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From: Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director

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To: Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union

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Subject: COMMISSION DELEGATED REGULATION (EU) .../... of 14.6.2023 amending Delegated Regulation (EU) 2019/1122 as regards the modernisation of the functioning of the Union Registry

Delegations will find attached document C(2023) 3669 final.

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Brussels, 14.6.2023
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COMMISSION DELEGATED REGULATION (EU) .../...

of 14.6.2023

**amending Delegated Regulation (EU) 2019/1122 as regards the modernisation of the
functioning of the Union Registry**

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

The Union Registry is established pursuant to Article 19(1) of Directive 2003/87/EC¹. The rules on the function of the Union Registry were established in Commission Regulation (EU) No 1193/2011² and by Commission Regulation (EU) No 389/2013³ for the third trading period of the EU Emissions Trading System (EU ETS) (2013-2020). The Union Registry rules were adapted to the new legal context set for the fourth trading period of the EU ETS (2021-2030) by the Commission Delegated Regulation (EU) 2019/1122⁴ that is applicable as of 1 January 2021. The latter has repealed the former in most parts. However, the fulfilment of requirements of the second period of the Kyoto Protocol is still governed by Regulation (EU) No 389/2013.

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 22 June and 30 September 2022.

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 17 January and 14 February 2023. 22 contributions were submitted, 13 from citizens, 3 from companies, 2 from non-governmental organisations, 2 from public authorities, 1 from a business association and 1 on behalf of academic institutions. The comments received contained similar arguments or information to what has already been put forward during the extensive discussions that have taken place within the Expert Group on Climate Change Policy, therefore the Commission maintained the text of the Delegated Regulation.

¹ 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).

² Commission Regulation (EU) No 1193/2011 of 18 November 2011 establishing a Union Registry for the trading period commencing on 1 January 2013, and subsequent trading periods, of the Union emissions trading scheme 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 and amending Commission Regulations (EC) No 2216/2004 and (EU) No 920/2010 (OJ L 315, 29.11.2011, p. 1).

³ 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).

⁴ 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 (OJ L 177, 2.7.2019, p. 3).

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).

The European Data Protection Supervisor was consulted in accordance with Article 42 of Regulation (EU) 2018/1725⁶ and delivered an opinion on 20 April 2023.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

Delegated Regulation (EU) 2019/1122 introduced rules on the obligation to report on bilateral transactions. However, this provision has not been applied consistently and further clarifications are necessary in the legal text.

That Regulation has also extended the list of entities that can receive data stored in the Union Registry. The recent experience has shown that there is a need to extend this provision to cover the newly founded European Public Prosecutor's Office, established on 1 June 2021.

As a part of the periodic modernisation of the IT infrastructure of the Union Registry and the functions described as EU transaction log, some redundant structures of the Union Registry should be removed and the Union Registry should be implemented with new technical frameworks. The current functionality of the Union Registry as prescribed in the ETS Directive will be maintained and the public information as shown on the public website will remain the same as prescribed in the Delegated Regulation (EU) 2019/1122, but implemented in a more modern technological framework.

⁶ Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

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

of 14.6.2023

amending Delegated Regulation (EU) 2019/1122 as regards the modernisation of the functioning of the Union Registry

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to 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/EC⁷, and in particular Article 19(3) thereof,

Whereas:

- (1) Article 19(1) of Directive 2003/87/EC, before its amendment by Directive 2009/29/EC of the European Parliament and of the Council⁸, required Member States to provide for the establishment and maintenance of a registry to ensure the accurate accounting of the issue, holding, transfer and cancellation of greenhouse gas emission allowances. For that purpose, Article 19(3) of Directive 2003/87/EC and Article 3 of Commission Regulation (EC) No 2216/2004⁹ created a system for the trading of greenhouse gas emission allowances which became operational in January 2005. That system ensured the accurate accounting of all greenhouse gas emission allowances issued under the emissions trading system of the Union ('EU ETS') and kept track of the ownership of EU ETS allowances held in electronic accounts. It consisted of the registries of all Member States and a Central Administrator, designated by the Commission, that was to maintain an independent transaction log recording the issue, transfer and cancellation of allowances. That independent transaction log, the Community Independent Transaction Log (CITL), was created pursuant to Article 5 of Commission Regulation (EC) No 2216/2004. That CITL checked, recorded, and authorised automatically all transactions that took place between accounts in the national registries. Where irregularities were identified through the automated checks, the CITL would terminate the transactions tainted by such irregularities and the central administrator had to inform the Member State or the Member States concerned thereof. In addition, that Member State or those Member States were held not to register the transactions or any other transaction relating to the allowances concerned until the irregularities had been solved.

⁷ OJ L 275, 25.10.2003, p. 32.

⁸ Directive 2009/29/EC of the European Parliament and of the Council of 23 April 2009 amending Directive 2003/87/EC so as to improve and extend the greenhouse gas emission allowance trading scheme of the Community (OJ L 140, 5.6.2009, p. 63).

⁹ Commission Regulation (EC) No 2216/2004 of 21 December 2004 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 319M, 29.11.2008, p. 1).

- (2) Article 19(1) of Directive 2003/87/EC was amended by Directive 2009/29/EC, which replaced the national registries with a Union Registry. Article 3 of Directive 2009/29/EC, however, contained a transitional provision, due to which the provisions of Directive 2003/87/EC were to continue to apply until 31 December 2012. The CITL was, in the meantime, replaced by the European Union Transaction Log ('EUTL'), which was established by Article 4 of Commission Regulation (EU) No 920/2010¹⁰. That Commission Regulation was replaced by Commission Regulation (EU) No 389/2013¹¹, which in its Article 4 established the Union Registry. That Commission Regulation was, in its turn and save for its Article 3, point (30), replaced by Commission Delegated Regulation (EU) 2019/1122¹². Delegated Regulation (EU) 2019/1122 now thus contains the rules for the functioning of the Union Registry for phase 4 of the EU emissions trading system (EU ETS), which started on 1 January 2021, and all EU ETS allowances issued from 1 January 2012 onwards are to be held in the Union Registry. As a result of the centralisation of the registries, the EUTL has become part of the Union Registry, which should be reflected in Delegated Regulation (EU) 2019/1122. The Union Registry thus performs, since 1 January 2012, all the functions of the EUTL.
- (3) As part of the modernisation of the IT infrastructure of the Union Registry, its role and possible evolution are periodically reassessed by the Commission as the central administrator in order to remove IT redundancies (i.e. reference to some IT components instead of functions or checks) and prepare the infrastructure for future evolutions of the IT framework, however without affecting its functionality or security. While such modernisation will affect the way the automated checks are performed, all the checks prescribed by Article 20(2) of Directive 2003/87/EC ensuring that there are no irregularities when issuing, transferring or cancelling allowances, should be maintained.
- (4) Currently, users of the Union Registry can initiate transfers without any limitations depending on the thresholds (value) of the transfer. To improve the security of high value transactions, the use of trusted account lists for transactions above a particular threshold should be mandatory.
- (5) In its Communication of 13 October 2021 on rising energy prices¹³, the Commission asked the European Securities Market Authority to examine more closely patterns of trading behaviours and the potential need for targeted actions on the European carbon market. One of the important sources for that analysis by the European Securities Market Authority were the Union Registry data on the ownership and transfers of allowances in the Union Registry. The analysis showed that for market monitoring purposes, it would be beneficial to add to Delegated Regulation (EU) 2019/1122 a

¹⁰ 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).

¹¹ 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).

¹² 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 (OJ L 177, 2.7.2019, p. 3).

¹³ Communication from the Commission of 13 October 2021 to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions, "Tackling rising energy prices: a toolbox for action and support", COM(2021) 660 final.

requirement to identify transactions of emission allowances between account holders that are part of the same group. At this moment, information on the group structure is required only for operator holding accounts. The requirement to provide this information should be introduced for trading accounts as well.

- (6) Article 80(3) of Delegated Regulation (EU) 2019/1122 lists entities that can obtain data from the Union Registry. Council Regulation (EU) 2017/1939¹⁴ established the European Public Prosecutor's Office (EPPO), which is responsible for investigating, prosecuting and bringing to judgment crimes against the financial interests of the Union since 1 June 2021. Those crimes include several types of fraud, VAT fraud with damages above 10 million euro, money laundering, corruption, etc. It is therefore appropriate to add the EPPO to the entities listed in Article 80(3) of Delegated Regulation (EU) 2019/1122.
- (7) Delegated Regulation (EU) 2019/1122 should therefore be amended accordingly.
- (8) The European Data Protection Supervisor was consulted in accordance with Article 42 of Regulation (EU) 2018/1725 of the European Parliament and of the Council¹⁵ and delivered an opinion on 20 April 2023,

HAS ADOPTED THIS REGULATION:

Article 1

Delegated Regulation (EU) 2019/1122 is amended as follows:

- (1) Article 5 is amended as follows:
 - (a) in paragraph 1, the following sentence is added
'The EUTL shall be part of the Union Registry.';
 - (b) in paragraphs 2 to 4 the acronym 'EUTL' is replaced by 'standardised electronic database';
- (2) Article 6 is amended as follows:
 - (a) in the title, the words 'and the EUTL' are deleted;
 - (b) paragraph 2 is replaced by the following:

'2. The central administrator shall ensure that the Union Registry checks and records transactions with allowances and the account management processes set out in Title I, Chapter 3. All transactions involving allowances units shall take place within the Union Registry, and shall be recorded and checked before and after the account management processes are executed. The central administrator may establish a restricted communication link between the Union Registry and the registry of a third country which has signed a treaty concerning its accession to the Union.';
- (3) in Article 7(4), third sentence, the words 'and the EUTL' are deleted;

¹⁴ Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO') (OJ L 283, 31.10.2017, p. 1).

¹⁵ Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

- (4) Article 23 is amended as follows:
- (a) paragraph 1 is replaced by the following:

‘1. Accounts in the Union Registry shall have a trusted account list.’;
 - (b) the following paragraphs 3a and 3b are inserted:

‘3a. The central administrator may set a threshold above which transactions can only be performed to accounts that appear in the trusted account list.

‘3b. Account representatives may set thresholds for transactions for their own accounts. Such limits have to be approved by a second account representative or a national administrator.’;
- (5) in Article 30(1), point (c), the words ‘or the EUTL’ are deleted;
- (6) in Article 52 and Article 53(2) the acronym ‘EUTL’ is replaced by ‘Union Registry’;
- (7) in Article 55, the following paragraph 5 is added:

‘5. Upon initiation of a transfer, the authorised representative shall indicate whether the transfer has been executed between account holders that belong to the same group.’;
- (8) in Title III, Common technical provisions, the title of Chapter 1 is replaced by the following:

Technical requirements of the Union Registry’;

- (9) Article 60 is amended as follows:
- (a) in the title, the words ‘and the EUTL’ are deleted;
 - (b) paragraph 1 is amended as follows:
 - (i) in point (b), the words ‘between the Union Registry and the EUTL’ are deleted;
 - (ii) point (d) is replaced by the following:

‘(d) the Union Registry responds promptly to requests made by account representatives.’;
 - (c) paragraph 2 is replaced by the following:

‘2. The central administrator shall ensure that the Union Registry incorporates 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.’;
 - (d) in paragraph 3, the words ‘and EUTL’ are deleted;
- (10) in Article 62, the words ‘by the EUTL’ are deleted;
- (11) in Article 65, the words ‘or the EUTL’ and ‘or of the EUTL’ are deleted;
- (12) in Article 66(2), the words ‘or the EUTL’ are deleted;
- (13) Article 68 is amended as follows:
- (a) in paragraph 1, the words ‘by the EUTL of’ are deleted;
 - (b) in paragraph 4, the acronym ‘EUTL’ is replaced by ‘Union Registry’;

(14) in Article 70, the acronym ‘EUTL’ is replaced by ‘Union Registry’;

(15) Article 71 is replaced by the following:

Article 71

Detection of discrepancies

In the case of processes completed through the direct communication link referred to in Article 6(2), the central administrator shall ensure that the Union Registry terminates any processes where it identifies discrepancies upon conducting the automated checks referred to in Article 72(2), and informs the administrator of the accounts involved in the terminated transaction thereof. The central administrator shall ensure that the Union Registry immediately informs the relevant account holders that the process has been terminated by returning an automated check response code.’;

(16) in Article 72(2), the acronym ‘EUTL’ is replaced by ‘Union Registry’.

(17) Article 73 is replaced by the following:

Article 73

Reconciliation — detection of inconsistencies by the Union Registry

1. The central administrator shall ensure that the Union Registry periodically initiates data reconciliation to ensure that the records of accounts and holdings of allowances match the executed transactions in the Union Registry. The central administrator shall ensure that the Union Registry records all processes.
2. If during the data reconciliation process referred to in paragraph 1 an inconsistency is identified regarding accounts or holdings of allowances as part of the periodic reconciliation process, the central administrator shall ensure that the Union Registry prevents any further processes to be completed with any of the accounts or holdings of allowances which are the subject of the inconsistency. The central administrator shall ensure that the Union Registry immediately informs the central administrator and the administrators of the relevant accounts or holdings of allowances of any inconsistency.’;

(18) Article 74 is replaced by the following:

Article 74

Finalisation of processes

1. All transactions and other processes communicated to the Union Registry in accordance with Article 6(2) shall be final when all automated checks are executed. The central administrator shall ensure that the Union Registry automatically aborts the completion of a transaction or process if that transaction or process could not be completed within 24 hours of its communication.
2. The data reconciliation process referred to in Article 73 shall be final when all inconsistencies for a specific time and date for specific accounts or holdings of allowances have been resolved, and the data reconciliation process has been successfully re-initiated and completed.’;

(19) in Article 76, the words ‘before a communication link is established and activated between the new version or release of that software and the EUTL’ are deleted;

(20) Article 77 is amended as follows:

- (a) in paragraphs 1 and 5, the words ‘and the EUTL’ are deleted;

- (b) in paragraphs 5, 6 and 7, the words ‘or the EUTL’ are deleted;
- (21) in Article 79(1), the words ‘in the EUTL or’ are deleted;
- (22) Article 80 is amended as follows:
 - (a) in paragraph 1, the words ‘the EUTL and’ are deleted;
 - (b) paragraph 3 is amended as follows:
 - (i) in the first sentence, the words ‘and the EUTL’ are deleted;
 - (ii) point (a) is replaced by the following:
 - ‘(a) the police or another law enforcement or judicial authority, tax authorities of a Member State and the European Public Prosecutor’s Office (EPPO);’;
 - (c) in paragraph 4, first subparagraph, the following sentence is added:
‘Those entities shall make any requests to the central administrator or to a national administrator by using the template set out in Annex XIV.’;
 - (d) paragraph 6 is replaced by following:
‘6. The entities that have received data under the conditions described above shall share with the central administrator, if they deem necessary, their general conclusions on the legal or technical implications of the transactions with allowances, including general findings to improve the understanding of the legal implications of the processes analysed and to contribute to policy developments without referring to data of individual accounts or transactions.’;
 - (e) in paragraph 7, the words ‘and the EUTL’ are deleted;
 - (f) in paragraph 10, the words ‘The EUTL and’ are deleted.
- (23) in Article 82, the words ‘and of the EUTL’ are deleted;
- (24) Annexes III, IV, VI, VII, VIII and XIII are amended in accordance with Annex I;
- (25) the text set out in Annex II is added as Annex XIV.

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*.

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

Done at Brussels, 14.6.2023

For the Commission
The President
Ursula VON DER LEYEN