



Registry options to facilitate linking: Exposure draft amendment regulations

Explanatory Note

05 March 2013

The proposals set out in this paper have been developed by the Department of Climate Change and Energy Efficiency to facilitate discussion and obtain views. They do not represent final Australian Government policy nor is there any commitment to make regulations in a particular form.



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**Department of Climate Change
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Table of contents

Information for respondents.....	4
General information about the consultation paper, draft regulations and consultation process	4
Information about the explanatory note.....	4
Submission guidelines.....	4
Contact details	5
Explanatory table: Australian implementation of the registry link.....	6



Information for respondents

General information about the consultation paper, draft regulations and consultation process

This explanatory note has been prepared by the Australian Department of Climate Change and Energy Efficiency on the basis of draft regulatory amendments implementing the policies set out in the *Registry options to facilitate linking of emissions trading systems* consultation paper.

As the proposed policy and legislative changes set out in the consultation paper relate to Australian legislation only, the consultation process will be run by the Australian Department of Climate Change and Energy Efficiency in line with Australian public consultation procedures. European and Australian stakeholders are invited to make submissions on the consultation paper to the Australian Department of Climate Change and Energy Efficiency copying the European Commission.

The Department of Climate Change and Energy Efficiency will share all submissions with the Directorate General for Climate Action. The submissions will be shared with the European Commission regardless of any confidentiality requests.

Information about the explanatory note

The explanatory note is presented in tabular format. It sets out each policy position relevant to the regulation amendments, including page references to the relevant parts of the consultation paper, a précis of how the policy position is implemented through the draft regulations, and draft regulation references where appropriate.

Please note that the table is not intended as a complete explanation of the contents of the draft regulations.

The explanatory note does not preempt the conclusion and content of an international agreement between Australia and the European Union on a full two-way link.

Submission guidelines

- Submissions relating to the policy positions described in the consultation paper and on whether the draft regulatory amendments would implement the policy set out in the consultation paper are due by **close of business on 28 March 2013**.
- General submissions relating to the operation of the proposed registry arrangements received after 28 March 2013 may be considered at the discretion of the Department of Climate Change and Energy Efficiency and the European Commission. Stakeholders should note that the more time that passes after 28 March 2013 reduces the capacity of the Department of Climate Change and Energy Efficiency and the European Commission to consider the contents of the submission.
- Submissions are invited from all interested stakeholders.
- Comments should only be provided on policy issues relevant to the linking the European Union Registry and the Australian National Registry of Emissions Units.
- Where possible, submissions should be lodged electronically at the email address below, preferably in Microsoft Word or other text-based formats. Alternatively, submissions may be sent to the postal addresses below to arrive by the due date.
- **Submissions will not be treated as confidential unless this is specifically requested**, and may be made publicly available. If a submission (or any extract of a submission) is to be kept confidential, please indicate this in the submission.

Submissions should be emailed to: ce.regulations@climatechange.gov.au and copied



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to : clima-ets-linking@ec.europa.eu

Postal address:

Australia – EU Registry Linking
Carbon Pricing and Markets Division
Department of Climate Change and Energy Efficiency
GPO Box 854
Canberra ACT 2601

Contact details

Copies of this explanatory note and the consultation paper *Registry options to facilitate linking of emissions trading systems* are available on the Department of Climate Change and Energy Efficiency website (www.climatechange.gov.au). Hard copies are available on request via email at: ce.regulations@climatechange.gov.au. Stakeholders seeking clarification on details relating to the European Union Registry may contact: clima-ets-linking@ec.europa.eu.



Explanatory table: Australian implementation of the registry link

This table provides an explanation of the contents of the draft *Australian National Registry of Emissions Units Amendment Regulation 2013 (No. A)* (the ANREU Regulations), the *Clean Energy Amendment Regulation 2013 (No. B)* (the CE Regulations) and the *Carbon Credits (Carbon Farming Initiative) Amendment Regulation 2013 (No. A)* (the CFI Regulations) and makes appropriate references to the content of the *Registry options to facilitate linking of emissions trading systems* consultation paper and existing provisions in the *Australian National Registry of Emissions Units Act 2011* (ANREU Act) which underpin the proposed arrangements.

Issue	Paper Reference	Proposals	Implementation details	Draft Reg. Reference
Form of registry link in the interim linking period	p. 17	An indirect registry link would be implemented to facilitate trade during the interim linking period. The indirect registry link would be in place by 1 July 2015 and operate until replaced by a direct registry link, no later than the start of the full linking period on 1 July 2018	Division 4.1 of the ANREU Regulations sets out the process for the issuance of Australian-issued international units (AIUs) to ANREU account holders with respect to European allowance units held by the Australian Government in the Union Registry.	ANREU Item 7; p.4
A manual or automated arrangement in the interim and the full linking period	p. 19	To facilitate trade, both the indirect and direct registry links would be supported by automated systems-based processes built into the registries.	The Clean Energy Regulator (the Regulator) and the European Commission would manage the implementation of the registry link through administrative arrangements to be developed in close consultation with one another. These arrangements would aim to ensure the automation of that processes relating to the transfer of units between accounts in the Union Registry and the ANREU.	NA
Maintaining consistent functionality for	p. 20	Both the indirect and the direct registry link would be implemented in a manner that ensures consistent functionality for users of	The Regulator and the European Commission would manage the implementation of the registry link through administrative arrangements to be developed in close	NA



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end users in the interim and the full linking period		the Australian Registry and the Union Registry.	consultation with one another. These arrangements would be developed consistent with the principles set out in the proposal.	
Operating the Australian Government Union Registry Account in the interim linking period	p. 20	The Union Registry's central administrator would open an Australian Government Union Registry Account to be managed by the Regulator. This account would facilitate the issuance of AIUs and the swap-back of EU allowances. These processes would be automated.	<p>The rules for the Regulator's operation of the Australian Government Union Registry Account would be set out in a determination (which is a legislative instrument) made by the Minister for Climate Change and Energy Efficiency. This determination would be consistent with relevant draft regulations, including ANREU Regulation 51 and 55.</p> <p>Otherwise, the operation of the account and contact between the Regulator and the European Commission concerning its practical operation would be implemented through administrative arrangements.</p>	Section 13, ANREU Act ANREU Item 7; pp.4-5, 7-8
Swapping-back AIUs in the interim linking period	p. 21	The indirect registry link would include a facility for AIUs to be swapped-back for EU allowances.	<p>The process for swapping-back AIUs is set out in ANREU Regulation 55. This requires the Regulator to account for a number of conditions before permitting the outgoing transfer of an AIU.</p> <p>ANREU Regulation 60 modifies paragraphs 50(1)(c) and 50(1)(d) of the ANREU Act to set out the process for swapping-back AIUs for European allowance units in the Union Registry, under the power conferred by subsection 57(2) of the ANREU Act.</p>	ANREU Item 7; pp.7-8 ANREU Item 7; pp.10-11 Subsection 57(2), ANREU Act



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Proposed form of registry link in the full linking period	p. 23	A direct registry link would replace the indirect registry link no later than the start of the full linking period.	<p>The Australian Government and the European Commission are considering possible arrangements for the implementation of a direct registry link.</p> <p>Proposed ANREU Regulation 51(1)(e) provides that, once there is an operational international arrangement that provides for the direct transfer of European allowance units to the ANREU, the Regulator may no longer issue AIUs with respect to European allowance units.</p> <p>ANREU Regulation 56 provides that an incoming international transfer of a prescribed unit, such as a European allowance, cannot occur unless provided for in an international arrangement. Please note this does not affect the issuance of AIUs.</p> <p>CFI Regulation 11.2 clarifies that an Australian Carbon Credit Unit (ACCU) cannot be exported unless provided for in an operational international arrangement.</p> <p>For both of these purposes, an 'international arrangement' is defined in section 4 of the ANREU Act to be an agreement between Australia and a 'foreign government body' (for example, a department or agency of a foreign government) or an 'international organisation' (for example, the EU).</p>	<p>ANREU Item 7; p.5</p> <p>ANREU Item 7; p.9</p> <p>CFI Item 1; p.2</p>



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Treatment of AIUs in the full linking period	p. 24	AIUs would be automatically exchanged for EU allowances soon after the establishment of the full direct link.	The criteria that need to be met to implement the automatic exchange of AIUs for European allowance units are set out in proposed ANREU Regulation 70.	ANREU Item 10; pp.12-13
Avoiding double counting in the interim linking period	p. 26	Where an AIU is swapped-back for an EU allowance, the AIU would be cancelled. For every AIU cancelled on the closure of an account, voluntarily cancelled, relinquished or surrendered, the Australian Government would transfer one EU allowance to the Union Deletion Account.	<p>The process that the Regulator must apply on surrender of an AIU is set out in proposed Clean Energy Regulation 6.1A.</p> <p>The process that the Regulator must apply for the cancellation of an AIU on closure of an account, the voluntarily cancellation of an AIU or the relinquishment of an AIU is set out in proposed ANREU Regulations 53, 68 and 72 respectively.</p> <p>These regulations all provide that after an AIU is surrendered, cancelled or relinquished a European allowance unit would be deleted by the Regulator, within a specified time period.</p>	CE Item 1; p.3 ANREU Item 6; p.6; Item 10 pp.12, 13
Resolution of transactions in the interim and the full linking period	p. 26	AAUs or other agreed Kyoto units would be transferred between the Australian Registry and the Union Registry to ensure that Kyoto Protocol commitments are met in respect of emissions from the covered sectors (installations/liable entities covered by the ETS).	<p>The process and timing for the resolution of transactions would be determined in an arrangement made between the Australian Government and the European Union.</p> <p>These arrangements are expected to be finalised alongside the two-way linking negotiations.</p>	NA



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**Department of Climate Change
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		The frequency of the resolution would be determined through subsequent processes.		
Validation of transactions in the interim and the full linking period	p. 28	<p>A secure communications link would connect the Australian Registry and the European Union Transaction Log to enable the validation of transfers and identification of any discrepancies in transaction records.</p> <p>The International Transaction Log would have no direct involvement in validating transactions in the link.</p>	<p>The process for validation is set out in ANREU Regulation 51(3) (for the issuance of AIUs) and Regulation 55(3) (for the outgoing transfer of AIUs).</p> <p>This process requires that the Regulator has verified that the ANREU account sending or receiving the AIU is not subject to a condition or other hindrance, limitation or restriction imposed under the ANREU Act or Regulations that would preclude its sending or receiving an AIU.</p> <p>The process also requires that the European Union Transaction Log has stated a reasonable level of assurance that the transaction is authentic and confirmed that the transferor's account and transferred European allowance unit are not subject to any restrictions in relation to AIUs or the Commonwealth foreign registry account.</p> <p>As the Registry link would be given effect through a secure electronic link, validation would be an automated process.</p> <p>Note that some transactions initiated in the Union Registry have a delay of 26 hours between initiation</p>	ANREU Item 7; pp. 5-6, 7-8



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			and the transfer being communicated for finalisation. This delay would be applied before the transaction is validated in both systems, and no additional delays would apply to these transactions.	
Publication of serial numbers in the interim linking period	p. 29	AllUs would have public serial numbers which would be independent of the serial number of the backing EU allowance.	When issued, AllUs must be provided with a serial number as specified in section 48B of the ANREU Act. The Regulator would ensure that the serial number assigned to an AllU would be unrelated to the serial number of the European allowance unit with respect to which it is issued.	Section 48B, ANREU Act
Responding to suspicious incidents/theft in the interim and the full linking period	p. 29	The Regulator, the European Central Administrator and National Administrators from EU Member States would work together to develop common protocols to respond to incidents involving misuse or criminal activity involving the registries and to protect the integrity of the registry link.	Information sharing would be supported by the required sharing of transaction information, which provides for the Regulator to tell the European Union Transaction Log when an AllU has been issued or cancelled (ANREU Regulations 52, 53(1)(a), 68(1)(b) and 72(1)(a) and Clean Energy Regulation 6.1A (1) (b)). The Regulator would have the power to suspend the ANREU link to the Union Registry, specifically: the issue of AllUs; processing instructions to transfer European allowance units; or processing instructions to transfer AllUs or European allowance units. This suspension could apply for up to five business days (see ANREU Regulation 35A).The criteria which the Regulator must take into account when deciding to impose a suspension are consistent with those	ANREU Item 7; p.6, 12, 13 CE Item 1, p 3. ANREU Item 6; pp.3-4



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			required for the suspension of the operation of the ANREU under section 28 of the ANREU Act.	
Ownership of AIUs	NA	The legal owner of an AIU would be its registered holder. Legal ownership of AIUs would be consistent with other units in the Australian registry.	<p>ANREU Regulation 54 provides that the legal ownership of AIUs is vested in the registered holder of the unit. The registered holder, as the legal owner, may transfer the ownership of or other forms of interest in the unit to another person. It provides protection to the purchaser of an AIU where that purchase is made in good faith for value and without notice of any defect in the title of the registered holder in the units.</p> <p>ANREU Regulations 57 and 58 respectively make provision concerning ownership and transmission of AIUs. ANREU Regulation 57 provides that AIUs are personal property for the purposes of the <i>Personal Property Security Act 2009</i>, which means that they may be used as security for a loan, and that they may be the subject of proceedings for the recovery of proceeds of crime under the <i>Proceeds of Crime Act 2002</i>. ANREU Regulation 58 provides that the Regulator, in order to transfer an AIU, must receive evidence in the required form of that transfer from the person receiving the units.</p>	<p>Section 49A, ANREU Act</p> <p>ANREU Item 7; p.7</p> <p>ANREU Item 7; pp.9-10</p>



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Treatment of units during the interim linking period	NA	<p>Australian carbon credit units (ACCUs) will not be able to be exported into the Union Registry during the interim linking period.</p> <p>European allowances will not be able to be directly imported into the Australian Registry during the interim linking period.</p>	<p>ANREU Regulation 56 would require that the Regulator would ensure, before transferring a prescribed international unit into an ANREU account (that is, a direct transfer of the unit), that there is an international arrangement in force to enable such a transfer to occur. For these purposes, an 'international arrangement' is defined in section 4 of the ANREU Act to be an agreement between Australia and a 'foreign government body' (for example, a department or agency of a foreign government) or an 'international organisation' (for example, the EU).</p> <p>CFI Regulation 11.2 would require that the Regulator ensures that, before an ACCU can be transferred into an account in a foreign registry, that there is an international arrangement in force to enable such a transfer to occur.</p>	<p>ANREU Item 7; p.9</p> <p>CFI Item 1; p.2</p>
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