

2. The correction factor referred to in paragraph 1 shall be zero if the compliance status figure of the last year of the previous period was greater than zero, but shall remain as the compliance status figure of the last year of the previous period if this figure is less than or equal to zero.

3. The Union Registry shall record the compliance status figure for every installation and aircraft operator for each year.

CHAPTER V

TRANSACTIONS

Article 35

Only transactions expressly provided for in this Regulation for each account type shall be initiated by that account type.

Article 36

Execution of transfers

1. For all transactions specified in Chapter V that are not initiated by an external platform, an out-of-band confirmation shall be required by the Union Registry before the transaction can be initiated. A transaction shall only be initiated where an additional authorised representative, whose approval is required pursuant to Article 21(3), has confirmed the transaction out of band.

2. For all transfers specified in Article 59 and Section 6 of Chapter V, the transfer shall be initiated immediately if it is confirmed between 10:00 and 16:00 central European time between Monday and Friday inclusive, with the exception of public holidays in the Member States deciding to suspend the running of the delay pursuant to paragraph 3. A transfer confirmed at any other time shall be initiated on the next day, Monday to Friday, at 10:00 central European time.

3. For all transfers of allowances and Kyoto units specified in Articles 59 and 60, and for all transfers specified in Article 61 to accounts not on the trusted list of the trading account holder, a delay of 26 hours shall apply between initiation and the transfer being communicated for finalisation pursuant to Article 78. The running of this delay shall be suspended between 00:00 and 24:00 central European time on Saturdays and Sundays. Member States may decide to also suspend the running of this delay between 00:00 and 24:00 central European time on national public holidays for a given year, subject to publication of that decision by 1 December of the previous year.

4. If an account representative suspects that a transfer was initiated fraudulently, at the latest two hours before the end of

the delay provided in paragraph 3 the account representative may request the national administrator to cancel the transfer on behalf of the account representative before the transfer is communicated for finalisation. The account holder shall report the suspected fraud to the competent national law enforcement authority immediately following the request. That report shall be forwarded to the national administrator within seven days.

5. Upon initiation pursuant to paragraphs 1 and 2, a notification shall be sent to all account representatives indicating the proposed initiation of the transfer.

Article 37

Nature of allowances and finality of transactions

1. An allowance or Kyoto unit shall be a fungible, dematerialised instrument that is tradable on the market.

2. The dematerialised nature of allowances and Kyoto units shall imply that the record of the Union Registry shall constitute prima facie and sufficient evidence of title over an allowance or Kyoto unit, and of any other matter which is by this Regulation directed or authorised to be recorded in the registry.

3. The fungibility of allowances and Kyoto units shall imply that any recovery or restitution obligations that may arise under national law in respect of an allowance or Kyoto unit shall only apply to the allowance or Kyoto unit in kind. In particular:

(a) subject to Article 64 and the reconciliation process foreseen in Article 77 of this Regulation, a transaction shall become final and irrevocable upon its finalisation pursuant to Article 78. Without prejudice to any provision of or remedy under national law that may result in a requirement or order to execute a new transaction in the registry, no law, regulation, rule or practice on the setting aside of contracts or transactions shall lead to the unwinding in the registry of a transaction that has become final and irrevocable under this Regulation;

(b) nothing within this Article shall prevent an account holder or a third party from exercising any right or claim resulting from the underlying transaction that they may have in law, including to recovery, restitution or damages, in respect of a transaction that has become final in the registry, for instance in case of fraud or technical error, as long as this does not lead to the reversal, revocation or unwinding of the transaction in the registry.

4. A purchaser and holder of an allowance or Kyoto unit acting in good faith shall acquire title to an allowance or Kyoto unit free of any defects in the title of the transferor.