

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 (Text with EEA relevance)

## CHAPTER IX

### **[<sup>F1</sup>APPOINTMENT REQUIREMENTS APPLICABLE TO THE AUCTIONEER AND ANY AUCTION PLATFORM]**

#### *Article 34*

#### **[<sup>F1</sup>Appointment requirements applicable to the auctioneer]**

1 [<sup>F1</sup>When appointing auctioneers, the Member States shall take into account the extent to which candidates:]

a exhibit the least risk of conflict of interest or market abuse having regard to the following:

(i) any activities on the secondary market;

(ii) any internal processes and procedures to mitigate the risk of conflict of interest or market abuse;

[<sup>F1</sup>b are able to fulfil the auctioneer's functions, in a timely manner, in accordance with the highest professional and quality standards.]

2 The auctioneer's appointment shall be subject to the conclusion of the arrangements referred to in Article 22(2) and (3) between the auctioneer and the auction platform concerned.

#### *Article 35*

#### **Appointment requirements applicable to any auction platform**

[<sup>F2</sup>1 Auctions shall only be conducted on an auction platform authorised as a regulated market whose operator organises a secondary market in allowances or allowances derivatives.

[<sup>F3</sup>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<sup>(1)</sup>, 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.]]

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**Changes to legislation:** There are outstanding changes not yet made to Commission Regulation (EU) No 1031/2010. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

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2 Any auction platform appointed under this Regulation for the auctioning of two-day spot or five-days futures shall be allowed, without further legal or administrative requirements by the Member States, to provide appropriate arrangements so as to facilitate access to and participation in auctions by bidders referred to in Article 18(1) and (2).

3 When appointing any auction platform, the Member States shall take into account the extent to which candidates demonstrate fulfilment of all of the following:

- a ensuring respect of the principle of non-discrimination both de facto and de jure;
- [<sup>F1</sup>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 ensuring cost-efficiency and avoiding undue administrative burden;
- d robust auction supervision, notification of suspicions of money laundering, terrorist financing, criminal activity or market abuse, administration of any required remedial measures or sanctions, including the provision of an extra-judicial dispute resolution mechanism;
- e avoiding distortions of competition in the internal market including the carbon market;
- f ensuring the proper functioning of the carbon market including the implementation of the auctions;
- g connecting to one or more clearing system or settlement system;
- h the provision of adequate measures requiring an auction platform to hand over all tangible and intangible assets necessary for the conduct of the auctions by an auction platform's successor.

[<sup>F14</sup> 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.]

Where the candidate regulated market and its market operator are not established in the same Member State, the first and second subparagraphs shall apply to both the Member State where the candidate regulated market is established and the Member State where its market operator is established.

[<sup>F15</sup> 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

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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.

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<sup>(2)</sup>.]

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#### Textual Amendments

- F2** Substituted by Commission Regulation (EU) 2017/1902 of 18 October 2017 amending Commission Regulation (EU) No 1031/2010 to align the auctioning of allowances with Decision (EU) 2015/1814 of the European Parliament and of the Council and to list an auction platform to be appointed by the United Kingdom (Text with EEA relevance).
- F3** Inserted by 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).

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- (1) [<sup>F2</sup>[<sup>F3</sup>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).]]
- (2) [<sup>F1</sup>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).]

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

- Regulation revoked by [2023 c. 28 Sch. 1 Pt. 2](#)
- Regulation revoked by [S.I. 2019/107 reg. 137](#) (This amendment not applied to [legislation.gov.uk](#). S.I. 2019/107 revoked immediately before IP completion day by [S.I. 2020/1369](#), regs. 1(2), 43(a))