

Commission Delegated Regulation (EU) 2019/1122 of 12 March 2019 supplementing Directive 2003/87/EC of the European Parliament and of the Council as regards the functioning of the Union Registry (Text with EEA relevance)

TITLE III

**COMMON TECHNICAL PROVISIONS**

*CHAPTER I*

***Technical requirements of the Union Registry and the EUTL***

*Section 1*

***Availability***

*Article 60*

**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 6 between the Union Registry and the EUTL 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 61*

**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.

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*Changes to legislation: There are currently no known outstanding effects for the Commission Delegated Regulation (EU) 2019/1122, TITLE III. (See end of Document for details)*

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## Section 2

### **Security and authentication**

#### Article 62

#### **Authentication of the Union Registry**

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 75.

#### Article 63

#### **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 National administrators shall be able to access the accounts they administer in the Union Registry through the secure area of the Union Registry. The central administrator shall ensure that this secure area of the Union Registry website is accessible through the internet.

3 Communications between authorised representatives or national administrators and the secure area of the Union Registry shall be encrypted having regard to the security requirements set out in the data exchange and technical specifications provided for in Article 75.

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 has been compromised, this authorised representative shall immediately suspend its access to the relevant account, inform the administrator of the account thereof and request new credentials. If the account cannot be accessed in order to suspend the access, the authorised representative shall immediately request the national administrator to suspend its access.

#### Article 64

#### **Authentication and authorisation in the Union Registry**

1 The central administrator shall ensure that national administrators and each authorised representative are assigned credentials to authenticate them for the purposes of accessing the Union Registry.

2 An 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 21. That access or request shall take place through a secure area of the website of the Union Registry.

3 In addition to the credentials referred to in paragraph 1, an authorised representative shall use secondary authentication to access the Union Registry, having regard to the types of

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secondary authentication mechanisms set out in the data exchange and technical specifications provided for in Article 75.

4 The administrator of an account may assume that a user who was successfully authenticated by the Union Registry is the authorised representative registered under the provided authentication credentials, unless the 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 65*

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

1 The central administrator may temporarily 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 or a serious risk affecting the security of the Union Registry or of the EUTL within the meaning of Commission Decision (EU, Euratom) 2017/46<sup>(1)</sup>, including the back-up facilities referred to in Article 60. In case the reasons for suspension persist for more than five working days, the Commission may instruct the central administrator to keep the suspension in place.

The central administrator shall promptly inform all national administrators about the suspension, its reasons and the likely duration.

2 A national administrator who becomes aware of a breach of security or a security risk shall promptly inform the central administrator. The central administrator may take the measures referred to in paragraph 1.

3 A national administrator who becomes aware of a situation, as described in paragraph 1, which requires the suspension of all access to the accounts that it administers in accordance with this Regulation, shall suspend all access to all accounts it administers and shall promptly inform the central administrator. The central administrator shall inform all national administrators as soon as possible.

4 Account holders shall be informed about measures taken pursuant to paragraphs 1, 2 and 3 with such prior notice of the suspension as practicable. The notice shall include the likely duration of the suspension and shall be clearly displayed on the public area of the Union Registry web site.

#### *Article 66*

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

1 A national administrator or a national administrator acting on instruction of the competent authority or a relevant authority under national law may suspend access to allowances in the part of the Union Registry it administers in any of the following cases:

- a for a maximum period of four weeks if it suspects that the allowances have been the subject of a transaction constituting fraud, money laundering, terrorist financing, corruption or other serious crime;

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- b if suspension is on the basis of and in accordance with national law provisions that pursue a legitimate objective.

For the purposes of point (a) of the first subparagraph, provisions of Article 67 shall be applied accordingly. Upon instruction from the financial intelligence unit the period may be extended.

2 The Commission may instruct the central administrator to suspend access to allowances in the Union Registry or the EUTL for a maximum period of four weeks if it suspects that the allowances 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 request the administrator to implement a suspension on the basis of and in accordance with national law.

#### *Article 67*

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

1 The central administrator and the national administrators shall cooperate with public bodies charged with the supervision of compliance under Directive 2003/87/EC and public bodies competent for the oversight of primary and secondary markets in allowances in order to ensure that they can acquire a consolidated overview of allowances markets.

2 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.

3 The national administrator, its directors and its employees, shall cooperate fully with the financial intelligence unit (FIU) referred to in Article 32 of Directive (EU) 2015/849 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.

4 The information referred to in paragraph 2 shall be forwarded to the 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 45(1) of Directive (EU) 2015/849, shall designate the person or persons responsible for forwarding information pursuant to this Article.

5 The Member State of the national administrator shall ensure that the national measures transposing Articles 37, 38, 39, 42 and 46 of Directive (EU) 2015/849 apply to the national administrator.

6 Account holders shall immediately report any fraud or suspected fraud to the competent national law enforcement authority. That report shall be forwarded to the national administrators.

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## Article 68

### 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.

4 The Commission may, including at the request of a Member State which has notified the European Council of its intention to withdraw from the Union pursuant to Article 50 of the Treaty on European Union, instruct the central administrator to temporarily suspend the acceptance by the EUTL of relevant processes for that Member State relating to free allocation and auctioning.

## Article 69

### Suspension of linking agreements

In case of suspension or termination of an agreement under Article 25 of Directive 2003/87/EC, the central administrator shall take the appropriate measures in accordance with the agreement.

## Section 3

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

## Article 70

### 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.

[<sup>F12</sup> The central administrator shall ensure that the EUTL conducts automated checks having regard to the data exchange and technical specifications provided for in Article 75 of this Regulation for all processes to identify irregularities and discrepancies, where a proposed

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process does not conform to the requirements of Directive 2003/87/EC, Regulation (EU) 2018/842 and this Regulation.]

#### Textual Amendments

- F1** Substituted by [Commission Delegated Regulation \(EU\) 2019/1124 of 13 March 2019 amending Delegated Regulation \(EU\) 2019/1122 as regards the functioning of the Union Registry under Regulation \(EU\) 2018/842 of the European Parliament and of the Council.](#)

#### Article 71

##### Detection of discrepancies

In the case of processes completed through the direct communication link between the Union Registry and the EUTL referred to in Article 6(2), the central administrator shall ensure that the EUTL terminates any processes where it identifies discrepancies upon conducting the automated checks referred to in Article 72(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.

#### Article 72

##### Detection of discrepancies within the Union Registry

1 The central administrator and Member States shall ensure that the Union Registry 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 75.

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 73

##### 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 and holdings of 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 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 which are the subject of the inconsistency. The central administrator shall ensure that the

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EUTL immediately informs the central administrator and the administrators of the relevant accounts of any inconsistency.

#### *Article 74*

### **Finalisation of processes**

1 All transactions and other processes communicated to the EUTL in accordance with Article 6(2) 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.

2 The data reconciliation process referred to in Article 73(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 75*

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

1 The Commission shall make available to national administrators data exchange and technical specifications laying down operational requirements for the Union Registry including the identification codes, automated checks, response codes and data logging requirements, as well as the testing procedures and security requirements.

2 The data exchange and technical specifications shall be drawn up in consultation with the Member States.

3 Standards developed in accordance with agreements under Article 25 of Directive 2003/87/EC shall be consistent with the data exchange and technical specifications drawn up in accordance with paragraphs 1 and 2 of this Article.

#### *Article 76*

### **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 75 are completed before a communication link is established and activated between the new version or release of that software and the EUTL.

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## CHAPTER 2

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

#### *Article 77*

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

1 In relation to the processing of personal data in the Union Registry and the EUTL, the national administrators shall be regarded as controllers within the meaning of Article 4(7) of Regulation (EU) 2016/679. In relation to its responsibilities under this Regulation and the processing of personal data involved therein, the Commission shall be regarded as a controller within the meaning of Article 3(8) of Regulation (EU) 2018/1725.

2 In the case of a personal data breach detected by a national administrator, it shall without undue delay inform the central administrator and other national administrators about the nature and possible consequences of the breach and the measures taken and proposed to be taken to address the personal data breach and to mitigate the possible adverse effects.

3 In the case of a personal data breach detected by the central administrator, it shall without undue delay inform the national administrators about the nature and possible consequences of the breach and the measures taken by the central administrator and proposed to be taken by national administrators to address the personal data breach and to mitigate the possible adverse effects.

4 Arrangements on the respective responsibilities of the controllers for compliance with their data protection obligations shall be included in the terms of cooperation drawn up pursuant to Article 7(4).

5 The central administrator and Member States shall ensure that the Union Registry and the EUTL 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. Any other information to be provided pursuant to this Regulation shall be stored and processed outside the Union Registry or the EUTL.

6 National administrators shall ensure that information required by this Regulation but not stored in the Union Registry or the EUTL are processed in accordance with the relevant provisions of Union and national law.

7 No special categories of data as defined in Article 9 of Regulation (EU) 2016/679 and Article 10 of Regulation (EU) 2018/1725 shall be recorded in the Union Registry or the EUTL.

#### *Article 78*

#### **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.

2 Personal data shall be removed from the records after five years of the closure of an account or after five years of the closure of business relationship, as defined in Article 3(13) of Directive (EU) 2015/849, with a natural person.



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3 Personal data may be retained, with access restricted to the central administrator, for additional five years only for the purposes of investigation, detection, prosecution, tax administration or enforcement, auditing and financial supervision of activities involving allowances, or of money laundering, terrorism financing, other serious crime or market abuse for which the accounts in the Union Registry may be an instrument, or of breaches of Union or national law ensuring the functioning the EU ETS.

4 For the purposes of investigation, detection, prosecution, tax administration or enforcement, auditing and financial supervision of activities involving allowances, or of money laundering, terrorism financing, other serious crime or market abuse for which the accounts in the Union Registry may be an instrument, or of breaches of Union or national law ensuring the functioning the EU ETS, personal data controlled by national administrators may be retained after the closure of the business relationship until the end of a period corresponding to the maximum prescription period of these offences laid down in the national law of the national administrator.

5 Account information containing personal data, gathered pursuant to the provisions of this Regulation and not stored in the Union Registry or the EUTL shall be retained according to the provisions of this Regulation.

6 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 79*

### **Reporting and availability of information**

1 The central administrator shall make available the information referred to in Annex XIII to the recipients set out in Annex XIII in a transparent and organised manner. The central administrator shall take all reasonable steps to make available the information referred to in Annex XIII at the frequencies set out in Annex XIII. The central administrator shall not release additional information held in the EUTL or in the Union Registry unless this is permitted under Article 80.

2 National administrators may also make available the part of the information referred to in Annex XIII that they have access to in accordance with Article 80 at the frequencies and to the recipients set out in Annex XIII 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 80.

#### *Article 80*

### **Confidentiality**

1 All information, including the holdings of all accounts, all transactions made, the unique unit identification code of the allowances held or affected by a transaction, held in the EUTL and the Union 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.

The first subparagraph also applies to any information gathered pursuant to this Regulation and held by the central administrator or the national administrator.

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2 The central administrator and the national administrators shall ensure that all persons who work or who have worked for them or entities to whom tasks are delegated, as well as experts instructed by them, are bound by the obligation of professional secrecy. They shall not divulge any confidential information which they may receive in the course of their duties, without prejudice to requirements of national criminal or taxation law or the other provisions of this Regulation.

3 The central administrator or national administrator may provide data stored in the Union Registry and the EUTL or gathered pursuant to this Regulation to the following entities:

- a the police or another law enforcement or judicial authority 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 48 of Directive (EU) 2015/849;
- f the competent authorities referred to in Article 67 of Directive 2014/65/EU;
- g the competent authorities referred to in Article 22 of Regulation (EU) No 596/2014;
- h European Securities and Markets Authority, established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council<sup>(2)</sup>;
- i Agency for the Cooperation of Energy Regulators established by Regulation (EC) No 713/2009 of the European Parliament and of the Council<sup>(3)</sup>
- j competent national supervisory authorities;
- k the national administrators of Member States and the competent authorities referred to in Article 18 of Directive 2003/87/EC;
- l the authorities mentioned in Article 6 of Directive 98/26/EC;
- m the European Data Protection Supervisor and the competent national data protection authorities.

4 Data may be provided to the entities referred to in paragraph 3 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 activities involving allowances, or of money laundering, terrorism financing, other serious crime, market abuse for which the accounts in the Union Registry may be an instrument, or of breaches of Union or national law ensuring the functioning the EU ETS.

Without prejudice to requirements of national criminal or taxation law, the central administrator, the national administrators or other authorities, bodies natural or legal persons, which receive confidential information pursuant to this Regulation, may use it only in the performance of their duties and for the exercise of their functions, in the case of the central administrator and the national administrators, within the scope of this Regulation or, in the case of other authorities, bodies or natural or legal persons, for the purpose for which such information was provided to them and/or in the context of administrative or judicial proceedings specifically relating to the exercise of those functions.

Any confidential information received, exchanged or transmitted pursuant to this Regulation shall be subject to the conditions laid down in this Article. Nevertheless, this Article shall not prevent the central administrator and the national administrators from exchanging or transmitting confidential information in accordance with this Regulation.

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This Article shall not prevent the central administrator and the national administrators from exchanging or transmitting, in accordance with national law, confidential information that has not been received from the central administrator or a national administrator of another Member State.

5 An entity receiving data in accordance with paragraph 4 shall ensure that the data received is only used for the purposes stated in the request in accordance with paragraph 4 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 3, if this is necessary for the purposes stated in the request made in accordance with paragraph 4.

6 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 3 for the purpose of looking for suspicious transaction patterns. Entities with such access may notify suspicious transaction patterns to other entities listed in paragraph 3.

7 Europol shall obtain permanent read-only access to data stored in the Union Registry and the EUTL for the purposes of Article 18 of Regulation (EU) 2016/794 of the European Parliament and of the Council<sup>(4)</sup>. Europol shall keep the Commission informed of the use it makes of the data.

8 National administrators shall make available through secure means to all other national administrators and the central administrator the name, nationality and date and place of birth of persons for whom they refused to open an account in accordance with points (a), (b) and (c) of Article 19(2), or whom they refused to nominate as an authorised representative in accordance with points (a) and (b) of Article 21(5), and the name, nationality and birth date of the account holder and the authorised representatives of accounts to which access has been suspended in accordance with Articles 30(1)(c), 30(2)(a), 30(3)(a) and (b) and Article 30(4) or of accounts that have been closed in accordance with Article 28. National administrators shall ensure that the information is kept up to date and no longer shared when the grounds giving rise to sharing cease to exist. The information shall not be shared for more than five years.

National administrators shall inform the persons concerned about the fact that their identity was shared with other national administrators and about the duration of this information sharing.

The persons concerned may object to the information sharing at the competent authority or the relevant authority under national law within 30 calendar days. The competent authority or the relevant authority shall instruct the national administrator either to stop sharing the information or maintain the sharing of information in a reasoned decision, subject to requirements of national law.

The persons concerned may require the national administrator sharing information pursuant to the first subparagraph to present them the personal data that was shared concerning them. National administrators shall comply with such requests within 20 working days of receiving the request.

9 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.

10 The EUTL and the Union Registry shall not require account holders to submit price information concerning allowances.

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

#### *Article 81*

##### **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 and verifiers 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 82*

##### **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 of the EUTL within the meaning of Decision (EU, Euratom) 2017/46 and by providing for robust systems and procedures to safeguard all information.

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- (1) Commission Decision (EU, Euratom) 2017/46 of 10 January 2017 on the security of communication and information systems in the European Commission ([OJ L 6, 11.1.2017, p. 40](#)).
- (2) Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC ([OJ L 331, 15.12.2010, p. 84](#)).
- (3) Regulation (EC) No 713/2009 of the European Parliament and of the Council of 13 July 2009 establishing an Agency for the Cooperation of Energy Regulators ([OJ L 211, 14.8.2009, p. 1](#)).
- (4) Regulation (EU) 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol) and replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA ([OJ L 135, 24.5.2016, p. 53](#)).

**Changes to legislation:**

There are currently no known outstanding effects for the Commission Delegated Regulation (EU) 2019/1122, TITLE III.