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Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**amending Regulation (EU) No 525/2013 as regards the technical implementation of the  
Kyoto Protocol to the United Nations Framework Convention on Climate Change**

(Text with EEA relevance)

## EXPLANATORY MEMORANDUM

### 1. CONTEXT OF THE PROPOSAL

#### The Doha Amendment

At the Doha Climate Change Conference in December 2012, the 192 Parties to the Kyoto Protocol to the United Nations Framework Convention on Climate Change ('Convention') adopted an amendment to the Protocol.<sup>1</sup> This 'Doha Amendment' establishes the second commitment period of the Kyoto Protocol, starting on 1 January 2013 and ending on 31 December 2020.

Under the Doha Amendment, the European Union, its Member States and Iceland commit to limit their average annual greenhouse gas (GHG) emission in the years 2013 to 2020 to 80% of their base year emissions (mostly 1990).<sup>2</sup> This commitment is based on the emission reduction targets laid down in the climate and energy package adopted in 2009, in particular the EU's Emissions Trading System (EU ETS) and the Effort Sharing Decision.<sup>3</sup> The calculation of the commitment takes into account the differences in scope between European Union legislation and the Kyoto Protocol's second commitment period.<sup>4</sup> This approach is in line with the conclusions of the Council in March 2012, which stated that the joint commitment of the European Union, its Member States and Iceland should be based on the climate and energy package, but also that the emission reduction obligations of individual Member States in the second commitment period of the Kyoto Protocol 'shall not exceed their obligations agreed in EU legislation'. This approach was followed in the submission by the European Union and its Member States on their commitment under a second commitment period in April 2012.<sup>5</sup>

Apart from adopting the Doha Amendment, the Doha Climate Change Conference also adopted a number of decisions on technical issues related to the implementation of the substantive mitigation commitments listed in the Doha Amendment: these include decisions on the accounting and management of Kyoto units in the transition from the first to the second commitment period and for the second commitment period (Decisions 1/CMP.8 and 2/CMP.8).<sup>6</sup> A further set of decisions, completing the implementation package, is in preparation, and the European Union is working to help ensure their adoption at the Warsaw Climate Change Conference in November 2013.

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<sup>1</sup> Decision 1/CMP.8, adopted by the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol, FCCC/KP/CMP/2012/13/Add.1

<sup>2</sup> For the first commitment period, EU base years were as follows: for CO<sub>2</sub>, CH<sub>4</sub> and N<sub>2</sub>O all Member States use 1990 as base year except: Bulgaria – 1988; Hungary - average of 1985 to 1987; Slovenia – 1986; Poland – 1988; Romania - 1989. For the fluorinated gases all Member States use 1995 as base year except: Austria, France, Italy and Slovakia – 1990; and Romania - 1989.

<sup>3</sup> Legislation adopted on 23 April 2009, including Directive 2009/29/EC of the European Parliament and of the Council amending Directive 2003/87/EC so as to improve and extend the greenhouse gas emission allowance trading scheme of the Community and Decision No 406/2009/EC of the European Parliament and of the Council of 23 April 2009 on the effort of Member States to reduce their greenhouse gas emissions to meet the Community's greenhouse gas emission reduction commitments up to 2020, OJ L 140, 5.6. 2009.

<sup>4</sup> This difference in scope is explained in detail in the Commission Staff Working Document 'Preparing the EU's Quantified Emission Limitation or Reduction Objective (QELRO) based on the EU Climate and Energy Package', SWD(2012) 18 final of 13.2.2012.

<sup>5</sup> Submission by Denmark and the European Commission on behalf of the European Union and its Member States of 19 April 2012 on 'Information on the quantified emission limitation or reduction objectives (QELROs) for the second commitment period under the Kyoto Protocol', FCCC/KP/AWG/2012/MISC.1.

<sup>6</sup> Footnote 1, above.

## **Joint fulfilment of the commitments of the European Union, its Member States and Iceland**

Article 4 of the Kyoto Protocol allows Parties to fulfil jointly their respective commitments. The European Union and its Member States used this option when they ratified the Kyoto Protocol in 2002 and implemented its first commitment period<sup>7</sup>. During the negotiations on the Doha Amendment, the European Union and its Member States made it clear that they again intended to fulfil their commitments jointly for the second commitment period, this time also with Iceland.

Parties that agreed to fulfil their commitments jointly are each deemed to have met those commitments if their joint commitment is achieved (based on their aggregate greenhouse gas emissions over the duration of the commitment period). In the event of failure to achieve the joint commitment, however, each Party is held responsible for its emission level set out in their joint fulfilment agreement. The Kyoto Protocol therefore requires the Parties to a joint fulfilment agreement to set out, and notify with the deposit of their instruments of acceptance, the respective emission levels allocated to each member of the joint fulfilment agreement.

The terms of the joint fulfilment of the commitment of the European Union, its Member States and Iceland is set out in Annex I of the proposal for a Council Decision on the conclusion of the Doha Amendment to the Kyoto Protocol to the United Nations Framework Convention on Climate Change and the joint fulfilment of commitments thereunder.<sup>8</sup> The terms will also be included in the bilateral agreement with Iceland, for which the Commission proposed to the Council a recommendation for a negotiating mandate in June 2013. Once agreed, these terms, including the respective emission levels, need to be notified to the UNFCCC when the European Union, its Member States and Iceland jointly deposit their instruments of acceptance of the Doha Amendment.

### **Emissions accounting after 2012**

The Kyoto Protocol's second commitment period will continue and to some extent enhance the existing comprehensive system of emissions accounting to ensure transparency of the performance of Parties and compliance with their obligations. At the heart of this system is the requirement, for each Party with a commitment, to calculate an assigned amount. This assigned amount represents the amount of tonnes each Party is allowed to emit during the commitment period, in carbon dioxide equivalent (CO<sub>2</sub>-eq). It is issued in the form of assigned amount units (AAUs) in each Party's national registry. Under the joint fulfilment agreement set out in Annex II to the proposal for a Council Decision this means that the European Union, its Member States and Iceland are each responsible for issuing to their national registries AAUs representing their respective assigned amounts.

In addition to AAUs, national registries will also hold, and account for, transactions in units resulting from the use of the Kyoto Protocol's flexible mechanisms. These include not only AAUs, but also certified emission reductions (CERs), for clean development mechanism projects, emission reduction units (ERUs) for joint implementation projects, as well as removal units (RMUs) for removals by sinks. Transactions in these units will be subject to international requirements such as the eligibility criteria for participation in the flexible mechanisms and those governing the commitment period reserve (CPR). These requirements provide safeguards against a Party's over-selling of units where this is not justified by actual emission reductions by that Party. In addition, the Doha Climate Change Conference agreed

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<sup>7</sup> Council Decision 2002/358/CE of 25 April 2002 concerning the approval, on behalf of the European Community, of the Kyoto Protocol to the United Nations Framework Convention on Climate Change and the joint fulfilment of commitments thereunder, OJ L 130/1, 15.5.2002, p. 1.

<sup>8</sup> COM(2013) 768 final.

rules on the transition of the first to the second commitment period, in particular in relation to the carry-over (banking) of surplus AAUs from the first commitment period.

Although the newly agreed Kyoto rules do not, in principle, affect the operation of the EU ETS and the Effort Sharing Decision, the interaction between the Kyoto Protocol's accounting system and the accounting rules under European Union legislation should be clarified, and the implementation of the Kyoto rules must be aligned with those under EU legislation. In addition, the implementation of the joint fulfilment agreement will require further technical rules to be drawn up.

### **Legal basis for technical implementation in the European Union**

During the Kyoto Protocol's first commitment period (2008 to 2012), internationally agreed requirements were implemented through the Monitoring Mechanism Decision<sup>9</sup> and the Registry Regulations applicable for phase two of the EU ETS (2008-2012).<sup>10</sup> These requirements included the accounting of emissions and units, the EU's joint fulfilment, the unit management required with regard to commitments under the Kyoto Protocol and their interaction with unit management processes under the EU ETS. The Registry Regulations contained accounting and unit management rules for implementation of the EU ETS and for implementation of the Kyoto Protocol's first commitment period. The Registry Regulation currently in force<sup>11</sup> only contains provisions for unit management related to the implementation and operation of phase three of the EU ETS and the Effort-Sharing Decision. It does not regulate accounting requirements for the technical implementation of the Protocol after 2012.

The implementation of the Kyoto Protocol after 2012 requires a set of technical implementation rules to be drawn up for the European Union, its Member States and Iceland. The recently adopted Monitoring Mechanism Regulation<sup>12</sup> does not contain the legal basis that would enable the Commission to do so in relation to Member States' national registries. Hence the need for this amendment to the Monitoring Mechanism Regulation to provide the required legal basis.

## **2. TECHNICAL IMPLEMENTATION OF THE KYOTO PROTOCOL AFTER 2012**

To ensure the technical implementation of the Kyoto Protocol in the European Union after 2012, enable the effective operation of the joint fulfilment of the commitments of the European Union, its Member States and Iceland, and ensure its alignment with the operation

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<sup>9</sup> 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.

<sup>10</sup> 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 and 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.

<sup>11</sup> 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.

<sup>12</sup> Regulation (EU) No 525/2013 of the European Parliament and of the Council of 21 May 2013 on a mechanism for monitoring and reporting greenhouse gas emissions and for reporting other information at national and Union level relevant to climate change and repealing Decision No 280/2004/EC, OJ L 165, 18.6.2013, p. 13.

of the EU ETS and the Effort Sharing Decision, technical implementation rules are required in the European Union. These rules should address a number of issues, including:

- Unit management processes such as transactions of Kyoto units (issuance, transfer, acquisition, cancellation, retirement, carry-over, replacement or expiry date change) in and between the national registries of the European Union, Member States and Iceland;
- Accounting processes related to the transition from the first to the second commitment period, including the carry-over of surplus AAUs, CERs and ERUs from the first to the second commitment period;
- The establishment and maintenance of a previous period surplus reserve (PPSR) and a commitment period reserve (CPR) for each member of the joint fulfilment agreement;
- The levy or ‘share of proceeds’ applied to the issuance of ERUs and the first international transfer of AAUs in the second commitment period.

This proposal for a Regulation of the European Parliament and of the Council provides the basis for implementing these technical issues in the European Union through the adoption of legal acts.

### **Unit management processes**

The delegated acts envisaged in this proposal are needed to ensure that all transactions of Kyoto units in the national registries of the European Union, its Member States and Iceland are consistent with the joint fulfilment of their commitments. The transactions include issuance, transfer, acquisition, cancellation, carry-over, replacement, expiry date change and retirement. It is also necessary to ensure effective implementation of unit management processes established for the accounting of emissions and units under the EU ETS and the Effort Sharing Decision. The joint fulfilment agreement for the second commitment period will require a further specification of Kyoto implementation rules in the European Union.

Moreover, both the EU ETS and the Effort Sharing Decision allow for the limited use of Kyoto units for compliance with obligations established in EU legislation. It is essential that the technical implementation of the Kyoto rules in the European Union provides for the full flexibility set down in Union legislation, so that these units can be accessed by operators in line with the provisions of the EU ETS and by Member States in relation to their obligations under the Effort Sharing Decision. It is also essential that the technical implementation maintains robust accounting practices relevant to the alignment of Kyoto implementation rules with the EU ETS and the Effort Sharing Decision. This includes the need to ensure that a Kyoto unit is issued or retired for each related EU unit being created or used for compliance.

In addition, the delegated acts envisaged in this proposal are required to define an effective regulation of the retirement of units after 2012: the achievement of the joint commitment depends on the retirement of units by the European Union, each Member State and Iceland, according to their respective emission levels. A coherent process of the retirement of units by the Union, the Member States and Iceland and clear identification of the units to be retired by each Party will guarantee that compliance under Union legislation will also mean compliance with commitments under the Kyoto Protocol and vice versa. Moreover, such a process is needed to safeguard the integrity of accounting under the EU ETS. Provided that operators covered by the EU ETS comply with obligations therein, it will also guarantee that there is no need to acquire further Kyoto units to cover those emissions for compliance with Kyoto accounting requirements for the second commitment period. To this end, the delegated acts envisaged in this proposal will ensure that emissions covered by the EU ETS between 1

January 2013 and 31 December 2020 correspond to the subsequent retirement of units valid for the second commitment period under the Kyoto Protocol. Essentially, they will ensure that one Kyoto unit, valid for the second commitment period, is retired for each unit surrendered in the EU ETS for emissions from sources listed in Annex A to the Kyoto Protocol. Similarly, they will also establish that Kyoto units, valid for the second commitment period, are retired against emissions and removals of Member States and Iceland in the non-ETS sectors, to the extent that these gases, sources and sinks are covered by the Protocol.

### **Accounting processes related to the transition from the first to the second commitment period**

Decision 13/CMP.1, which contains the Kyoto Protocol's key accounting rules,<sup>13</sup> sets out the provisions to enable Parties to carry over ERUs, CERs and AAUs to the subsequent commitment period after the compliance assessment has been completed for all Parties. Under this Decision, ERUs and CERs may be carried over up to a limit equivalent to 2.5 % of a Party's assigned amount. Removal units (RMUs), temporary CERs (tCERs), long-term CERs (ICERs) and ERUs converted from RMUs cannot be carried over. Decision 1/CMP.8 confirms the application of these rules after 2012 and adds the requirement that carried-over AAUs must be transferred to that Party's previous period surplus reserve (PPSR).

The percentage limit on carry-over of CERs and ERUs is applied based on assigned amount, and CERs and ERUs valid for the first commitment period used for compliance in phase three of the EU ETS (2013-2020) are held in the Union Registry. For these reasons, it will be crucial that the limit across the European Union and its Member States is applied in a way that allows such units to be carried over for subsequent retirement. Furthermore, the EU ETS requires accounts to be opened and maintained not only by Parties, but also by private entities. To the extent that the holdings in these accounts include CERs and ERUs, it will be important to establish consistent rules that enable an optimal implementation of carry-over rules. AAUs representing allowances banked between phase two and phase three of the EU ETS are also held in the Union Registry. The delegated acts will therefore also need to establish rules for the application of carry-over rules on AAUs to ensure that the implementation of the Kyoto accounting system is aligned with that under the EU ETS and the Effort Sharing Decision.

### **The establishment and maintenance of a commitment period reserve (CPR) and a previous period surplus reserve (PPSR) for each member of the joint fulfilment agreement;**

The delegated acts envisaged in this proposal will also need to specify the operation of the commitment period reserve (CPR) in the national registries of the European Union, its Member States and Iceland. The international requirement to establish and maintain a CPR forms part of each Party's responsibility to manage and account for its assigned amount. According to international decisions, the CPR equals the lower of either 90 % of a Party's initial assigned amount or 100 % of its most recently reviewed inventory, multiplied by 8. The CPR applies to each member of the joint fulfilment agreement individually. As the assigned amount of the Member States and Iceland only covers non-ETS sectors and the assigned amount of the Union covers the ETS sectors, the delegated acts envisaged in this proposal are required to determine a coherent approach for the accurate calculation, and transparent reporting, of the respective commitment period reserves of the European Union, its Member States and Iceland.

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<sup>13</sup> Decision 13/CMP.1 on Modalities for the accounting of assigned amounts under Article 7, paragraph 4, of the Kyoto Protocol, in: FCCC/KP/CMP/2005/8/Add.2.

Decision 1/CMP.8 requires each Party to establish a previous period surplus reserve (PPSR) account in its national registry and establishes associated rules for the PPSR as follows: units may be transferred between PPSR accounts; each Party may retire the units in its own PPSR up to the level by which emissions during the second commitment period exceed the assigned amount; and a Party may acquire units up to 2 % of its assigned amount in the previous commitment period from another Party's PPSR. The European Union, its Member States and Iceland are each responsible to establish and maintain a PPSR in accordance with internationally agreed rules and the terms of the joint fulfilment. It is necessary to define the scope of each PPSR pursuant to the definition of the emission levels set out in Annex I to the proposed Council Decision. It is also necessary to establish common rules on the opening balance,<sup>14</sup> and on the use and acquisition of units in the PPSRs of the European Union, its Member States and Iceland.

### **Share of proceeds applied to AAUs and ERUs**

Decision 1/CMP.8 subjects the first international transfer of AAUs and the issuance of ERUs to a 2 % share of proceeds levy. In so far as this levy applies to the issuance of ERUs, this will fall under the responsibility of each Member State and Iceland. Nonetheless, to the extent that AAU balances must be maintained to ensure that a valid Kyoto unit can be retired for each unit used for compliance with the Effort Sharing Decision, the delegated acts envisaged in this proposal are required to ensure that the accounting for the application of the share of proceeds levy is aligned with the requirements of European Union legislation.

### **3. LEGAL ASPECTS OF THIS PROPOSAL**

This proposal amends the legal basis, contained in the Monitoring Mechanism Regulation, which enables the Commission to adopt non-legislative acts establishing rules on non-essential elements for the accounting of Kyoto units after 2012 in EU law. The essential elements as regards the commitments of the European Union, its Member States and Iceland, their implementation and joint fulfilment are laid down in a number of legal instruments, including the separate proposal for a Council Decision. They will also be addressed in the bilateral agreement with Iceland and are included in the Doha Amendment and accompanying decisions of the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol, as well as the Monitoring Mechanism Regulation and the delegated and implementing acts adopted thereunder.

Previously, under former Registry Regulations, such rules were adopted under the procedure of a regulatory committee with scrutiny. They were based on a legal basis contained in the Monitoring Mechanism Decision. The legal basis which enabled the implementation of technical issues related to the management of units in the first commitment period of the Kyoto Protocol through adoption of the Registry Regulations was contained in Articles 3(3) and 6(1), of the Monitoring Mechanism Decision. It referred, inter alia, to the need to adopt implementing comitology provisions as regards reports on the information from the national registry, on the issue, acquisition, holding, transfer, cancellation, withdrawal and carry-over of assigned amount units, removal units, emission reduction units and certified emission reductions during the previous year. It also provided for the adoption of comitology measures as regards the requirement of the Community and its Member States, to 'establish and

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<sup>14</sup> The initial balance of the European Union PPSR, to be established in the Union Registry, will primarily consist of AAUs held in the Union Registry in accordance with Article 56 of Regulation 920/2010/EC which represent EU ETS allowances banked in accordance with Article 57 of Regulation 920/2010/EC. The initial balance of each PPSR of Member States and Iceland will consist of the AAUs carried over in each national registry.

maintain registries in order to ensure the accurate accounting of the issue, holding, transfer, acquisition, cancellation and withdrawal of assigned amount units, removal units, emission reduction units and certified emission reductions and the carryover of assigned amount units, emission reduction units and certified emission reductions’.

The Monitoring Mechanism Decision was repealed and replaced by the Monitoring Mechanism Regulation, which entered into force on 8 July 2013. The Monitoring Mechanism Regulation refers to the registry system which enables the technical implementation of the Kyoto Protocol with regard to the unit management in national registries in its Article 10 (‘Establishment and operation of registries’). It contains the essential element of the international requirement for the Union and its Member States ‘to set up and maintain registries to accurately account for the issue, holding, transfer, acquisition, cancellation, retirement, carry-over, replacement or change of expiry date, as relevant, of AAUs, RMUs, ERUs, CERs, tCERs and ICERs. Article 10 (4) also contains a legal basis for the adoption of a delegated act which implements the non-essential elements of the technical implementation of the Kyoto Protocol with regard to the unit management in national registries, replacing the former Article 6 (1) of the Monitoring Mechanism Decision. However, while Article 6 (1) of the Monitoring Mechanism Decision applied to all unit management issues in ‘the registries of the Community and its Member States’, the scope of application of this provision has been narrowed in the Monitoring Mechanism Regulation. The legal basis for the adoption of delegated acts now only applies to the ‘set up’ (rather than the establishment *and maintenance*) of the ‘Union Registry’ (rather than the registries of the Union *and Member States*).

In order to establish an effective registries system that implements the new requirements for unit management in the second commitment period of the Kyoto Protocol, it is therefore necessary to amend Article 10 of the Monitoring Mechanism. Its scope of application must be widened to include all technical implementation issues with regard to the unit management in national registries as required by the Kyoto Protocol, the Doha Amendment and decisions adopted thereunder for the second commitment period of the Kyoto Protocol.

Based on the content of the rules that need to be adopted in the legal acts provided for in this proposal according to the above, these legal acts must also be adopted as delegated acts pursuant to Article 290 TFEU, in the same way as already provided for in Article 10 (4), of the Monitoring Mechanism Regulation.

A delegated act supplements the essential rules by specifying its substance and regulating further detail. It is different from an implementing act pursuant to Article 291 TFEU which provides for uniform conditions in the implementation of Union legislation by the Member States. As shown above, the accounting requirements to be implemented after 2012 do not solely stem from EU legislation, but are to a large extent based on internationally agreed rules. Also, they are not implemented by the Member States alone, but they apply equally to the European Union itself, placing an obligation on EU institutions. As provided for by Article 290 TFEU, the delegated acts envisaged in this proposal would not harmonise the implementation of any existing essential rules, but rather set out further specific technical details for the implementation of the Kyoto Protocol after 2012.



Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**amending Regulation (EU) No 525/2013 as regards the technical implementation of the Kyoto Protocol to the United Nations Framework Convention on Climate Change**

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,  
Having regard to the Treaty on the Functioning of the European Union, and in particular Article 192 (1) thereof,  
Having regard to the proposal from the European Commission,  
After transmission of the draft legislative act to the national Parliaments,  
Having regard to the opinion of the European Economic and Social Committee<sup>15</sup>,  
Having regard to the opinion of the Committee of the Regions<sup>16</sup>,  
Acting in accordance with the ordinary legislative procedure,  
Whereas:

- (1) The Council adopted Decision [...] on the conclusion of the Doha Amendment to the Kyoto Protocol to the United Nations Framework Convention on Climate Change and the joint fulfilment of commitments thereunder.<sup>17</sup> The Decision concludes the Doha Amendment to the Kyoto Protocol to the United Nations Framework Convention on Climate Change ('UNFCCC'), establishing a second commitment period, on behalf of the Union, and sets out the terms of the joint fulfilment of the commitments of the Union, its Member States and Iceland in accordance with Article 4 of the Kyoto Protocol.
- (2) The conclusion of the Doha Amendment, the implementation of accompanying decisions of the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol and the terms of the joint fulfilment in the Union, its Member States and Iceland require the establishment of rules to ensure the technical implementation of the Kyoto Protocol in the Union after 2012, to enable the effective operation of the joint fulfilment of the commitments of the Union, its Member States and Iceland, and to ensure its alignment with the operation of the Union's Emissions Trading System ('EU ETS') established by Directive 2003/87/EC of the European Parliament and of

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<sup>15</sup> OJ C , , p. .

<sup>16</sup> OJ C , , p. .

<sup>17</sup> OJ L , , p. .

the Council<sup>18</sup> and Decision 406/2009/EC of the European Parliament and of the Council.<sup>19</sup>

- (3) During the first commitment period of the Kyoto Protocol, the internationally agreed requirements for the accounting and management of emissions and units and the joint fulfilment by the Union and its Member States were implemented under Decision No 280/2004/EC of the European Parliament and of the Council<sup>20</sup> and the so-called Registry Regulations<sup>21</sup>. The former Registry Regulations were replaced by Commission Regulation (EU) No 389/2013<sup>22</sup>, which now contains provisions for unit management related to the implementation and operation of the EU ETS and Decision 406/2009/EC.<sup>23</sup> The newly adopted Regulation (EU) No 525/2013 of the European Parliament and of the Council<sup>24</sup> no longer contains the required legal basis for the adoption of delegated legislation to implement the rules for the second commitment period.
- (4) For the second commitment period, the assigned amount of the Union relates to the emissions of greenhouse gases from sources covered by the EU ETS, to the extent that these are covered by the Kyoto Protocol, while the respective assigned amounts of Member States and Iceland relate to all other emissions of greenhouse gases from sources and removals from sinks covered by the Kyoto Protocol.
- (5) Decision 1/CMP.8<sup>25</sup> amends the rules for the establishment of eligibility to participate in the flexible mechanisms under the Kyoto Protocol. It also defines limits related to units carried-over from the first to the second commitment period, including the requirement for each Party to establish a previous period surplus reserve (PPSR). Moreover, that Decision provides for a 2 % share of the proceeds to be levied on the first international transfers of assigned amount units (AAUs) and the issuance of emission reduction units (ERUs) for joint implementation projects immediately upon

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<sup>18</sup> 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 275/32, 25.10.2003).

<sup>19</sup> Decision No 406/2009/EC of the European Parliament and of the Council of 23 April 2009 on the effort of Member States to reduce their greenhouse gas emissions to meet the Community's greenhouse gas emission reduction commitments up to 2020 (OJ L 140, 5.6. 2009).

<sup>20</sup> 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).

<sup>21</sup> 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) and Commission Regulation 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.)

<sup>22</sup> 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.

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

<sup>24</sup> Regulation (EU) No 525/2013 of the European Parliament and of the Council of 21 May 2013 on a mechanism for monitoring and reporting greenhouse gas emissions and for reporting other information at national and Union level relevant to climate change and repealing Decision No 280/2004/EC, OJ L 165, 18.6.2013, p. 13.

<sup>25</sup> Decision 1/CMP.8, adopted by the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol, FCCC/KP/CMP/2012/13/Add.1.

the conversion to ERUs of AAUs or removal units (RMUs) previously held by Parties. Further rules for the implementation of the Kyoto Protocol's second commitment period are currently being negotiated.

- (6) In order to establish coherent rules to ensure the technical implementation of the Kyoto Protocol in the Union after 2012, to enable the effective operation of the joint fulfilment of the commitments of the Union, its Member States and Iceland, and ensure its alignment with the operation of the EU ETS and the Effort Sharing Decision, the power to adopt delegated acts in accordance with Article 290 TFEU should be delegated to the Commission. The Commission, when preparing and drawing up delegated acts, should ensure their consistency with internationally agreed accounting requirements, the terms of the joint fulfilment set out in Decision [...] and relevant Union legislation,

HAVE ADOPTED THIS REGULATION:

### *Article 1*

Regulation (EU) No 525/2013 is amended as follows:

1. the following points (13a) and (13b) are added to Article 3:
  - “(13a) ‘Commitment period reserve’ or ‘CPR’ means the reserve established pursuant to the Annex to Decision 11/CMP.1 or other relevant decisions of the UNFCCC or Kyoto Protocol bodies;
  - (13b) ‘Previous period surplus reserve’ or ‘PPSR’ means the reserve established pursuant to Decision 1/CMP.8 or other relevant decisions of the UNFCCC or Kyoto Protocol bodies;”
2. Article 10 is amended as follows:
  - (a) the following subparagraph is added to Article 10(1):

“The Union and the Member States shall account, in their registries, for the transfer of units required by the Kyoto Protocol, Decision 1/CMP.8 or other relevant decisions of the UNFCCC or Kyoto Protocol bodies as a share of proceeds following the issuance of ERUs and on the first international transfer of AAUs.”
  - (b) the following paragraph 5 is added to Article 10:

“5. The Commission shall also be empowered to adopt delegated acts in accordance with Article 25 in order to ensure, through the registries of the Union and of the Member States, the technical implementation of the Kyoto Protocol, enable the effective operation of the joint fulfilment of the commitments of the Union, the Member States and Iceland, and ensure its alignment with the operation of Directive 2003/87/EC and Decision 406/2009/EC, including:

    - (a) unit management processes such as transactions of AAUs, CERs, including ICERs and tCERs, ERUs and RMUs (issuance, transfer, acquisition, cancellation, retirement, carry-over, replacement or expiry date change) in and between the national registries of the Union and its Member States and Iceland;

- (b) accounting processes related to the transition from the first to the second commitment period, including the carry-over of surplus AAUs, CERs and ERUs from the first to the second commitment period;
- (c) the establishment and maintenance of a previous period surplus reserve and a commitment period reserve for the Union and the Member States;
- (d) the accounting for the share of proceeds as provided for by paragraph 1 of this Article.

When adopting the delegated acts referred to in the first subparagraph, the Commission shall ensure a consistent implementation of internationally agreed accounting requirements, optimise transparency and ensure accuracy of the accounting of Kyoto units by the Union and the Member States, while minimising administrative burden and costs.”

#### *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*.

Done at Brussels,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*