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Client update

European Commission closes all carbon registries

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Executive Summary

The European Commission announced on 19 January 2011 that it had closed all carbon registries in its Emissions Trading Scheme (**EU ETS**), except for allocation and surrender of allowances, until at least 26 January 2011.

The European wide registry closure, follows that of the Austrian, Czech, Polish, Estonian and Greek national emissions trading registries, after reports that a Czech Firm had 470,000 allowances stolen in a suspected cyber attack. In December 2010, a number of incidents of unauthorised access to EU ETS registry accounts in Romania were the subject of an investigation.

The Commission statement reads that: *"Following a first such security breach in early 2010 the Commission has worked closely with National Authorities responsible for registries to ensure that adequate security measures are put in place in all registries. The incidents over the last weeks have underlined the urgent need for all registries to ensure that these measures are speedily implemented"*.

Click [here](#) to view the full European Commission statement.

Account Holders on the Irish Registry

The Environmental Protection Agency (EPA) is designated the competent authority for the purposes of the EU ETS Directive, as amended, and operates the Irish emissions trading registry. Account holders on the EPA Registry will understandably be concerned as regards the security of their allowances, as a result of these recent cyber attacks.

Registries - Security Measures and Governing Rules

Technical and operational detail regarding the Irish registry, including security requirements, is governed by EU Regulation 2216/2004, as amended, which created a standardised and secured system of registries across the EU, and is directly effective under Irish Law. As recently as 14 October 2010, important amendments were introduced by the EU to provide increased powers for data and information access to registries for member state law enforcement and tax authorities. These additional powers were for the purposes of investigating, detecting and prosecuting fraud, tax and administration law enforcement, money laundering, terrorism and serious crime (Article 78 of Regulation 920/2010).

Under the Regulation, it is possible to manually reverse a finalised transaction where the account holder or registry administrator "unintentionally" or "erroneously" initiated a transaction. This provision was originally intended to facilitate the reversal of transactions in circumstances where there had been, for example, a misallocation of units under a National Allocation Plan to an account holder. However, it may be argued that, in circumstances where an account holder's account has been illegally accessed by a fraudster, and allowances fraudulently transferred, this could constitute an "unintentional" transaction on the part of the true account holder who may legitimately seek to have this transaction unwound. There is, at present at least, an open question as to whether, in circumstances of fraud, such a reversal could take place under the Regulation.

Remedies

There is (quite understandably) some uncertainty on the part of companies which may have been the victim of fraudulent trading of their allowances from their registry account and for buyers who were the *bona fide* purchasers of such allowances, or acquired them as a result of subsequent transfers.

The ByrneWallace Green Economy Group has been working with a number of its clients to ensure that they are fully aware of their legal rights and duties (as account holders) in such circumstances and potential remedies available under national law.

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