

Commission Delegated Regulation (EU) 2019/1868 of 28 August 2019 amending Regulation (EU) No 1031/2010 to align the auctioning of allowances with the EU ETS rules for the period 2021 to 2030 and with the classification of allowances as financial instruments pursuant to Directive 2014/65/EU of the European Parliament and of the Council (Text with EEA relevance)

COMMISSION DELEGATED REGULATION (EU) 2019/1868

of 28 August 2019

amending Regulation (EU) No 1031/2010 to align the auctioning of allowances with the EU ETS rules for the period 2021 to 2030 and with the classification of allowances as financial instruments pursuant to Directive 2014/65/EU of the European Parliament and of the Council

(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 system for greenhouse gas emission allowance trading within the Union and amending Council Directive 96/61/EC⁽¹⁾, and in particular Articles 3d(3), 10(4) and 10a(8) thereof,

Whereas:

- (1) Since 2012, emission allowances are auctioned in accordance with Commission Regulation (EU) No 1031/2010⁽²⁾. The auctioning of allowances is conducted by a common auction platform for 25 Member States and three EEA EFTA states and by a small number of opt-out platforms.
- (2) Directive 2003/87/EC has been amended by Directive (EU) 2018/410 of the European Parliament and of the Council⁽³⁾ to enhance cost-effective emission reductions and low-carbon investments through the system for greenhouse gas emission allowance trading within the Union ('EU ETS') as from 2021. The auctioning of allowances remained the general rule for allocation of allowances whereby the share of allowances to be auctioned should be 57 % of the total quantity of allowances.
- (3) It is appropriate to incorporate the new elements introduced by Directive (EU) 2018/410, related to the determination of the annual auction volume, into Regulation (EU) No 1031/2010. In particular, it is necessary to take into account the possibility to reduce the auction volume by up to 3 % of the total quantity of allowances to increase the amount available for free allocation (free allocation buffer). Furthermore, the revised Directive 2003/87/EC allows for changes to be made to the annual auction volumes due to: voluntary cancellation of allowances by the Member States in the event of closure of electricity generation capacity; the reintroduction into the EU ETS of installations that emit less than 2 500 tonnes of carbon dioxide; and the flexibility established between

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the ETS and non-ETS sectors to facilitate the achievement of Member States national reduction targets in non-ETS sectors as provided for by Article 6 of Regulation (EU) 2018/842 of the European Parliament and of the Council⁽⁴⁾.

- (4) Directive 2003/87/EC establishes the Modernisation Fund to improve energy efficiency and modernise the energy systems of certain Member States and the Innovation Fund to support investments in innovative technologies. Both funds are financed through the auctioning of allowances on the common auction platform by the European Investment Bank ('EIB'). To this end, the EIB should become the auctioneer for the two funds without becoming part of the joint procurement procedure for the common auction platform. The relevant volumes of allowances should be auctioned at the same auctions as the volumes auctioned by the Member States and the EEA EFTA states participating in the common auction platform.
- (5) In view of establishing the Modernisation Fund, Directive 2003/87/EC provides that 2 % of the total quantity of allowances are to be auctioned and, in addition, the eligible Member States may add to this fund allowances under Articles 10(2)(b) and 10c of Directive 2003/87/EC. The EIB is required to ensure that those allowances are auctioned in accordance with the principles and modalities of the auctioning process, where the equal distribution of auction volumes is a key element.
- (6) To ensure the availability of funds for innovation in low carbon technologies and the proper functioning of the carbon market, the volumes of the Innovation Fund should in principle be auctioned in equal annual volumes. However, the Commission should review in two-year intervals the distribution of allowances to be auctioned for the Innovation Fund taking into account the results of each call for proposals. The first review should be carried out no later than by 30 June 2022.
- (7) With a view to enable that a Member State can cancel allowances from its auction volumes in the event of closure of electricity generation capacity in its territory, a notification procedure should be established. The Member State concerned should notify the Commission of its intention to cancel allowances using a uniform template providing evidence and information about the closed installation, the intended volume and timing of the cancellation. To preserve the functioning of the market stability reserve ('MSR') established by Decision (EU) 2015/1814 of the European Parliament and of the Council⁽⁵⁾, the volume of the cancellation should be deducted from the auction volumes of the Member State only after the MSR adjustments are made for the respective year. To ensure transparency, the Commission should publish the information provided by the Member States in accordance with the template, except where this information is protected for reasons of confidentiality.
- (8) In order to reinforce the integrity of the carbon market, since 2018, allowances are classified as financial instruments by Directive 2014/65/EU of the European Parliament and of the Council⁽⁶⁾. Previously, Directive 2004/39/EC of the European Parliament and of the Council⁽⁷⁾ recognised only derivatives of allowances as financial instruments. The new classification brings the secondary market spot trade in allowances in the scope of, inter alia, Directive 2014/65/EU, Regulation (EU) No 596/2014 of the European Parliament and of the Council⁽⁸⁾ and Regulation (EU) No 600/2014 of the European

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Parliament and of the Council⁽⁹⁾. However, the process of auctioning of allowances (primary market) is only in the scope of Regulation (EU) No 596/2014.

- (9) To align the auctioning of allowances with the new financial market regulatory regime, the system established for monitoring and reporting of auctions should be revised. Because the scope of Regulation (EU) No 596/2014 has been extended and applies also to the auctioning of allowances, the functions of monitoring and preventing market abuse with respect to auctions are a responsibility of the competent national authorities. The competent national authorities are required by Regulation (EU) No 596/2014 to actively detect and investigate occurrences of market abuse. The necessary auction monitoring functions should be carried out by the auction platforms, the Commission, the Member States and the competent national authorities and the provisions laying down an obligation to appoint an auction monitor should be deleted. Further, as Regulation (EU) No 596/2014 applies directly to auctions, the specific market abuse provisions of Regulation (EU) No 1031/2010 have become redundant and should be deleted.
- (10) To provide the necessary reporting data to the competent national authorities responsible for surveillance of market abuse in a cost-efficient and proportionate manner, Regulation (EU) No 1031/2010 should mirror the necessary transaction reporting obligations set out in Regulation (EU) No 600/2014 and make them applicable to auction platforms with respect to reporting on auction transactions. This is necessary since Regulation (EU) No 596/2014 that is now applicable to auctions, does not establish a self-standing transaction reporting mechanism, but relies on data collection under Regulation (EU) No 600/2014.
- (11) It is essential to ensure a competitive procurement process for auction platforms and that the relevant criteria are set accordingly. In relation to the fees to be paid by the successful bidders, it should be possible to increase the current maximum fee level in a limited manner where this is foreseen by the procurement procedure and the annual auction volumes are reduced by more than 200 million allowances due to the operation of the market stability reserve.
- (12) The public procurement for the common auction platform may provide for expanding the selection criteria also to regulated markets in energy products which have not yet established a secondary market in emission allowances. In case such regulated market is selected to become an auction platform, it should be required to put it in place at least 60 trading days prior to the first auction. This is necessary to establish the price of the secondary market at the time of the auctions ('reserve price') for the cases of cancellation of auctions, and the bidder's fees, which are linked to the comparable fee paid in the secondary market. In addition, the Commission and the participating Member States should be able to extend the current five years maximum duration of the contracts to seven years in accordance with the provisions of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council⁽¹⁰⁾ ('Financial Regulation') in circumstances which would be difficult to foresee by a diligent contracting authority. In order to verify the market conditions and to prepare the new procurements during

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the contract duration, the Commission should be able to undertake preliminary market consultation in accordance with the Financial Regulation.

- (13) To simplify the auction process, the setting of the annual auction volumes should be made more flexible in case changes up to 50 000 allowances are needed. Any change below that threshold should not lead to changing the auction volume of the subsequent year, unless a Member State explicitly requests so. Furthermore, the procedure for the determination and publication of auction calendars should be simplified in the sense that the Commission would no longer provide an opinion thereon. However, the auction calendar should be published after the Commission takes an internal decision on the auction table corresponding to the auction calendar under the delegated acts adopted pursuant to Article 19(3) of Directive 2003/87/EC.
- (14) To simplify the reappointment of opt-out platforms, an amendment to Annex III to Regulation (EU) No 1031/2010 should be required only for the listing of new entities as opt-out platforms, or for a re-listing under changed conditions. Thus, in case the same opt-out platform is appointed by its Member State under the same conditions, its listing should be prolonged under the same terms and conditions as the initial listing without an amendment to Annex III to Regulation (EU) No 1031/2010. This should be subject to a confirmation from the Member State and the Commission that the requirements of this Regulation and the objectives of Article 10(4) of Directive 2003/87/EC are satisfied.
- (15) To avoid accumulation of cancelled volumes in case several auctions are cancelled, it should be made possible that the cancelled volumes are distributed evenly over the next auctions that do not include cancelled volumes from previously cancelled auctions.
- (16) Regulation (EU) No 1031/2010 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

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

- (1) The title is replaced by the following:
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 system for greenhouse gas emission allowances trading within the Union.
- (2) Article 3 is amended as follows:
- (a) points (1) and (2) are deleted;
 - (b) points (3) and (4) are replaced by the following:
 3. “two-day spot” means allowances auctioned for delivery at an agreed date no later than the second trading day from the day of the auction;
 4. “five-day futures” means allowances auctioned for delivery at an agreed date no later than the fifth trading day from the day of the auction;;

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- (c) points (8), (9) and (10) are replaced by the following:
 - 8. “investment firm” means the same as in point (1) of Article 4(1) of Directive 2014/65/EU of the European Parliament and of the Council⁽¹¹⁾;
 - 9. “credit institution” means the same as in Article 4(1) of Regulation (EU) No 575/2013 of the European Parliament and of the Council⁽¹²⁾;
 - 10. “financial instrument” means the same as in point (15) of Article 4(1) of Directive 2014/65/EU;;
- (d) points (12), (13) and (14) are replaced by the following:
 - 12. “parent undertaking” means the same as in Article 2(9) of Directive 2013/34/EU of the European Parliament and of the Council⁽¹³⁾;
 - 13. “subsidiary undertaking” means the same as in Article 2(10) of Directive 2013/34/EU;
 - 14. “affiliate undertaking” means the same as in Article 2(12) of Directive 2013/34/EU;;
- (e) points (17) to (19) are replaced by the following:
 - 17. “money laundering” means the same as in Article 1(3) of Directive (EU) 2015/849 of the European Parliament and of the Council⁽¹⁴⁾ having regard to Article 1(4) and (6) of that Directive;
 - 18. “terrorist financing” means the same as in Article 1(5) of Directive (EU) 2015/849 having regard to Article 1(6) of that Directive;
 - 19. “criminal activity” means the same as in Article 3(4) of Directive (EU) 2015/849;;
- (f) point 21 is replaced by the following:
 - 21. “nominated holding account” means one or more type of holding account provided for in the applicable delegated acts adopted pursuant to Article 19(3) of Directive 2003/87/EC for the purposes of participating in or conducting the auction process including the holding of allowances in escrow, pending their delivery under this Regulation;;
- (g) points (23) and (24) are replaced by the following:
 - 23. “customer due diligence measures” means the same as the customer due diligence measures in Article 13 of Directive (EU) 2015/849 and the enhanced customer due diligence measures in Article 18, Article 18a and Article 20 having regard to Articles 22 and 23 of that Directive;
 - 24. “beneficial owner” means the same as in Article 3(6) of Directive (EU) 2015/849;;
- (h) points (26), (27) and (28) are replaced by the following:

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- 26. “politically exposed persons” means the same as in Article 3(9) of Directive (EU) 2015/849;
- 27. “market abuse” means the same as in Article 1 of Regulation (EU) No 596/2014 of the European Parliament and of the Council⁽¹⁵⁾;
- 28. “insider dealing” means the same as in Article 8 of Regulation (EU) No 596/2014 and as prohibited by points (a) and (b) of Article 14 of that Regulation;;
- (i) the following point (28a) is inserted:
 - 28a. “unlawful disclosure of inside information” means the same as in Article 10 of Regulation (EU) No 596/2014 and as prohibited by point (c) of Article 14 of that Regulation;;
- (j) points (29) and (30) are replaced by the following:
 - 29. “inside information” means the same as in Article 7 of Regulation (EU) No 596/2014;
 - 30. “market manipulation” means the same as in Article 12 of Regulation (EU) No 596/2014 and as prohibited by Article 15 of that Regulation;;
- (k) point (39) is replaced by the following:
 - 39. “regulated market” means the same as in point (21) of Article 4(1) of Directive 2014/65/EU;;
- (l) point (41) is deleted;
- (m) point(42) is replaced by the following:
 - 42. “market operator” means the same as in point (18) of Article 4(1) of Directive 2014/65/EU;;
- (n) in point (43), points (b) to (f) are replaced by the following:
 - (b) the same as in point (55)(a) of Article 4(1) of Directive 2014/65/EU taking into account the requirements of Article 5(4) of that Directive for the purposes of Article 18(2) of this Regulation;
 - (c) the same as in point (55)(a) of Article 4(1) of Directive 2014/65/EU taking into account the requirements of Article 5(4) of that Directive for the purposes of Article 19(2) of this Regulation, in the case of persons referred to in point (b) of Article 18(1) of this Regulation;
 - (d) the same as in point (43) of Article 4(1) of Regulation (EU) No 575/2013 for the purposes of Article 19(2) of this Regulation, in the case of persons referred to in point (c) of Article 18(1) of this Regulation;
 - (e) the same as in point (55)(a) of Article 4(1) of Directive 2014/65/EU for the purposes of Article 19(2) of this Regulation in the case of business grouping referred to in point (d) of Article 18(1) of this Regulation;

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- (f) the same as in point (55)(b) of Article 4(1) of Directive 2014/65/EU for the purposes of Article 35(4), (5) and (6) of this Regulation;;
 - (o) point (44) is replaced by the following:
 - 44. “exit strategy” means one or more documents determined in accordance with the contracts appointing the auction platform concerned, setting out detailed measures planned to ensure the following:
 - (a) the transfer of all tangible and intangible assets necessary for the uninterrupted continuation of the auctions and the smooth operation of the auction process by an auction platform’s successor;
 - (b) the provision of all information relating to the auction process, that is necessary for the procurement procedure for the appointment of the auction platform’s successor;
 - (c) the provision of the technical assistance that enables the contracting authorities or the auction platform’s successor or any combination of these, to understand, access or use the relevant information provided pursuant to points (a) and (b)..
- (3) Article 6 is amended a follows:
- (a) in paragraph 1, the third subparagraph is deleted;
 - (b) in paragraph 2, point (c) is replaced by the following:
 - (c) the volume bid as a number of allowances in integral multiples of lots of 500 allowances;;
 - (c) paragraph 5 is replaced by the following:
 - 5. The reception, transmission and submission of a bid by an investment firm or credit institution on any auction platform shall be deemed to constitute an investment service within the meaning of point (2) of Article 4(1) of Directive 2014/65/EU..
- (4) In Article 7, paragraphs 7 and 8 are replaced by the following:
7. Before an auction is started, the auction platform shall determine the methodology for the application of paragraph 6 of this Article, after consulting the relevant contracting authority pursuant to Article 26(1) or Article 30(5), and notifying the competent national authorities referred to in Article 56.
- In between two bidding windows on the same auction platform, the auction platform concerned may modify the methodology. It shall notify the relevant contracting authority pursuant to Article 26(1) or Article 30(5) and the competent national authorities referred to in Article 56 without delay.
- The auction platform concerned shall take the utmost account of the opinion of the relevant contracting authority, where provided.
- 8 Where an auction of allowances covered by Chapter III of Directive 2003/87/EC is cancelled, its volume shall be distributed evenly over the next four auctions scheduled on the same auction platform. Where the Member State volume from

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cancelled auctions may not be distributed evenly in accordance with the first sentence, the Member State concerned shall auction those allowances over less than four auctions in volumes pursuant to Article 6(1) of this Regulation.

Where an auction of allowances covered by Chapter II of Directive 2003/87/EC is cancelled, its volume shall be distributed evenly over the next two auctions scheduled on the same auction platform. Where the Member State volume from cancelled auctions may not be distributed evenly in accordance with the previous sentence, the Member State concerned shall auction these allowances in the first following auction in volumes pursuant to Article 6(1) of this Regulation.

Where an auction that already includes volumes from a previously cancelled auction is cancelled, its volume shall be spread in accordance with the first and second subparagraphs starting from the first auction which is not subject to other adjustments due to previous cancellations..

(5) In Article 8, paragraphs 3 to 6 are replaced by the following:

3. In exceptional circumstances, any auction platform may, after consulting the Commission, change the times of any bidding window, by giving notice to all persons likely to be affected. The auction platform concerned shall take the utmost account of the Commission's opinion, where delivered.

4. As from the sixth auction or earlier, the auction platform appointed pursuant to Article 26(1) of this Regulation 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.

No other auction platform shall conduct an auction on any of a maximum of two days a week during which an auction platform appointed pursuant to Article 26(1) conducts an auction. Where the auction platform appointed pursuant to Article 26(1) conducts auctions on more than two days a week, it shall determine and publish on which two days no other auctions may take place. It shall do so no later than when it makes the determination and publication referred to in Article 11.

5. The volume of allowances covered by Chapter III of Directive 2003/87/EC to be auctioned on the auction platform appointed pursuant to Article 26(1) of this Regulation shall be distributed evenly over the auctions held in a given year, except that volumes auctioned in August of each year shall be half of the volume auctioned in auctions held in other months of the year.

The volume of allowances covered by Chapter II of Directive 2003/87/EC to be auctioned on the auction platform appointed pursuant to Article 26(1) of this Regulation shall in principle be distributed evenly over the auctions held in a given year, except that volumes auctioned in August of each year shall be half of the volume auctioned in auctions held in other months of the year.

Where the annual auction volume of allowances of a Member State may not be distributed evenly over the auctions in a given year in lots of 500 allowances in accordance with Article 6(1), the relevant auction platform shall distribute that volume over fewer auction dates, ensuring that the volume is at least auctioned on a quarterly basis.

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- 6 Additional provisions on the timing and frequency of the auctions conducted by any auction platform other than the auction platforms appointed pursuant to Article 26(1) are set out in Article 32..
- (6) Article 9 is amended as follows:
- (a) the first paragraph is replaced by the following:
- Without prejudice to the application of the rules referred in Article 58 where appropriate, an auction platform may cancel an auction where the proper conduct of that auction is disrupted or is likely to be disrupted. The volume of allowances of the cancelled auctions shall be distributed pursuant to Article 7(8).;
- (b) the second and the third paragraphs are deleted.
- (7) In Article 10, paragraphs 1 to 4 are replaced by the following:
1. The volume of allowances covered by Chapter III of Directive 2003/87/EC to be auctioned in any given calendar year as from 2019 shall be the quantity of allowances established in accordance with Articles 10(1) and 10(1a) of that Directive.
2. The volume of allowances covered by Chapter III of Directive 2003/87/EC to be auctioned in any given calendar year by each Member State shall be based on the volume of allowances pursuant to paragraph 1 of this Article and the share of allowances of that Member State determined pursuant to Article 10(2) of that Directive.
3. The volume of allowances covered by Chapter III of Directive 2003/87/EC to be auctioned each calendar year by each Member State pursuant to paragraphs 1 and 2 of this Article shall take into account Article 10a(5a) of Directive 2003/87/EC, the changes to be made pursuant to Articles 1(5) and (8) of Decision (EU) 2015/1814 of the European Parliament and of the Council⁽¹⁶⁾, the changes pursuant to Articles 10c, 12(4), 24, 27 and 27a of Directive 2003/87/EC, and pursuant to Article 6 of Regulation (EU) 2018/842 of the European Parliament and of the Council⁽¹⁷⁾.
4. Without prejudice to Decision (EU) 2015/1814, any subsequent change to the volume of allowances to be auctioned in a given calendar year shall be accounted for in the volume of allowances to be auctioned in the subsequent calendar year.
- In exceptional circumstances, in particular where the cumulative annual value of such changes does not exceed 50 000 allowances for a given Member State, these changes may be accounted for in the volume of allowances to be auctioned in subsequent calendar years, unless a Member State requests the Commission by 30 April 2020 that this threshold shall not apply to it for the period starting from 2021.
- Any volume of allowances that may not be auctioned in a given calendar year due to the rounding required by Article 6(1) shall be accounted for in the volume of allowances to be auctioned in the subsequent calendar year..
- (8) Article 11 is replaced by the following:

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Article 11

Calendar for individual auctions of allowances covered by Chapter III of Directive 2003/87/EC auctioned by auction platforms appointed pursuant to Article 26(1) of this Regulation

The auction platforms appointed pursuant to Article 26(1) of this Regulation shall determine the auction calendar, including the bidding windows, individual volumes, auction dates as well as the auctioned product, payment and delivery dates of the allowances covered by Chapter III of Directive 2003/87/EC to be auctioned in individual auctions each calendar year having previously consulted the Commission. The auction platforms concerned shall publish the auction calendar by 15 July of the previous year or as soon as practicable thereafter, provided that the Commission has instructed the central administrator of the European Union Transaction Log (“EUTL”) to enter the auction table corresponding to the auction calendar into the EUTL in accordance with the delegated acts adopted pursuant to Article 19(3) of Directive 2003/87/EC..

- (9) Article 12 is amended as follows:
- (a) in the first subparagraph of paragraph 1, the following sentence is added:

Article 10(4) shall apply to any subsequent change to the volume of allowances to be auctioned.;
 - (b) paragraph 2 is replaced by the following:

2. For each calendar year in a given trading period, the volume of allowances covered by Chapter II of Directive 2003/87/EC to be auctioned by each Member State shall be determined on the basis of the volume pursuant to paragraph 1 of this Article and the share of that Member State determined in accordance with Article 3d(3) of Directive 2003/87/EC..
- (10) Article 13 is amended as follows:
- (a) the heading is replaced by the following:

Calendar for individual auctions of allowances covered by Chapter II of Directive 2003/87/EC auctioned by auction platforms appointed pursuant to Article 26(1) of this Regulation;
 - (b) paragraph 1 is deleted;
 - (c) in paragraph 2, the first subparagraph is replaced by the following:

2. The auction platforms appointed pursuant to Article 26(1) of this Regulation shall determine the auction calendars, including the bidding windows, individual volumes, auction dates as well as the auctioned product, payment and delivery dates of the allowances covered by Chapter II of Directive 2003/87/EC to be auctioned in individual auctions for each calendar year, having previously consulted the Commission. The auction platforms concerned shall publish the auction calendar by 30 September of the previous year, or as soon as practicable thereafter provided that the Commission has instructed the central administrator of the EUTL to enter the auction table corresponding to the auction calendar into the

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EUTL in accordance with the delegated acts adopted pursuant to Article 19(3) of Directive 2003/87/EC. Without prejudice to the deadline for publication of the auction calendar for allowances covered by Chapter III of Directive 2003/87/EC under Article 11 of this Regulation, the auction platforms concerned may simultaneously determine the auction calendars for allowances covered by Chapter II and Chapter III of Directive 2003/87/EC.;

(d) paragraphs 3 and 4 are replaced by the following:

3. The auction platforms appointed pursuant to Article 26(1) of this Regulation shall base their determinations and publications under paragraph 2 of this Article on the Commission's decision adopted pursuant to Article 3e(3) of Directive 2003/87/EC.

4 The provisions on the calendar for individual auctions of allowances covered by Chapter II of Directive 2003/87/EC conducted by an auction platform other than the auction platforms appointed pursuant to Article 26(1) of this Regulation shall be determined and published pursuant to Article 32 of this Regulation.

Article 32 shall also apply with respect to the auctions conducted pursuant to the second subparagraph of Article 30(7) by the auction platform appointed pursuant to Article 26(1)..

(11) Article 14 is amended as follows:

(a) paragraph 1 is amended as follows:

(i) point (b) is replaced by the following:

(b) any suspension of an auction platform other than the auction platforms appointed pursuant to Article 26(1) of this Regulation provided for in the delegated acts adopted pursuant to Article 19(3) of Directive 2003/87/EC.;

(ii) point (f) is replaced by the following:

(f) allowances remaining in the reserve for new entrants provided for in Article 10a(7) of Directive 2003/87/EC and allowances not allocated pursuant to Article 10c of that Directive.;

(iii) point (j) is replaced by the following:

(j) any withholding of allowances from the auctions pursuant to Article 22(5).;

(iv) point (l) is replaced by the following:

(l) adjustments necessary pursuant to Decision (EU) 2015/1814 which shall be determined and published by 15 July of the given year, or as soon as practicable thereafter.;

(v) the following point (m) is added:

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- (m) cancellation of allowances pursuant to Article 12(4) of Directive 2003/87/EC.;
- (b) paragraph 2 is replaced by the following:
 2. Where the manner in which a modification is to be implemented is not provided for in this Regulation, the auction platform concerned shall not implement that modification until it has previously consulted the Commission. Articles 11 and 13(2) shall apply..
- (12) Article 15 is replaced by the following:

Article 15

Persons who may submit bids directly in an auction

Only a person who is eligible to apply for admission to bid pursuant to Article 18 and is admitted to bid pursuant to Articles 19 and 20 may submit bids directly in an auction..

- (13) in Article 16(2), the second subparagraph is replaced by the following:

In addition, an auction platform appointed pursuant to Article 26(1) or 30(1) may offer bidders the option of accessing its auctions through dedicated connections to the electronic interface..
- (14) Article 18 is amended as follows:
 - (a) points (b) and (c) of paragraph 1 are replaced by the following:
 - (b) investment firms authorised under Directive 2014/65/EU bidding on their own account or on behalf of their clients;
 - (c) credit institutions authorised under Directive 2013/36/EU of the European Parliament and of the Council⁽¹⁸⁾ bidding on their own account or on behalf of their clients.;
 - (b) paragraph 2 is replaced by the following:
 2. Without prejudice to the exemption in Article 2(1)(j) of Directive 2014/65/EU, persons covered by this exemption and authorised pursuant to Article 59 of this Regulation shall be eligible to apply for admission to bid directly in the auctions either on their own account or on behalf of clients of their main business provided that a Member State where they are established has enacted legislation enabling the relevant competent national authority in that Member State to authorise them to bid on their own account or on behalf of clients of their main business.;
 - (c) paragraph 3 is deleted;
 - (d) paragraph 6 is deleted.
- (15) Article 20 is amended as follows:
 - (a) paragraph 4 is replaced by the following:
 4. An application for admission to bid, including any supporting documents, shall upon request be made available for inspection by

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the competent national law enforcement authorities of a Member State conducting an investigation, referred to in Article 62(3)(e) and any competent Union bodies involved in investigations conducted on a cross-border basis.;

(b) paragraph 6 is deleted.

(16) In Article 21(2), the second subparagraph is replaced by the following:

In such a case, the auction platform concerned shall report to the financial intelligence unit referred to in Article 32 of Directive (EU) 2015/849 (“FIU”) in accordance with Article 55(2) of this Regulation..

(17) In Article 22, paragraphs 3 and 4 are replaced by the following:

3. For Member States not participating in the joint actions as provided in Article 26(1), the auctioneer shall be appointed by the appointing Member State so as to conclude and implement the necessary arrangements with the auction platforms appointed pursuant to Article 26(1), 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).

4 Member States shall refrain from disclosing inside information to persons working for the auctioneer unless the person working or acting for the Member State makes such disclosure on a need-to-know basis in the normal course of the exercise of their employment, profession or duties and the Member State concerned is satisfied that the auctioneer has in place appropriate measures to prevent insider dealing, or the unlawful disclosure of inside information by any person working for an auctioneer, additional to the measures provided for in Articles 18(8) and 19(10) of Regulation (EU) No 596/2014..

(18) The title of Chapter VI is deleted.

(19) Articles 24 and 25 are replaced by the following:

Article 24

Auctioning of allowances for the Innovation Fund and the Modernisation Fund

1 The European Investment Bank (EIB) shall be the auctioneer for the allowances to be auctioned from 2021 pursuant to the first subparagraph of Article 10a(8) and to Article 10d(4) of Directive 2003/87/EC on the auction platform appointed pursuant to Article 26(1) of this Regulation. Articles 22(2), 22(4), 23(1) and 52(1) shall apply *mutatis mutandis* to the EIB. The EIB as auctioneer shall ensure that the auction proceeds for the purposes of Article 10a(8) of Directive 2003/87/EC are disbursed to an account notified to it by the Commission, at the latest 15 days following the end of the month within which the auction proceeds were generated. It may deduct prior to disbursement any additional fees for their holding and disbursement, in accordance with the agreement concluded between the Commission and the EIB pursuant to Article 20(3) of Commission Delegated Regulation (EU) 2019/856⁽¹⁹⁾.

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2 The annual auction volumes of allowances pursuant to paragraph 1 shall be auctioned together with the annual volumes to be auctioned by the Member States participating in the joint action pursuant to Article 26(1) of this Regulation and shall be evenly distributed in accordance with Article 8(5) of this Regulation.

3 The volumes of allowances pursuant to Article 10a(8) of Directive 2003/87/EC shall, in principle, be auctioned in equal annual volumes over the ten-year period beginning from 1 January 2021.

The Commission shall review the distribution of allowances remaining to be auctioned after the award decision of each call for proposals carried out in accordance with the delegated acts adopted pursuant to the fourth subparagraph of Article 10a(8) of Directive 2003/87/EC. Such reviews shall take place every two years, with the first review taking place no later than 30 June 2022. Each review shall pay particular attention to the support available for future calls for proposals, the maximum amount of the Innovation Fund support available for project development assistance, the part of the total amount of the Innovation Fund support available for the call to small-scale projects reserved by the Commission, the support foreseen for the awarded projects as well as the disbursement and the recovery rate.

Article 25

Procedure for cancellation of allowances pursuant to Article 12(4) of Directive 2003/87/EC

1 Any Member State that intends to cancel allowances from its total quantity of allowances to be auctioned in the event of closure of the electricity generation capacity in its territory pursuant to Article 12(4) of Directive 2003/87/EC shall notify the Commission of its intention at the latest by 31 December of the calendar year following the year of the closure, using the template set out in Annex I to this Regulation.

2 The volume of allowances to be cancelled pursuant to Article 12(4) of Directive 2003/87/EC shall be deducted from the volume to be auctioned by the Member State concerned established pursuant to Article 10 of this Regulation after any adjustments pursuant to Decision (EU) 2015/1814.

3 The Commission shall publish the information provided by the Member States in accordance with Annex I except for the reports referred to in point 6 of that Annex..

(20) Article 26 is amended as follows:

(a) paragraph 2 is deleted;

(b) paragraphs 3 to 6 are replaced by the following:

3. The joint procurement procedure referred to in paragraph 1 shall be conducted pursuant to Article 165(2) of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council⁽²⁰⁾.

4 Any period of appointment of the auction platforms referred to in paragraph 1 shall be no longer than five years. Where the conditions under Article 172(3) of Regulation (EU, Euratom) 2018/1046 are fulfilled, the Member States and the Commission may extend the maximum period of appointment of the auction platform to seven years. During the contract

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duration, the Commission may conduct a preliminary market consultation in accordance with Article 166(1) of Regulation (EU, Euratom) 2018/1046 with a view to verify the market conditions and to prepare the new procurement procedure.

5 The identity and contact details of the auction platforms referred to in paragraph 1 shall be published on the Commission's website.

6 Any Member State that joins the joint actions as provided in paragraph 1 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.

Any Member State that decides pursuant to Article 30(4) not to participate in the joint action as provided in paragraph 1 of this Article 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 paragraph 1 and the Commission subject to any applicable public procurement rules..

(21) Article 27 is amended as follows:

(a) paragraph 1 is amended as follows:

(i) points (f) and (g) are replaced by the following:

(f) providing the Commission with any information relating to the conduct of the auctions pursuant to Article 53;

(g) surveying the auctions, notifying suspicions of money laundering, terrorist financing, criminal activity or market abuse, administering any required remedial measures or sanctions including the provision of an extra-judicial dispute resolution mechanism, pursuant to Article 54 to 59 and Article 64(1);;

(ii) the following point (h) is added:

(h) reporting, pursuant to Article 36.;

(b) paragraph 3 is replaced by the following:

3. Within three months from the date of its appointment, the auction platform shall submit its detailed exit strategy to the Commission..

(22) Article 28 is deleted.

(23) Article 29 is amended as follows:

(a) the heading is replaced by the following:

Services provided to the Commission by the auction platforms appointed pursuant to Article 26(1);

(b) the introductory phrase is replaced by the following:

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Auction platforms appointed pursuant to Article 26(1) shall provide the Commission with technical support services with respect to the Commission's work relating to the following;

- (c) point (a) is replaced by the following:
 - (a) any coordination of the auction calendar for Annex III;
 - (d) points (b) and (c) are deleted;
 - (e) point (d) is replaced by the following:
 - (d) the reports by the Commission pursuant to Articles 10(5) of Directive 2003/87/EC;
 - (f) point (f) is replaced by the following:
 - (f) any review of this Regulation, Directive 2003/87/EC or the delegated acts adopted pursuant to Article 19(3) of that Directive which has an impact on the functioning of the carbon market including the implementation of the auctions;
- (24) Article 30 is amended as follows:
- (a) the heading is replaced by the following:

Appointment of any auction platform other than an auction platform appointed pursuant to Article 26(1);
 - (b) paragraph 1 is replaced by the following
 1. Any Member State not participating in the joint action as provided in Article 26(1) may appoint its own auction platform for the auctioning of its 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.;
 - (c) paragraph 2 is deleted;
 - (d) paragraphs 3, 4 and 5 are replaced by the following:
 3. Member States not participating in the joint action as provided in Article 26(1) may appoint the same auction platform or separate auction platforms for the auctioning pursuant to Article 31(1).
 - 4 Any Member State not participating in the joint action as provided in Article 26(1), shall inform the Commission of its decision not to participate in the joint action as provided in Article 26(1) but to appoint its own auction platform pursuant to paragraph 1 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) shall select its own auction platform appointed pursuant to paragraph 1 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.

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Any period of appointment of the auction platform referred to in paragraph 1 shall be no longer than 3 years renewable for no more than a further 2 years.

The appointment of the auction platforms referred to in paragraph 1 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.;

(e) paragraph 6 is amended as follows:

(a) the introductory phrase is replaced by the following:

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

(b) point (c) is replaced by the following:

(c) the auctioned product and any information necessary for the Commission to assess whether the envisaged auction calendar is compatible with any prevailing or envisaged auction calendar of the auction platforms appointed pursuant to Article 26(1) 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.;

(f) paragraphs 7 and 8 are replaced by the following:

7. Auction platforms other than those appointed pursuant to Article 26(1), the Member States appointing them, their term of appointment, and any applicable conditions or obligations, shall be set out in Annex III where the requirements of this Regulation and the objectives of Article 10(4) of Directive 2003/87/EC are satisfied. The Commission shall act solely on the basis of these requirements and objectives and shall have full regard to any information submitted by the Member State concerned.

In case a Member State having appointed its own auction platform decides to appoint the same auction platform under the same conditions and obligations as per the listing provided for in the first subparagraph, this listing shall continue to be valid where that Member State and the Commission confirm that the requirements of this Regulation and the objectives of Article 10(4) of Directive 2003/87/EC are satisfied. To this end, the Member State shall, in particular, provide a notification containing the information referred to in paragraph 6 to the Commission and share any relevant information with the other Member States. The Commission shall inform the public about the extended validity of the listing.

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) but opting to appoint its own auction platform pursuant to paragraph 1 of this Article shall use the auction platforms appointed pursuant to Article 26(1) to

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auction its share of allowances that would have otherwise been auctioned on the auction platform to be appointed pursuant to paragraph 1 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) but opting to appoint its own auction platform pursuant to paragraph 1 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) as provided in the third 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.

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

The volume of allowances that were scheduled to be auctioned on an auction platform other than the auction platforms appointed pursuant to Article 26(1) shall be spread evenly over the auctions conducted by the relevant auction platform appointed pursuant to Article 26(1);.

(25) Article 31 is amended as follows:

(a) the heading is replaced by the following:

Functions of auction platforms other than the auction platforms appointed pursuant to Article 26(1);

(b) in paragraph 1, the second subparagraph is replaced by the following:

However, an auction platform appointed pursuant to Article 30(1) shall be exempted from the provisions of Article 27(1)(c) and it shall submit the exit strategy referred to in Article 27(3) to the appointing Member State.;

(c) paragraph 2 is deleted;

(d) paragraph 3 is replaced by the following:

The provisions on the auction calendar provided for in Article 8(1), (2) and (3), Articles 9, 10, 12, 14 and 32 shall apply to the auction platforms appointed pursuant to Article 30(1)..

(26) Article 32 is amended as follows:

(a) the heading is replaced by the following:

Auction calendar for any auction platform other than the auction platforms appointed pursuant to Article 26(1);

(b) paragraphs 1, 2, 3, 4 and 5 are replaced by the following:

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) of this Regulation shall be no

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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 shall be no less than 1,5 million allowances in the respective periods of 12 months when a number of allowances is to be deducted from the volume of allowances to be auctioned pursuant to Article 1(5) of Decision (EU) 2015/1814.

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

3 The total volume of allowances covered by Chapters II and III of Directive 2003/87/EC to be auctioned by all auction platforms appointed pursuant to Article 30(1) of this Regulation collectively shall be distributed evenly over any given calendar year, except that the volume auctioned in auctions held in August of each year shall be half of the volume auctioned in other months of the year. These requirements shall be considered to be met where each auction platform appointed pursuant to Article 30(1) meets these requirements individually.

4 The auction platforms appointed pursuant to Article 30(1) of this Regulation shall determine the auction calendar, including the bidding windows, individual volumes, auction dates as well as the auctioned product, payment and delivery dates of the allowances to be auctioned in individual auctions each year, having previously consulted the Commission. The auction platforms concerned shall make their determination of the individual auction volumes in accordance with Articles 10 and 12.

The auction platforms concerned shall publish the auction calendar for the allowances covered by Chapter II of Directive 2003/87/EC, by 31 October of the previous year or as soon as practicable thereafter, and for those covered by Chapter III of that Directive, by 15 July of the previous year or as soon as practicable thereafter, provided that the Commission has instructed the central administrator of the EUTL to enter the respective auction table into the EUTL in accordance with the delegated acts adopted pursuant to Article 19(3) of Directive 2003/87/EC. The auction platforms concerned shall make their determination and publication of the auction calendars only after the determination and publication pursuant to Articles 11 and 13(2) of this Regulation by the auction platforms appointed pursuant to Article 26(1) of this Regulation, unless such an auction platform has not yet been appointed. Without prejudice to the deadline for publication of the auction calendar for allowances covered by Chapter III of Directive 2003/87/EC, the auction platforms concerned may simultaneously determine the auction calendars for allowances covered by Chapter II and Chapter III of Directive 2003/87/EC.

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Published calendars shall be consistent with any relevant conditions or obligations listed in Annex III.

5 Where an auction conducted by an auction platform appointed pursuant to Article 30(1) is cancelled by the auction platform pursuant to Article 7(5) or (6) or Article 9, the auctioned volume shall be distributed either pursuant to Article 7(8) or, if the auction platform concerned conducts less than four auctions in a given calendar year, over the next two auctions scheduled on the same auction platform..

- (27) Article 33 is deleted.
- (28) The heading of Chapter IX is replaced by the following:
APPOINTMENT REQUIREMENTS APPLICABLE TO THE AUCTIONEER AND ANY AUCTION PLATFORM.
- (29) Article 34 is amended as follows:
- (a) the heading is replaced by the following:
- Appointment requirements applicable to the auctioneer;**
- (b) paragraph 1 is amended as follows:
- (i) the introductory phrase is replaced by the following:
- When appointing auctioneers, the Member States shall take into account the extent to which candidates;
- (ii) point (b) is replaced by the following:
- (b) are able to fulfil the auctioneer's functions, in a timely manner, in accordance with the highest professional and quality standards..
- (30) Article 35 is amended as follows:
- (a) in paragraph 1, a second subparagraph is inserted:
- Without prejudice to the first subparagraph, where it is foreseen in the procurement documents for the joint procurement procedure pursuant to Article 26(1), a regulated market whose operator organises a wholesale energy market as defined in Article 2(6) of Regulation (EU) No 1227/2011 of the European Parliament and of the Council⁽²¹⁾, but does not organise a secondary market in allowances or allowances derivatives, may participate in the procurement procedure pursuant to Article 26(1) of this Regulation. In that case, where such regulated market is appointed as auction platform pursuant to Article 26(1) and its operator does not organise a secondary market in allowances or allowances derivatives by the time of publication of the procurement procedure pursuant to Article 26(1), that operator shall acquire an authorisation and shall organise a secondary market in allowances or allowances derivatives at least 60 trading days prior to the opening of the first bidding window run by the auction platform concerned.;
- (b) in paragraph 3, point (b) is replaced by the following:

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- (b) full, fair and equitable access to bid in the auctions for SMEs covered by the Union scheme and access to bid in the auctions for small emitters, as defined in Articles 27(1), 27a(1) and 28a(6) of Directive 2003/87/EC;;
- (c) in paragraph 4, the first and second subparagraphs are replaced by the following:

4. An auction platform may only be appointed pursuant to Article 26(1) or 30(1) of this Regulation 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 2014/65/EU 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) of this Regulation 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 VI of Directive 2014/65/EU to the extent relevant.;

- (d) paragraphs 5 and 6 are 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 67(1) of Directive 2014/65/EU 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 2014/65/EU, 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 VI of Directive 2014/65/EU as transposed into the national legal order of the Member State of their establishment pursuant to paragraph 4 of this Article.

6 The competent national authorities referred to in paragraph 5 of this Article shall maintain effective market oversight and take the necessary measures to ensure that the requirements referred to in that paragraph are complied with. To that effect, they shall be able to exercise directly, or with the assistance of other competent national authorities designated pursuant to Article 67(1) of Directive 2014/65/EU, the powers provided for in the national measures transposing Article 69 of that Directive with regard to the regulated market and its market operator referred to in paragraph 4 of this Article.

The Member State of each competent national authority referred in paragraph 5 of this Article shall ensure that the national measures transposing Articles 70, 71 and 74 of Directive 2014/65/EU apply in relation to the persons responsible for failure to comply with their obligations under Title III of Directive 2014/65/EU as transposed into the national legal order of the Member State of their establishment pursuant to paragraph 4 of this Article.

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For the purposes of this paragraph, national measures transposing Articles 79 to 87 of Directive 2014/65/EU shall apply to cooperation between competent national authorities of different Member States and with European Securities and Markets Authority established pursuant to Regulation (EU) No 1095/2010 of the European Parliament and of the Council⁽²²⁾..

(31) The title of Chapter X is replaced by the following:
REPORTING ON TRANSACTIONS.

(32) Article 36 is replaced by the following:

Article 36

Obligation to report transactions

1 The auction platform shall report to the competent national authority designated pursuant to Article 67(1) of Directive 2014/65/EU the complete and accurate details of every transaction executed on the auction platform that results in the transfer of emission allowances to the successful bidders.

2 The reports on the transactions pursuant to paragraph 1 shall be submitted as quickly as possible, and no later than the close of the trading day following the transaction concerned.

3 Where the successful bidder is a legal person, the auction platform shall, in reporting the designation to identify the successful bidder as required under paragraph 5 of this Article, use a legal entity identifier referred to in Article 5 of Commission Delegated Regulation (EU) 2017/590⁽²³⁾.

4 The auction platform shall be responsible for the completeness, accuracy and timely submission of the reports. Insofar as there are details to transactions which are not available to the auction platforms, the bidders and the auctioneers shall submit such information to the auction platform.

Where there are errors or omissions in the transaction reports, the auction platform reporting the transaction shall correct the information and submit a corrected report to the competent national authority.

5 The report pursuant to paragraph 1 of this Article shall, in particular, include the name of the allowances or allowances derivatives, the quantity bought, the dates and times of execution, the transaction prices, a designation to identify the successful bidders, and if applicable, the clients on whose behalf the transaction was executed.

The report shall be drawn up using data standards and formats established in the Commission Delegated Regulation (EU) 2017/590 and shall include all the relevant details referred to in Annex I of Commission Delegated Regulation (EU) 2017/590..

(33) Articles 37 to 43 are deleted.

(34) In Article 44, paragraph 2 is replaced by the following:

2. An auction platform including the clearing system(s) or settlement system(s) connected to it shall transfer the payments made by the bidders or any successors in title arising from the auctioning of allowances covered by Chapters II and III of Directive 2003/87/EC to the auctioneers that auctioned the allowances in question..

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- (35) Article 46 is replaced by the following:

Article 46

Transfer of the auctioned allowances

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 delegated acts adopted pursuant to Article 19(3) of Directive 2003/87/EC..

- (36) In Article 51, in paragraph 1, the following second subparagraph is inserted:

Without prejudice to the first subparagraph, where it is foreseen in the procurement documents for the procurement procedures pursuant to Article 26(1) or Article 30(5), the operator of the auction platform may increase the fees paid by the successful bidders pursuant to Article 52(1) of this Regulation to a maximum of 120 % of the comparable standard fees paid by the successful buyers of allowances on the secondary market during the years when the auction volumes are reduced by more than 200 million allowances pursuant to Decision (EU) 2015/1814..

- (37) Article 52 is amended as follows:

- (a) in paragraph 1, the first subparagraph is replaced by the following:

1. Without prejudice to paragraph 2, the costs of the services provided for in Articles 27(1) and Article 31 shall be paid for through 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.;

- (b) in paragraph 2, the first, second and third subparagraphs 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) 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), but subsequently make use of the auction platform appointed pursuant to Article 26(1), 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 Article 27(1) related to the volume 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) 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) within 6 months of the entry into

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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) 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) 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) paragraph 3 is deleted.

(38) Article 53 is replaced by the following:

Article 53

Monitoring of auctions

1 By the end of each month, the auction platform appointed pursuant to Article 26(1) or Article 30(1) shall report on the implementation of the auctions it conducted in the preceding month in particular with respect to:

- a fair and open access;
- b transparency;
- c price formation;
- d technical and operational aspects of the implementation of the contract appointing the auction platform concerned;
- e the relationship between the auction processes and the secondary market in respect of the information under points (a) to (d);
- f any evidence of anti-competitive behaviour, market abuse, money laundering, terrorist financing or criminal activity that the auction platform has been made aware while carrying out its functions pursuant to Article 27 or Article 31(1);
- g any breach of this Regulation or non-conformity with the objectives of Article 10(4) of Directive 2003/87/EC that the auction platform has been made aware while carrying out its functions pursuant to Article 27 or Article 31(1) of this Regulation;
- h follow-up to any information reported under points (a) to (g).

In addition, by 31 January of each year, the auction platform shall also provide a summary and an analysis of these monthly reports of the previous year.

2 The auction platform appointed pursuant to Article 26(1) or Article 30(1) of this Regulation shall provide the reports under paragraph 1 to the Commission, its appointing Member States and its competent national authority designated in accordance with Article 22 of Regulation (EU) No 596/2014.

3 The relevant contracting authorities shall monitor the implementation of the contracts appointing the auction platforms. The Member States appointing an auction platform pursuant to Article 30(1) shall notify the Commission of any failure of that auction platform to comply with the contract appointing it that would be likely to have a significant impact on the auction processes.

4 In accordance with Article 10(4) of Directive 2003/87/EC the Commission, on behalf of the Member States participating in the joint action pursuant to Article

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26(1), and the Member States appointing an auction platform pursuant to Article 30(1) shall publish summary reports in respect of the elements listed in points (a) to (h) of paragraph 1 of this Article.

5 Auctioneers, auction platforms and the competent national authorities supervising them shall actively cooperate and, upon request, provide the Commission with any information in their possession relating to the auctions, as is reasonably required for the monitoring of the auctions.

6 The competent national authorities supervising credit institutions and investment firms and the competent national authorities supervising persons authorised to submit bids on behalf of others pursuant to Article 18(2) shall, within their competence, actively cooperate with the Commission, as is reasonably required for the monitoring of the auctions.

7 The obligations imposed on the competent national authorities in paragraphs 5 and 6 shall take into account professional secrecy considerations to which they are subject under Union law..

(39) Article 54 is amended as follows:

(a) in paragraph 1, in the first subparagraph, point (c) is replaced by the following:

(c) monitoring transactions undertaken by persons admitted to bid pursuant to Articles 19(1), (2) and (3) and by persons as defined in Article 3(26) 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.;

(b) paragraph 2 is amended as follows:

(i) point (a) is replaced by the following:

(a) request any information of the bidder, pursuant to Article 19(2) and (3) and Article 20(5) 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;;

(ii) point (c) is replaced by the following:

(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) and (7)..

(40) Articles 55 is replaced by the following:

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Article 55

Notification of money laundering, terrorist financing or criminal activity

1 The competent national authorities referred to in Article 48(1) of Directive (EU) 2015/849 shall monitor and take the necessary measures to ensure compliance of an auction platform appointed pursuant to Article 26(1) or 30(1) of this Regulation with the customer due diligence measures referred to in Article 19(2)(e) and Article 20(10) of this Regulation, with the obligation to refuse to grant admission to bid, revoke or suspend any admission to bid already granted pursuant to Article 21(1) and (2) of this Regulation, with the monitoring and record keeping requirements of Article 54 of this Regulation and with 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 48(2) and (3) of Directive (EU) 2015/849.

An auction platform appointed pursuant to Article 26(1) or 30(1) may be held liable for infringements of Article 20(7) and (10), Article 21(1) and (2), and Article 54 of this Regulation and paragraphs 2 and 3 of this Article. The national measures transposing Articles 58 to 62 of Directive (EU) 2015/849 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 by promptly:

- a informing the FIU, including by filing a report, on their own initiative, where they know, suspect or have reasonable grounds to suspect that funds in relation to the auctions, regardless of the amount involved, are the proceeds of criminal activity or are related to terrorist financing, and by promptly responding to requests by the FIU for additional information in such cases;
- b providing the FIU directly, at its request, with all necessary information.

All suspicious transactions, including attempted transactions, shall be reported.

3 The information referred to in paragraph 2 shall be forwarded to the FIU of the Member State in whose territory the auction platform concerned is situated.

The national measures transposing the compliance management and communication policies and procedures, referred to in Article 33(2) of Directive (EU) 2015/849, shall designate the person or persons responsible for forwarding information pursuant to this Article.

4 The Member State in whose territory an auction platform appointed pursuant to Article 26(1) or 30(1) of this Regulation is situated shall ensure that the national measures transposing Articles 37 to 39, 42, Article 45(1) and Article 46 of Directive (EU) 2015/849 apply to the auction platform concerned..

(41) In Article 56, paragraphs 1 and 2 are replaced by the following:

1. An auction platform appointed pursuant to Article 26(1) or 30(1) of this Regulation, shall report to the competent national authorities in accordance with Article 16 of Regulation (EU) No 596/2014 and with the national measures transposing Article 54 of Directive 2014/65/EU, suspicions of market abuse or

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attempted 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.

- 2 The auction platform concerned shall notify the Commission of the fact that it has made a notification under paragraph 1, stating what remedial action it has taken or proposes to take to counter the wrongdoing referred to in paragraph 1..

(42) In Article 57, paragraphs 1 and 2 are replaced by the following:

1. A maximum bid-size, or any other remedial measures necessary to mitigate an actual or potential discernible risk of market abuse, money laundering, terrorist financing or other criminal activity, as well as anti-competitive behaviour, may be imposed by any auction platform after consulting the Commission and obtaining its opinion thereon, provided that implementation of a maximum bid-size or any other remedial measures would effectively mitigate the risk in question. The Commission may consult the Member States concerned and obtain their opinion on the proposal made by the auction platform concerned. The auction platform concerned shall take the utmost account of the Commission's opinion.

- 2 The maximum bid-size shall either be expressed as a percentage of the total number of auctioned allowances in any given auction or a percentage of the total number of auctioned allowances in any given year, whichever may be most appropriate to deal with the risk of market abuse..

(43) Article 59 is amended as follows:

- (a) in paragraph 1, point (b) is deleted;
- (b) in paragraph 2, point (b) is replaced by the following:
- (b) they shall refuse to bid on behalf of a client if they have reasonable grounds to suspect money laundering, terrorist financing, criminal activity or market abuse, subject to national legislation transposing Articles 35 and 39 of Directive (EU) 2015/849;;
- (c) in paragraph 3, point (a) is replaced by the following:
- (a) they shall provide any information requested by any auction platform where they are admitted to bid to fulfil its functions under this Regulation;;
- (d) in paragraph 5, point (c) is replaced by the following:
- (c) they comply with the requirements of national legislation transposing Directive (EU) 2015/849;.

(44) In Article 60, paragraph 2 is deleted.

(45) Article 61 is amended as follows:

- (a) paragraphs 1 and 2 are replaced by the following:
1. An auction platform shall announce the results of each auction it conducts including at least the following information:
- a the volume of the allowances auctioned;
- b the auction clearing price in euros;
- c the total volume of bids submitted;

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- d the total number of bidders and the number of successful bidders;
- e in case of cancellation of an auction, the auctions to which the volume of allowances will be carried over;
- f the total revenue earned from the auction;
- g the distribution of the revenue between the Member States, in the case of auction platforms appointed pursuant to Article 26(1).

2 The auction platform shall announce the results of each auction as soon as is reasonably practicable. The information on the auction results pursuant to points (a) and (b) of paragraph 1 shall be announced no later than 5 minutes after the close of the bidding window, whereas the information on the auction results pursuant to points (c) to (g) of paragraph 1 shall be announced no later than 15 minutes after the close of the bidding window.;

- (b) the introductory phrase of paragraph 3 is replaced by the following:

At the same time as the auction platform announces pursuant to paragraph 2 the information listed in points (a) and (b) of paragraph 1, the auction platform shall notify each successful bidder bidding through its systems.;

- (46) Article 62 is amended as follows:

- (a) paragraph 1 is amended as follows:

- (i) point (f) is deleted;
- (ii) point (g) is replaced by the following:
 - (g) business secrets provided by persons participating in a competitive procurement process to appoint an auction platform.;

- (b) paragraph 3 is amended as follows:

- (i) point (f) is deleted;
- (ii) point (h) is deleted;
- (iii) in point (j), point (iii) is deleted;

- (c) paragraphs 4 and 5 are replaced by the following:

4. The measures required to ensure that confidential information is not wrongfully disclosed and the consequences of any such wrongful disclosure by an auction platform, including any persons contracted to work for it, shall be set out in the contract appointing it.

5 Confidential information obtained by an auction platform, including any persons contracted to work for it, shall be used solely for the purpose of the performance of its obligations or the exercise of its functions with respect to the auctions.;

- (d) in paragraph 6, the introductory phrase is replaced by the following:

Paragraphs 1 to 5 shall not preclude the exchange of confidential information between an auction platform and.;

- (e) paragraph 7 is replaced by the following:

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7. Any person who works, or has worked for, an auction platform involved in the auctions, shall be bound by the obligation of professional secrecy and shall ensure that confidential information is protected pursuant to this Article..

(47) In Article 63, paragraph 1 is replaced by the following:

1. Written information provided by an auction platform pursuant to Article 60(1) and (3) or under the contract appointing it, which is not published in the *Official Journal of the European Union*, shall be in a language customary in the sphere of international finance..

(48) In Article 64, paragraph 2 is replaced by the following:

2. Member States where a regulated market appointed as an auction platform pursuant to Article 26(1) or 30(1) of this Regulation 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 74(1) of Directive 2014/65/EU. 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 74(2) of Directive 2014/65/EU..

(49) Annex I is replaced by Annex I to this Regulation.

(50) Annex III is amended in accordance with Annex II to this Regulation.

(51) Annex IV is deleted.

Article 2

This Regulation shall enter into force on the twentieth day following that of 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.

Done at Brussels, 28 August 2019.

For the Commission

The President

Jean-Claude JUNCKER

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ANNEX I

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

ANNEX I

Template for the notification of voluntary cancellation by a Member State under Article 12(4) of Directive 2003/87/EC

	Notification pursuant to Article 12(4) of Directive 2003/87/EC	
1.	Member State and public authority submitting the notification:	
2.	Date of the notification:	
3.	Identification of the closed electricity generation installation (“installation”) on the territory of the Member State in accordance with the data recorded in EUTL, established by the delegated act adopted pursuant to Article 19(3) of Directive 2003/87/EC, including:	
a)	The name of the installation:	
b)	The installation identifier from the EUTL:	
c)	The name of the installation operator:	
4.	The date of closure of the installation and revocation of the greenhouse gas permit:	
5.	Description and reference of the additional national measures that triggered the closure of the installation:	
6.	The verified emission reports of the installation for the five years preceding the year of the closure:	
7.	The total volume of allowances to be cancelled:	

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8.	The years over which the allowances are to be cancelled:	
9.	The exact volume of allowances to be cancelled in each of the years referred to in point 8:	

ANNEX II

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

- (1) the heading is replaced by the following:

Auction platforms other than those appointed pursuant to Article 26(1), their appointing Member States and any applicable conditions or obligations referred to in Article 30(7).
- (2) points 1, 2 and 3 are deleted.
- (3) in point 4, in the sixth row ‘Obligations’, point 5 is deleted.

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- (1) [OJ L 275, 25.10.2003, p. 32.](#)
- (2) 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 ([OJ L 302, 18.11.2010, p. 1.](#)).
- (3) Directive (EU) 2018/410 of the European Parliament and of the Council of 14 March 2018 amending Directive 2003/87/EC to enhance cost-effective emission reductions and low-carbon investments, and Decision (EU) 2015/1814 ([OJ L 76, 19.3.2018, p. 3.](#)).
- (4) Regulation (EU) 2018/842 of the European Parliament and of the Council of 30 May 2018 on binding annual greenhouse gas emission reductions by Member States from 2021 to 2030 contributing to climate action to meet commitments under the Paris Agreement and amending Regulation (EU) No 525/2013 ([OJ L 156, 19.6.2018, p. 26.](#)).
- (5) Decision (EU) 2015/1814 of the European Parliament and of the Council of 6 October 2015 concerning the establishment and operation of a market stability reserve for the Union greenhouse gas emission trading scheme and amending Directive 2003/87/EC ([OJ L 264, 9.10.2015, p. 1.](#)).
- (6) Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU ([OJ L 173, 12.6.2014, p. 349.](#)).
- (7) Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC ([OJ L 145, 30.4.2004, p. 1.](#)).
- (8) Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC ([OJ L 173, 12.6.2014, p. 1.](#)).
- (9) Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 ([OJ L 173, 12.6.2014, p. 84.](#)).
- (10) Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 ([OJ L 193, 30.7.2018, p. 1.](#)).
- (11) Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU ([OJ L 173, 12.6.2014, p. 349.](#)).
- (12) Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 ([OJ L 176, 27.6.2013, p. 1.](#));
- (13) Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC ([OJ L 182, 29.6.2013, p. 19.](#));
- (14) Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC ([OJ L 141, 5.6.2015, p. 73.](#));
- (15) Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC ([OJ L 173, 12.6.2014, p. 1.](#));

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- (16) Decision (EU) 2015/1814 of the European Parliament and of the Council of 6 October 2015 concerning the establishment and operation of a market stability reserve for the Union greenhouse gas emission trading scheme and amending Directive 2003/87/EC (OJ L 264, 9.10.2015, p. 1).
- (17) Regulation (EU) 2018/842 of the European Parliament and of the Council of 30 May 2018 on binding annual greenhouse gas emission reductions by Member States from 2021 to 2030 contributing to climate action to meet commitments under the Paris Agreement and amending Regulation (EU) No 525/2013 (OJ L 156, 19.6.2018, p. 26).’.
- (18) Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).’;
- (19) Commission Delegated Regulation (EU) 2019/856 of 26 February 2019 supplementing Directive 2003/87/EC of the European Parliament and of the Council with regard to the operation of the Innovation Fund (OJ L 140, 28.5.2019, p. 6).’.
- (20) Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193, 30.7.2018, p. 1).’.
- (21) Regulation (EU) No 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency (OJ L 326, 8.12.2011, p. 1).’;
- (22) Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).’.
- (23) Commission Delegated Regulation (EU) 2017/590 of 28 July 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the reporting of transactions to competent authorities. (OJ L 87, 31.3.2017, p. 449).’.

Changes to legislation:

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Changes and effects yet to be applied to :

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