

Unofficial translation

Executive Order No. 1637 of November 18, 2020 on the Union Registry and the Danish Kyoto Registry¹⁾

Pursuant to Section 3 (2), Section 21 (3) and (4), Section 22 (2) and (3), Section 29 (2)-(4), Section 30 (4), Section 31 (7) and (8), Section 32 (2) and Section 36 (1) and (2) of the Act on greenhouse gas emission allowances, cf. Consolidation Act No. 1605 of 14 December 2016, and Section 5 (2) and Section 10 (2) of the Act on the procedure for notification, etc. of certain information to the Danish Business Authority, cf. Consolidated Act No. 1204 of 14 October 2013, the following is established by authorisation pursuant to Section 1 (1) of Executive Order No. 1357 of 17 December 2012 on the assignment of certain powers under the Act on greenhouse gas emission allowances to the Danish Business Authority:

Chapter 1

Scope and definitions

1. This Executive Order supplements Commission Regulation (EU) 2019/1122 as regards the functioning of the Union Registry and Commission Regulation (EU) No 389/2013 of 2 May 2013 as regards the Kyoto Registry. The Danish Business Authority is the national administrator, as defined in the regulations, of the Union Registry and the Danish Kyoto Registry.

2. For the purpose of this Executive Order, the following definitions apply:

- 1) Notifier: A natural person who notifies a matter on behalf of a prospective or existing account holder to the Danish Business Authority.
- 2) Auction collateral delivery account: A special account held by an auctioneer, a clearing system or a settlement system as defined in Commission Regulation (EU) No 1031/2010 of 12 November 2010, or an auction platform in accordance with Article 26 or Article 30 of that Regulation.
- 3) Authorised representative: A natural person who can initiate and/or authorise transactions and other processes on behalf of an account holder in the Union Registry or the Danish Kyoto Registry, unless the person is limited to 'read only' access.
- 4) Operator holding account: A special account held by an operator, cf. the Act on greenhouse gas emission allowances.
- 5) The Regulations: collective term for Commission Regulation 389/2013/EU 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, Official Journal of the European Union, No L 122, page 1, as last amended and supplemented by Commission Delegated Regulation (EU) 2019/1122 supplementing Directive 2003/87/EC of the European Parliament and of the Council as regards the functioning of the Union Registry.
- 6) Trading account: An account in the Union Registry that can generally be held by any natural or legal person.
- 7) Account holder: A natural or legal person who holds an account in the Union Registry or the Danish Kyoto Registry.
- 8) Account representative: A collective term for an authorised and an additional authorised representative.
- 9) Aircraft operator holding account: A special account held by an aircraft operator, cf. the Act on greenhouse gas emission allowances.
- 10) National holding account: An account held by the Danish Government.
- 11) Person holding account: An account in the Danish Kyoto Registry that can generally be held by any natural or legal person.
- 12) Verifier: An accredited verifier, cf. Article 3, No 3, in Commission Regulation 2018/2067/EU that may be registered in the Union Registry.
- 13) Additional authorised representative: A natural person who may be appointed by the account holder to approve certain transactions in the Danish Kyoto Registry.

¹⁾ The Executive Order contains provisions implementing 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, Official Journal 2003, No L 275, page 32, as last amended by Directive 2018/410/EU of the European Parliament and of the Council, Official Journal 2018, No L 76, page 3. The Executive Order incorporates certain provisions of Commission Regulation 389/2013/EU establishing a Union Registry pursuant to Directive 2003/87/EC of the European Parliament and of the Council and Decisions 280/2004/EC and 406/2009/EC of the European Parliament and of the Council, repealing Commission Regulation 920/2010/EU and 1193/2011/EU, Official Journal 2013, No L 122, page 1, as last amended and supplemented by Commission Delegated Regulation (EU) 2019/1122 supplementing Directive 2003/87/EC of the European Parliament and of the Council as regards the functioning of the Union Registry, Official Journal 2019, L. No 177, page 3. According to Article 288 of the TFEU, a regulation shall be directly applicable in all Member States. The reiteration of these provisions in the Executive Order is therefore solely for practical purposes and does not affect the Regulation's direct applicability in Denmark.

Chapter 2

Common provisions Digital communication

3. Account holders, account representatives, verifiers and notifiers shall as far as possible utilise the self-service facility on the Danish website Virk Indberet for submitting requests to open or close an account, adding or deleting account representatives, editing rights, roles and data as well as for uploading documents in accordance with the instructions in the self-service facility.

(2) If a request cannot be submitted via the Danish website Virk Indberet, the request shall be submitted by following the applicable guidelines provided on the website of the Danish Business Authority.

(3) The Danish Business Authority may demand that documentation is provided in physical form.

(4) A notifier, account holder, account representative or verifier who registers a matter in the Union Registry or the Danish Kyoto Registry or submits a notification of this to the Danish Business Authority is responsible for ensuring that the registration or notification was carried out legally, including having the necessary authorisations, and that the documentation regarding the registration or notification is complete, up to date, accurate and true.

4. The Danish Business Authority retrieves relevant information available in the Union Registry or the Danish Kyoto Registry, from CVR, CPR, the tax authorities and publicly accessible company and person registries in and outside Denmark. If the Danish Business Authority cannot retrieve the information itself, it will ask the account holder to submit the missing information.

(2) Information that other authorities have access to in the Union Registry or the Danish Kyoto Registry is indicated in the regulations, relevant EU legislation, the Act on greenhouse gas emission allowances, the Act on the procedure for notification, etc. of certain information and the Act on the Danish Business Authority's processing of data.

(3) The Danish Business Authority retains collected personal data for a maximum of 10 years after an account representative has ceased to be a representative or 10 years after an account has been closed. The data will then be removed from the Danish Business Authority's registries. Criminal record disclosure certificates are not retained after the case is closed.

General information about documentation requirements

5. At the request of the Danish Business Authority, an account holder shall submit all information that the Authority deems necessary for performing the Authority's work pertaining to the Union Registry and the Danish Kyoto Registry.

6. The Danish Business Authority can demand supplementary documentation beyond what is specified in the Regulations and this Executive Order, if it is specifically deemed necessary.

(2) The Danish Business Authority can, in special cases and after a specific assessment, grant dispensation from the documentation requirements.

7. A copy of a document issued in Denmark that is sent as documentation shall be verified as a true copy by the issuing authority, a Danish municipal citizen service centre, a court office in Denmark, a notary public, an independent lawyer or an authorised accountant in Denmark.

8. A copy of a document issued outside Denmark that is submitted as documentation shall be certified pursuant to Regulation (EU) 2016/1191 of the European Parliament and of the Council on promoting the free movement of citizens by simplifying the requirements for presenting certain public documents in the European Union and amending Regulation (EU) No 1024/2012 or legalised according to applicable bilateral or international agreements.

9. The date of any certification or legalisation pursuant to Sections 7 or 8 and for issuance of documentation pursuant to the Regulation shall not be more than three months earlier than the date on which the document is received by the Danish Business Authority. Documentation is regarded as received on the date of its submission via Virk Indberet, submission in electronic format or of its receipt in a physical format by the Danish Business Authority.

Translation of documents

10. Subject to certification, cf. Section 6, a document or a copy of a document submitted as documentation shall be written in Danish, Norwegian, Swedish or English and otherwise be accompanied by a translation into Danish or English. The same applies to the translation of any certification or legalisation according to Section 8.

(2) The Danish Business Authority can require translations to be carried out by a registered translation agency.

Changes to registered information

11. Within 10 working days, an account holder shall report changes to the information or documentation submitted to the Danish Business Authority in connection with the creation or updating of an account. The information and documents relevant to the change shall be submitted with the notification.

(2) An account holder is exempted from the duty to notify stipulated in (1), if a change in the company information is notified to the Danish Business Authority or tax administration pursuant to the Executive Order on notification, registration, fees, disclosure, etc. at the Danish Business Authority. The same applies to personal data notified to CPR.

Account fees

12. The Danish Business Authority charges an annual fee. The fee can be subject to consumer price index and wage index adjustment annually on 1 January. The current fee is published on the Danish Business Authority's website. The fee is charged for the current calendar year for accounts and verifier accesses that are open and active on 1 July in that respective year, and is charged regardless of whether the account is open for the full calendar year.

(2) When setting up a trading account, person holding account, or auction collateral delivery account or registering a verifier, the Danish Business Authority charges a fee corresponding to the annual fee. Payment of the fee is a requirement for setting up an account. The fee covers the creation of the account and for the remainder of the current calendar year.

(3) If a notification to create an account does not result in account creation, no fee is payable.

13. Payment of fees shall comply with the procedures and payment due dates specified by the Danish Business Authority.

(2) In case of late payment, a reminder fee will be charged to cover the costs incurred by the Danish Business Authority from the reminder procedure. If the account fee or the costs plus the reminder fee are still not paid, the fee or the costs will be transferred to a debt collection agency and the Danish Business Authority may close or suspend access to the account. The current rates applicable to reminder fees are published on the website of the Danish Business Authority.

Chapter 3

Opening and transfer of accounts

14. The account holder or the prospective account holder authorises the notifier and account representatives to act as authorised representatives on behalf of the undertaking or person vis-à-vis the Danish Business Authority. The notification shall be signed by the account holder's authorised signatories or a person to whom the account holder has assigned a written power of attorney.

15. An operator holding account or an aircraft operator holding account is created following notification from the Danish Energy Agency if the operator or aircraft operator is subject to the Act on greenhouse gas emission allowances. The Danish Business Authority contacts the operator or aircraft operator after notification for the purpose of retrieving the requested information and documents, cf. Regulation 2019/1122/EU, Articles 14 and 15.

(2) In addition to the information and documentation required by Regulation 2019/1122/EU, Annexes III and VI for the opening of an operator account, the account holder shall submit the information listed in Annex VI, No. 5 (a)-(d) of the Regulation.

(3) In addition to the information and documentation required by Regulation 2019/1122/EU, Annexes III and VII for the opening of an aircraft operator's account, the account holder shall submit information listed in Annex VII, No. 5, (a)-(d) of the Regulation.

16. When requesting the creation of a verifier access to the Union Registry, documentation shall be submitted in accordance with Regulation 2019/1122/EU, Article 18 and Annex V.

17. When requesting the creation of a trading account or a person holding account, documentation shall be submitted in accordance with Regulation 2019/1122/EU, Article 16 or Regulation 389/2013/EU, Article 18, respectively.

(2) The opening of an account, cf. (1), is conditional on the prospective account holder having permanent residence in Denmark or being registered in CVR, cf. Regulation No 2019/1122/EU, Article 16 (2) and Regulation 389/2013/EU, Article 18 (2).

(3) In addition to the information required to set up a trading account, criminal record disclosure certificates shall be submitted by the undertaking's management.

(4) The Danish Business Authority may close a trading account or a person holding account if the conditions for holding an account are not complied with despite an order to that effect, cf. Regulation 2019/1122/EU, Article 28 (1) or Regulation 389/2013/EU, Article 33 (1).

18. Danish VAT registration is required to the extent that this is required in accordance with the rules on VAT for undertakings that request opening of accounts, with the exception of aircraft operator holding accounts or verifier access.

19. In case of a merger between companies, company law determines whether an account can be transferred from the non-surviving company to the new company or surviving company. Similarly, for demergers and spin-offs, company law determines whether an account can be transferred from a demerging company to a receiving company. The legal successor to the former account holder becomes the new account holder once it has submitted the documentation required in accordance with Sections 15 or 17.

(2) The transfer of an operator account is conditional upon transfer of the associated installation, cf. Regulation No 2019/1122/EU, Article 22 (5).

(3) The Danish Business Authority shall be notified of changes in ownership, cf. (1) and (2) within 10 working days, unless the changes have already been registered with CVR.

Chapter 4

Account representatives

20. The account holder determines the number, roles, authorisations, and removal of account representatives, cf. Regulation 2019/1122/EU, Article 20 (1)-(5) or Regulation 389/2013/EU, Article 23 as regards person holding accounts. At least two account representatives shall be nominated in order to open an account.

(2) A notification regarding the nomination of account representatives and authorisations shall be signed by the account holder's authorised signatories or person to whom the account holder has assigned a written power of attorney. The notification shall be submitted together with documentation and information as stated in the Regulations.

(3) An account representative may personally request their removal from an account.

(4) At least one account representative for an account, with the exception of verifier access, shall have permanent residence in Denmark. The account representative shall not be limited by 'read only' access to the account. The Danish Business Authority may grant dispensation from this requirement if an aircraft operator does not have activities in Denmark.

Chapter 5

Assistance with transactions, processes, suspensions, etc.

21. If an account representative cannot access the Union Registry or the Danish Kyoto Registry for technical or other reasons, the Danish Business Authority may initiate a transaction on behalf of the account representative or account holder upon either of those parties' written request, cf. Regulation 2019/1122/EU, Article 20 (6) and (7) or Regulation 2013/389/EU, Article 23 (5). The request shall be submitted to the Danish Business Authority not later than three days before the requested initiation date, cf. Section 3.

(2) An account holder may request that the Danish Business Authority carry out a surrender, cf. Regulation 2019/1122/EU, Article 30 (10). The request shall be submitted to the Danish Business Authority no later than three working days in advance of the intended transaction initiation date, cf. Section 3.

(3) The account representative may request that the Danish Business Authority abort or reverse certain transactions, cf. Regulation 389/2013/EU, Article 58 or Regulation 2019/1122/EU, Article 35 (6). The request shall be submitted to the Danish Business Authority within the time limits stipulated in the Regulations.

22. If an account representative's authentication data for the Union Registry and the Danish Kyoto Registry are no longer secure, the representative shall suspend their access to the relevant account immediately or request that the Danish Business Authority suspend that access. The account representative shall contact the Danish Business Authority to have the representative's authentication data replaced.

23. In an urgent situation, the Danish Business Authority can be contacted outside normal working hours to suspend access to the account or report a security breach. The times during which urgent assistance can be provided are stated on the Danish Business Authority's website.

Chapter 6

Security, limitation of liability, right of complaint, penalties, etc.

24. When using the Union Registry and the Danish Kyoto Registry, an account representative shall take all the necessary measures to prevent data from being lost, stolen or compromised. An account representative shall notify the Danish Business Authority immediately if data are lost, stolen or compromised.

(2) Failure to comply with the security requirements may result in suspension of access to the account.

25. The Danish Business Authority disclaims all liability for any situation arising as a result of a notifier, an account holder or their account representatives being non-contactable by means of the contact details held in the Union Registry or the Danish Kyoto Registry.

(2) Furthermore, the Danish Business Authority disclaims all liability for any situation attributable to an account holder's or their account representatives' failure to comply with best practice for secure data processing and internet use, as stated on the website of the Danish Business Authority.

26. Appeals against the following decisions made by the Danish Business Authority pursuant to this Executive Order together with the Regulations may be brought before the Energy Board of Appeal no later than 30 calendar days after the decision has been notified to the party concerned:

- 1) Rejection of a request to open an account, cf. Chapter 3.
- 2) Rejection of a request to approve the addition of an account representative, cf. Section 20.
- 3) Suspension of any access, Regulation 389/2013/EU, Article 34 or Regulation 2019/1122/EU, Article 30.
- 4) Suspension of accounts and removal of an account representative, Regulation 389/2013/EU, Article 33 or Regulation 2019/1122/EU, Article 28.

(2) A decision cannot be brought before the courts until the final administrative decision is available.

(3) Decisions made by the Danish Business Authority pursuant to this Executive Order and the Regulations cannot be brought before the Minister for Industry, Business and Financial Affairs.

27. Unless a more severe penalty is incurred under any other legislation, a fine is imposed on anyone who

- 1) fails to comply with an order to disclose information or provide documentation pursuant to Section 5, Section 6 (1);
- 2) fails to comply with an order to provide timely information about changes to the information submitted, cf. Section 11;
- 3) fails to comply with an order issued by the Danish Business Authority pursuant to the Regulations; or

- 4) withholds information or discloses inaccurate or misleading information with implications for the Danish Business Authority's administration of the Union Registry of the Danish Kyoto Registry.
- (2) Companies, etc. (legal persons) may incur criminal liability pursuant to the rules in Chapter 5 of the Danish Criminal Code.

Chapter 7

Entry into force, etc.

28. This Executive Order enters into force on 1 January 2021.

(2) Executive Order No. 1627 of 12 November 2020 on the Union Registry and the Danish Kyoto Registry is hereby repealed.

Ministry of Industry, Business and Financial Affairs, 18 November 2020

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