Council of the European Union

Brussels, 17 July 2015
(OR. en)

11023/15

CLIMA 86
ENV 497
ENER 288
TRANS 240
IND 115
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AGRI 409
FORETS 23
ECOFIN 618
DELACT 97

COVER NOTE

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	13 July 2015
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	C(2015) 4676 final
Subject:	Commission Delegated Regulation (EU) …/... of 13.7.2015 amending Regulation (EU) No 389/2013 as regards the technical implementation of the Kyoto Protocol after 2012

Delegations will find attached document C(2015) 4676 final.

Encl.: C(2015) 4676 final

EUROPEAN
COMMISSION

Brussels, 13.7.2015
C(2015) 4676 final

COMMISSION DELEGATED REGULATION (EU) …/...

of 13.7.2015

amending Regulation (EU) No 389/2013 as regards the technical implementation of the Kyoto Protocol after 2012

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

Regulation (EU) No 525/2013 of the European Parliament and of the Council of 21 May 2013 on a mechanism for monitoring and reporting greenhouse gas emissions and for reporting other information at national and Union level relevant to climate change and repealing Decision No 280/2004/EC[1] established registries to account for units under the Kyoto Protocol (Article 10).

Article 10(5) of Regulation (EU) No 525/2013 empowers the Commission to adopt delegated acts to give effect, in the registries of the Union and of the Member States, to the necessary texhnical implementation of the Kyoto Protocol pursuant to relevant Decisions of the Conference of the Parties to the UNFCCC serving as the meeting of the Parties to the Kyoto Protocol and the joint fulfillement agreement between the Union and Member States.

Article 10(6) of Regulation (EU) No 525/2013 empowers the Commission to adopt delegated acts to ensure the consistency of accounting between the relevant EU legislation (Directive 2003/87/EC[2] and Decision No 406/2009/EC[3]) and the obligations of the Union and Member States in the second commitment period of the Kyoto Protocol.

Regulation (EU) 389/2013[4] provides for the accounting of emissions and units and unit management under Directive 2003/87/EC and Decision No 406/2009/EC. This draft Delegated Regulation will amend Regulation (EU) 389/2013 to regulate accounting requirements for the technical implementation of the Kyoto Protocol after 2012. This will enable the effective operation of the joint fulfilment agreement and ensure its alignment with the operation of the relevant EU legislation.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

In order to prepare the draft Delegated Regulation, the Commission created an ad-hoc expert group composed of members nominated by the Member States. Four meetings of the expert group were held. The documents relevant to the meetings have been transmitted simultaneously to the European Parliament and the Council, as foreseen in the Common Understanding on delegated acts. The observations presented by the expert group during the meetings and sent in writing have been taken into account when preparing the final draft version of the Delegated Regulation.

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1 OJ L 165, 18.6.2013, p. 13.

2 Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC (OJ L 275, 25.10.2003, p. 32).

3 Decision No 406/2009/EC of the European Parliament and of the Council of 23 April 2009 on the effort of Member States to reduce their greenhouse gas emissions to meet the Community's greenhouse gas emission reduction commitments up to 2020 (OJ L 140, 5.6.2009, p. 136).

4 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, OJ L 122, 3.5.2013, p. 1.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

The draft Delegated Regulation adds six Articles in Title 3 of Regulation (EU) 389/2013. These Articles define the rules applicable to: the transfer of CERs and ERUs exchanged in the EU ETS (new Article 73a), the issuance and deposit of AAUs (new Article 73b), including the possibilities to release deposited AAUs; the transfer and use of units (new Article 73c), in particular of units used pursuant to EU legislation; the cancellation of units valid for the first commitment period after the carry-over of units from the first to the second commitment period (new Article 73d), the retirement of units (new Article 73e); the carry-over in the Union Registry (new Article 73f) and clearing processes (new Article 73g) so that net transfers of annual emission allocations under Decision No 406/2009 are followed by a transfer of a corresponding number of AAUs.

COMMISSION DELEGATED REGULATION (EU) …/...

of 13.7.2015

amending Regulation (EU) No 389/2013 as regards the technical implementation of the Kyoto Protocol after 2012

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 525/2013 of the European Parliament and of the Council of 21 May 2013 on a mechanism for monitoring and reporting greenhouse gas emissions and for reporting other information at national and Union level relevant to climate change and repealing Decision No 280/2004/EC[5], and in particular Article 10(5) and (6) thereof,

Whereas:

(1) The Conference of the Parties to the United Nations Framework Convention on Climate Change (UNFCCC) serving as the meeting of the Parties to the Kyoto Protocol adopted the Doha amendment, establishing a second commitment period of the Kyoto Protocol, starting on 1 January 2013 and ending on 31 December 2020 ('the Doha Amendment'). The Union approved the Doha Amendment by Council Decision (the Ratification Decision).

(2) The necessary technical implementation of the Doha Amendment to the Kyoto Protocol should be carried out in the Union Registry and in the national Kyoto Protocol registries. It is also necessary to ensure consistency with Directive 2003/87/EC of the European Parliament and of the Council[6] and Decision No 406/2009/EC of the European Parliament and of the Council[7] and a consistent implementation of internationally agreed accounting requirements, to optimise transparency and to ensure accuracy of the accounting of AAUs, RMUs, ERUs, CERs, tCERs and lCERs by the Union and the Member States, while avoiding, to the extent possible, administrative burdens and costs, including those relating to share of proceeds and IT development and maintenance.

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5 OJ L 165, 18.6.2013, p.13.

6 Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC (OJ L 275, 25.10.2003, p. 32).

7 Decision No 406/2009/EC of the European Parliament and of the Council of 23 April 2009 on the effort of Member States to reduce their greenhouse gas emissions to meet the Community's greenhouse gas emission reduction commitments up to 2020 (OJ L 140, 5.6.2009, p. 136).

(3) Once the Doha Amendment enters into force, the Union and the Member States will be required to issue in their respective Kyoto Protocol registries assigned amount units (AAUs) equal to their assigned amount determined in accordance with the Ratification Decision, adding any amounts resulting from the application of Article 3(7bis) of the Kyoto Protocol.

(4) Following any upwards adjustment of a Member State annual emission allocation under Article 10 of Decision No 406/2009/EC or Article 27 of Regulation (EU) No 525/2013, it may have to acquire additional AAUs at the end of the second commitment period if it used this additional annual emission allocation to cover its emissions under Decision No 406/2009/EC or transferred it to another Member State. A Member State concerned may also use its Previous Period Surplus Reserve referred to in Article 3(13b) of Regulation (EU) No 525/2013 if its emissions are higher than its assigned amount. Any resulting AAU acquisition would be subject to the application of the share of the proceeds on the first international transfer of AAUs referred to in Article 10(1) of Regulation (EU) No 525/2013. Where appropriate, such situations may be considered accounting inconsistencies in matching the implementation of Union legislation with the rules agreed under the Kyoto Protocol within the meaning of Article 10(7) of Regulation (EU) No 525/2013.

(5) A clearing process at the end of the second commitment period of the Kyoto Protocol should be established to provide for the settlement in AAUs of any net transfers of annual emission allocations in accordance with Decision No 406/2009/EC.

(6) In accordance with Article 11a of Directive 2003/87/EC, stationary installation and aircraft operators can exchange CERs and ERUs for allowances. Exchanged CERs and ERUs valid for the first commitment period of the Kyoto Protocol potentially represent EU ETS emissions in the second commitment period. Since the Doha Amendment establishes limits on the carry-over of CERs and ERUs from the first to the second commitment period of the Kyoto Protocol, Member States should transfer to the Union a corresponding number of AAUs valid for the first commitment period to cover these potential emissions and the Union should transfer to the Member States the corresponding CERs and ERUs valid for the first commitment period of the Kyoto Protocol received from stationary installation and aircraft operators in exchange for allowances.

(7) Commission Regulation (EU) No 389/2013[8] should therefore be amended accordingly.

(8) This Regulation should enter into force as a matter of urgency as it is necessary to perform transitional transfers before the end of the additional period for fulfilling commitments under the first commitment period of the Kyoto Protocol referred to in Article 11(2) of Regulation (EU) No 525/2013.

(9) This Regulation should apply as of the date of entry into force of the Doha Amendment to the Kyoto Protocol, except in so far as it provides for transitional transfers,

8 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 (OJ L 122, 3.5.2013, p. 1).

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EU) No 389/2013 is amended as follows:

(1) the following Article 73a is inserted:

"*Article 73a*

Transfer of CERs and ERUs exchanged in the EU ETS

1. The central administrator shall inform each national administrator of the number of CERs and ERUs valid for the first commitment period transferred pursuant to Article 60 from operator holding accounts and aircraft operators holding accounts administered by that Member State. The central administrator shall add to that number a portion of the number of CERs and ERUs valid for the first commitment period transferred pursuant to Article 60 from operators holding accounts and aircraft operators holding accounts administered by Member States with no KP registry in the first commitment period, in proportion of Member States' respective numerical limits for the carry-over of CERs and ERUs from the first to the second commitment period.

2. Prior to the end of the additional period for fulfilling commitments under the first commitment period of the Kyoto Protocol referred to in Article 11(2) of Regulation (EU) No 525/2013, the central administrator shall transfer to each national KP registry a number of CERs and ERUs valid for the first commitment period from the EU International Credit Accounts equal to the total number determined pursuant to paragraph 1 of this Article.

3. The central administrator shall ensure that the EUTL prevents all transactions of units transferred pursuant to paragraph 1 with the exception of:

(a) the cancellation of units in accordance with Article 10(1) of Regulation (EU) No 525/2013;

(b) the retirement of units in accordance with Article 11 of Regulation (EU) No 525/2013;

(c) the carry-over of units from the first to the second commitment period in accordance with Article 10(1) of Regulation (EU) No 525/2013;

(d) the transfer of units within one KP registry.

4. Immediately after the transfer performed pursuant to paragraph 2, each national administrator shall transfer a number of AAUs to a relevant Party holding Account in the Union Registry equal to the number of credits returned to that Member State pursuant to paragraph 2."

(2) the following Articles 73b to 73g are inserted:

"*Article 73b*

Issuance and Deposit of AAUs

1. Prior to the retirement transaction in accordance with Article 11(3) of Regulation (EU) No 525/2013 of the European Parliament and of the Council(*), the central administrator shall:

(a) issue a number of AAUs equal to the Union assigned amount determined in accordance with Council Decision [ratification decision](**) in the EU AAU Account in the Union Registry;

(b) immediately transfer a number of AAUs equal to the number of general allowances created pursuant to Commission Decision 2010/634/EU(**) from the EU AAU Account to the ETS AAU Deposit Account in the Union Registry.

2. At the latest three months after the closure of the ESD Compliance Account for 2020 pursuant to Article 31, each national administrator shall:

(a) issue a number of AAUs equal to its respective Member State assigned amount determined pursuant to the Ratification Decision in a Party holding Account in its KP registry;

(b) immediately transfer a number of AAUs equal to the total number of AEAs corresponding to the annual emission allocation for its Member State for all years pursuant to Article 3(2) of Decision No 406/2009/EC as determined prior to any amendment pursuant to Article 27(2) of Regulation (EU) No 525/2013 from the Party holding Account to the ESD AAU Deposit Account in its KP registry.

3. Before the completion of the clearing processes pursuant to Article 73f, the central administrator shall ensure that the EUTL prevents all transactions of AAUs from the ETS AAU Deposit Account or from the ESD AAU Deposit Accounts, with the exception of:

(a) the cancellation or the transfer of a number of AAUs less than or equal to the number of AEAs transferred to the ESD Deletion Account pursuant to Article 88(2);

(b) the retirement of a number of AAUs in accordance with Article 11(3) of Regulation (EU) No 525/2013, equal to the number of AEAs transferred to the ESD Deletion Account pursuant to Article 31(4) of this Regulation corresponding to the quantity of GHG emissions entered in the ESD Compliance Account pursuant to Article 77 of this Regulation;

(c) the cancellation or the transfer of a number of AAUs less than or equal to the number of AEAs transferred to the ESD Deletion Account pursuant to Article 31(4) that exceed the quantity of GHG emissions entered in the ESD Compliance Account pursuant to Article 77;

(d) transfers required for the purposes of the clearing processes pursuant to Article 73f;

(e) the conversion of AAUs into ERUs, provided that a number of AEAs equal to the number of AAUs to be converted plus the number of ERUs required to satisfy the share of proceeds levy referred to in Article 10(1) of Regulation (EU) No 525/2013 have been transferred to the ESD Deletion Account pursuant to Article 31(4) of this Regulation.

Article 73c

Transfer and use of units

1. The central administrator shall ensure that the EUTL prevents transactions involving CERs, ERUs, tCERs and lCERs which have been used in accordance with Article 81 with the exception of:

(a) the transfer of units from the ESD Compliance Account in the Union Registry to the relevant MS KP registry pursuant to Article 31(3);

(b) the retirement of units pursuant to Article 11 of Regulation (EU) No 525/2013;

(c) the carry-over of units from the first to the second commitment period in accordance with Article 10(1) of Regulation (EU) No 525/2013.

2. Upon completion of the carry-over of units from the first to the second commitment period in accordance with Article 10(1) of Regulation (EU) No 525/2013, the central administrator shall ensure that the EUTL prevents the use of CERs, ERUs, tCERs or lCERs pursuant to Article 81 of this Regulation unless those units are valid for the second commitment period of the Kyoto Protocol.

Article 73d

Cancellation of units

1. After the completion of the carry-over of units from the first to the second commitment period in accordance with Article 10(1) of Regulation (EU) No 525/2013, the central administrator shall cancel all CERs and ERUs remaining in the Aviation Surrender Set Aside Account.

2. After the completion of the carry-over of units from the first to the second commitment period in accordance with Article 10(1) of Regulation (EU) No 525/2013, the central administrator shall request national administrators to cancel CERs and ERUs valid for the first commitment period of the Kyoto Protocol held in ETS accounts they administer in the Union Registry or cancel them.

Article 73e

Retirement of units

To the extent that emissions covered by Directive 2003/87/EC exceed the Union assigned amount determined in accordance with the Ratification Decision, the central administrator shall retire AAUs from the EU PPSR Account.

Article 73f

Carry-over in the Union Registry

The central administrator shall carry-over all AAUs from the ETS Central Clearing Account and the AAUs transferred pursuant to Article 73a(4) of this Regulation to the EU PPSR Account established pursuant to Article 10(1) of Regulation (EU) No 525/2013.

Article 73g

Clearing Processes

1. Within six months of the closure of the ESD Compliance Account for 2020 in accordance with Article 31, the central administrator shall calculate a clearing value for each Member State by subtracting net transfers of AEAs from net acquisitions of AEAs between Member States over the period 2013-2020.

2. Where a Member State has a negative clearing value pursuant to paragraph 1, the relevant national administrator shall transfer a number of AAUs equal to the clearing value from their ESD AAU Deposit Account to the ESD Central Clearing Account.

3. Where a Member State has a positive clearing value pursuant to paragraph 1 and after the completion of all transfers pursuant to paragraph 2, the central administrator shall transfer a number of AAUs equal to the clearing value to a Party holding Account of the relevant Member State.

4. Before performing the transfer referred to in paragraph 2 of this Article, the relevant national administrator shall first transfer a number of AAUs required to satisfy the share of proceeds applied to first international transfers of AAUs in accordance with Article 10(1) of Regulation (EU) No 525/2013.";

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(*) Regulation (EU) No 525/2013 of the European Parliament and of the Council of 21 May 2013 on a mechanism for monitoring and reporting greenhouse gas emissions and for reporting other information at national and Union level relevant to climate change and repealing Decision No 280/2004/EC (OJ L 165, 18.6.2013, p. 13).

(**) Commission Decision 2010/634/EU of 22 October 2010 adjusting the Union-wide quantity of allowances to be issued under the Union Scheme for 2013 and repealing Decision 2010/384/EU (OJ L 279, 23.10.2010, p. 34)."

(3) Annex I is amended as set out in the Annex to this Regulation.

Article 2

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

However, Article 1(2) and (3) shall apply from the date of publication by the Commission in the *Official Journal of the European Union* of a communication on the entry into force of the Doha Amendment to the Kyoto Protocol.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 13.7.2015

For the Commission
The President
Jean-Claude JUNCKER