

Commission Regulation (EU) No 1210/2011 of 23 November 2011 amending Regulation (EU) No 1031/2010 in particular to determine the volume of greenhouse gas emission allowances to be auctioned prior to 2013 (Text with EEA relevance)

COMMISSION REGULATION (EU) No 1210/2011

of 23 November 2011

amending Regulation (EU) No 1031/2010 in particular to determine the volume of greenhouse gas emission allowances to be auctioned prior to 2013

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to 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<sup>(1)</sup>, and in particular Articles 3d(3) and 10(4) thereof,

Whereas:

- (1) Commission Regulation (EU) No 1031/2010 of 12 November 2010 on the timing, administration and other aspects of auctioning of greenhouse gas emission allowances pursuant to Directive 2003/87/EC of the European Parliament and of the Council establishing a scheme for greenhouse gas emission allowances trading within the Community<sup>(2)</sup> provides for determining the volumes of any allowances to be auctioned in 2011 and 2012 as soon as practicable following its adoption. The volumes so determined are to be listed in an Annex to that Regulation. The foremost objective in specifying the volume is to ensure a smooth transition from the second to the third trading period of the Union Emissions Trading Scheme that underpins the proper functioning of the secondary market.
- (2) When determining the volumes to be auctioned in 2011 and 2012, due account should be taken of factors determining demand for and supply of allowances, notably hedging needs for compliance in the early years of the third trading period in particular from the power sector; the volume of allowances valid for the second trading period not needed for compliance in the said trading period and which is held largely by the industrial sectors; the share of those allowances that has been and is likely to be sold on the market in the second trading period; the volume of certified emission reductions and emission reduction units stemming from emission reduction projects under the Clean Development Mechanism or under Joint Implementation provisions available for hedging or for surrendering by operators covered by the Union Emissions Trading Scheme; and the monetisation of allowances from the new entrant reserve for the third trading period for support of demonstration projects of carbon capture and sequestration and innovative renewable energy technologies (NER300) pursuant to Commission

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Decision 2010/670/EU of 3 November 2010 laying down criteria and measures for the financing of commercial demonstration projects that aim at the environmentally safe capture and geological storage of CO<sub>2</sub> as well as demonstration projects of innovative renewable energy technologies under the scheme for greenhouse gas emission allowance trading within the Community established by Directive 2003/87/EC of the European Parliament and of the Council<sup>(3)</sup>. Although all these factors are subject to different degrees of uncertainty, it is important to determine the volume to be auctioned in 2012 in a timely manner.

- (3) The assessment based on those factors concludes that no allowances valid for the third trading period should be auctioned in 2011.
- (4) The auction calendars for the auctioning of allowances in 2012 should be determined such as to limit the impact of the auctions on the functioning of the secondary market, whilst ensuring that auctions are large enough to attract sufficient participation. There should be a smooth transition from the auctioning on transitional auction platforms to the auctioning on later auction platforms. Moreover, adjustment of a published auction calendar could be justified in certain additional precisely specified situations.
- (5) Since delivery of the allowances to be auctioned can be expected to be enabled in time, there is no need for transitionally auctioning forwards and futures. The procurement of a transitional auction platform remains, however, desirable in order to mitigate risk inherent to the procurement of the auction platform to which the Regulation will apply in full. Given the importance of the full application of the Regulation, transitional auction platforms should conduct auctions no longer than necessary. The appointment of a transitional auction platform should be facilitated by imposing fewer requirements on the conduct of its auctions, as was already foreseen for the auctioning of forwards and futures. In this way, the services to be procured can remain more aligned to services already existing in the market. In addition, the application of the national measures transposing Title III of Directive 2004/39/EC of the European Parliament and of the Council<sup>(4)</sup> to the auctions conducted by a transitional auction platform is not indispensable. Similarly, it would be disproportionate to require the authorisation of the transitional auction platform to be updated in accordance with the requirements of the Auctioning Regulation. However, in order to ensure effective market oversight, the provisions in the present Regulation relating to the prohibition of market abuse should apply to auctions conducted on a transitional auction platform from the moment the Member State concerned has implemented the relevant provisions in national law. This encourages a level playing field between candidate auction platforms without making the start of the auctions dependent on such implementation. This applies to the transitional auction platform to be procured by means of a joint procurement procedure, as well as to transitional auction platforms to be appointed by Member States that do not join the joint action and appoint their own auction platform.
- (6) It is not necessary to distribute the share of the costs of the auction monitor attributable to services procured by the Commission over the number of auction platforms.
- (7) For efficient and adequate preparation and conduct of the joint procurement procedure to appoint a common auction platform, it is desirable to have timely clarity on

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participation by Member States in that joint action. Therefore, in certain situations, it should be possible that a Member State that starts making use of the common auction platform at a later stage bears costs attributable to services provided by an auction platform not borne by Member States participating in the joint action from the start.

- (8) The appointment of the auctioneers and the auction monitor is of crucial importance for the proper conduct of the auctions and it would generally not be possible to conduct auctions without the conclusion and entry into force of the arrangements between the auctioneers and the auction monitor on the one side and the auction platforms on the other. These arrangements should be properly implemented, but the non-implementation, or a dispute on the implementation, should not in all situations lead to withholding allowances from the auctions.
- (9) The auction monitor is to be appointed following a joint procurement procedure between the Commission and the Member States. Although it is foreseen that all Member States participate in this joint action from the outset, it is appropriate to provide rules in case a Member State joins only at a later stage. Moreover, Member States that have decided to appoint an auction platform of their own should be able to join the joint action for the sole purpose of making use of a common auction platform in the absence of listing of the auction platform of their own, without prejudice to their observer status in that joint action.
- (10) The risk of insider trading by withdrawing a bid should be mitigated. Where such behaviour is not covered by Directive 2003/6/EC of the European Parliament and of the Council<sup>(5)</sup>, the relevant provisions in the Auctioning Regulation should apply.
- (11) A limited number of technical clarifications and corrections to the Auctioning Regulation should be provided for in this Amendment.
- (12) Regulation (EU) No 1031/2010 should therefore be amended accordingly.
- (13) In order to ensure predictable and timely auctions, this Regulation should enter into force as a matter of urgency.
- (14) The measures provided for in this Regulation are in accordance with the opinion of the Climate Change Committee,

HAS ADOPTED THIS REGULATION:

#### *Article 1*

#### **Amendments to Regulation (EU) No 1031/2010**

Regulation (EU) No 1031/2010 is amended as follows:

- (1) point (f) of Article 3(43) is replaced by the following:
  - (f) the same as in point 20(b) of Article 4(1) of Directive 2004/39/EC for the purposes of Article 28(4) and (5), Article 35(4), (5) and (6) and Article 42(1) of this Regulation;
- (2) Article 4 is amended as follows:

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- (a) paragraph 2 is replaced by the following:
    - 2. Each Member State shall auction allowances in the form of either two-day spot or five-day futures.;
  - (b) paragraph 3 is deleted;
- (3) the second and third subparagraphs of Article 6(1) are replaced by the following:
- One lot auctioned by an auction platform appointed pursuant to Article 26(1) or Article 30(1) shall be 500 allowances.
- One lot auctioned by an auction platform appointed pursuant to Article 26(2) or Article 30(2) shall be 500 or 1 000 allowances.;
- (4) the first subparagraph of Article 8(4) is replaced by the following:
4. As from the sixth auction or earlier, the auction platform appointed pursuant to Article 26(1) or (2) shall conduct auctions of allowances covered by Chapter III of Directive 2003/87/EC at least on a weekly basis and auctions of allowances covered by Chapter II of Directive 2003/87/EC at least on a two-monthly basis, except that during 2012, the said auction platforms shall conduct auctions of allowances covered by Chapter III of that Directive on a monthly basis at least.;
- (5) Article 10(1) is replaced by the following:
1. For each Member State, Annex I to this Regulation sets out the volume of any allowances covered by Chapter III of Directive 2003/87/EC to be auctioned in 2012.;
- (6) the first subparagraph of Article 10(3) is replaced by the following:
3. The volume of allowances covered by Chapter III of Directive 2003/87/EC to be auctioned each calendar year as from 2013 shall be based on Annex I and on the Commission's determination and publication pursuant to Article 10(1) of that Directive of the estimated amount of allowances to be auctioned or on the most recent amendment of the Commission's original estimate as published by 31 January of the preceding year, taking into account to the extent possible any transitional free allocations deducted or to be deducted from the quantity of allowances that a given Member State would otherwise auction pursuant to Article 10(2) of Directive 2003/87/EC as provided for in Article 10c(2) of that Directive.;
- (7) Article 11(2) is replaced by the following:
2. The auction platforms appointed pursuant to Article 26(1) or (2) of this Regulation shall make their determinations and publications as provided in paragraph 1 of this Article in accordance with Annex I and the Commission's determination and publication of the estimated amount of allowances to be auctioned or the most recent amendment of the Commission's original estimate, including any adjustment, referred to in Article 10(3).;
- (8) the following indent points are added to Article 14(1):
- (j) any withholding of allowances from the auctions pursuant to Article 22(5) or the second subparagraph of Article 24(1);

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- (k) the necessity for an auction platform to avoid conducting an auction in breach of this Regulation or Directive 2003/87/EC.;
- (9) Article 16(2) and (3) is replaced by the following:
2. An auction platform appointed pursuant to Article 26(1) or 30(1) shall ensure that its auctions can be accessed remotely by means of an electronic interface accessible securely and reliably through the Internet.
- In addition, an auction platform appointed pursuant to Article 26(1) or 30(1) shall offer bidders the option of accessing its auctions through dedicated connections to the electronic interface.
3. An auction platform appointed pursuant to Article 26(1) or 30(1) may offer one or more alternative means of accessing its auctions, should the main means of access be inaccessible for whatever reason, provided that such alternative means of access are secure and reliable and their use does not lead to any discrimination between bidders.;
- (10) Article 17 is replaced by the following:

#### *Article 17*

#### **Training and helpline**

An auction platform appointed pursuant to Article 26(1) or 30(1) shall offer a practical web-based training module on the auction process it is conducting, including guidance on how to complete and submit any forms and a simulation of how to bid in an auction. It shall also make available a helpline service accessible by telephone, facsimile and electronic mail at least during the working hours of each trading day.;

- (11) Article 18(3) is replaced by the following:
3. Persons referred to in paragraph 1(b) or (c) shall be eligible to apply for admission to bid directly in the auctions on behalf of their clients when bidding for auctioned products that are not financial instruments provided that a Member State in which they are established has enacted legislation enabling the relevant competent national authority in that Member State to authorise them to bid on behalf of their clients.;
- (12) Article 19(1) and (2) is replaced by the following:
1. When an auction platform organises a secondary market, members or participants of the secondary market organised by an auction platform appointed pursuant to Article 26(1) or 30(1) that are eligible persons pursuant to Article 18(1) or (2) shall be admitted to bid directly in the auctions conducted by that auction platform without any further admission requirements, provided that all of the following conditions are fulfilled:
- a the requirements for admission of the member or participant to trade allowances through the secondary market organised by the auction platform appointed pursuant to Article 26(1) or 30(1) are no less stringent than those listed under paragraph 2 of this Article;

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- b the auction platform appointed pursuant to Article 26(1) or 30(1) receives any additional information necessary to verify the fulfilment of any requirements referred to in paragraph 2 of this Article that have not been previously verified.

2 Persons, who are not members or participants of the secondary market organised by an auction platform appointed pursuant to Article 26(1) or 30(1), and that are eligible persons pursuant to Article 18(1) or (2) shall be admitted to bid directly in the auctions conducted by that auction platform provided that they:

- a are established in the Union, an operator or an aircraft operator;
- b hold a nominated holding account;
- c hold a nominated bank account;
- d appoint at least one bidder's representative as defined in the third subparagraph of Article 6(3);
- e satisfy the auction platform concerned in line with applicable customer due diligence measures as to their identity, the identity of their beneficial owners, integrity, business and trading profile having regard to the means of establishing the relationship with the bidder, the type of bidder, the nature of the auctioned product, the size of prospective bids, and the means of payment and delivery;
- f satisfy the auction platform concerned of their financial standing, in particular, that they are able to meet their financial commitments and current liabilities as they fall due;
- g have in place or are able to put in place when requested, the internal processes, procedures and contractual agreements necessary to give effect to a maximum bid-size imposed pursuant to Article 57;
- h fulfil the requirements of Article 49(1).

When an auction platform appointed pursuant to Article 26(1) or 30(1) does not organise a secondary market, persons who are eligible persons pursuant to Article 18(1) or (2) shall be admitted to bid directly in the auctions conducted by that auction platform provided that they satisfy the conditions set out in subparagraphs (a) to (h) of this paragraph.;

(13) paragraphs 1, 5, 6, 7, 9 and 10 of Article 20 are replaced by the following:

1. Before submitting their first bid directly through any auction platform appointed pursuant to Article 26(1) or 30(1), persons eligible under Article 18(1) or (2) shall apply to the auction platform concerned for admission to bid.

When an auction platform organises a secondary market, members of or participants in the secondary market organised by the auction platform concerned fulfilling the requirements of Article 19(1) shall be admitted to bid without applying under the first subparagraph of this paragraph.

5. An auction platform appointed pursuant to Article 26(1) or 30(1) may refuse admission to bid in its auctions if the applicant refuses any of the following:
  - a to comply with requests made by the auction platform for additional information or clarification or substantiation of information provided;
  - b to attend an invitation made by the auction platform to interview any officers of the applicant including at its business premises or elsewhere;
  - c to allow investigations or verifications, requested by the auction platform including on-site visits or spot-checks at the applicant's business premises;

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- d to comply with requests made by the auction platform for any information required from an applicant, the clients of an applicant or the clients of their clients as provided for in Article 18(4) to check compliance with the requirements of Article 19(3);
  - e to comply with requests made by the auction platform for any information required to check compliance with the requirements of Article 19(2).
- 6 An auction platform appointed pursuant to Article 26(1) or 30(1) shall apply the measures provided for in Article 13(4) of Directive 2005/60/EC in respect of its transactions or business relationships with politically exposed persons irrespective of their country of residence.
- 7 An auction platform appointed pursuant to Article 26(1) or 30(1) shall require an applicant for admission to bid in its auctions to ensure that clients of the applicant comply with any request made pursuant to paragraph 5 and that any client of the applicant's clients as provided for in Article 18(4) does the same.
9. An applicant shall not provide any auction platform appointed pursuant to Article 26(1) or 30(1), with false or misleading information. An applicant shall notify the auction platform concerned fully, frankly and promptly of any changes in its circumstances that could affect its application for admission to bid in auctions conducted by that auction platform or any admission to bid already granted to it.
- 10 An auction platform appointed pursuant to Article 26(1) or 30(1) shall decide on an application submitted to it and notify its decision to the applicant.
- The auction platform concerned may:
- a grant unconditional admission to the auctions for a period not exceeding the term of its appointment, including any extension or renewal of that appointment;
  - b grant conditional admission to the auctions for a period not exceeding the term of its appointment, subject to fulfilment of the specified conditions, by a given date, which shall be duly verified by the auction platform concerned;
  - c refuse to grant admission.;
- (14) paragraphs 1, 2 and 3 of Article 21 are replaced by the following:
- 1. An auction platform appointed pursuant to Article 26(1) or 30(1) shall refuse to grant admission to bid in its auctions, revoke or suspend any admission to bid already granted to any person who:
    - a is not or is no longer eligible to apply for admission to bid under Article 18(1) or (2);
    - b does not or no longer meets the requirements of Articles 18, 19 and 20;
    - c is wilfully or repeatedly in breach of this Regulation, the terms and conditions of its admission to bid in the auctions conducted by the auction platform concerned or any other related instructions or agreements.
  - 2 An auction platform appointed pursuant to Article 26(1) or 30(1) shall refuse to grant admission to bid in its auctions, revoke or suspend any admission to bid already granted, if it suspects money laundering, terrorist financing, criminal activity or market abuse in relation to an applicant, provided that such refusal, revocation or suspension is unlikely to frustrate efforts by the competent national authorities, to pursue or apprehend the perpetrators of such activities.

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In such a case, the auction platform concerned shall make a report to the financial intelligence unit (FIU) referred to in Article 21 of Directive 2005/60/EC in accordance with Article 55(2) of this Regulation.

- 3 An auction platform appointed pursuant to Article 26(1) or 30(1) may refuse to grant admission to bid in its auctions, revoke or suspend any admission to bid already granted, to any person:
- a who is negligently in breach of this Regulation, the terms and conditions of its admission to bid in the auctions conducted by the auction platform concerned or any other related instructions or agreements;
  - b who has otherwise behaved in a manner that is prejudicial to the orderly or efficient conduct of an auction;
  - c who is referred to in Article 18(1)(b) or (c) or Article 18(2) and has not bid in any auction during the preceding 220 trading days.;

(15) Article 22 is amended as follows:

- (a) paragraph 3 is replaced by the following:

3. For Member States not participating in the joint actions as provided in Article 26(1) and (2), the auctioneer shall be appointed by the appointing Member State in good time prior to the commencement of the auctions on the auction platforms appointed pursuant to Article 26(1) and (2) so as to conclude and implement the necessary arrangements with these auction platforms, including any clearing system and settlement system connected to them, to enable the auctioneer to auction allowances on behalf of the appointing Member State on such auction platforms upon mutually agreed terms and conditions, pursuant to the second subparagraph of Article 30(7) and the first subparagraph of Article 30(8).;

- (b) paragraph 5 is replaced by the following:

5. The allowances to be auctioned on behalf of a Member State shall be withheld from the auctions whenever that Member State does not have in place a duly appointed auctioneer or whenever the arrangements referred to in paragraph 2 are not concluded or in force.;

(16) Article 24 is amended as follows:

- (a) a second and third subparagraph is inserted in the first paragraph:

Without prejudice to the third subparagraph, the allowances to be auctioned on behalf of a Member State shall be withheld from the auctions whenever that Member State does not have in place a duly appointed auction monitor or whenever the contractual arrangements with the auction monitor are not concluded or in force.

Where reasons of *force majeure* prevent the auction monitor from performing its tasks in respect of a given auction, in full or in part, the auction platform concerned may decide to conduct that auction provided that it takes appropriate measures to ensure adequate monitoring of the auction itself. The foregoing shall also apply where the appointment of the auction monitor has been delayed until no later than 1 January 2013, or until no later than 1 July 2013 where the first procurement procedure



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does not result in an appointment of the auction monitor and the conduct of a second procurement procedure is necessary.;

(b) the following paragraph is added:

5. Any Member State that joins the joint action referred to in paragraph 2 after the entry into force of the joint procurement agreement entered into between the Member States and the Commission shall accept the terms and conditions agreed by the Member States and the Commission in the joint procurement agreement as well as any decisions already adopted under that agreement.

After the entry into force of the joint procurement agreement and until a Member State joins the joint action referred to in paragraph 2, it may be given observer status upon terms and conditions agreed in the joint procurement agreement between the Member States and the Commission subject to any applicable public procurement rules.;

(17) the first subparagraph of Article 25(4) is replaced by the following:

4. A Member State not participating in the joint action as provided in Article 26(1) and (2) of this Regulation but opting to appoint its own auction platform pursuant to Article 30(1) and (2) of this Regulation may request the auction monitor to provide the Member States, the Commission and the auction platform concerned with a technical report on the ability of the auction platform it proposes or intends to propose, to carry out the auction process in accordance with the requirements of this Regulation and in conformity with the objectives set out in Article 10(4) of Directive 2003/87/EC.;

(18) Article 26 is amended as follows:

(a) paragraphs 1 and 2 are replaced by the following:

1. Without prejudice to Article 30, Member States shall appoint an auction platform to auction allowances pursuant to Article 27 following a joint procurement procedure between the Commission and the Member States participating in the joint action pursuant to this Article.

2. Without prejudice to Article 30, Member States shall appoint an auction platform to auction allowances pursuant to Article 28 following a joint procurement procedure between the Commission and the Member States participating in the joint action pursuant to this Article.

An auction platform appointed pursuant to the first subparagraph of this paragraph shall auction allowances pursuant to Article 28 until the commencement of the auctions on an auction platform appointed pursuant to paragraph 1.;

(b) paragraph 6 is replaced by the following:

6. Any Member State that joins the joint actions as provided in paragraphs 1 and 2 after the entry into force of the joint procurement agreement entered into between the Commission and the Member States participating in that action shall accept the terms and conditions agreed by the Commission and the Member States joining the joint action prior to the entry into force of that agreement as well as any decisions already adopted under that agreement.

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Any Member State that decides pursuant to Article 30(4) not to participate in the joint action as provided in paragraphs 1 and 2 but to appoint its own auction platform may be given observer status upon terms and conditions agreed in the joint procurement agreement between the Member States participating in the joint action as provided in paragraphs 1 and 2 and the Commission subject to any applicable public procurement rules.;

- (19) the first paragraph of Article 27 is amended as follows:
- (a) in point (e) the phrase ‘through sub-contracting’ is deleted;
  - (b) in point (g), the word ‘supervising’ is replaced by the word ‘surveying’ and the reference to ‘Article 44’ is replaced by a reference to ‘Article 54’;
- (20) Article 28 is amended as follows:
- (a) in point (e) of the first paragraph, the reference to ‘except that Article 40 shall apply in any case’ is replaced by ‘without prejudice to Articles 44 to 50’;
  - (b) the third paragraph is replaced by the following:
    3. Without prejudice to paragraphs 4 and 5, Article 16(2) and (3), Articles 17 and 19 to 21, Articles 36 to 43, Articles 54 to 56, Articles 60(3) and 63(4), and Article 64 shall not apply with respect to the auctions conducted by an auction platform appointed pursuant to Article 26(2) or 30(2).
    - 4 Paragraph 3 shall not preclude Article 36(1) from being applicable with respect to the auctions of allowances in the form of two-day spot or five-day futures that are a financial instrument within the meaning of Article 1(3) of Directive 2003/6/EC conducted by an auction platform appointed pursuant to Article 26(2) or 30(2), where the Member State where the auction platform is established has implemented Article 36(1) of this Regulation or where such implementation is not necessary for the application of Article 36(1) of this Regulation.
    - 5 Paragraph 3 shall not preclude Article 36(2) and Articles 37 to 43 from being applicable with respect to the auctions of allowances in the form of two-day spot or five-day futures that are not a financial instrument within the meaning of Article 1(3) of Directive 2003/6/EC conducted by an auction platform appointed pursuant to Article 26(2) or 30(2) where the Member State where the auction platform is established has implemented Article 43 of this Regulation or where such implementation is not necessary for the application of Article 43 of this Regulation.;
- (21) Article 29(e) is deleted.
- (22) Article 30 is amended as follows:
- (a) paragraphs 1 to 5 are replaced by the following:
    1. Any Member State not participating in the joint action as provided in Article 26(1) and (2) may appoint its own auction platform for the auctioning of its share of the volume of allowances covered by Chapters II and III of Directive 2003/87/EC to be auctioned as provided for in Article 31(1) of this Regulation.

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2 Any Member State not participating in the joint action as provided in Article 26(1) and (2) may appoint its own auction platform for the auctioning of its share of the volume of allowances covered by Chapters II and III of Directive 2003/87/EC to be auctioned as provided for in Article 31(2) of this Regulation.

3 Member States not participating in the joint action as provided in Article 26(1) and (2) may appoint the same auction platform or separate auction platforms for the auctioning pursuant to Article 31(1) and (2) respectively.

4 Any Member State not participating in the joint action as provided in Article 26(1) and (2), shall inform the Commission of its decision not to participate in the joint action as provided in Article 26(1) and (2) but to appoint its own auction platform pursuant to paragraphs 1 and 2 of this Article within 3 months of the entry into force of this Regulation.

5 Any Member State not participating in the joint action as provided in Article 26(1) and (2) shall select its own auction platform appointed pursuant to paragraphs 1 and 2 of this Article on the basis of a selection procedure compliant with Union and national procurement law where a public procurement process is required by either Union or national law, respectively. The selection procedure shall be subject to all applicable remedies and enforcement procedures under Union and national law.

Any period of appointment of the auction platform referred to in paragraph 1 and 2 shall be no longer than 3 years renewable for no more than a further 2 years. However, the term of appointment of the auction platform referred to in paragraph 2 shall expire either 3 months from the listing of the auction platform referred to in paragraph 1 pursuant to paragraph 7, 4 months from denial of that listing, or 6 months from the start of the auctions on the auction platform appointed pursuant to Article 26(1) in case the Member State has not notified pursuant to Article 30(6) an auction platform referred to in Article 30(1) by the date of the start of the auctions on the auction platform appointed pursuant to Article 26(1), whichever is the earliest.

The appointment of the auction platforms referred to in paragraphs 1 and 2 shall be subject to listing the auction platform concerned in Annex III pursuant to paragraph 7. It shall not be implemented before the entry into force of the listing of the auction platform concerned in Annex III as provided for in paragraph 7.;

(b) the first subparagraph of paragraph six is replaced by the following:

6. Each Member State not participating in the joint action as provided for in Article 26(1) and (2) but opting to appoint its own auction platform pursuant to paragraphs 1 and 2 of this Article shall provide the Commission with a complete notification containing all of the following:

- a the identity of the auction platform it proposes to appoint;
- b the detailed operative rules that would govern the auction process to be conducted by the auction platform(s) it proposes to appoint, including the contractual provisions concerning the appointment of the auction platform concerned including the any clearing system(s) and settlement system(s) connected to the proposed auction platform

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- stipulating the terms and conditions governing the structure and level of fees, collateral management, payment and delivery;
- c the proposed bidding windows, individual volumes, auction dates indicating the occurrence of relevant public holidays, as well as the auctioned product, payment and delivery dates of the allowances to be auctioned in individual auctions in a given calendar year and any other information necessary for the Commission to assess whether the proposed auction calendar is compatible with the auction calendar of the auction platforms appointed pursuant to Article 26(1) or (2) as well as other auction calendars proposed by other Member States not participating in the joint action provided for in Article 26 but opting to appoint their own auction platforms;
- d the detailed rules and conditions on surveying and supervising the auctions to which its proposed auction platform shall be subject pursuant to Article 35(4), (5) and (6) as well as the detailed rules protecting against money laundering, terrorist financing, criminal activity or market abuse, including any remedial measures or sanctions;
- e the detailed measures put in place to comply with Article 22(4) and Article 34 regarding the appointment of the auctioneer.;

- (c) the second subparagraph of paragraph 7 is replaced by the following:

In the absence of any listing provided for in the first subparagraph, a Member State not participating in the joint action as provided in Article 26(1) and (2) but opting to appoint its own auction platform pursuant to paragraphs 1 and 2 of this Article shall use the auction platforms appointed pursuant to Article 26(1) or (2) to auction its share of allowances that would have otherwise been auctioned on the auction platform to be appointed pursuant to paragraphs 1 or 2 of this Article in the period until the expiry of 3 months after the entry into force of the listing provided for in the first subparagraph.

Without prejudice to paragraph 8, a Member State not participating in the joint action as provided in Article 26(1) and (2) but opting to appoint its own auction platform pursuant to paragraphs 1 and 2 of this Article may nevertheless participate in the joint action for the sole purpose of being able to make use of the auction platforms appointed pursuant to Article 26(1) and (2) as provided in the second subparagraph. Such participation shall take place in accordance with the provisions of the second subparagraph of Article 26(6) and subject to the terms and conditions of the joint procurement agreement.;

- (d) the first subparagraph of paragraph 8 is replaced by the following:

8. Any Member State not participating in the joint action as provided in Article 26(1) and (2) but opting to appoint its own auction platform pursuant to paragraphs 1 and 2 of this Article may join the joint action provided for in Article 26, pursuant to Article 26(6).;

- (23) Article 32 is amended as follows:

- (a) the first paragraph shall be replaced by the following:

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1. The volume of allowances covered by Chapter III of Directive 2003/87/EC auctioned in individual auctions conducted by an auction platform appointed pursuant to Article 30(1) or (2) of this Regulation shall be no greater than 20 million allowances and no less than 3,5 million allowances; save where the total volume of allowances, covered by Chapter III of Directive 2003/87/EC, to be auctioned by the appointing Member State is less than 3,5 million in a given calendar year, in which case the allowances shall be auctioned in a single auction per calendar year. However, the volume of allowances covered by Chapter III of Directive 2003/87/EC auctioned in an individual auction conducted by those auction platforms in 2012 shall be no greater than 6,5 million allowances and no less than 1 million allowances.;

(b) the following sentences are added at the end of the third paragraph:

These requirements shall be considered to be met where each auction platform appointed pursuant to Article 30(1) or (2) meets these requirements individually. With respect to the calendar year 2012, the foregoing shall apply as from 1 month after the start of the auctions conducted by any of these auction platforms.;

(c) the first subparagraph of paragraph 4 is replaced by the following:

4. The auction platforms appointed pursuant to Article 30(1) or (2) of this Regulation shall determine and publish the bidding windows, individual volumes, auction dates as well as the auctioned product, payment and delivery dates of the allowances, covered by Chapters II and III of Directive 2003/87/EC, to be auctioned in individual auctions each year, by 31 March of the previous year or as soon as practicable thereafter. The auction platforms concerned shall make their determination and publication only after the determination and publication pursuant to Articles 11(1) and 13(1) of this Regulation by the auction platforms appointed pursuant to Article 26(1) or (2) of this Regulation, unless such an auction platform has not yet been appointed. The auction platforms concerned shall make their determination and publication only after having consulted the Commission and obtained its opinion thereon. The auction platforms concerned shall take the utmost account of the Commission's opinion.;

(d) the following third subparagraph is added to the fourth paragraph:

The auction platforms appointed pursuant to Article 30(1) or (2) shall determine and publish as provided for in the first subparagraph of this paragraph in accordance with the volumes attributed to the Member State appointing the auction platform concerned as set out in Annex I and the Commission's latest determination and publication of the estimated number of allowances to be auctioned referred to in Article 10(1) of Directive 2003/87/EC, taking into account to the extent possible any transitional free allocations deducted or to be deducted from the quantity of allowances that a given Member State would otherwise auction pursuant to Article 10(2) of Directive 2003/87/EC as provided for in Article 10c(2) of that Directive.;

(24) Article 35 is amended as follows:

(a) paragraph 1 is replaced by the following:

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1. Auctions shall only be conducted on an auction platform authorised as a regulated market.;
- (b) the first and second subparagraphs of paragraph 4 are replaced by the following:
4. An auction platform may only be appointed pursuant to Article 26(1) or 30(1) where the Member State where the candidate regulated market and its market operator are established has ensured that the national measures transposing Title III of Directive 2004/39/EC apply to the auctioning of two-day spot or five-day futures to the extent relevant.
- An auction platform shall only be appointed pursuant to Articles 26(1) and 30(1) after the Member State, where the candidate regulated market and its market operator are established, has ensured that the competent authorities of that Member State are able to authorise and supervise them in accordance with the national measures transposing Title IV of Directive 2004/39/EC to the extent relevant.;
- (c) paragraph 5 is replaced by the following:
5. The competent national authorities of the Member State referred to in the second subparagraph of paragraph 4 of this Article designated under Article 48(1) of Directive 2004/39/EC shall decide on the authorisation of a regulated market appointed, or to be appointed, pursuant to Article 26(1) or 30(1) of this Regulation, provided that the regulated market and its market operator comply with the provisions of Title III of Directive 2004/39/EC, as transposed into the national legal order of the Member State of their establishment pursuant to paragraph 4 of this Article. The decision on authorisation shall be taken in accordance with Title IV of Directive 2004/39/EC as transposed into the national legal order of the Member State of their establishment pursuant to paragraph 4 of this Article.;
- (25) the following sentence is added to Article 36(1):
- The foregoing shall be without prejudice to the application of Articles 38 to 40 of this Regulation to the use of inside information to withdraw a bid.;
- (26) Article 46(1) and (2) is deleted and replaced by the following:
- Allowances auctioned by any auction platform shall be transferred by the Union registry prior to the opening of a bidding window, into a nominated holding account, to be held in escrow by the clearing system or settlement system acting as custodian, until delivery of the allowances to successful bidders or their successors in title, pursuant to the results of the auction, as provided for in the applicable Commission regulation adopted under Article 19(3) of Directive 2003/87/EC.;
- (27) Article 50(2) is deleted and the reference to ‘paragraphs 1 or 2’ in paragraph 3 is replaced by a reference to ‘paragraph 1’;
- (28) Article 52 is amended as follows:
- (a) paragraph 1 is replaced by the following:
    1. Without prejudice to paragraph 2, the costs of the services provided for in Articles 27(1) and 28(1) and Article 31 shall be paid for through

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fees paid by the bidders, except that any cost of the arrangements between the auctioneer and the auction platform referred to in Article 22(2) and (3) allowing the auctioneer to auction allowances on behalf of the appointing Member State, but excluding the costs of any clearing or settlement system connected to the auction platform concerned, shall be borne by the auctioning Member State.

The costs referred to in the first subparagraph shall be deducted from the auction proceeds payable to the auctioneers, pursuant to Article 44(2) and (3).;

- (b) the first, second and third subparagraphs of paragraph 2 are replaced by the following:

2. Without prejudice to the third subparagraph, the terms and conditions of the joint procurement agreement, referred to in the first subparagraph of Article 26(6) or the contract appointing an auction platform pursuant to Article 26(1) or (2) may derogate from paragraph 1 of this Article by requiring Member States that have notified the Commission pursuant to Article 30(4) of their decision not to participate in the joint action as provided in Article 26(1) and (2), but subsequently make use of the auction platform appointed pursuant to Article 26(1) or (2), may be required to pay to the auction platform concerned, including the clearing system(s) or settlement system(s) connected to it, the costs of the services provided for in Articles 27(1) and 28(1) related to the share of allowances which that Member State auctions from the date when that Member State commences auctioning through the auction platform appointed pursuant to Article 26(1) or (2) until the termination or expiry of the term of appointment of that auction platform.

The foregoing shall also apply to Member States that have not joined the joint action as provided in Article 26(1) and (2) within 6 months of the entry into force of the joint procurement agreement referred to in the first subparagraph of Article 26(6).

The first subparagraph shall not apply where a Member State joins the joint action as provided in Article 26(1) or (2) following the expiry of the appointment period referred to in the second subparagraph of Article 30(5), or where it uses the auction platform appointed pursuant to Article 26(1) or (2) to auction its share of allowances in the absence of a listing, pursuant to Article 30(7), of an auction platform that has been notified pursuant to Article 30(6).;

- (c) the first subparagraph of paragraph 3 is replaced by the following:

3. The share of the costs of the auction monitor that varies according to the number of auctions, as specified in the contract appointing the auction monitor, shall be evenly distributed over the number of auctions. All other costs of the auction monitor, as specified in the contract appointing the auction monitor, save costs attributable to services procured by the Commission and costs relating to any report made pursuant to Article 25(4), shall be evenly distributed over the number of auction platforms, unless otherwise specified in the contract appointing the auction monitor.;

- (29) Article 54 is replaced by the following:

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## Article 54

### Monitoring the relationship with bidders

- 1 An auction platform appointed pursuant to Article 26(1) or 30(1) shall monitor the relationship with bidders admitted to bid in its auctions throughout its subsistence, by doing the following:
- a scrutinising bids made throughout the course of that relationship to ensure that the bidding behaviour of bidders is consistent with the auction platform's knowledge of the customer, its business and risk profile, including, where necessary, the source of funds;
  - b maintaining effective arrangements and procedures for the regular monitoring of the compliance by persons admitted to bid pursuant to Article 19(1), (2) and (3) with its market conduct rules;
  - c monitoring transactions undertaken by persons admitted to bid pursuant to Articles 19(1), (2) and (3) and 20(6) using its systems in order to identify breaches of the rules referred to in point (b) of this subparagraph, unfair or disorderly auctioning conditions or conduct that may invoke market abuse.

Where scrutinising bids in accordance with point (a) of the first subparagraph, the auction platform concerned shall pay particular attention to any activity which it regards as particularly likely, by its nature, to be related to money laundering, terrorist financing or criminal activity.

- 2 An auction platform appointed pursuant to Article 26(1) or 30(1) shall ensure that the documents, data or information it holds on a bidder are kept up-to-date. For this purpose, such an auction platform may:
- a request any information of the bidder, pursuant to Article 19(2) and (3) and Article 20(5), (6) and (7), for the purposes of monitoring the relationship with that bidder following its admission to bid in the auctions, throughout the subsistence of that relationship and for a period of 5 years following its termination;
  - b require any person admitted to bid to re-submit an application for admission to bid at regular intervals;
  - c require any person admitted to bid to promptly notify the auction platform concerned of any changes to the information submitted to it pursuant to Article 19(2) and (3) and Article 20(5), (6) and (7).
- 3 An auction platform appointed pursuant to Article 26(1) or 30(1) shall keep records of:
- a the application for admission to bid submitted by an applicant, pursuant to Article 19(2) and (3), including any amendments thereto;
  - b the checks carried out in:
    - (i) processing the application for admission to bid submitted, pursuant to Articles 19, 20 and 21;
    - (ii) scrutinising and monitoring the relationship, pursuant to points (a) and (c) of paragraph 1, following an applicant's admission to bid;



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- c all information relating to a given bid submitted by a given bidder in an auction, including any withdrawal or modification of such bids, pursuant to the second subparagraph of Article 6(3) and Article 6(4);
  - d all information relating to the conduct of each auction in which a bidder has submitted a bid.
- 4 An auction platform appointed pursuant to Article 26(1) or 30(1) shall keep the records referred to in paragraph 3 for as long as a bidder is admitted to bid in its auctions and for at least 5 years following the termination of the relationship with that bidder.;
- (30) Article 55(1), (2) and (4) is replaced by the following:
  - 1. The competent national authorities referred to in Article 37(1) of Directive 2005/60/EC shall monitor and take the necessary measures to ensure compliance of an auction platform appointed pursuant to Article 26(1) or 30(1) with the customer due diligence requirements of Article 19 and Article 20(6) of this Regulation, the monitoring and record keeping requirements of Article 54 of this Regulation and the notification requirements of the paragraphs 2 and 3 of this Article.

The competent national authorities referred to in the first subparagraph shall have the powers provided for in the national measures transposing Article 37(2) and (3) of Directive 2005/60/EC.

An auction platform appointed pursuant to Article 26(1) or 30(1) may be held liable for infringements of Article 19, Article 20(6) and (7), Article 21(1) and (2), and Article 54 of this Regulation and paragraphs 2 and 3 of this Article. The national measures transposing Article 39 of Directive 2005/60/EC shall apply in this regard.
  - 2 An auction platform appointed pursuant to Article 26(1) or 30(1), its directors and employees, shall cooperate fully with the FIU referred to in Article 21 of Directive 2005/60/EC by promptly:
    - a informing the FIU, on their own initiative, where they know, suspect or have reasonable grounds to suspect that money laundering, terrorist financing or criminal activity is being or has been committed or attempted in the auctions;
    - b providing the FIU, at its request, with all necessary information, in accordance with the procedures established by the applicable legislation.
  - 4. The Member State in whose territory an auction platform appointed pursuant to Article 26(1) or 30(1) is situated shall ensure that the national measures transposing Articles 26 to 29, 32, Article 34(1) and Article 35 of Directive 2005/60/EC apply to the auction platform concerned.;
- (31) Article 56(1) shall be replaced by the following:
  - 1. An auction platform appointed pursuant to Article 26(1) or 30(1), shall notify the competent national authorities designated under Article 43(2) of Directive 2004/39/EC, responsible for supervising the auction platform concerned or for investigating and prosecuting market abuse, occurring on or through the systems of the auction platform concerned, of suspicion of market abuse by any person admitted to bid in the auctions or by any person on whose behalf the person admitted to bid in the auctions is acting.

National measures transposing Article 25(2) of Directive 2005/60/EC shall apply.;
- (32) Article 58 is replaced by the following:

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## Article 58

### Market conduct rules or any other contractual arrangements

Articles 53 to 57 shall be without prejudice to any other action that an auction platform appointed pursuant to Article 26(1) or 30(1) is entitled to take under its market conduct rules or any other contractual arrangements in place, directly or indirectly, with any bidders admitted to bid in the auctions, provided that such action does not conflict with or undermine the provisions of Articles 53 to 57.;

(33) Article 60(3) is replaced by the following:

3. A list of the names, addresses, telephone and facsimile numbers, electronic mail addresses and websites of all persons admitted to bid on behalf of others in auctions conducted by any auction platform appointed pursuant to Article 26(1) or 30(1) shall be published on the website maintained by the auction platform concerned.;

(34) the phrase ‘is made public’ in Article 62(3)(e) is replaced by ‘is disclosed or made public’;

(35) Article 64 is replaced by the following:

## Article 64

### Right of appeal

1 An auction platform appointed pursuant to Article 26(1) or 30(1) shall ensure that it has in place an extra-judicial mechanism to deal with complaints from applicants for admission to bid, bidders admitted to bid, or whose admission to bid has been refused, revoked or suspended.

2 Member States where a regulated market appointed as an auction platform pursuant to Article 26(1) or 30(1) or its market operator are supervised, shall ensure that any decisions made by the extra-judicial mechanism dealing with complaints referred to in paragraph 1 of this Article are properly reasoned and are subject to the right to apply to the courts referred to in Article 52(1) of Directive 2004/39/EC. That right shall be without prejudice to any rights of appealing directly to the courts or competent administrative bodies provided for in the national measures transposing Article 52(2) of Directive 2004/39/EC.;

(36) Annex I to Regulation (EU) No 1031/2010 is replaced as set out in the Annex to this Regulation.

## Article 2

### Entry into force

This Regulation shall enter into force on the day following its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

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Done at Brussels, 23 November 2011.

*For the Commission*

*The President*

José Manuel BARROSO

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## ANNEX

Annex I to Regulation (EU) No 1031/2010 is replaced by the following:

ANNEX Allowances auctioned in 2012 pursuant to Article 10(1) Member  
I State Volume Belgium 2 979 000 Bulgaria 3 277 000 Czech Republic 5 503  
000 Denmark 1 472 000 Germany 23 531 000 Estonia 1 068 000 Ireland 1 100  
000 Greece 4 077 000 Spain 10 145 000 France 6 434 000 Italy 11 324 000 Cyprus 307  
000 Latvia 315 000 Lithuania 637 000 Luxemburg 141 000 Hungary 1 761 000 Malta 120  
000 Netherlands 3 938 000 Austria 1 636 000 Poland 14 698 000 Portugal 2 065  
000 Romania 5 878 000 Slovenia 520 000 Slovakia 1 805 000 Finland 1 965 000 Sweden 1  
046 000 United Kingdom 12 258 000 Total 120 000 000

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- (1) OJ L 275, 25.10.2003, p. 32.
- (2) OJ L 302, 18.11.2010, p. 1.
- (3) OJ L 290, 6.11.2010, p. 39.
- (4) OJ L 145, 30.4.2004, p. 1.
- (5) OJ L 96, 12.4.2003, p. 16.

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**Changes and effects yet to be applied to :**

- [Regulation revoked by 2023 c. 28 Sch. 1 Pt. 2](#)