of Directive 95/46/EC and Article 10 of Regulation (EC) No 45/2001 shall be recorded in the Union Registry, the EUTL or other KP registries.

3 The central administrator and Member States shall ensure that only personal data related to transactions that transfer Kyoto units are transferred to the ITL.

#### *Article 108*

##### **Records**

1 The central administrator shall ensure that the Union Registry stores records concerning all processes, log data and account holders for five years after the closure of an account.

The central administrator and Member States shall ensure that the Union Registry and other KP registries store records concerning all relevant KP processes, log data and account holders of KP accounts for 15 years after the closure of the account or until any issue of implementation relating to them arising within the context of the UNFCCC bodies has been resolved, whichever is the later.

2 The central administrator shall ensure that national administrators are able to access, query and export all records held in the Union Registry in relation to accounts that are or were administered by them.

#### *Article 109*

##### **Reporting**

1 The central administrator shall make available the information referred to in Annex XIV to the recipients set out in Annex XIV in a transparent and organised manner via the EUTL web site. The central administrator shall take all reasonable steps to make available the information referred to in Annex XIV at the frequencies set out in Annex XIV. The central administrator shall not release additional information held in the EUTL or in the Union Registry unless this is permitted under Article 110.

2 National administrators may also make available the part of the information referred to in Annex XIV that they have access to in accordance with Article 110 at the frequencies and to the recipients set out in Annex XIV in a transparent and organised manner on a site publicly accessible via the Internet. National administrators shall not release additional information held in the Union Registry unless this is permitted under Article 110.

#### *Article 110*

##### **Confidentiality**

1 Information, including the holdings of all accounts, all transactions made, the unique unit identification code of the allowances and the unique numeric value of the unit serial number of the Kyoto units held or affected by a transaction, held in the EUTL, the Union Registry and any other KP registry shall be considered confidential except as otherwise required by Union



law, or by provisions of national law that pursue a legitimate objective compatible with this Regulation and are proportionate.

2 The central administrator or national administrator may provide data stored in the Union Registry and the EUTL to the following entities:

- a the law enforcement and tax authorities of a Member State;
- b the European Anti-fraud Office of the European Commission;
- c the European Court of Auditors;
- d Eurojust;
- e the competent authorities referred to in Article 11 of Directive 2003/6/EC of the European Parliament and of the Council<sup>(1)</sup> and in Article 37(1) of Directive 2005/60/EC;
- f competent national supervisory authorities;
- g the national administrators of Member States and the competent authorities referred to in Article 18 of Directive 2003/87/EC.

3 Data may be provided to the entities referred to in paragraph 2 upon their request to the central administrator or to a national administrator if such requests are justified and necessary for the purposes of investigation, detection, prosecution, tax administration or enforcement, auditing and financial supervision of fraud involving allowances or Kyoto units, or of money laundering, terrorism financing, other serious crime, market manipulation for which the accounts in the Union registry or the KP registries may be an instrument, or of breaches of Union or national law ensuring the functioning the Union ETS.

4 An entity receiving data in accordance with paragraph 3 shall ensure that the data received is only used for the purposes stated in the request in accordance with paragraph 3 and is not made available deliberately or accidentally to persons not involved in the intended purpose of the data use. This provision shall not preclude these entities to make the data available to other entities listed in paragraph 2, if this is necessary for the purposes stated in the request made in accordance with paragraph 3.

5 Upon their request, the central administrator may provide access to transaction data which do not allow the direct identification of specific persons to the entities referred to in paragraph 2 for the purpose of looking for suspicious transaction patterns. Entities with such access may notify suspicious transaction patterns to other entities listed in paragraph 2.

6 Europol shall obtain permanent read-only access to data stored in the Union Registry and the EUTL for the purpose of the performance of its tasks in accordance with Council Decision 2009/371/JHA<sup>(2)</sup>. Europol shall keep the Commission informed of the use it makes of the data.

7 National administrators shall make available through secure means to all other national administrators and the central administrator the names and identities of persons for whom they refused to open an account in accordance with points (a), (b) and (c) of Article 22(2), or whom they refused to nominate as an authorised representative or additional authorised representative in accordance with points (a) and (b) of Article 24(5), and the names and identities of the account holder, authorised representative or additional authorised representative of accounts to which access has been suspended in accordance with Article 34 or of accounts that have been closed in accordance with Article 33. National administrators shall inform the persons concerned.

8 National administrators may decide to notify to national law enforcement and tax authorities all transactions that involve a number of units above the number determined by the national administrator and to notify any account that is involved in a number of transactions within a period that is above a number determined by the national administrator.

9 The EUTL, the Union Registry and other KP registries shall not require account holders to submit price information concerning allowances or Kyoto units.

10 The auction monitor appointed pursuant to Article 24 of Regulation (EU) No 1031/2010 shall have access to all information concerning the auction delivery account held in the Union Registry.

### *Article 111*

#### **Fees**

1 The central administrator shall not charge any fees to account holders in the Union Registry.

2 National administrators may charge reasonable fees to account holders administered by them.

3 National administrators shall notify the central administrator of the fees charged and of any changes in the fees within ten working days. The central administrator shall display fees on a public website.

### *Article 112*

#### **Interruption of operation**

The central administrator shall ensure that interruptions to the operation of the Union Registry are kept to a minimum by taking all reasonable steps to ensure the availability and security of the Union Registry and the EUTL and by providing for robust systems and procedures to safeguard all information.

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

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- (1) OJ L 96, 12.4.2003, p. 16.
- (2) OJ L 121, 15.5.2009, p. 37.