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**REGISTRY: TERMS AND CONDITIONS OF USE****CONTENTS**

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## 1 GENERAL PROVISIONS

The Umweltbundesamt GmbH (Environment Agency Austria Ltd.) acts as national administrator within the meaning of Regulation (EU) No 1122/2019 (as amended) and has been nominated by the responsible Austrian Federal Ministry as Registry administrator in accordance with the Austrian Act on Emissions Allowance Trading 2011 (as amended), in conjunction with the Registry Ordinance 2012, Federal Legal Gazette II 2012/208 (as amended).

To be able to participate in emissions trading it is necessary to open an account in the Union Registry.

**Note:** the current terms and conditions are only applicable to accounts in the Union Registry.

## 2 LEGAL BASIS

All relevant legal provisions applicable at European and national level shall apply to the use of the Registry, in particular the following:

- Commission Delegated Regulation (EU) No 1122/2019 of 12 March 2019 supplementing Directive 2003/87/EC of the European Parliament and of the Council as regards the functioning of the Union Registry,
- Commission Regulation (EU) No 421/2014 of the European Parliament and of the Council of 16 April 2014 amending 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, in view of the implementation by 2020 of an international agreement applying a single global market-based measure to international aviation emissions Text with EEA relevance and amending Council Directive 96/61/EC, last amended by Decision No 377/2013/EU of the European Parliament and of the Council of 24 April 2013 derogating temporarily from Directive 2003/87/EC establishing a scheme for greenhouse gas emission allowance trading within the Community, as amended,
- Austrian Act on Emissions Allowance Trading 2011, Federal Legal Gazette 2011/118 (as amended),
- Environmental Measures Support Act, Federal Legal Gazette 1993/185 (as amended),
- Registry Ordinance 2012 Federal Legal Gazette II 2012/208 (as amended).

### **3 SCOPE**

The national administrator shall be responsible for the administering of accounts in the Austrian part of the Union Registry. This includes in particular the opening, verifying and closing of accounts, refusal to open an account or suspension of access, allocation of allowances, changes to the national allocation table etc.

The technical management and maintenance of the Union Registry (IT infrastructure) shall be exempted from the scope of the terms and conditions set out in this document.

The terms and conditions set out in the following regulate the details applicable to the use of the Registry and shall apply exclusively to the business relationships between the national administrator and its users.

### **4 DEFINITIONS**

The definitions set out in European and national law provisions, in particular Art 3 and Art 77 (1) of Regulation (EU) No 1122/2019 (as amended) and Section 3 of the Austrian Act on Emissions Allowance Trading 2011 (as amended), shall apply.

In addition to the above, and pursuant to the terms and conditions set out in this document, the following definitions shall apply:

“Registry”: means the Austrian part of the Union Registry.

“National administrator”: governmental administrator according to § 43 Austrian Act on Emissions Allowance Trading 2011 (as amended)

“Account holder”: party to the agreement with the Registry that, after having fulfilled all the necessary conditions, is entitled to hold an account in the Registry

“Registry user”: account holder and account representatives

“Authorised representative” means a natural person acting on behalf of an account holder in the Registry.

“Suspension of access” means blocking the access to the Registry or to one’s own account. The account itself shall remain in existence. In principle, suspension of access is only a temporary measure. Once the situation giving rise to the suspension has been resolved the suspension of the relevant account shall be lifted or the account shall be definitely closed.

“Closure of an account” means the definite closure of an account. With the closure of an account the business relationship between the national administrator and the registry user comes to an end.

## **5 ACCESS TO THE REGISTRY**

### **5.1 Authentication in EU Login**

As a condition for online access to the Austrian part of the Union Registry, authentication of registry users in the EU Login is required. Through authentication, Registry users undertake to meet all the technical specifications of EU Login and to follow the rules and procedures for access to the Union Registry as specified therein.

The authentication process is only possible via “EU Login Mobile App”. Therefore, EU login users need a mobile phone with an integrated camera. Users have to scan an automatically produced QR-code. Thereby a certain password is activated which is only valid for a single sign-in and authentication.

Users have to provide the following technical conditions:

- “EU Login Mobile App” shall be downloaded on a smartphone or a tablet. It shall be installed by Google Playstore (Android) or App store (Apple).
- Mobile phones by Huawei, roll out after 16 May 2019, are not appropriate/compatible with “EU Login Mobile”.
- Mobile phones/tablets shall have an integrated and working camera.
- A screen lock shall be activated for security reasons.
- “EU Login Mobile App” can only be installed on one single mobile device (smartphone, tablet) for one single user. It is not possible to use this App on more than one mobile device for one single user.
- After installation: users shall allow all access rights required by “EU Login Mobile App”

Common updates shall be downloaded to guarantee the proper function of the “EU Login Mobile App”.

### **5.2 Other technical preconditions**

Registry users have to use the relevant hard- and software tools according to current requirements stated by the European Commission to gain access to the Austrian part of the Union Registry.

In addition IT systems have to be set up that they verify the e-mail address [registerstelle@umweltbundesamt.at](mailto:registerstelle@umweltbundesamt.at) and registry users shall receive e-mails correctly sent by the national administrator (e.g. adjustment of spamfilters).

### **5.3 Process referring to users which are not assigned to open accounts**

The national administrator shall deactivate for security reasons the user-ID in case a user is not assigned to a certain open account (any more).

### **5.4 Authorised representatives**

The provisions set out in Art 20 et seq of Regulation (EU) No 1122/2019 (as amended) shall apply.

Authorised representatives initiate transactions in the registry or other actions on behalf of the account holder.

Each account holder (except verifiers) shall nominate at least two authorised representatives for each account.

Authorised representatives act on behalf of the account holder and have one of the following rights:

- (a) initiate processes
- (b) approve processes, if required;
- (c) initiate processes and approve processes initiated by another authorised representative.

At the opening, each account shall have at least two authorised representatives with one of the combination of rights mentioned in Art 20 (2) Regulation (EU) 1122/2019.

Account holders may decide that the approval of a second authorised representative is not necessary to propose transfers for execution to accounts on the trusted account list set up pursuant to Art 23. The account holder may withdraw such decision. The decision and the withdrawal of the decision shall be communicated in a duly signed statement submitted to the national administrator.

Authorised representatives must be natural persons over 18 years of age. All authorised representatives of a single account must be different persons. But the same person can be an authorised representative on more than one account. Moreover, every authorised representative must establish his/her personal e-mail address. General mail addresses such as [office@companyname.com](mailto:office@companyname.com) are not allowed.

In the case of trading accounts at least one of the authorised representatives must be a permanent resident of Austria.

When nominating an authorised representative, the account holder shall provide to the national administrator the requested information as required by it, but at a minimum the information set out in Annex VIII to Regulation (EU) No 1122/2019 (as amended).

In the event of justified doubts, the national administrator may request assistance by another national administrator in carrying out the verification referred to in the first subparagraph. The administrator that has received such request may refuse it. The prospective account holder or verifier may explicitly ask the national administrator to request such assistance. The national administrator shall inform the prospective account holder or verifier of such assistance request.

Within 20 working days of the receipt of the complete set of information and after its positive examination, the national administrator shall approve an authorised representative or inform the account holder of its refusal. If necessary, the evaluation process may be extended by 20 additional working days. An objection to a refusal may be raised via the competent authority (the Austrian Federal Ministry of Climate Action, Environment, Energy, Mobility, Innovation and Technology).

An authorised representative may not transfer its status as such to another person. An account holder may request the removal of an authorised representative from an account. If an authorised representative has been removed and as a result the minimum number of authorised can not be achieved, the account holder has to nominate a new authorised representative without delay.

The account holder shall be responsible, and liable, for ensuring that only authorised persons have access to the registry to initiate relevant transactions therein. In the event that any unauthorised persons carry out processes and transactions in the registry due to the fault of the account holder, the responsibility and liability for these processes or transactions shall also lie exclusively with the account holder.

## **5.5 Opening of accounts**

### **5.5.1 General provisions**

The opening of any type of account shall be initiated on behalf of the prospective account holder. Each account shall receive an account ID.

#### General provisions for the conclusion of an account contract:

- online request for the opening of an account in the Austrian part of the Union Registry,
- signed contract governing the opening and management of the account (in two counterparts) including the terms and conditions applicable to the use of the registry,

- submission of documents supporting the request in accordance with the documents and information required under the applicable laws and regulations, and/or any further information and documents as required by the national administrator if applicable (see details e.g. on the website [www.emissionshandelsregister.at](http://www.emissionshandelsregister.at) in the chapters about information regarding opening of an account),
- for further provisions see Points 5.4.2 to 5.4.5.

The national administrator shall only be obliged to open and manage an account for which a request for account opening has been received if a complete set of information as required by law, plus any additional information considered necessary by the national administrator, are submitted that meet the formal requirements and the quality standards as requested.

Unless regulated otherwise under Regulation (EU) No 1122/2019 (as amended), proof of identity shall be provided by applying, by analogy, the provisions set out in Section 6 of the Austrian Anti-Moneylaundering Act, Federal Legal Gazette 2016/118 (as amended). In the event that a registered office or a place of residence is outside the EEA, identification has to be provided by the administrative authority of the third country or by a recognised legalisation body.

Account holders shall demonstrably notify the national administrator without delay (no later than within 10 working days) of any changes to the information submitted for the opening of an account, or of any changes regarding the requirements for registry access. Trading and verifier accounts will receive an annual reminder, to check their account data. Operator holder accounts and aircraft operator account holders shall confirm unrequested to the national administrator by 30 June each year that the information for their account remains complete, up-to-date, accurate and true. Holders of regulated entity holding accounts shall give that information by 31 March each year.

Even after the opening of an account the national administrator may request, within a reasonable period of time, information and documents to an extent that is proportionate, especially if required by law (e.g. for meeting the obligation of carrying out a review in accordance with Art 22 (4) of Regulation (EU) No 1122/2019 (as amended)) or if necessary because of changes to the European or national legal framework.

The national administrator shall perform regular reviews to check whether all requirements for account access are complied with (e.g. KYC-check (Pt. 5.6)).

#### **5.5.2 5.5.2. Formal requirements regarding the application of necessary documents and proofs**

Any documents and proofs that are necessary for opening an account can be transmitted by electronic means under certain circumstances. Please find further details at [www.emissionshandelsregister.at](http://www.emissionshandelsregister.at).

### 5.5.3 Special provisions for operator holding accounts

The Annexes to Regulation (EU) No 1122/2019 (as amended) which are mentioned under this point can be downloaded at [www.emissionshandelsregister.at](http://www.emissionshandelsregister.at).

In addition to the general terms and conditions set out under Pt. 5.4.1, operators which have an account in the Austrian part of the Union Registry have to fulfil the following conditions:

- legitimisation as operators of an installation pursuant to Section 3 in conjunction with Section 4 of the Austrian Act on Emissions Allowance Trading 2011 (as amended),
- providing information set out in Annex VI and Annex VIII to Regulation (EU) No 1122/2019 (as amended)<sup>1</sup>,

The account shall be opened within 20 working days of the receipt of a complete set of information and its positive examination.

A new operator holding account may be opened only if the installation does not already have an operator holding account that was opened based on the same greenhouse gas emissions permit.

An operator has to open a separate operator holding account for each installation and to perform the legal duties for these accounts. The operator shall administer all allowances allocated to the installation, as well as any allowances that may be acquired, through the operator holding account.

The national administrator shall allocate allowances to operator holding account with compliance status A (compliant) by 30 June of each year. The operator is obliged to check the number of allowances allocated, against the official notification on his allocation that he has received from the competent authority.

Change of operator: In the event of a change of operator (e.g. if there has been a sale, merger or a partial division), an ongoing contractual relationship shall be transferred, together with all ensuing rights and duties, to the other legal person, i.e. the new operator in accordance with Section 3 in conjunction with Section 4 of the Austrian Act on Emissions Allowance Trading 2011 (as amended). In addition, Pt. 13 shall also apply.

Penalty: If an operator fails to fulfil its legal obligations of surrendering a sufficient number of allowances, the competent authority (the Austrian Federal Ministry of Agriculture and Forestry, Climate and Environmental Protection, Regions and Water Management)) shall charge a penalty. The amount of such sanctions shall be determined in accordance with Section 53 of the Austrian Act on Emissions Allowance Trading 2011 (as amended). Payment

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<sup>1</sup> The national administrator is allowed to check the national register of residents; so the submission of this proof is not necessary, if a national residence exists and the data are available.

of the penalty shall not release the operator from the obligation to surrender an amount of allowances equal to the excess emissions.

Apart from the general options for terminating a contract (Pt. 15), the national administrator may terminate a contract immediately if the plant operator ceases to be an operator as defined in the Austrian Act on Emissions Allowance Trading (as amended) and is thus no longer authorised to use the account. Here the general provisions for closing accounts as specified in Regulation (EU) No 1122/2019 (as amended) shall apply.

#### **5.5.4 Special provisions for trading accounts**

The Annexes to Regulation (EU) No 1122/2019 (as amended) which are mentioned under this point can be downloaded at [www.emissionshandelsregister.at](http://www.emissionshandelsregister.at).

In addition to the general terms and conditions set out in Pt. 5.4.1, potential holders of person holding and trading accounts have to fulfil the following conditions:

- providing information as requested by the national administrator including, at a minimum, information set out in Annex IV and Annex VIII to Regulation (EU) No 1122/2019 (as amended)<sup>2</sup>,
- proof of residence pursuant to Art 20 (9) of Regulation (EU) No 1122/2019 (as amended) for at least one authorised representative,
- arrival of a onetime administrative charge (2.000 EUR) at the banking account of the national administrator for account openings by applicants from non-EEA-countries.

The account shall be opened within 20 working days of the receipt of a complete set of information and its positive examination.

Account holders shall administer their allowances through their trading accounts.

Apart from the general options available for terminating a contract (Pt. 15), the national administrator may terminate a contract immediately if a situation as described in Art 28 (1), (2) and (3) of Regulation (EU) No 1122/2019 (as amended) arises. The general provisions for closing accounts as specified in Regulation (EU) No 1122/2019 (as amended) shall apply.

#### **5.5.5 Special provisions for aircraft operator accounts**

The Annexes to Regulation (EU) No 1122/2019 (as amended) which are mentioned under this point can be downloaded at [www.emissionshandelsregister.at](http://www.emissionshandelsregister.at).

In addition to the general terms and conditions (Pt. 5.4.1), aircraft operators have to fulfil the following conditions:

- providing information as requested by the national administrator including, at a minimum, information set out in Annex VII and Annex VIII to Regulation (EU) No 1122/2019 (as amended)<sup>2</sup>

The account shall be opened within 20 working days of the receipt of a complete set of information and its positive examination.

The national administrator shall allocate allowances to the aircraft operator holding account with compliance status A (compliant), if it is not in the status “excluded” for the corresponding year, by 30 June of each year.

Apart from the general options available for terminating a contract (Pt. 15), the national administrator may terminate a contract immediately if instructions for the closure of an account have been given pursuant to Art 26 of Regulation (EU) No 1122/2019 (as amended) because the aircraft operator merged into another aircraft operator or the aircraft operator has permanently ceased all its operations covered by Annex I to Directive 2003/87/EC (as amended). The general provisions for closing accounts as specified in Regulation (EU) No 1122/2019 (as amended) shall apply.

Penalty: If an aircraft operator fails to fulfil its legal obligations of surrendering a sufficient number of allowances, the competent authority (the Austrian Federal Ministry of Agriculture and Forestry, Climate and Environmental Protection, Regions and Water Management) ) shall charge a penalty. The amount of such sanctions shall be determined in accordance with Section 53 of the Austrian Act on Emissions Allowance Trading 2011 (as amended). Payment of the penalty shall not release the aircraft operator from the obligation to surrender an amount of allowances equal to the excess emissions.

#### **5.5.6 Special provisions for independent verifiers**

The Annexes to Regulation (EU) No 1122/2019 (as amended) which are mentioned under this point, can be downloaded at [www.emissionshandelsregister.at](http://www.emissionshandelsregister.at).

In addition to the general terms and conditions (Pt. 5.4.1), independent verifiers have to fulfil the following conditions:

- proof of legitimation as verifier pursuant to Art 3 Pt 6 of Regulation (EU) No 1122/2019 (as amended) or accreditation pursuant to the Commission Implementing Regulation (EU) No 2067/2018 (as amended),
- providing information as requested by the national administrator including, at a minimum, information set out in Annex III and Annex V to Regulation (EU) No 1122/2019 (as amended)<sup>2</sup>.

If the verifier's approval or accreditation has expired or has been withdrawn, Art 27 of Regulation (EU) No 1122/2019 (as amended) shall apply.

Within 20 working days of the receipt of a complete set of information, the national administrator shall register the verifier in the Union Registry.

Any operator or any aircraft operator is responsible for the appointment of an independent verifier. The independent verifier shall confirm or refuse the appointment.

The national administrator reserves the right to charge a fee if the costs incurred by the administration of a verifier account make such a fee necessary and if it has been approved by the competent authority.

## **5.6 Refusal to open an account or register a verifier**

In the event of justified doubts, the national administrator may request assistance by another national administrator in carrying out the verification referred to in the first subparagraph. The administrator that has received such request may refuse it. The prospective account holder or verifier may explicitly ask the national administrator to request such assistance. The national administrator shall inform the prospective account holder or verifier of such assistance request.

The national administrator may refuse to open an account or register a verifier

- if the information and documents provided are incomplete, out of date or otherwise inaccurate or false;
- if the prospective account holder, or, if it is a legal person, any of the directors, 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;
- if the national administrator has reasonable grounds to believe that the accounts may be used for fraud involving allowances, money laundering, terrorist financing or other serious crimes;
- for reasons set out in national law;
- if the national administrator required the prepaying of registry fees for trading accounts and they were not paid.

## **5.7 Know your customer checks (KYC-checks)**

The national administrator examines correctness and currency of all information and data which registry users submit to the national administrator.

Data contain personal data as well. Therefore, the national administrator shall be obliged to fulfil the provisions of the General Data Protection Regulation (EU) 2018/679 and the Austrian Federal Data Protection Act 2018 (as amended) (see Pt 11).

The national administrator shall carry out KYC-checks when an account shall be opened or changed or according to Art 22 Regulation (EU) 1122/2019 (as amended).

## **6 REGISTRY USERS' OBLIGATIONS TO COOPERATE**

Registry users shall comply with the following regulations:

1. Registry users shall submit a complete set of data, information, documents and evidence as requested by the national administrator, in the desired quality, within a reasonable period of time to be specified by the national administrator.
2. Registry users shall review their submitted data in the registry for accuracy of content and completeness and, if appropriate, correct them on their own initiative, provided such autocorrection is possible. Otherwise the registry user shall notify the national administrator of any corrections that need to be made.
3. Registry users are obliged to hold carefully and keep safe their personal access data and related information (e.g. secret question – answer to secret question, code for unlock the mobile device, on which the “EU Login” App is installed, password for EU Login, ...).
4. Registry users shall notify the national administrator immediately of any changes concerning nominated authorised representatives.
5. Registry users shall inform the national administrator without delay if they acquire knowledge of any suspicious transactions in the registry.
6. Registry users shall fulfil notification obligations as set out in Section 43 paragraph 2 of the Austrian Act on Emissions Allowance Trading 2011 (as amended).
7. Registry users are responsible for informing other registry users about the closure of their account.
8. Registry users have to accept interruptions of registry services for maintenance purposes.
9. Registry users shall view actively and regularly, at a minimum once a week, the registry's website at [www.emissionshandelsregister.at](http://www.emissionshandelsregister.at) in order to be up to date with important information on a regular basis.
10. Registry users shall provide technical infrastructure according to Pt 5.1 and 5.2.

Failure to comply with the above obligations to cooperate may result in a suspension of the account with subsequent closure and termination of contract according to Art 28 and Art 30 (2) Regulation (EU) No 1122/2019 (as amended).

## **7 TRAINING**

In the event that registry users cannot fulfil their obligations because their knowledge about the Emissions Trading Registry is not sufficient, the national administrator may request that employees of the account holders with relevant skills attend training sessions.

## **8 HANDLING TECHNICAL DISRUPTIONS**

The technical parameters for the operation and functioning of the Registry as defined in Chapter III Art 60 et seq. of Regulation (EU) No 1122/2019 (as amended) shall apply.

Upon receipt of relevant information from the European Commission, the national administrator shall inform its users of any foreseeable measures which are necessary for the operational functioning of the registry (e.g. Registry maintenance by the European Commission) and lead to temporary service disruptions.

If unexpected technical problems should occur when using the registry, the national administrator and the registry users shall inform each other without delay.

Thereupon, measures foreseen by the European Commission and its subcontractors in such cases shall be taken immediately so as to restore the smooth functioning of registry operations as soon as possible.

If toward the end of the annual compliance cycle a registry user temporarily has no internet access to the registry, although he holds open accounts, the national administrator may carry out transactions upon request and on behalf of the relevant registry user, provided that access to the account has not been suspended. This kind of procedure is solely limited to transactions required for surrender of allowances.

## **9 AUSTRIAN REGISTRY SERVICEDESK**

The national administrator has set up a service desk which shall be available as a first contact point for registry users and their queries from Monday to Friday from 09.00 until 14.00 CET, except on 24.12., 31.12. and national holiday, by phone. Phone times shall be extended in certain periods up to 2 weeks before expiry of deadlines (e.g.: submission deadline, entry of emissions, surrender of allowances, ...) from 09.00 until 16.00 CET.

Contact via E-mail ([registerstelle@umweltbundesamt](mailto:registerstelle@umweltbundesamt)) shall be additionally provided.

The service desk is according to the "helpdesk" set by Art 61 (1) Regulation (EU) 1122/2019 (as amended).

The national administrator shall inform the users on the modalities of account administration, accept calls on technical problems or suspicious transactions in the Union Registry, inform registry users of any measures prescribed by the bodies responsible for the Union Registry for problem solving and cancel transactions if required in the case of fraud.

Latest news shall be published at [www.emissionshandelsregister.at](http://www.emissionshandelsregister.at). Moreover registry users shall receive chosen news directly by e-mail.

**Contact data for the national administrator are as follows:**

Address: Umweltbundesamt GmbH (Environment Agency Austria Ltd.)

Spittelauer Lände 5

1090 Wien (Vienna)

Austria

Phone: +43 (1) 31304/4114

[registerstelle@umweltbundesamt.at](mailto:registerstelle@umweltbundesamt.at)

## **10 TRANSACTIONS**

### **10.1. General provisions**

A transaction is the transfer of allowances from one account to another account in the Union Registry. Each transaction with another account shall be carried out by authorised persons nominated by the relevant account holder. The technical specifications for carrying out transactions are in line with Art 20 and 35 of Regulation (EU) No 1122/2019 (as amended) and the relevant technical level of implementation achieved by the European Commission and its subcontractors. The central administrator has set a threshold of 2 million certificates per transaction. Account representatives may set thresholds for transactions for their own accounts. Such limits have to be approved by a second account representative or a national administrator.

Transactions according to Art 55 of Regulation (EU) No 1122/2019 shall be executed as follows:

Transfers to accounts indicated on the trusted account list are executed immediately if they are proposed for execution between 10:00 and 16:00 CET on working days.

A transfer to accounts indicated on the trusted accounts list proposed for execution at any other time shall be executed on the same working day at 10:00 CET, if it is proposed for execution before 10:00 CET, or on the following working day at 10:00 CET, if it is proposed for execution after 16:00 CET.

Transactions referring to accounts which are not part of the trusted account list shall be executed as follows:

Transfers proposed for execution before 12.00 CET of a working day, are executed at 12.00 CET of the following working day. Transactions proposed for execution after 12.00 CET of a working day shall be executed at 12.00 CET of the second working day following the day of proposal for execution.

In addition to public holidays in Austria, 24 December and 31 December are no working days in the Austrian part of the Union Registry.

The account holder shall have sole responsibility for initiating and if necessary, confirming transactions and comply with the transaction thresholds.

## **10.2. Formal requirements for cancelling transactions**

An account representative may abort a transaction referring to accounts which are not part of the trusted list accounts at the latest two hours before its execution.

If an account representative or the account holder suspects that a transfer, which is subject to execution rules according to trusted list accounts, was proposed for execution fraudulently, at the latest two hours before its execution, the account representative or the account holder may request the national administrator to abort the transfer on behalf of the account representative or the account holder

If the transaction was aborted because the account representative or account holder suspected fraud the account holder has to inform the Austrian national law enforcement authority. Moreover the account holder shall forward that report to the national administrator within a period of 7 working days.

The national administrator shall accept requests for the cancellation of transactions only if they are sent by e-mail to [registerstelle@umweltbundesamt.at](mailto:registerstelle@umweltbundesamt.at). The request shall include the note "urgent – cancellation of a transaction" in the subject line. Requests per telephone are void.

The national administrator carries out cancellations only between 10:00 and 12:00 CET. Registry users shall be contactable for re-confirmation and any additional queries under a mobile telephone number provided by them.

Registry users carry the risk of submitting a request for cancellation within the applicable period of time as specified in Art 35 (6) of Regulation (EU) No 1122/2019 (as amended). Such a request shall be submitted at the latest two hours before the execution of the transaction. The account holder shall report the suspected fraud to the competent national law

enforcement authority immediately following the request. In Austria the competent authority is the concrete district police station. If the damage exceeds more than 5 million EUR the competent authority is the central public prosecutor for commercial criminal law.

## **11 CONFIDENTIALITY AND DATA PROTECTION**

The national administrator and the registry user shall use any information as specified in Art 80 of Regulation (EU) No 1122/2019 (as amended), as well as any information held in the registry pertaining to accounts and transactions made, only for purposes of establishing and managing the registry and to treat this information confidentially, i.e. to ensure that it is not made available to third parties even if the information is not explicitly designated as confidential (e.g. personal access data). This applies particularly to business and company secrets and access data of the national administrator and the registry users.

Exceptions to this rule are:

- data made available to explicitly legitimised legal entities as specified in Art 80 of Regulation (EU) No 1122/2019 (as amended),
- information which has to be made available to the public in accordance with certain legal provisions, such as information of the Annexes to Regulation (EU) No 1122/2019 (as amended),
- information which may be disclosed in accordance with a specific written agreement with the Registry user.

Furthermore personal data is processed for purposes referring to account management according to Art 77 and 78 Regulation (EU) 1122/2019 and to the General Data Protection Regulation (EU) 2016/679 and Austrian Federal Data Protection Act 2018.

Personal data shall be removed from the records after five years of the closure of an account or after five years of the closure of business relationship with a natural person. Personal data may be retained, with access restricted to the central administrator, for additional five years only for the purposes of investigation, detection, prosecution, tax administration or enforcement, auditing and financial supervision of activities involving allowances, or of money laundering, terrorism financing, other serious crime or market abuse for which the accounts in the Union Registry may be an instrument, or of breaches of Union or national law ensuring the functioning the EU ETS.

Personal data controlled by national administrators may be retained after the closure of the business relationship until the end of a period corresponding to the maximum prescription period of these offences laid down in the national law of the national administrator.

The national administrator shall report by involving the in-house data protection officer any occurring data breach to the central administrator and the other national administrators and

shall inform about executed and proposed measures to solve the breach and limit any negative consequences.

The Union Registry shall not contain sensitive data according to Art 9 and 10 General Data Protection Regulation (EU) 2016/679.

Registry users notice the fact that the national administrator performs its duties according to the principles of a fair and transparent data processing (see Art 13 and 14 GDPR (EU) 2016/679 as amended).

The related data protection information including any rights of data protection subjects is available on the website [www.emissionshandelsregister.at](http://www.emissionshandelsregister.at).

## **12 LIABILITY**

As a rule, the national administrator and its users shall be liable under the general rules for damages. The liability of the national administrator shall be limited to loss or damage which results from a deliberate act or gross negligence.

Under no circumstances shall the national administrator be liable for

- damage caused by way of force majeure and other unjustifiable circumstances;
- damage caused by third parties;
- damage or any other harm suffered by the registry user as a result of an interruption of the registry for technical reasons;
- damage or any other harm arising from the IT infrastructure provided by the European Commission;
- damage or any other harm suffered by the registry user or a third party as a result of a violation or breach of the terms and conditions of registry use;
- damage or any other harm suffered by the registry user as a result of a termination of the contractual relationship (Pt. 15);
- damage or any other harm suffered by the registry user as a result of transactions in the registry which are not performed by authorised persons;
- damages or any other harm which occur because registry users do not take care of their personal access data or take care of providing the necessary technical infrastructure;
- instructions from European bodies, in particular the European Commission;
- requirements of third parties (e.g. EU Login) in the context of emissions allowance trading that affect registry users;
- agreements concluded between registry users;

- requests for cancellations of transactions in case of fraud received after the due date, especially because of non-compliance with the formal requirements specified in Pt. 10.2, or for cancellation failures due to unsuccessful attempts of the national administrator to reach the applicant by phone for the purpose of re-confirmation;
- damage or any other harm caused by a failure to inform other account holders of the closure of a specific account;
- the accuracy of data provided by independent verifiers.

### **13 LEGAL SUCCESSION**

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. The new operator holding account agreement shall enter into force after signing by the legal successor and the national administrator, provided the legal successor has validly and fully assumed the rights and duties from the former account holder and this has been proven to the national administrator in writing.

Holders of trading accounts and aircraft operator accounts may not sell or divest of the ownership of their accounts to third parties (Art 22 paragraph 5 of Regulation (EU) No 1122/2019 (as amended)).

### **14 SUSPENSION OF ACCESS TO ACCOUNTS**

The national administrator may suspend the access of an authorised representative to any account or verifier in the registry or to processes to which that authorised representative would otherwise have access if the administrator has reasonable grounds to believe that one of the reasons mentioned in Art 30 paragraph 1 to 5 Regulation (EU) No 1122/2019 exists.

The national administrator shall reverse the suspension immediately once the situation giving rise to the suspension is resolved.

This suspension may be maintained until the national administrator receives official information about who has the rights to represent the account holder and the authorised representatives are confirmed or new authorised representatives are nominated in accordance with Art 21 Regulation (EU) 1122/2019.

Suspension of access to accounts may lead to closure of account (Pt 15.2).

## **15 TERMINATION**

### **15.1. General provisions**

An authorised representative of a trading account and verifiers may request the closure of an account or removal of the verifier online. Thereupon the account holder has to send a letter, duly signed with the company's signature, requesting the account closure to the national administrator.

The request regarding the closure of an operator holding and aircraft operator depends on the fulfilment of all legal obligations ("ex lege" cancellation of permit) and in consultation with the responsible Austrian Federal Ministry.

If there is a positive balance of allowances on an account which an administrator shall close, the national administrator is entitled to transfer the allowances to a national holding account and delete them or set the account status to "closure pending". This process shall be started after a period stipulated for 40 days and according to Art 29 of Regulation (EU) No 1122/2019 (as amended).

The registry users accept that this (property) transfer is slightly and proportionate according to Austrian constitutional federal law.

If the process of closure described above is complied with, the contractual relationship shall end automatically by a software generated e-mail without either of the parties having to make a specific declaration.

### **15.2. How to terminate a contract**

- Suspension of access to accounts with subsequent closure
- Closure for other reasons
- Termination by Account holder

#### **15.2.1 Suspension of access to accounts with subsequent closure**

The provisions set out in Chapter 3, Section 3 and 4 of Regulation No 1122/2019 (as amended) shall apply.

In accordance with Art 30 of Regulation (EU) No 1122/2019 (as amended) the national administrator may suspend the access to accounts if it has reasonable grounds to believe that the authorised representative has

- attempted to access accounts or processes for which he is not authorised;

- repeatedly attempted to access an account or a process using an incorrect username and password;
- attempted to compromise the security, the availability, the integrity or the confidentiality of the authentication system or the EUTL, or of the data handled or stored therein.

Furthermore, the national administrator may suspend the access where one of the following conditions is fulfilled:

- the account holder died or ceased to exist as a legal person;
- the account holder did not pay the fees within the agreed payment terms;
- the account holder violated the terms and conditions applicable to the account;
- the account holder did not agree to changes in the terms and conditions applicable to the management of the account;
- the account holder did not notify changes to account information or provide evidence concerning the changes to account information or new account information within 3 months even after the national administrator required the new documents (e.g. in the scope of account reviews);
- the account holder failed to maintain the required minimum number of authorised representatives for the account;
- the account holder failed to maintain compliance with the Member State requirement to have an authorised representative with a permanent residence in Austria;
- 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;
- the account holder violated the obligations to cooperate as set out under Pt. 6.

The national administrator may suspend the access to a specific account for a maximum period of four weeks if he has reasonable grounds to believe that the account was used or will be used for fraud, money laundering, terrorist financing or other serious crimes, or on the basis of and in accordance with national law provisions that pursue a legitimate objective. The national counterparty may extend the period of suspension. The competent authority referring to money laundering is statuted by the Ministry of the Interior. Any suspects may be reported to A-FIU@bmi.gv.at.

The national administrator shall reverse the suspension immediately once the situation giving rise to the suspension is resolved.

If a registry user cannot resolve the situation giving rise to the suspension, or rectify a violation that has been committed, after a maximum of three reminders and an additional period of grace of reasonable length granted by the national administrator, the national administrator may, at the earliest possible date pursuant to the regulations, definitely close the account in accordance with Regulation (EU) No 1122/2019 (as amended). The contractual relationship between the registry user and the national administrator shall thus be terminated.

### **15.2.2 Closure for other reasons**

The national administrator may terminate a contract with immediate effect without setting an additional period of grace, and close an account in accordance with the requirements set out in Regulation (EU) No 1122/2019 (as amended), if insolvency proceedings have been opened with regard to a registry user's assets, or bankruptcy proceedings due to a lack of sufficient assets to cover the costs of insolvency proceedings, or if any other state of inability to pay arises on the part of the registry user. If, in the event of insolvency or bankruptcy, an existing contract is continued under the management of an appointed receiver or insolvency manager, the national administrator may make the provision of further services dependent on the provision of appropriate security or the making of an advance payment.

Verifiers shall be removed from the Union Registry by the national administrator if the verifier's accreditation has expired or has been withdrawn or the verifier ceased operation.

If the Umweltbundesamt GmbH (Environment Agency Austria Ltd.) no longer acts as the national administrator, the contract shall also end automatically upon expiry of the last working day of the Umweltbundesamt GmbH (Environment Agency Austria Ltd.). In such a case the Umweltbundesamt GmbH (Environment Agency Austria Ltd.) shall inform all registry users promptly and without delay.

### **15.2.3 Termination by Account holder**

Account holders may terminate the contractual relationship with the national administrator by giving a one month notice in writing at the end of the month without stating any reasons (= ordinary termination). The termination process is a two-step process: at first the account will be suspended by the national administrator after expiration of the cancellation period (step 1). Subsequently the final closure of the account and the final ending of the contractual relationship depend on the fulfilment of all legal obligations (step 2).

Owners of operator holding and aircraft accounts should take note specifically of the fact that, if a contract is terminated for whatever reason, they will not be able to fulfil their duties under the Austrian Act on Emissions Allowance Trading 2011 (as amended) – which includes especially the obligation to have an Emission Allowance account – and will thus be subject to legal penalties and sanctions (Sections 53, 54 of the Austrian Emissions Allowance Trading Act 2011 as amended).

In addition to the above, registry users may exercise the right of extraordinary termination for just cause, in particular in the event of changes made to the terms of use which negatively affect them (see Pt. 18). In this case the termination shall be effective immediately. The

account will be suspended without delay (step 1) and the final closure depends here, too on the fulfilment of all legal obligations (step 2).

## **16 REIMBURSEMENT OF COSTS AND EXPENSES**

The registry shall charge a reimbursement of costs and expenses in accordance with Art 81 of Regulation (EU) No 1122/2019 (as amended). The fees shall be displayed on the website of the Austrian Emissions Trading Registry at [www.emissionshandelsregister.at](http://www.emissionshandelsregister.at).

Fees are payable annually as a lump-sum payment (time period is 1 January to 31 December).

The amount of the fees depends on the number of accounts held and on the relevant category of fees.

## **17 TERMS OF PAYMENT AND ACCOUNTING**

Payment of fees (e.g. reimbursements for account administration) shall be made upon receipt of an invoice and shall be only sent to the contracted account holder and not later than the due date as indicated on the invoice or, if no date is specified, within 7 calendar days of the receipt of the invoice. The invoice amount has to be credited, by the due date, to the account specified on the invoice.

Account holders have the right to object to an invoice in writing within 30 days of the receipt of the invoice. After this period, the invoice shall be considered binding.

Invoices shall be issued in Euros. Unless explicitly stated, fees do not include VAT. The activities of the national administrator are carried out in the exercise of governmental authority. For this reason, VAT is not applicable.

In the event of a delay the national administrator has the right to charge interest on overdue payment, to be calculated by using the base interest rate of the Austrian National Bank plus an annual rate of 4% or, in the case of commercial transactions, plus an annual rate of 9,2 % (Section 456 of the Austrian Commercial Code).

In principle, no set-off or counterclaim shall be admissible. The national administrators and the account holders only have a right to set-off where claims, which have a legal connection with the debt, or claims, which have been ascertained by a court or recognised by the national administrator are involved. In the event that an account holder is at risk of being unable to pay, the national administrator has the right to a set-off.

Invoices shall be sent by e-mail. The account holder has to notify a certain mail address to the national administrator.

Invoice mistakes have to be corrected by the national administrator.

## **18 AMENDMENTS TO THE TERMS AND CONDITIONS OF USE**

The national administrator reserves the right to change the terms and conditions set out in this document to an extent that is objectively justified, especially if such amendments are required because of amendments to European and national law provisions which form the basis of these terms and conditions.

The national administrator shall inform registry users of such amendments by e-mail. Apart from the main content, the information shall contain the time of the entry into force of the amendment and a note referring to the extraordinary right to terminate the agreement (Pt. 15).

If no specific date or time is indicated, amendments shall enter into force 14 days after the registry users have been informed by e-mail.

A notice referring to the terms and conditions as amended shall be made on the website of the national administrator at [www.emissionshandelsregister.at](http://www.emissionshandelsregister.at). Here the full text of the terms and conditions is available for download.

## **19 ADMINISTRATIVE SUPERVISION**

The national administrator and registry users are obliged to inform the competent authority of any infringements of laws which have to be penalised by the authority.

## **20 CONCLUDING CLAUSES**

All agreements shall be in writing in order to be effective. This also applies to a waiver of this written form requirement. In the case of electronic correspondence, the written form requirement is only fulfilled if an electronic signature is attached to e-mails according to Commission Regulation (EU) No 910/2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC (as amended).

If some of the provisions of these terms of use become ineffective and/or void, this fact shall have no effect on the remainder of the provisions. The parties agree to replace the ineffective/void provision by one which serves the legal, commercial and technical purposes as closely as possible.

The business language and the language of this contract is German or English. This stipulation may be amended by mutual agreement.

Person names come from Regulation (EU) No 2019/1122, as amended, and are in accordance with determination and gender-neutrality.

This contract shall be governed by Austrian law excluding the principles on conflicts of law. Application of the UN Sales Convention shall be excluded. The court having jurisdiction shall be the competent court at the registered office of the Umweltbundesamt GmbH (Environment Agency Austria Ltd.) in Vienna.