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EXECUTIVE ORDER no. 1636 of 13/12/2017 (In force)

Ministry: Ministry of Industry, Business and Financial Affairs
Reference Number: Ministry of Industry, Business and Financial Affairs,
The Danish Business Authority, ref. no. 2017-12646

Later amendments to the regulations: None

The executive order on the EU's ETS Registry and The Danish Kyoto Registry¹⁾

pursuant to Section 3(2), Section 21(3) and (4), Section 22(2) and (3), Section 30(4), Section 31(7) and (8), Section 32(2) and Section 36(1) and (2) in the Danish Emission Allowances Act, cf. Consolidated Act no. 1605 of 14 December 2016 and Section 5(2) and 10(2) of the Act on the procedure of notification etc. of certain information to the Danish Business Authority, cf. Consolidated Act no. 1204 of 14 October 2013, the following is established by order, in accordance with Section 1(1) of Executive order no. 1357 of 17 December 2012 on delegation of certain powers in the Danish Emission Allowances Act to the Danish Business Authority:

Chapter 1

Areas of application and definitions

1. The executive order supplements the Commission regulation no. 389/2013/EU on the establishment of a common Union Registry, hereinafter the regulation, for the following account types that are administered by the Danish Business Authority in the EU ETS Registry and the Danish Kyoto Registry:

- 1) The EU's ETS Registry:
 - a) Operator holding accounts.
 - b) Aircraft operator holding accounts.
 - c) Verifier accounts.
 - d) Trading accounts.
 - e) Person holding accounts.
 - f) Auction delivery accounts.
 - g) External trading platform accounts.
- 2) The Danish Kyoto Registry:
 - a) Person holding accounts.
 - b) Former operator holding accounts.

2. In this executive order, the following definitions shall apply:

- 1) Applicant: A physical person who notifies a matter on behalf of a potential or existing account holder to the Danish Business Authority.
- 2) Auction delivery accounts: Special account belonging to an auctioneer, a clearing system or a settlement system, as defined in the Commission Regulation (EU) No. 1031/2010 of 12 November 2010, or an auctioning platform in accordance with Article 26 or Article 30 of that Regulation.
- 3) Authorised representative: A physical person who can initiate transactions and other processes on behalf of an account holder in the EU's ETS Registry or the Danish Kyoto Registry, unless the person only has read only access.
- 4) Operator holding account: Special account belonging to an operator, cf. the Danish Emission Allowances Act.
- 5) External trading platform account: Special account belonging to a multilateral exchange of any kind that brings together or facilitates the bringing together of multiple third-party buying and selling interests of CO₂ allowances or Kyoto units, as defined in Article 4 of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004.
- 6) Trading account: Account that can generally be held by any physical or legal entity.

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- 7) Legal entity: A legal person or a branch of a foreign legal person, state-administrative entity, a region, a municipality or an inter-municipal establishment.
- 8) Account holder: A physical or legal person who has an account in the EU's ETS Registry or the Danish Kyoto Registry.
- 9) Account representative: Common term for an authorised and an additional authorised representative.
- 10) Aircraft operator holding account: Special account belonging to an aircraft operator, cf. the Danish Emission Allowances Act.
- 11) National holding account: Account belonging to the Danish state.
- 12) Person holding account: Account that can generally be held by any physical or legal person.
- 13) Verifier account: Special account belonging to a verifying body, cf. Article 3(3) in the Commission Regulation (EU) no. 600/2012 of 21 June 2012.
- 14) Additional authorised representative: A physical person that the account holder can appoint to approve certain transactions, cf. the regulation, Article 23(3).

Chapter 2

Common provisions

Digital communication

3. The account holder, account representative, verifier and applicant must, as far as possible, use the self-service solution at Virk Indberet to submit applications for creating or closing an account, adding or removing account representatives, carrying out changes to information and uploading documents, in accordance with what is indicated in the self-service solution.

(2). If the application cannot be submitted through Virk Indberet, it must be submitted according to the applicable guidelines indicated on the website of the Danish Business Authority.

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

(4). An applicant, account holder or account representative that registers a matter in the EU's ETS 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 at CVR, CPR, SKAT and publicly available 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 ETS Registry is indicated in the regulation, relevant EU legislation, the Danish Emission Allowances Act and the Act on the procedure of reporting etc. of certain information.

General information on documentation requirements

5. Upon request from the Danish Business Authority, an account holder must submit all information that the authority deems necessary to perform the authority's work in accordance with the EU's ETS Registry and The Danish Kyoto Registry.

6. The Danish Business Authority can demand supplementary documentation beyond what is specified in the regulation 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 an exemption from the documentation requirements.

(3). The Danish Business Authority can permit certain documents that have been approved in connection with a case in the EU ETS Registry and The Danish Kyoto Registry to be used in another case.

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

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8. A copy of a document issued abroad that is sent as documentation must be legalised or verified, according to applicable EU legislation as well as bilateral or international agreements.

9. The verification or legalisation date, in accordance with Sections 7 or 8, for the issued documentation in accordance with the regulation may not exceed 3 months from the date when the document was received by the Danish Business Authority. Documentation is regarded as received on the day it is submitted via Virk Indberet, submitted electronically or received in physical form at the Danish Business Authority.

Translation of documents

10. If a document or a copy of a document that is sent as documentation is not written in Danish, Norwegian, Swedish or English, it must be accompanied by a translation into Danish or English. Correspondingly, Section 8 applies to translations of verification and legalisations.

(2). The Danish Business Authority can demand that translations are carried out by a registered translation agency.

Changes to registered information

11. Within 10 working days, an account holder must report changes to the information or documentation submitted to the Danish Business Authority in connection with creating or updating an account, in accordance with the regulation, Article 25, cf. however subsection (2). The information and documents relevant to the change must be submitted with the notification.

(2). An account holder is exempted from the duty to notify as stipulated in subsection (1), if a change in the company information is reported to the Danish Business Authority or SKAT pursuant to the executive order on notification, registration, fees, disclosure, etc. at the Danish Business Authority. The same applies to personal data submitted to CPR.

(3). The change is registered when the necessary information and documentation has been approved by the Danish Business Authority. Upon request from the Danish Business Authority, the account holder's account representatives must ensure the registration of changes in the EU's ETS Registry or The Danish Kyoto Registry, in accordance with what is indicated in the IT system.

Account fee

12. The annual fee for having an account in the EU's ETS Registry is as follows:

- 1) DKK 5,250 for an operator holding account and DKK 0.20 per allocated free allowances.
- 2) DKK 5,250 for an aircraft operator holding account and DKK 0.20 per allocated free allowances.
- 3) DKK 3,600 for a verifier account.
- 4) DKK 5,250 for a trading account.
- 5) DKK 5,250 for a personal holding account.
- 6) DKK 2,910 for an auction delivery account.
- 7) DKK 13,950 for an external trading platform account.

(2). The annual fee for having a personal holding account in The Danish Kyoto Registry is DKK 5,250.

(3). The annual fee for keeping CO₂ allowances or Kyoto units in a national holding account, cf. the regulation, Article 32 (1), is DKK 30,000. The fee is chargeable to the previous account holder.

(4). The Danish Business Authority charges the fees once annually in the middle of the year. The fee is charged for the current calendar year for the accounts that are open and active on 1 July in that respective year, and they are charged regardless of whether the account is open for the full calendar year.

13. When setting up an account indicated in Section 12(1) point 3-7 and subsection (2) and (3), the Danish Business Authority charges a fee corresponding to the annual fee for the respective account type. The payment of the fee is a prerequisite for creating an account. The fee applies to the creation of the account as well as for the remaining part of this calendar year.

(2). If a notification of account creation does not lead to the creation of an account, a fee shall not be paid.

14. Fees in accordance with Sections 12 and 13, as well as payment in accordance with Section 19(4),

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shall be due for payment 32 days after the billing date.

(2). Payment of fees must take place using the collection method issued by Danish Business Authority. The Authority can reject other forms of payment, e.g. payment by cheque or cash.

(3). In case of late payment, a reminder fee of DKK 100 will be charged to cover the costs of the Danish Business Authority in connection with 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 sent to debt collection and the Danish Business Authority may close or suspend access to the account.

Chapter 3

Opening and transfer of accounts

15. The account holder or the potential account holder authorises the applicant and account representative to act as authorised representative on behalf of the company or person towards the Danish Business Authority.

(2). When nominating the account representatives, the notification must be signed by the persons authorised to bind the company or by a person that the account holder has given a written power of attorney.

16. An operator holding account or aircraft operator holding account is created after notification from the Danish Energy Agency when the operator or aircraft operator is covered by the Danish Emission Allowances Act. The Danish Business Authority contacts the operator or aircraft operator after notification for the purpose of retrieving the requested information and documents, cf. the regulation, annex III and annex VI and VIII.

(2). A holding account, cf. subsection (1), is transferred after notification from the Danish Energy Agency. After the notification, the Danish Business Authority contacts the new operator for the purpose of obtaining the required information and documents, cf. subsection (1).

17. When requesting the creation of a verifier account, documentation must be submitted in accordance with the regulation, annex III, V and VIII.

18. When requesting the creation of a trading account or a person holding account, documentation must be submitted in accordance with the regulation, annex III, IV and VIII.

(2). 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, in case of a split between companies, company law determines whether an account can be transferred from the transferor company to the existing or newly established companies.

19. When creating an auction delivery account or an external trading platform account, the applicant must submit documentation to the Danish Business Authority that the person is authorised by the Danish Financial Supervisory Authority.

(2). When creating an auction delivery account, the applicant must also submit the documentation to the Danish Business Authority as indicated in the regulation, Article 15, annex III, VI and VIII.

(3). When creating an external trading platform account, the applicant must also submit the documentation to the Danish Business Authority as indicated in the regulation, Article 20, annex III, VI and VIII.

(4). The Danish Business Authority's costs for any expert assistance that the Danish Business Authority deems necessary for assessing the documentation, in accordance with subsection (3), shall be incurred by the potential account holder. Before the Danish Business Authority enters into a final agreement for such assistance, the authority will send a price overview to the potential account holder. If the potential account holder is not willing to pay the mentioned costs, the Danish Business Authority will deny the creation of the external trading platform account.

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

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21. At least one account representative associated with an operator holding account, trading account, person holding account, auction delivery account or external trading platform account must be a permanent resident of Denmark.

(2). The account representative, cf. subsection (1), may not only have read only access to the account.

Chapter 4

Assistance with Transactions, suspensions, etc.

22. If an account representative, due to technical or other reasons, cannot access the EU's ETS Registry or The Danish Kyoto Registry, the Danish Business Authority may, following a written request from the account representative or the account holder, initiate a transaction on behalf of the representative if

- 1) the account representative previously had technical access to the relevant account in the EU's ETS Registry or The Danish Kyoto Registry.
- 2) the lacking access is temporary,
- 3) there are no outstanding matters in relation to the approval of the information or documentation about the account representative,
- 4) the account representative's access is not suspended, in accordance with the regulation,
- 5) and the transferring account permits initiation of the transaction.

(2) The request must be sent to the Danish Business Authority no later than 3 working days before the desired date of the transaction, cf. Section 3.

23. The account representative may request cancellation or reversal of transactions, cf. the regulation, Article 39(4) or Article 70.

(2). The account representative can contact the Danish Business Authority outside normal working hours in case of cancellation of transactions, cf. the regulation Article 39(4), or in case of a security breach, cf. Section 24. The Danish Business Authority's normal opening hours and emergency phone opening hours are indicated on the Team ETS Registry pages on the website of the Danish Business Authority.

24. If an account representative's authentication data for the EU's ETS Registry and The Danish Kyoto Registry is no longer secure, the representative must immediately suspend their access to the respective account or request that the Danish Business Authority suspend access, and they must inform the Danish Business Authority of this and submit a request to change the representative's authentication data.

Chapter 5

Security, limitation of liability, right to complain, penalties, etc.

25. When using the EU's ETS Registry and The Danish Kyoto Registry, an account representative must take all necessary measures to prevent data from being lost, stolen or compromised. An account representative must immediately inform the Danish Business Authority if data is lost, stolen or compromised.

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

26. The Danish Business Authority is not liable for any situations that arise due to the inability to contact an applicant, an account holder or their account representatives using the contact information registered in the EU's ETS Registry or The Danish Kyoto Registry.

(2). The Danish Business Authority is also not liable for any situation resulting from the account holder's or their account representatives' lack of compliance with secure data processing and use of the internet, including the minimum security requirements in the applicable terms and conditions.

27. Decisions made by the Danish Business Authority in accordance with this executive order as well as the regulation can be brought before the Energy Appeals Authority within 4 weeks of the notification of the decision. A decision cannot be brought before the courts until the final administrative decision is available.

(2). Decisions made by the Danish Business Authority pursuant to this executive order and the regulation

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cannot be brought before the Minister of Industry, Business and Financial Affairs.

28. The Danish Business Authority can specify the requirements derived from the executive order in a set of guidelines.

29. Unless a more severe penalty is due pursuant to different legislation, a fine shall be levied against the party that

- 1) fails to comply with instructions to submit information or documentation in accordance with Section 5 or Section 6 (1)
- 2) fails to comply with instructions to provide notification of changes to the submitted information on time, cf. Section 11.
- 3) fails to comply with instructions issued by the Danish Business Authority in conjunction with the regulation or
- 4) fails to provide information or provides incorrect information that is relevant to the Danish Business Authority's case processing in relation to the EU's ETS Registry or The Danish Kyoto Registry.

(2). Companies etc. (legal persons) can face criminal liability, in accordance with the rules in chapter 5 of the Danish Criminal Code.

Chapter 6

Entry into force etc.

30. The executive order shall enter into force on 1 January 2018.

(2). Executive order no. 95 of 29 January 2015 on the EU's ETS Registry and The Danish Kyoto Registry is abolished.

The Danish Business Authority, on 13 December 2017

VICTOR KJÆR

/ Susanne Thorhauge

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- 1) The executive order contains provisions that carry out 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, the Official Journal of the European Union 2003, no. L 275, page 32, Directive 2004/101/EC of the European Parliament and of the Council of 27 October 2004 amending Directive 2003/87/EC establishing a scheme for greenhouse gas emission allowance trading within the Community, in respect of the Kyoto Protocol's project mechanisms, the Official Journal of the European Union 2004, no. L338, page 18, Directive 2008/101/EC of the European Parliament and of the Council of 19 November 2008 on the amendment of Directive 003/87/EC with the intention of including air traffic activities in the scheme on trade of greenhouse emission quotas in the Community, the Official Journal of the European Union 2009, no. L 8, page 3 and Directive 2009/29/EC of the European Parliament and of the Council of 23 April 2009 on the amendment of Directive 2003/87/EC for the purpose of improving and extending the scheme for trade with greenhouse emission quotas in the Community, the Official Journal of the European Union 2009, no. L 140, page 63. The executive order includes certain provisions from Commission regulation (EU) no. 389/2013 of 2 May 2013 on the creation of an EU registry, in accordance with the Directive 2003/87/EC of the European Parliament and of the Council and Decision no. 280/2004/EC and no. 406/2009/EC of the European Parliament and of the Council, and on the abolishment of Commission regulation (EU) no. 920/2010 and no. 1193/2011, the Official Journal of the European Union 2013, no. L 122, page 1. Pursuant to Article 288 of the EDF Treaty, regulations shall apply in each member state. Reproduction of these provisions in the executive order is thus solely for practical purposes and does not affect the validity of the regulation in Denmark.