

II

(Non-legislative acts)

REGULATIONS

COMMISSION DELEGATED REGULATION (EU) 2023/1642

of 14 June 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/EC ⁽¹⁾, 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 Council ⁽²⁾, 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 2216/2004 ⁽³⁾ 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 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.
- (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

⁽¹⁾ OJ L 275, 25.10.2003, p. 32.

⁽²⁾ 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).

⁽³⁾ 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 386, 29.12.2004, p. 1).

Commission Regulation (EU) No 920/2010⁽⁴⁾. That Commission Regulation was replaced by Commission Regulation (EU) No 389/2013⁽⁵⁾, 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) 2019/1122⁽⁶⁾. 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 prices⁽⁷⁾, 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 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) 2017/1939⁽⁸⁾ 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.

⁽⁴⁾ 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).

⁽⁵⁾ 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 (EU) No 1193/2011 (OJ L 122, 3.5.2013, p. 1).

⁽⁶⁾ 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).

⁽⁷⁾ 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.

⁽⁸⁾ 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).

- (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 Council ⁽⁹⁾ 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;

- (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:

⁽⁹⁾ 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).

‘CHAPTER 1

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 June 2023.

For the Commission
The President
Ursula VON DER LEYEN

ANNEX I

Annexes III, IV, VI, VII, VIII and XIII to Delegated Regulation (EU) 2019/1122 are amended as follows:

(1) in Annex III, Table III-I is amended as follows:

- (a) in column F, the heading 'Displayed on the EUTL public website?' is replaced by the following: 'Displayed on the public website?';
- (b) in the last row, the sentence 'Displayed at the EUTL public website.' is replaced by the following: 'Displayed on the public website.';

(2) in Annex IV, point 5 is amended as follows:

(a) the following point (f) is added:

'(f) account holders that are part of a group shall provide a document clearly identifying the structure of the group.';

(b) the following paragraph is added:

'For the purposes of point (f), where the document identifying the structure of the group is a copy, a public notary or other similar person specified by the national administrator shall certify that copy as a true copy. A certified copy that is issued outside the Member State requesting a copy shall be legalised, except where otherwise provided for by national law. The date of the certification or legalisation shall not be more than three months prior to the date of application.';

(3) Annex VI is amended as follows:

- (a) in Table VI-I, column F, the heading 'Displayed on the EUTL public website?' is replaced by the following: 'Displayed on the public website?';
- (b) in Table VI-II, column F, the heading 'Displayed on the EUTL public website?' is replaced by the following: 'Displayed on the public website?';

(4) in Annex VII, Table VII-I, column F, the heading 'Displayed on the EUTL public website?' is replaced by the following: 'Displayed on the public website?';

(5) in Annex VIII, Table VIII-I, column F, the heading 'Displayed on the EUTL public website?' is replaced by the following: 'Displayed on the public website?';

(6) Annex XIII is amended as follows:

(a) point 1 is amended as follows:

- (i) the introductory wording is replaced by the following: 'The Union Registry shall display on the public website the following information for each account:';
- (ii) in point (a), the words 'displayed on the EUTL public website' are replaced by the following: 'displayed on the public website';
- (iii) in Table XIV-I, the heading 'to be displayed on the EUTL public website' is replaced by the following: 'to be displayed on the public website';

(b) in point 2, the introductory wording is replaced by the following: 'The Union Registry shall display on the public website the following general information, and shall update it every 24 hours:';

(c) in point 3, the introductory wording is replaced by the following: 'The Union Registry shall display on its public website the following general information, on 30 April of each year:';

- (d) in point 4, the introductory wording is replaced by the following: 'The Union Registry shall display on the public website the following information about each completed transaction recorded by the Union Registry by 30 April of a given year on 1 May three years later:';
 - (e) in point 5, the introductory wording is replaced by the following: 'On 1 May each year, the following information shall be published on agreements which are in force pursuant to Article 25 of Directive 2003/87/EC recorded by the Union Registry by 30 April:';
 - (f) in point 6(b)(v), the words 'and the EUTL' are deleted;
 - (g) in point 8(b)(iv), the words 'and the EUTL' are deleted.
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ANNEX II

'ANNEX XIV

Template for a request for data stored in the Union Registry under Article 80(3) of Commission Delegated Regulation (EU) 2019/1122 ⁽¹⁾

Request to the [specify if the request is submitted to the central or national administrator] of the Union Registry pursuant to Article 80(3) of Delegated Regulation (EU) 2019/1122

1.	Entity submitting the request:	
2.	Date of the request:	
3.	Purposes for the request from the exhaustive list laid down in Article 80(4) of Delegated Regulation (EU) 2019/1122	
4.	Description of the legal or administrative context in which the data will be used:	
5.	Precise description of the data requested, including the time period for which the data is requested:	
6.	Contact point for any queries in relation to the request:	

As required by Articles 80(4) and 80(5) of Delegated Regulation (EU) 2019/1122, we commit to use the confidential information received pursuant to this request only for the purpose for which such information was provided and to not make the data received available deliberately or accidentally to persons not involved in the intended purpose of the data use.

[Name and signature]

⁽¹⁾ 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).