

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 (Text with EEA relevance)

TITLE I

COMMON GENERAL PROVISIONS

CHAPTER 3

Accounts

Section 1

General provisions applicable to all accounts

Article 9

Accounts

- 1 Member States and the central administrator shall ensure that each KP registry and the Union Registry contain accounts as specified in Annex I.
- 2 Each account type may hold the unit types as set out in Annex I.

Article 10

Account status

- 1 Accounts shall be in one of the following status: open, blocked, excluded or closed.
- 2 No processes may be initiated from blocked accounts, except for the processes specified in Articles 25, 31, 35, 67, 77, 81 and 82.
- 3 No processes may be initiated from closed accounts. A closed account may not be re-opened, and may not acquire units.
- 4 Upon exclusion of an installation from the Union scheme pursuant to Article 27 of Directive 2003/87/EC, the national administrator shall set the corresponding operator holding account to excluded status for the duration of the exclusion.
- 5 Upon notification from the competent authority that an aircraft operator's flights are no longer included in the Union scheme in accordance with Annex I to Directive 2003/87/EC in a given year, the national administrator shall set the corresponding aircraft operator holding account to excluded status, after giving prior notice to the aircraft operator concerned and until notification from the competent authority that an aircraft operator's flights are again included in the Union scheme.

6 No processes may be initiated from excluded accounts, except for the processes specified in Articles 25 and 68 and the processes specified in Articles 35 and 67 corresponding to the period where the account status was not set to excluded.

Article 11

The administering of accounts

1 Every account shall have an administrator who shall be responsible for administering the account on behalf of a Member State or on behalf of the Union.

2 The administrator of an account shall be determined for each account type as set out in Annex I.

3 The administrator of an account shall open, suspend, limit access to, or close an account, change its status, approve authorised representatives, permit changes to account details that require the approval of the administrator, and initiate transactions as requested by the account holder in accordance with Article 23(5), in accordance with the provisions of this Regulation.

4 The administrator may require the account holders and its representatives to agree to comply with reasonable terms and conditions consistent with this Regulation having regard to the issues set out in Annex II.

5 Accounts shall be governed by the laws and fall under the jurisdiction of the Member State of their administrator and the units held in them shall be considered to be situated in that Member State's territory.

Article 12

Notifications from the central administrator

The central administrator shall notify the account representatives and the national administrator of the initiation and completion or termination of any process related to the account, and of the change of status of the account, through an automated mechanism described in the data exchange and technical specifications provided for in Article 105.

Section 2

Opening and updating accounts

Article 13

Opening accounts administered by the central administrator

1 The central administrator shall open all ETS management accounts in the Union Registry, the Union's KP accounts, the EU AEA Total Quantity Account, the ESD Deletion Account and one ESD Compliance Account for each Member State for each year of the compliance period within 20 working days of the receipt of the information set out in Annex III.

2 The national administrator designated pursuant to Article 8(1) shall act as authorised representative of the ESD Compliance Accounts, unless the relevant Member State nominates another person.

3 Each Member State shall provide the central administrator the information set out in Table VIII-I of Annex VIII for each authorised representative and additional representative of the ESD Compliance Accounts.

Article 14

Opening national administrative platform accounts in the Union Registry

1 From 1 January 2014, a national administrator may submit a request for opening a national administrative platform account in the Union Registry. This request shall be submitted to the central administrator. The national administrator shall provide information as required by the central administrator. This information shall include, at a minimum, the information set out in Annex III and evidence that the national administrative platform ensures a level of security equivalent or higher than the security ensured by the Union Registry in accordance with this Regulation, having regard to the technical and security requirements described in the data exchange and technical specifications provided for in Article 105.

2 Within 20 working days of the receipt of a complete set of information in accordance with paragraph 1, the central administrator shall open a national administrative platform account in the Union Registry or shall inform the national administrator of the refusal to open the account if the level of security ensured by the national administrative platform is not sufficient compared to the requirements of paragraph 1.

3 The national administrator designated pursuant to Article 8(1) shall act as the authorised representative of the national administrative platform account.

Article 15

Opening an auction delivery account in the Union Registry

1 An auctioneer, a clearing system or a settlement system as defined in the Regulation (EU) No 1031/2010 or an auction platform appointed pursuant to Article 26 or Article 30 of that Regulation may submit to a national administrator a request for an auction delivery account in the Union Registry. The person requesting the account shall provide the information set out in Annex IV.

2 Within 20 working days of the receipt of a complete set of information in accordance with paragraph 1 of this Article and Article 24, the national administrator shall open the auction delivery account in the Union Registry or inform the person requesting the account of the refusal to open the account, pursuant to Article 22.

Article 16

Opening operator holding accounts in the Union Registry

1 Within 20 working days of the entry into force of a greenhouse gas emissions permit, the relevant competent authority or the operator shall provide the relevant national administrator with the information set out in Annex VI and shall request the national administrator to open an operator holding account in the Union Registry.

2 Within 20 working days of the receipt of a complete set of information in accordance with paragraph 1 of this Article and Article 24, the national administrator shall open an operator holding account for each installation in the Union Registry or inform the prospective account holder of the refusal to open the account, pursuant to Article 22.

Article 17

Opening aircraft operator holding accounts in the Union Registry

1 Within 20 working days from the approval of the monitoring plan of an aircraft operator, the competent authority or aircraft operator shall provide the relevant national administrator with the information set out in Annex VII and shall request the national administrator to open an aircraft operator holding account in the Union Registry.

2 Each aircraft operator shall have one aircraft operator holding account.

3 Aircraft operators performing aviation activities with total annual emissions lower than 25 000 tonnes of carbon dioxide equivalent per year or operating fewer than 243 flight per period for three consecutive four-month period may mandate a natural person or a legal entity to open an aircraft operator holding account and to surrender the allowances pursuant to Article 12(2a) of Directive 2003/87/EC on their behalf. Responsibility for compliance still remains with the aircraft operator. When mandating the natural person or the legal entity, the aircraft operator shall ensure that there is no conflict of interest amongst the mandated person or entity and competent authorities, national administrators, verifiers or other bodies subject to the provisions of Directive 2003/87/EC and the acts adopted for its implementation. In this case, the natural person or legal entity mandated shall provide the information required in accordance with paragraph 1.

4 Within 40 working days of the receipt of a complete set of information in accordance with paragraph 1 of this Article and Article 24, the national administrator shall open an aircraft operator holding account for each aircraft operator in the Union Registry or inform the prospective account holder of the refusal to open the account, pursuant to Article 22.

5 The status of aircraft operator holding accounts shall be changed from blocked to open following the entry of verified emissions pursuant to paragraphs 1 to 5 of Article 35 and a compliance status figure greater than or equal to 0 calculated pursuant to Article 37(1). The status of the account shall also be changed to open at an earlier date between the date of opening of the account and the date when verified emissions are entered in the Union Registry for the first time following receipt by the national administrator of a request by the account holder to activate its account for trading, provided that such a request contains, at a minimum, any required elements specified in the data exchange and technical specifications provided for in Article 105.

Article 18

Opening person holding and trading accounts in the Union Registry

1 A request for opening a person holding account or trading account in the Union Registry shall be submitted to the national administrator by the prospective account holder. The prospective account holder shall provide information as required by the national administrator, which shall include, at a minimum, the information set out in Annex IV.

2 The Member State of the national administrator may require as a condition for opening a person holding or trading account that the prospective account holders have their permanent residence or registration in the Member State of the national administrator administering the account.

3 The Member State of the national administrator may require as a condition for opening a person holding or trading account that prospective account holders are registered for value added tax (VAT) in the Member State of the national administrator of the account.

4 Within 20 working days of the receipt of a complete set of information in accordance with paragraph 1 of this Article and Article 24, the national administrator shall open a person holding account or trading account in the Union Registry or inform the prospective account holder of the refusal to open the account, pursuant to Article 22.

Article 19

Opening national holding accounts in the Union Registry

The competent authority of a Member State shall instruct the national administrator to open a national holding account in the Union Registry within 20 working days of the receipt of the information set out in Annex III.

Article 20

Opening external trading platform accounts in the Union Registry

1 External trading platforms may submit a request for opening an external trading platform account in the Union Registry. This request shall be submitted to the national administrator. The person requesting the account shall provide information as required by the national administrator. This information shall include, at a minimum, the information set out in Annex IV and evidence that the external trading platform ensures a level of security equivalent or higher than the security ensured by the Union Registry in accordance with this Regulation and that it has security arrangements in place that offer at least a level of protection equivalent to the approval of an additional account representative required in Article 23(3).

2 National administrators shall ensure that external trading platforms have regard to the technical and security requirements described in the data exchange and technical specifications provided for in Article 105.

3 Within 20 working days of the receipt of a complete set of information in accordance with paragraph 1 of this Article and Article 24, the national administrator shall open an external trading platform account in the Union Registry or inform the central administrator or the person requesting the account of the refusal to open the account, pursuant to Article 22. The national administrator concerned shall notify the Commission of the opening of such accounts without delay.

4 The approval of an additional authorised representative shall not be required pursuant to Article 23(3) to initiate a transaction for transactions initiated by external trading platforms.

Article 21

Opening verifier accounts in the Union Registry

1 A request for opening a verifier account in the Union Registry shall be submitted to the national administrator. The person requesting the account shall provide information as required by the national administrator including the information set out in Annexes III and V.

2 Within 20 working days of the receipt of a complete set of information in accordance with paragraph 1 of this Article and Article 24, the national administrator shall open the verifier account in the Union Registry or inform the prospective account holder of the refusal to open the account, pursuant to Article 22.

Article 22

Refusal to open an account

1 The national administrator shall verify whether the information and documents provided for account opening are complete, up-to-date, accurate and true.

- 2 A national administrator may refuse to open an account:
- a if the information and documents provided are incomplete, out-of-date or otherwise inaccurate or false;
 - b if the prospective account holder, or, if it is a legal person, any of the directors of the prospective account holder, is under investigation or has been convicted in the preceding five years for fraud involving allowances or Kyoto units, money laundering, terrorist financing or other serious crimes for which the account may be an instrument;
 - c if the national administrator has reasonable grounds to believe that the accounts may be used for fraud involving allowances or Kyoto units, money laundering, terrorist financing or other serious crimes;
 - d for reasons set out in national law.

3 If the national administrator refuses to open an account, the person requesting the account opening may object to the relevant authority under national law, who shall either instruct the national administrator to open the account or uphold the refusal in a reasoned decision, subject to requirements of national law that pursue a legitimate objective compatible with this Regulation and are proportionate.

Article 23

Authorised representatives

1 Each account, with the exception of the verifier account, shall have at least two authorised representatives. A verifier account shall have at least one authorised representative. The authorised representatives shall initiate transactions and other processes on behalf of the account holder.

2 In addition to the authorised representatives specified in paragraph 1, accounts may also have authorised representatives with 'view only' access to the account.

3 Accounts may have one or more additional authorised representatives. The approval of an additional authorised representative is required, in addition to the approval of an authorised representative, in order to initiate a transaction, except for:

- a transfers to an account on the trusted account list in the Union Registry of the account holder;
- b transactions initiated by external trading platforms, whose accounts are opened pursuant to Article 20; and
- c the exchange of allowances pursuant to Article 60, the surrender of allowances pursuant to Article 67, the deletion of allowances pursuant to Article 68 and the cancellation of Kyoto units pursuant to Article 69, if no additional authorised representative has been nominated. In such a case, the transaction initiation shall be confirmed by another account representative.

4 Account holders may enable their accounts to be accessed through an external trading platform. Such account holders shall nominate a person who is already the authorised representative of an external trading platform account as an authorised representative.

5 If an authorised representative cannot access the Union Registry for technical or other reasons, the national administrator may initiate transactions on behalf of the authorised representative upon request, provided that the national administrator allows such requests and that access was not suspended in accordance with this Regulation.

6 The data exchange and technical specifications may set a maximum number of authorised representatives and additional authorised representatives for each account type.

7 Authorised representatives and additional authorised representatives shall be natural persons over 18 years of age. All authorised representatives and additional authorised representatives of a single account shall be different persons but the same person can be an authorised representative or an additional authorised representative on more than one account. The Member State of the national administrator may require that at least one of the authorised representatives of an account shall be a permanent resident in that Member State, except for verifier accounts.

Article 24

Nominating and approval of authorised representatives and additional authorised representatives

1 When requesting the opening of an account, the prospective account holder shall nominate a number of authorised representatives and additional authorised representatives in accordance with Article 23.

2 When nominating an authorised representative or additional authorised representative, the account holder shall provide information as required by the administrator. That information shall include, at a minimum, the information set out in Annex VIII.

3 Within 20 working days of the receipt of a complete set of information required in accordance with paragraph 2, the national administrator shall approve an authorised representative or additional authorised representative, or inform the account holder of its refusal. Where evaluation of the nominee information requires more time, the administrator may extend the evaluation process by up to 20 additional working days, and notify the extension to the account holder.

4 The national administrator shall verify whether the information and documents provided for nominating an authorised representative or additional authorised representative are complete, up-to-date, accurate and true.

5 A national administrator may refuse to approve an authorised representative or additional authorised representative:

- a if the information and documents provided are incomplete, out-of-date or otherwise inaccurate or false;
- b if the prospective representative is under investigation or has been convicted in the preceding five years for fraud involving allowances or Kyoto units, money laundering, terrorist financing or other serious crimes for which the account may be an instrument;
- c for reasons set out in national law.

6 If the national administrator refused to approve an authorised representative or additional authorised representative, the account holder may object through the relevant authority under national law, who shall either instruct the national administrator to approve the representative or uphold the refusal in a reasoned decision, subject to requirements of national law that pursue a legitimate objective compatible with this Regulation and are proportionate.

Article 25

Updating of account information and information on authorised representatives

1 All account holders shall notify the national administrator within 10 working days of changes to the information submitted for the opening of an account. In addition, account holders shall confirm to the national administrator by 31 December each year that the information for their account remains complete, up-to-date, accurate and true.

2 Aircraft operators shall notify the administrator of their account within 10 working days if they have undergone a merger involving two or more aircraft operators or if they have split into two or more aircraft operators.

3 The notification of change shall be supported by information as required by the national administrator in conformity with this Section. Within 15 working days of the receipt of such a notification and supporting information, the relevant national administrator shall approve the update of the information. The administrator may refuse to update the information in accordance with Article 24(4) and (5). The account holder shall be notified of any such refusal. Objections to such refusals may be raised with the competent authority or the relevant authority under national law in accordance with Article 22.

4 At least once every three years, the national administrator shall review whether the information submitted for the opening of an account remains complete, up-to-date, accurate and true, and shall request that the account holder notify any changes as appropriate.

5 The account holder of an operator holding account may only sell or divest of its operator holding account together with the installation linked to the operator holding account.

6 Subject to paragraph 5, no account holder may sell or divest of the ownership of its account to another person.

7 An authorised representative or additional authorised representative may not transfer its status as such to another person.

8 An account holder may request the removal of an authorised representative from an account. Upon receipt of the request the national administrator shall suspend the access of the

authorised representative or additional authorised representative. Within 10 working days of the receipt of the request, the relevant administrator shall remove the authorised representative.

9 An account holder may nominate new authorised representatives or additional authorised representatives in accordance with Article 24.

10 If the administering Member State of an aircraft operator changes in accordance with the procedure set out in Article 18a of Directive 2003/87/EC or due to the enlargement of the Union, the central administrator shall update the national administrator of the corresponding aircraft operator holding account. Where the administrator of an aircraft operator holding account changes, the new administrator may require the aircraft operator to submit the account opening information that it requires in accordance with Article 17 and the information about authorised representatives that it requires in accordance with Article 24.

11 Subject to paragraph 10, the Member State responsible for managing an account shall not change.

Article 26

Trusted account list

1 Auction delivery accounts, holding accounts and trading accounts may have a trusted account list in the Union Registry.

2 Accounts held by the same account holder shall be automatically included on the trusted account list.

3 Changes to the trusted account list shall be initiated and completed through the procedure set out in Article 39 for transfers specified in Section 6 of Chapter 2 of Title II. The change shall be confirmed by an additional authorised representative, or, if no additional authorised representative has been nominated, by another authorised representative. The delay specified in Article 39(3) shall not apply for the deletion of accounts from the trusted account list; for all other changes to the trusted account list the delay shall be seven days.

Section 3

Closure of accounts

Article 27

Closure of accounts

Subject to Article 32(1), within 10 working days of the receipt of a request from the account holder of an account other than those specified in Articles 28, 29, 30 and 31, the administrator shall close the account.

Article 28

Closure of operator holding accounts

1 The competent authority shall notify the national administrator within 10 working days of the revocation or suspension of a greenhouse gas emissions permit or knowledge of

installation closure. Within ten working days of such a notification, the national administrator shall record the relevant date in the Union Registry.

2 The national administrator may close an operator holding account by 30 June of the year following the year of closure of the installation, revocation or suspension of the greenhouse gas emissions permit if the relevant installation has surrendered an amount of allowances equal to or greater than its verified emissions and is not excluded pursuant to Article 27 of Directive 2003/87/EC.

Article 29

Closure of aircraft operator holding accounts

Aircraft operator holding accounts shall only be closed by the national administrator if instructed by the competent authority to do so because the competent authority has discovered that the aircraft operator merged into another aircraft operator or the aircraft operator has ceased all its operations covered by Annex I of Directive 2003/87/EC, either through a notification by the account holder or through other evidence.

Article 30

Closure of verifier accounts

1 Within ten working days of the receipt of a request from a verifier to close its account, the national administrator shall close the verifier account.

2 The competent authority may also instruct the national administrator to close a verifier account where one of the following conditions is fulfilled:

- a the verifier's accreditation has expired or has been withdrawn,
- b the verifier ceased operation.

Article 31

Closure of the ESD Compliance Account

1 The central administrator shall close an ESD Compliance Account not earlier than one month after the determination of the compliance status figure for that account pursuant to Article 79 and not later than 21 December, and after prior notice to the account holder.

2 The central administrator shall ensure that the Union Registry carries out a transfer of all international credits, tCERs and ICERs used pursuant to Article 81 to the relevant KP retirement account.

3 Where the direct transfer to the relevant KP retirement account is prohibited by the rules on transactions applicable to the ITL elaborated under the Kyoto Protocol, the international credits, the tCERs and the ICERs which have been used for compliance shall be transferred first to a dedicated holding account created for this purpose by the national administrator.

4 On closure of the ESD Compliance Account, the central administrator shall ensure that the Union Registry transfers the AEAs remaining in the ESD Compliance Account to the ESD Deletion Account.

Article 32

Positive balance on accounts under closure

1 If there is a positive balance of allowances or Kyoto units on an account which an administrator is to close in accordance with Articles 27, 28 and 29, the administrator shall request the account holder to specify another account to which such allowances or Kyoto units shall be transferred. If the account holder has not responded to the administrator's request within 40 working days, the administrator shall transfer the allowances and Kyoto units to its national holding account.

2 If there is a positive balance of allowances or Kyoto units on an account to which access was suspended in accordance with Article 34, the competent authority may require that the allowances and Kyoto units are transferred immediately to the relevant national account.

Article 33

Closure of accounts and removal of authorised representative on the administrator's initiative

1 If the situation giving rise to the suspension of access to accounts pursuant to Article 34 is not resolved within a reasonable period despite repeated notifications, the competent authority may instruct the national administrator to close, or in the case of operator holding accounts or aircraft operator holding accounts to set to blocked status, those accounts for which access is suspended until the competent authority determines that the situation giving rise to the suspension no longer subsists.

2 If a person holding account or trading account has a zero balance and no transactions have been recorded for a period of one year, the national administrator may notify the account holder that the person holding account or trading account will be closed within 40 working days unless the national administrator receives a request that the account be maintained. If the national administrator does not receive any such request from the account holder, the national administrator may close the account.

3 The national administrator shall close an operator holding account upon instruction from the competent authority on the basis that there is no reasonable prospect of further allowances being surrendered.

4 The national administrator may remove an authorised representative or an additional authorised representative if it considers that the approval of the authorised representative or an additional authorised representative should have been refused in accordance with Article 24(3), and in particular if it discovers that the documents and identification information provided upon nomination were incomplete, out-of-date or otherwise inaccurate or false.

5 The account holder may object to the change of account status of an account in accordance with paragraph 1 or the removal of an authorised representative or additional authorised representative in accordance with paragraph 4 with the authority competent under national law within 30 calendar days, who shall either instruct the national administrator to reinstate the account or the authorised representative or additional authorised representative or uphold the change of account status or removal in a reasoned decision, subject to requirements of national law that pursue a legitimate objective compatible with this Regulation and are proportionate.

Section 4

Suspension of access to accounts

Article 34

Suspension of access to accounts

1 An administrator may suspend the access of an authorised representative or an additional authorised representative to any account in the registry or to processes to which that authorised representative would otherwise have access if the administrator has reasonable grounds to believe that the authorised representative has:

- a attempted to access accounts or processes for which he is not authorised;
- b repeatedly attempted to access an account or a process using an incorrect username and password; or
- c attempted to compromise the security, the availability, the integrity or the confidentiality of the Union Registry or the EUTL, or of the data handled or stored therein.

2 An administrator may suspend the access of all authorised representatives or additional authorised representatives of a specific account where one of the following conditions is fulfilled:

- a the account holder died without a legal successor or ceased to exist as a legal person;
- b the account holder did not pay fees;
- c the account holder violated the terms and conditions applicable to the account;
- d the account holder did not agree to changes in the terms and conditions set by the national administrator or the central administrator;
- e the account holder did not notify changes to account information or provide evidence concerning the changes to account information, or evidence concerning new account information requirements;
- f the account holder failed to maintain the required minimum number of authorised representatives for the account;
- g the account holder failed to maintain compliance with the Member State requirement to have an authorised representative with a permanent residence in the Member State of the national administrator;
- h the account holder failed to maintain compliance with the Member State requirement that the account holder have a permanent residence or registration in the Member State of the administrator of the account.

3 An administrator may suspend the access of all authorised representatives or additional authorised representatives to a specific account and the possibility to initiate processes from that account:

- a for a maximum period of four weeks if the administrator has reasonable grounds to believe that the account was used or will be used for fraud, money laundering, terrorist financing, corruption or other serious crimes, or
- b on the basis of and in accordance with national law provisions that pursue a legitimate objective.

4 The national administrator may suspend access to an account if it considers that the opening of the account should have been refused in accordance with Article 22 or that the account holder no longer meets the requirements for the opening of the account.

5 The administrator of the account shall reverse the suspension immediately once the situation giving rise to the suspension is resolved.

6 The account holder may object to the suspension of its access in accordance with paragraphs 1 and 3 to the competent authority or the relevant authority under national law within 30 calendar days, who shall either instruct the national administrator to reinstate access or uphold the suspension in a reasoned decision, subject to requirements of national law that pursue a legitimate objective compatible with this Regulation and are proportionate.

7 The competent authority or the Commission may also instruct the national administrator or central administrator to implement a suspension for one of the grounds set in paragraphs 1, 2, 3 and 4.

8 A national law enforcement authority of the Member State of the administrator may also request the administrator to implement a suspension on the basis of and in accordance with national law.

9 When access to an external trading platform account is suspended, the administrator shall also suspend access enabled for the external trading platform to user accounts in accordance with Article 23(4). When access of authorised representatives and additional authorised representatives of an external trading platform account is suspended, the administrator shall also suspend the access of those representatives enabled by an account holder for the external trading platform in accordance with Article 23(4).

10 Where the holder of an operator holding account or aircraft operator holding account is prevented from surrendering in the 10 working days preceding the surrender time-limit laid down in Article 12(2a) and (3) of Directive 2003/87/EC due to suspension in accordance with this Article, the national administrator shall, if so requested by the account holder, surrender the number of allowances specified by the account holder.