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From: Secretary-General of the European Commission,
signed by Mr Jordi AYET PUIGARNAU, Director

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To: Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of
the European Union

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Subject: COMMISSION DELEGATED REGULATION (EU) .../... of 12.3.2019
amending Regulation (EU) No 389/2013 as regards the technical
implementation of the second commitment period of the Kyoto Protocol

Delegations will find attached document C(2019) 1839 final.

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COMMISSION DELEGATED REGULATION (EU) .../...

of 12.3.2019

amending Regulation (EU) No 389/2013 as regards the technical implementation of the second commitment period of the Kyoto Protocol

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

The Union Registry was established by Commission Regulation (EU) No 389/2013¹ (Registry Regulation). It needs to be adapted to the new legal context set for the fourth trading period of the EU Emissions Trading System (EU ETS) (2021-2030). Regulation (EU) 2017/2392² and Directive (EU) 2018/410³ amended the ETS Directive⁴, which is the first legal basis of the Registry Regulation. These changes need to be reflected in the rules governing the Union Registry. Therefore, a new Registry Regulation will be adopted as a separate delegated act.

However, the fulfilment of requirements for the second commitment period of the Kyoto Protocol will be governed still by the provisions contained in Regulation (EU) No 389/2013. These existing rules require further adjustment.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

The Commission established the Expert Group on Climate Change Policy on 27 March 2018. For the preparation of this Delegated Regulation, meetings of the Expert Group on Climate Change Policy were held on 3 April 2018, 18 May 2018, 11-12 June 2018 and 3 July 2018.

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 annexed to the Interinstitutional Agreement on Better Law Making⁵. The observations expressed by the expert group were taken into account when preparing the draft Delegated Regulation.

Furthermore, online feedback on the text of the Delegated Regulation was collected on the Better Regulation portal for four weeks between 9 January and 6 February 2019. During this period, no contributions were submitted to this draft text.

¹ 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).

² Regulation (EU) 2017/2392 of the European Parliament and of the Council of 13 December 2017 amending Directive 2003/87/EC to continue current limitations of scope for aviation activities and to prepare to implement a global market-based measure from 2021 (OJ L 350, 29.12.2017, p.7).

³ Directive (EU) 2018/410 of the European Parliament and of the Council of 14 March 2018 amending Directive 2003/87/EC to enhance cost-effective emission reductions and low-carbon investments, and Decision (EU) 2015/1814 (OJ L 76, 19.3.2018, p. 3).

⁴ Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a system for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC (OJ L 275, 25.10.2003, p. 32).

⁵ Interinstitutional Agreement Between the European Parliament, the Council of the European Union and the European Commission of 13 April 2016 on Better Law-Making (OJ L 123, 12.5.2016, p.1).

3. LEGAL ELEMENTS OF THE DELEGATED ACT

Commission Delegated Regulation (EU) 2015/1844⁶ introduced rules into the Registry Regulation for the implementation of the second commitment period of the Kyoto Protocol. However, this Regulation did not contain rules on the clearing foreseen at the end of the second commitment period with countries not taking part in the joint fulfilment. These rules need to be included in Regulation (EU) No 389/2013, with applicability linked to the entry into force of the Doha Amendment.

⁶ Commission Delegated Regulation (EU) 2015/1844 of 13 July 2015 amending Regulation (EU) No 389/2013 as regards the technical implementation of the Kyoto Protocol after 2012 (OJ L 268, 15.10.2015, p.1).

COMMISSION DELEGATED REGULATION (EU) .../...

of 12.3.2019

amending Regulation (EU) No 389/2013 as regards the technical implementation of the second commitment period of the Kyoto Protocol

(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/EC⁷, and in particular Article 10(6) thereof,

Whereas:

- (1) Article 19(1) of Directive 2003/87/EC of the European Parliament and the Council⁸ requires that all allowances issued from 1 January 2012 onwards are held in a Union Registry. Such a Union Registry was initially established by Commission Regulation (EU) No 920/2010⁹.
- (2) Commission Regulation (EU) No 389/2013¹⁰ repealed Regulation (EU) No 920/2010 to lay down general, operational and maintenance requirements concerning the Union Registry for the trading period starting on 1 January 2013 and subsequent periods, concerning the independent transaction log provided for in Article 20(1) of Directive 2003/87/EC, and concerning registries provided for in Article 6 of Decision No 280/2004/EC of the European Parliament and of the Council¹¹.

⁷ OJ L 165, 18.6.2013, p. 13.

⁸ Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a system for greenhouse gas emission allowance trading within the Union and amending Council Directive 96/61/EC (OJ L 275, 25.10.2003, p. 32).

⁹ Commission Regulation (EU) No 920/2010 of 7 October 2010 for a standardised and secured system of registries pursuant to Directive 2003/87/EC of the European Parliament and of the Council and Decision No 280/2004/EC of the European Parliament and of the Council (OJ L 270, 14.10.2010, p. 1).

¹⁰ 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).

¹¹ Decision No 280/2004/EC of the European Parliament and of the Council of 11 February 2004 concerning a mechanism for monitoring Community greenhouse gas emissions and for implementing the Kyoto Protocol (OJ L 49, 19.2.2004, p. 1).

- (3) Article 10(1) of Regulation (EU) No 525/2013 provides for the establishment of registries for the fulfilment of obligations stemming from the Kyoto Protocol. Regulation (EU) No 389/2013 governs also the functioning of these registries.
- (4) The Conference of the Parties to the United Nations Framework Convention on Climate Change 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 (EU) 2015/1339¹². It is necessary to implement the Doha Amendment to the Kyoto Protocol in the Union Registry and in the national Kyoto Protocol registries. However, the relevant provisions should apply only as of the date of entry into force of the Doha Amendment to the Kyoto Protocol.
- (5) Norway and Liechtenstein are participating in the EU Emissions Trading System established by Directive 2003/87/EC, but are not parties to the joint fulfilment agreement¹³ during the second commitment period of the Kyoto Protocol. Therefore, a specific clearing procedure should be established at the end of the second commitment period as provided for by Article 10(6) of Regulation (EU) No 525/2013.
- (6) All operations required in relation to the third trading period of the EU Emissions Trading System between 2013 and 2020 should be completed in accordance with the rules laid down in Regulation (EU) No 389/2013. As Directive 2003/87/EC allowed for the use of international credits generated pursuant to the Kyoto Protocol, that Regulation will continue to apply to those operations until 1 July 2023, which is the end of the additional period for fulfilling commitments under the second commitment period of the Kyoto Protocol. In order to provide clarity about the rules applying to all operations related to the third trading period in accordance with Directive 2003/87/EC, as amended by Directive 2009/29/EC, on the one hand, and the rules applying to all operations related to the fourth trading period in accordance with Directive 2003/87/EC, as amended by Directive (EU) 2018/410, on the other hand, the scope of application of those provisions of Regulation (EU) No 389/2013 which continue to apply, after the entry into force of the present Regulation, for the operations related to the third trading period will be limited to that purpose,

HAS ADOPTED THIS REGULATION:

Article 1

In Regulation (EU) No 389/2013, the following Article 73h is inserted:

'Article 73h

¹² Council Decision (EU) 2015/1339 of 13 July 2015 on the conclusion, on behalf of the European Union, of the Doha Amendment to the Kyoto Protocol to the United Nations Framework Convention on Climate Change and the joint fulfilment of commitments thereunder (OJ L 207, 4.8.2015, p. 1).

¹³ Council Decision (EU) 2015/1340 of 13 July 2015 on the conclusion, on behalf of the European Union, of the Agreement between the European Union and its Member States, of the one part, and Iceland, of the other part, concerning Iceland's participation in the joint fulfilment of commitments of the European Union, its Member States and Iceland for the second commitment period of the Kyoto Protocol to the United Nations Framework Convention on Climate Change (OJ L 207, 4.8.2015, p. 15).

Clearing process for countries not parties to a joint fulfilment agreement

1. Within 6 months after the closure of the trading period 2013-2020, the central administrator shall calculate the clearing value for countries not parties to a joint fulfilment agreement by subtracting the amount equal to the allowances in the EU ETS resulting from the inclusion of that country in the EU ETS for the trading period 2013-2020 from the total amount of general allowances surrendered by operators administered by the national administrator of that country for the period 2013-2020.
2. The central administrator shall notify the national administrators about the result of the calculation pursuant to paragraph 1.
3. Within 5 working days of the notification set out in paragraph 2, the Central Administrator shall transfer an amount of AAUs equal to the clearing value calculated pursuant to paragraph 1 from the ETS Central Clearing Account in the Union Registry to a KP party holding account in the KP registry of each country with a positive clearing value.
4. Within 5 working days of the notification set out in paragraph 2, each KP registry administrator whose country has a negative clearing value shall transfer an amount of AAUs to that is equal to the positive equivalent of the clearing value calculated pursuant to paragraph 1 to the ETS Central Clearing Account in the Union Registry.
5. Before performing the transfer referred to in paragraphs 3 and 4 of this Article, the relevant national administrator or the central 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](#).
6. Within 6 months after the closure of the trading period 2013-2020, the central administrator shall calculate the clearing value for countries not parties to a joint fulfilment agreement by subtracting the amount equal to the verified emissions by aircraft operators that are included in the national inventory under the UNFCCC of that country from the total amount of general allowances surrendered by aircraft operators administered by the national administrator of that country for the period 2013-2020.
7. The central administrator shall notify the national administrators about the result of the calculation pursuant to paragraph 6.
8. Within 5 working days of the notification pursuant to paragraph 7, each KP registry administrator whose country has a positive clearing value shall transfer an amount of AAUs equal to the clearing value calculated pursuant to paragraph 6 to the ETS Central Clearing Account in the Union Registry.
9. Within 5 working days of the notification pursuant to paragraph 7, the Central Administrator shall transfer an amount of AAUs equal to the positive equivalent of the clearing value calculated pursuant to paragraph 6 from the ETS Central Clearing Account in the Union Registry to a KP party holding account in the KP registry of each country with a negative clearing value.

10. Before performing the transfer referred to in paragraphs 8 and 9 of this Article, the relevant national administrator or the central 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.’

Article 2

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

It 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, 12.3.2019

For the Commission
The President
Jean-Claude JUNCKER