



Brussels, 17.10.2023
C(2023) 6751 final

COMMISSION DELEGATED REGULATION (EU) .../...

of 17.10.2023

**supplementing Directive 2003/87/EC of the European Parliament and of the Council by
laying down rules on the timing, administration and other aspects of auctioning of
greenhouse gas emission allowances**

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

Since 2012, several billion allowances of the EU Emission Trading System ('EU ETS') have been auctioned in regular auctions in accordance with Directive 2003/87/EC of the European Parliament and of the Council¹, and Commission Regulation (EU) No 1031/2010², which sets the detailed rules for the auctions of ETS allowances. In 2013, the auctioning of allowances became the default method of allocation.

Regulation (EU) 2021/1119 of the European Parliament and of the Council (European Climate Law)³ sets a target of at least 55 % net emission reductions by 2030 compared to 1990. As a consequence, Directive 2003/87/EC was amended by Directive (EU) 2023/959 of the European Parliament and of the Council⁴ to revise the EU ETS and implement the ambition decided in the 2030 Climate Target Plan and the Fit for 55 agenda.

Regulation (EU) No 1031/2010 needs to be changed to take account of the new rules and elements introduced in Directive 2003/87/EC, including the extension of the scope of the existing EU ETS (ETS 1) to maritime transport and the introduction of a new and separate emissions trading system for buildings, road transport and additional sectors (ETS 2). This Regulation will also address changes necessary for the implementation of the auctions for REPowerEU in accordance with Article 10e of Directive 2003/87/EC and for the Social Climate Fund established by Regulation (EU) 2023/955 of the European Parliament and of the Council⁵, as well as for the functioning of the Innovation Fund, established pursuant to Article 10a(8) of Directive 2003/87/EC. In addition, this Regulation introduces clarifications or fine-tuning of existing provisions, based on the lessons learned from implementation. However, the overall architecture of Regulation (EU) No 1031/2010 will be kept and the auctioning process unchanged, as it is seen as efficient and working well.

The extent of the necessary changes to the current rules requires that a new regulation is adopted. Regulation (EU) No 1031/2010 should therefore be repealed.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

The Commission consulted the members of the Commission Expert Group on Climate Change Policy ('CCEG') on the proposed draft delegated regulation replacing Regulation (EU) No 1031/2010 in March, April, May and July 2023. The documents relevant to the

¹ 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 Community and amending Council Directive 96/61/EC (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 system for greenhouse gas emission allowances trading within the Community (OJ L 302, 18.11.2010, p. 1).

³ Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 ('European Climate Law') (OJ L 243, 9.7.2021, p.1)

⁴ Directive (EU) 2023/959 of the European Parliament and of the Council of 10 May 2023 amending Directive 2003/87/EC establishing a system for greenhouse gas emission allowance trading within the Union and Decision (EU) 2015/1814 concerning the establishment and operation of a market stability reserve for the Union greenhouse gas emission trading system (OJ L 130, 16.5.2023, p. 134).

⁵ Regulation (EU) 2023/955 of the European Parliament and of the Council of 10 May 2023 establishing a Social Climate Fund and amending Regulation (EU) 2021/1060 (OJ L 130, 16.5.2023, p. 1).

meetings were transmitted simultaneously to the European Parliament and the Council, as provided for in the Common Understanding on Delegated Acts annexed to the Interinstitutional Agreement on Better Law Making⁶. The observations expressed by the expert group were taken into account when preparing the draft delegated regulation replacing Regulation (EU) No 1031/2010.

The draft delegated regulation was published on the Better Regulation portal for a four week feedback period from 28 July until 25 August 2023. Contributions were received from eight citizens and one business association. The feedback relevant to topic of the consultation contained similar arguments or information already put forward during the extensive discussions that have taken place within the Expert Group on Climate Change Policy, therefore the Commission maintained the text of the Delegated Regulation.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

The revision of Regulation (EU) No 1031/2010 focuses on adapting the auctioning rules to reflect the changes introduced to Directive 2003/87/EC by Directive (EU) 2023/959 and by Regulation (EU) 2023/435. The main legal elements of the revision are as follows:

- (1) Changes related to the extension of scope of Regulation (EU) No 1031/2010 to cover the auctioning of allowances for maritime transport as part of the existing ETS (ETS 1), including of the eligibility criteria for admission to auctions of shipping companies;

The revised Directive 2003/87/EC has expanded the scope of Annex I activities to include also maritime transport. This Regulation aligns the provisions for establishing the auctioning volumes to reflect this change. In addition, the rules for admission to auctions are updated to include the eligibility of shipping companies.

- (2) Changes related to the extension of scope to cover the auctioning of allowances for a new and separate emissions trading system for buildings, road transport and industrial activities not covered by ETS 1, including of the eligibility criteria for admission to auctions of the ETS 2 regulated entities;

With the new Chapter IVa of Directive 2003/87/EC, a new ETS 2 is established as an upstream separate system from ETS 1. Allowances for buildings, road transport and industrial facilities under the ETS 2 will only be allocated via auctioning. This Regulation introduces the necessary provisions to allow for the establishment and smooth start of auctions under ETS 2, separately from the auctions for the existing ETS. While the general ETS 1 auctioning architecture will apply to ETS 2 as well, some specific provisions are introduced. These include the application of a reserve price at the start of the auctions, specific minimum frequency of auctions, requirement for having a separate bidding window from ETS 1 auctions, and specific rules for determining the auction volumes and auction calendars for ETS 2. In addition, the rules for admission to auctions are updated to include the eligibility of ETS 2 regulated entities.

- (3) Changes related to the provisions for the auctioning of aviation auction volumes;

The revised Directive 2003/87/EC includes a phase-out of free allocation for aviation in 2024 and 2025. The phase-out will be complemented by a corresponding increase in the auctioning volume while, from 2026 onwards, most allowances for aviation will be auctioned. Therefore,

⁶ Interinstitutional Agreement Between the European Parliament, the Council of the European Union and the European Commission of 13 April 2016 on Better Law-Making (OJ L 123, 12.5.2016, p.1).

this Regulation aligns the provisions for establishing the auctioning volumes for aviation to reflect this change. In addition, taking into account the updated definitions of general and aviation allowances in the Commission Delegated Regulation (EU) 2019/1122⁷ (Registry Regulation) merging aviation allowances into general allowances as of 1 January 2025, provisions are added to allow the joint auctioning of all allowances for the ETS 1.

- (4) Changes related to the provisions for the auctioning of allowances for the Innovation Fund, as well as the introduction of new provisions for the auctioning of allowances for the Recovery and Resilience Facility in the context of RePowerEU and for the Social Climate Fund;

The revised Directive 2003/87/EC has increased the scope, ambition and changed the funding sources and timing of the Innovation Fund and calls for frontloading the Innovation Fund allowances in the first years to ensure an adequate amount of resources is available to foster innovation and support the decarbonisation efforts in specific sectors. Therefore, a new provision is added (Article 10(5)) on the establishment annually of the volume to be auctioned for the Innovation Fund.

The revised Directive 2003/87/EC provides that a number of allowances are to be auctioned for the Recovery and Resilience Facility and for the Social Climate Fund until the relevant target revenue established in Directive 2003/87/EC is reached. This Regulation introduces specific provisions necessary to operationalise the auctioning of allowances for these two instruments, including on the establishment and review of the auction volumes. In addition, as regards the Social Climate Fund, this includes the provisions to enable the Commission to serve as auctioneer for the allowances to be auctioned for the Social Climate Fund.

- (5) Changes related to the improvements regarding market oversight and transparency, in view of the recommendations included in the ESMA Carbon Market report of March 2022⁸ and the Commission statements attached to the revised Directive 2003/87/EC⁹;

During the negotiations for the revision of Directive 2003/87/EC, the Commission committed to enhance the transparency and integrity of the European carbon market by measures that need to be reflected in the Auctioning Regulation. In particular, this Regulation includes the European Security and Markets Authority (ESMA) as a recipient, alongside the national supervisory authorities, of information on the primary market transactions. This will ensure that the monitoring of the carbon market by ESMA is as complete as possible.

- (6) Changes related to the rules regarding the notification of the voluntary cancellation of allowances by Member States under Article 12(4) of Directive 2003/87/EC;

The revised Article 12(4) of Directive 2003/87/EC provides that Member States are “strongly encouraged” to cancel allowances in the event of certain closures, accompanied by a recital which states that the Commission should assess whether the use by Member States of cancellation can be facilitated by amending the relevant delegated act, represented by this

⁷ Commission Delegated Regulation (EU) 2019/1122 of 12 March 2019 supplementing Directive 2003/87/EC of the European Parliament and of the Council as regards the functioning of the Union Registry (OJ L 177, 2.7.2019, p. 3).

⁸ ESMA published its Final Report on the EU Carbon Market ([link](#))

⁹ Commission statements on the occasion of the adoption of Directive (EU) 2023/9591 of the European Parliament and of the Council amending Directive 2003/87/EC establishing a system for greenhouse gas emission allowance trading within the Union and Decision (EU) 2015/1814 concerning the establishment and operation of a market stability reserve for the Union greenhouse gas emission trading system ([link](#))

Regulation. Article 25 and Annex II of this Regulation are amended in order to provide additional flexibility to Member States to determine the exact volume of allowances to be cancelled, while ensuring the predictability and transparency to market participants of the total volume of allowances to be auctioned.

(7) Lessons learned from the implementation of EU ETS auctions;

Substantial experience has been accumulated in the last 10 years, during which more than 2 500 EU ETS auctions were carried out. As a consequence, several elements have been identified where the auction process can be further improved and simplified. They include clarifications of certain definitions and update of references to the Union Registry established under Article 19 of Directive 2003/87/EC, the review of the volumes to be auctioned during August, the removal of outdated auction products, the simplification of administrative requirements for admission to auctions, and update of the information concerning the nominated opt-out platforms listed in Annex III. In addition, a number of other minor changes are introduced, in particular in order to update certain definitions, delete outdated rules and clarify or simplify the legal text.

COMMISSION DELEGATED REGULATION (EU) .../...

of 17.10.2023

supplementing Directive 2003/87/EC of the European Parliament and of the Council by laying down rules on the timing, administration and other aspects of auctioning of greenhouse gas emission allowances

(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/EC¹⁰, and in particular Article 3d(3) and Article 10(4) thereof,

Whereas:

- (1) Directive 2003/87/EC establishing a system for greenhouse gas emission allowance trading within the union (EU ETS) was revised and amended by Directive (EU) 2023/959 of the European Parliament and of the Council¹¹ to align it with Regulation (EU) 2021/1119 of the European Parliament and of the Council¹² setting a target of at least 55 % net emission reductions by 2030 compared to 1990.
- (2) Since 2012, emission allowances have been auctioned in accordance with Commission Regulation (EU) No 1031/2010¹³ providing for rules on the timing, administration and other aspects of the auctioning of allowances under Directive 2003/87/EC, ensuring that the auctioning of allowances is conducted in an open, transparent, harmonised and non-discriminatory manner through a well-functioning process.
- (3) Regulation (EU) No 1031/2010 needs to be changed to take account of the new rules and elements introduced in Directive 2003/87/EC, including the extension of the scope of the existing emission trading system to maritime transport and the introduction of a new and separate emissions trading system for buildings, road transport and industrial

¹⁰ OJ L 275, 25.10.2003, p. 32.

¹¹ Directive (EU) 2023/959 of the European Parliament and of the Council of 10 May 2023 amending Directive 2003/87/EC establishing a system for greenhouse gas emission allowance trading within the Union and Decision (EU) 2015/1814 concerning the establishment and operation of a market stability reserve for the Union greenhouse gas emission trading system (OJ L 130, 16.5.2023, p. 134).

¹² Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 ('European Climate Law') (OJ L 243, 9.7.2021, p.1)

¹³ 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 Community (OJ L 302, 18.11.2010, p. 1).

activities not covered by the existing emission trading system. It is also necessary to address changes in the auctioning of allowances for the Recovery and Resilience Facility¹⁴ and the Social Climate Fund¹⁵ introduced by Article 10e, Article 10a(8b) and Article 30d(3) and 30d(4) of Directive 2003/87/EC, as well as changes in the functioning of the Innovation Fund pursuant to Article 10a(8) of that Directive. In addition, it is appropriate to clarify and fine-tune existing provisions in Regulation (EU) No 1031/2010, based on the lessons learned from its implementation.

- (4) The extent of the necessary changes to the current rules requires that a new regulation is adopted. Regulation (EU) No 1031/2010 should therefore be repealed.
- (5) Article 10(4) of Directive 2003/87/EC lays down the principles for the auctioning of allowances. The auctioning should be predictable, in particular as regards the timing and sequencing of auctions and the estimated volumes of allowances to be made available. According to that Article, it is to be ensured that auctions are designed to ensure that small and medium-sized enterprises covered by the emissions trading system have full, fair and equitable access, that small emitters are granted access, that participants have access to information at the same time, that participants do not undermine the operation of the auctions, and that the organisation of and participation in the auctions is cost-efficient avoiding undue administrative costs.
- (6) This Regulation should apply to the auctioning of all allowances covered by Directive 2003/87/EC.
- (7) Article 10(1) of Directive 2003/87/EC requires Member States to auction allowances to stationary installations covered by Chapter III of that Directive not allocated free of charge. Thus, Member States must auction allowances not allocated free of charge. They may not use any other means of allocation, nor could they withhold or cancel allowances not allocated for free instead of auctioning them.
- (8) From 2024, emissions from maritime transport will be included in the EU ETS. Directive 2003/87/EC provides that the rules on auctioning of allowances are to apply to maritime transport activities in the same manner as they apply to other activities covered by the EU ETS.
- (9) The method for establishing the total quantity of allowances to be allocated for aviation, and the method for establishing the share of those allowances to be auctioned have been changed with a gradual phase out of free allocation for the aviation sector by 2026. Therefore, it is necessary to revise the specific rules to determine the volume to be auctioned each calendar year in respect to aviation in accordance with Directive 2003/87/EC.
- (10) In Commission Delegated Regulation (EU) 2019/1122¹⁶, the definition of general allowances has been amended to include all allowances issued after 1 January 2025 pursuant to Chapter III of Directive 2003/87/EC, all allowances created for maritime transport activities pursuant to Article 3ga of that Directive and all allowances created for aviation activities pursuant to Article 3c and Article 3d of that Directive. It is

¹⁴ Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021 establishing the Recovery and Resilience Facility (OJ L 57, 18.2.2021, p. 17).

¹⁵ Regulation (EU) 2023/955 of the European Parliament and of the Council of 10 May 2023 establishing a Social Climate Fund and amending Regulation (EU) 2021/1060 (OJ L 130, 16.5.2023, p. 1).

¹⁶ Commission Delegated Regulation (EU) 2019/1122 of 12 March 2019 supplementing Directive 2003/87/EC of the European Parliament and of the Council as regards the functioning of the Union Registry (OJ L 177, 2.7.2019, p. 3).

therefore necessary to ensure that those allowances are jointly auctioned in the same bidding windows from 1 January 2025.

- (11) From 2027, Directive 2003/87/EC provides for a separate emissions trading system for fuels used in buildings, road transport and additional sectors which correspond to industrial activities not covered by Annex I of Directive 2003/87/EC, such as the heating of industrial facilities. Specific rules need to be established for the auctioning of those allowances, in particular to ensure a smooth start of operations of the separate emission trading system.
- (12) For reasons of simplicity and accessibility, allowances should be auctioned by way of a standardised electronic contract, made available for delivery within two trading days. Such short-term delivery deadlines limit any potential negative impact on competition between the auction platforms and trading places in the secondary market for allowances. Moreover, short-term delivery deadlines are simpler and encourage wide participation, thereby mitigating the risk of market abuse. They also ensure better accessibility for small and medium-sized enterprises covered by the system and for small emitters.
- (13) To ensure fairness and cost-efficiency and to address the need to mitigate the risk of market abuse, auctions should be carried out by means of a single-round, sealed-bid and uniform-price format. Moreover, tied bids should be resolved by means of a random process, as this generates uncertainty for bidders who could potentially collude on the price.
- (14) In view of legal certainty and transparency, this Regulation should contain detailed provisions on other aspects of auctioning such as lot size, the possibility to withdraw or modify submitted bids, the currency used for bidding and for payment, the submission and processing of applications for admission to bid, as well as any refusal, revocation or suspension of admission.
- (15) The auction clearing price can be expected to be closely aligned to the prevailing secondary market price. Where an auction clearing price is significantly under the prevailing secondary market price, it is likely to indicate a deficiency of the auction. Allowing such an auction clearing price to prevail could distort the carbon price signal and disturb the carbon market and it would not ensure that bidders pay fair value for the allowances. Therefore, it is necessary to determine a reserve price on the basis of the prevailing secondary market price during the bidding window. Where the reserve price is not cleared, the auction should be cancelled. However, providing for cancellation of auctions should not be applicable for the start of an auctioning system when a sufficiently liquid secondary market is not yet established, which is the case for the new emissions trading system for fuels used in buildings, road transport and additional sectors. Therefore, it is necessary to derogate from the requirement to determine a reserve price for the initial period of auctions of allowances covered by Chapter IVa of Directive 2003/87/EC until a sufficiently liquid relevant secondary market is established.
- (16) In order to safeguard the integrity of the auctions, an auction platform should be able to cancel an auction when that auction may be disrupted. To avoid the accumulation of volumes in case several auctions are cancelled, it should be possible to distribute the cancelled volumes evenly over subsequent auctions that do not already include cancelled volumes from previously cancelled auctions.

- (17) A relatively high frequency of auctions is desirable in order to limit their impact on the functioning of the secondary market, whilst ensuring that auctions are large enough to attract sufficient participation. Such high frequency reduces the risk of market abuse, as it decreases the value at stake for bidders in individual auctions and increases their flexibility to make use of later auctions to adjust their trading positions. For those reasons, the frequency should be at least weekly. Given the much smaller volume of allowances in respect of aviation, the appropriate frequency for auctions for such allowances should be at least once every two months. However, to ensure a smooth start of the auctions of allowances covered by Chapter IVa of Directive 2003/87/EC, it is necessary to allow for less frequent auctions at the start of the system. If this flexibility is used, it will result in a higher volume of allowances for each auction, which might be necessary to meet the initial demand for allowances on the spot market before a sufficiently liquid secondary market is established.
- (18) As a rule, the volume to be auctioned in each calendar year should be equal to the volume of allowances attributed to that year. The auction volume is to be established each year in accordance with the relevant provisions of Directive 2003/87/EC.
- (19) The allowances for the aviation sector, the maritime sector and the sector of stationary installations should be auctioned together from 1 January 2025. In 2024, the allowances for the maritime sector and for stationary installations are to be auctioned together. As the new emission trading system for buildings, road transport and additional sectors is established as a separate system, its allowances are to be auctioned separately from the allowances for the aviation sector, the maritime sector and the sector of stationary installations.
- (20) To provide predictability to the carbon market, it is necessary to establish clear rules and procedures for determining, well before the beginning of each calendar year, a detailed auction calendar, with all relevant information for each individual auction. Any subsequent changes to the auction calendar should only be possible in certain situations. Any adjustments should be made in a manner which affects the predictability of the carbon market the least and the revised calendars should be published, when possible, well in advance of the date when the revision takes effect.
- (21) Open access is required to encourage participation and, thereby, ensure a competitive auction outcome. Equally, confidence in the integrity of the auction process, in particular vis-à-vis participants seeking to distort the auctions by using them as a vehicle for money laundering, terrorist financing, criminal activity or market abuse is a pre-requisite for ensuring auction participation and a competitive auction outcome. To ensure the integrity of the auctions, access to the auctions should be subject to minimum requirements with regard to adequate know-your-customer and eligibility checks. To ensure the cost-effectiveness of such checks, eligibility to apply for admission to the auctions should be given to easily identifiable, well-defined categories of participants, notably operators of stationary installations, aircraft operators, shipping companies and regulated entities covered by the emissions trading system, as well as regulated financial entities such as investment firms and credit institutions. Business groupings of such operators and regulated entities should also be eligible to apply for admission to bid in the auctions.
- (22) Participants should be able to choose whether to access the auctions directly via the internet or dedicated connections, or through authorised and supervised financial intermediaries. For that purpose, they should be able to choose other persons authorised by the Member States to bid on their own account or on behalf of clients of

their main business, where their main business is not the provision of investment or banking services, subject to such other persons complying with investor protection measures and customer due diligence measures equivalent to those applicable to investment firms.

- (23) In order to ensure equal and transparent access to the auctions, it should not be possible to make admission to the auctions dependent on becoming a member of or a participant in the secondary market organised by the auction platform or any other trading place operated by the auction platform or by any third party. However, participants in the secondary market organised by an auction platform that are otherwise deemed eligible should be admitted to auctions without further admission requirements. An auction platform should refuse or revoke access to auctions in certain well-defined circumstances that may affect the integrity of the auctioning system.
- (24) Each Member State should appoint an auctioneer, who is to be responsible for the auctioning of allowances on behalf of the appointing Member State. It should be possible for the same auctioneer to be appointed by more than one Member State. The auctioneer should be responsible for auctioning the allowances on the auction platform and for receiving and disbursing the auction proceeds. It is important that agreements between the Member States and their auctioneers are compatible with the agreements between the auctioneer and the auction platform, and in case of any conflict the agreements between the auctioneer and the auction platform should prevail.
- (25) It is essential to ensure the integrity of the auctioneers. Therefore, when appointing the auctioneer, Member States should consider with priority candidates with the least risk of conflict of interest or market abuse having regard in particular to their activities on the secondary market, if any, and their internal processes and procedures to mitigate the risk of conflict of interest or market abuse, without affecting their ability to fulfil their tasks, in a timely manner, in accordance with the highest professional and quality standards. In order to comply with the rules against market abuse, Member States should be expressly prohibited from sharing any inside information regarding the auctions with their auctioneer. Contravention of that prohibition should be subject to effective, proportionate and dissuasive sanctions.
- (26) Directive 2003/87/EC provides for the auctioning of allowances for the Innovation Fund to support innovation in low-carbon technologies, for the Modernisation Fund to improve energy efficiency and to modernise the energy systems of certain Member States, and for the Recovery and Resilience Facility to foster independence, security and sustainability of the Union's energy supply. Those allowances should be auctioned on the auction platform appointed by the Commission and the Member States participating in the joint action to appoint that platform ('common auction platform') in accordance with the principles and modalities of the auctioning process. To this end, the European Investment Bank (EIB) should be the auctioneer for those 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 participating in the joint action to procure the common auction platform.
- (27) For the volume of allowances to be auctioned for the Innovation Fund and for the Recovery and Resilience Facility, it is necessary to take into account the objectives set by Directive 2003/87/EC for the respective funds, the resources available and the revenue already raised. In order to ensure transparency and predictability for market

participants, a minimum annual volume to be auctioned for the Innovation Fund before any transfer to the Recovery and Resilience Facility should be established. Since Directive 2003/87/EC establishes for the Recovery and Resilience Facility overall auction revenue targets, initial annual volumes to be auctioned for that facility should also be established. It is also necessary to establish a procedure for revising the auction volumes in case the auction revenues are considered insufficient to meet the revenue target set in Directive 2003/87/EC. In case the auction volumes are not sufficient, it should be possible to adjust the auction calendars to schedule additional volumes to be auctioned for the Recovery and Resilience Facility. If the targeted auction revenue is accumulated earlier, the auctioning of allowances for the Recovery and Resilience Facility should be suspended in accordance with the relevant provisions of Commission Delegated Regulation (EU) 2019/1122, and the auction calendar should be revised in due course.

- (28) A Social Climate Fund established by Regulation (EU) 2023/955 of the European Parliament and of the Council¹⁷ will provide dedicated funding to Member States to support the most affected vulnerable groups, especially households in energy or transport poverty affected by the inclusion of the emission from the fuels used in the buildings and road transport sector in Directive 2003/87/EC. The Social Climate Fund will be funded from the auctioning of allowances from the existing EU ETS and of allowances from the new emissions trading for the buildings, road transport and additional sectors.
- (29) To ensure transparency and predictability for market participants, initial annual volumes to be auctioned for the Social Climate Fund in 2027 should be established. Initial annual auction volumes should not be established for the period 2028-2032 in view of the commitment taken to incorporate the Social Climate Fund in the Union budget from the post-2027 Multi-annual Financial Framework. For reasons of efficiency, the Commission should serve as auctioneer for the allowances to be auctioned for the Social Climate Fund. To ensure that sufficient revenue is raised from the auctioning of allowances to meet the annual amount to be allocated to the Social Climate Fund, the annual volumes of allowances under Article 30d(3) and 30d(4) of Directive 2003/87/EC to be auctioned for the Social Climate Fund should be distributed between January and August of each year. Since Directive 2003/87/EC determines auction revenues targets for the Social Climate Fund, it is necessary to establish a procedure for revising the auction volumes where the targeted auction revenues are reached before the set period or where they are insufficient. The auction calendar should be revised to include additional allowances to be auctioned between September to December in the case of a shortfall of revenue. If the targeted auction revenue is accumulated earlier, the auctioning of allowances for the Social Climate Fund should be suspended in accordance with Commission Delegated Regulation (EU) 2019/1122 and the auction calendar should be revised.
- (30) Article 12(4) of Directive 2003/87/EC provides the possibility for, and strongly encourages Member States to cancel allowances from their auction volumes in the event of closure of electricity generation capacity in their territory, for which a notification procedure is to be established by this Regulation. 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

¹⁷ Regulation (EU) 2023/955 of the European Parliament and of the Council of 10 May 2023 establishing a Social Climate Fund and amending Regulation (EU) 2021/1060 (OJ L 130, 16.5.2023, p. 1).

maximum volume to be cancelled and the timing of the cancellation, as well as a methodology for determining the exact volumes to be cancelled annually. This should be communicated annually no later than 31 May of the second year after the notification of the intent to cancel the allowances. To preserve the functioning of the market stability reserve established by Decision (EU) 2015/1814 of the European Parliament and of the Council¹⁸, the volume of the cancellation should be deducted from the auction volumes of the Member State only after the adjustments for the market stability reserve have been made for the respective year. If the volume to be cancelled does not exceed 5 million allowances, the volume of the cancellation should be deducted from the allowances to be auctioned by the relevant Member State between September and December of that year. If the volume to be auctioned exceeds 5 million allowances, the volume of the cancellation should be deducted over a period of 12 months starting from September to minimise the impact of that cancellation on the market. To ensure transparency, the Commission should publish the information provided by the Member States in accordance with the template, except where that information is protected for reasons of confidentiality.

- (31) A common auctioning infrastructure where a common auction platform conducts the auctions based on harmonised rules for the auctioning of the different type of emission allowances best achieves the overarching objectives of Directive 2003/87/EC. Such an approach is the most cost-effective means of auctioning allowances without an undue administrative burden that would necessarily ensue from using multiple auctioning infrastructures. It best provides for open, transparent and non-discriminatory access to the auctions, both de jure and de facto. Such a common approach would ensure the predictability of the auction calendar and best strengthens the clarity of the carbon price signal. A common auctioning infrastructure is particularly important for providing equitable access to small and medium-sized enterprises covered by the emissions trading system and to small emitters. A common auction platform facilitates the widest participation from across the Union and, thereby, best mitigates the risk of participants undermining the auctions by using them as a vehicle for money laundering, terrorist financing, criminal activity or market abuse.
- (32) The conduct of the auctions, the establishment and management of the auction calendar and various other tasks relating to the auctions, such as maintaining an up-to-date website accessible throughout the Union, require joint action by the Member States and the Commission. The need for such joint action is derived from the Union-wide ambit of the emissions trading systems, the overarching policy objectives of Directive 2003/87/EC, and the fact that the Commission is directly responsible under that Directive for the detailed implementation of a number of features of the emissions trading system. Therefore, the competitive procurement process for the appointment of the common auction platform should be carried out through a joint procurement by the Commission and the Member States, within the meaning of Article 165(2) of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council¹⁹.

¹⁸ 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 system and amending Directive 2003/87/EC (OJ L 264 9.10.2015, p. 1)

¹⁹ 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)

- (33) The specific procedures to be followed for the procurement of the common auction platform should be specified in an agreement between the Commission and Member States, in which the practical modalities for the evaluation of the requests for participation, for the tenders and for the award of the contract, as well as the law applicable to the contract and the competent court for hearing disputes, should be set out as required by Article 165(2) of Regulation (EU, Euratom) 2018/1046.
- (34) To mitigate any risk of reduced competition in the carbon market, it should be possible for Member States to opt-out of the common auction platform by appointing their own auction platforms ('opt-out auction platforms'). Appointed opt-out platforms should be listed by the Commission in Annex III to this Regulation. Such listing should be based on a notification of the opt-out platform by the appointing Member State to the Commission and an assessment by the Commission.
- (35) Competition between different potential auction platforms should be ensured by the competitive procurement process for the appointment of the auction platform where required by either Union or national procurement law. The auction platform should be connected to at least one clearing system or settlement system. Opt-out auction platforms should be appointed for a limited period of maximum 3 years, renewable for another 2 years during which the arrangements governing all auction platforms should be reviewed. Providing for a period of 3 years for the opt-out auction platform is designed to ensure a minimum term of appointment for the opt-out platform whilst allowing the appointing Member State to join the common platform if it chooses to do so after the 3 year period has elapsed, without prejudice to the ability of the appointing Member State to renew the appointment of the opt-out platform for a further 2 years pending the outcome of the review by the Commission. Upon expiry of each appointment period, there should be a new competitive procurement process where a procurement process is required by either Union or national procurement law.
- (36) To simplify the reappointment of opt-out platforms, listing under this Regulation should only be required for new entities or for re-listing of an entity under changed conditions. Thus, in case the same opt-out platform is appointed by a Member State under the same conditions, its listing should be prolonged under the same terms and conditions as the initial listing. That prolongation 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.
- (37) Subject to any applicable Union or national public procurement rules, including those concerning the avoidance of conflicts of interest and maintaining confidentiality, it should be possible to grant Member States not participating in the joint action to procure the common auction platform observer status in whole or in part in the joint procurement process upon terms and conditions agreed between the Member States participating in the joint action and the Commission in the joint procurement agreement. Such access will facilitate convergence between the opt-out auction platforms and the common auction platform with respect to aspects of the auction process that are not fully harmonised.
- (38) In view of ensuring a smooth start of auctions for the new emissions trading system for buildings, road transport and additional sectors, established under Chapter IVa of Directive 2003/87/EC, and facilitating the coordination and integration with the

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)

auction platforms for the existing EU ETS, the possibility to opt-out from the common auction platform should not apply for the auctioning of such allowances for buildings, road transport and additional sectors.

- (39) In view of the possibility of having multiple opt-out auction platforms appointed by different Member States, as well as a common auction platform, it is necessary to establish in detail the tasks of and the services to be provided by the auction platforms, such as providing access to and conducting auctions, managing auction calendars, publishing and notifying the auction results, as well as providing to the Commission and the competent authorities any information necessary for safeguarding the integrity of the auctioning system and the carbon market. In order to ensure smooth transition between incumbent and newly appointed auction platforms, all auction platforms should also determine an exit strategy.
- (40) In order to make use of the organisational infrastructure available on the secondary market for the administration of the auctions, it is necessary to require that an auction platform is a regulated market. In particular, regulated markets are bound under Directive 2014/65/EU of the European Parliament and of the Council²⁰ and under Regulation (EU) No 596/2014 of the European Parliament and of the Council²¹ on market abuse, to provide a number of safeguards in the conduct of their operations. The requirement that the auction platform is a regulated market has various advantages. It allows relying on the organisational infrastructure, experience, capabilities, and transparent mandatory operational rules of the market. This is relevant, inter alia, with regard to the clearing or settlement of transactions, as well as monitoring compliance with the market's own rules and with other legal obligations such as the prohibition of market abuse and the provision of extra-judicial dispute settlement mechanisms. This is cost-effective and helps safeguard the operational integrity of the auctions. The conflict-of-interest rules of regulated markets laid down in Regulation (EU) No 596/2014 require the auctioneer to be independent of the auction platform, its owners or its market operator so as not to undermine the sound functioning of the regulated market. Moreover, many potential participants in the auctions will already be either members of, or participants in, the various regulated markets active on the secondary market.
- (41) Since 2018, allowances are classified as financial instruments by Directive 2014/65/EU. Previously, only derivatives of allowances were as financial instruments. That classification brings the secondary market spot trade in allowances within the scope of, inter alia, Directive 2014/65/EU, Regulation (EU) No 596/2014 and Regulation (EU) No 600/2014 of the European Parliament and of the Council²². However, the process of auctioning of allowances (primary market) is only covered by Regulation (EU) No 596/2014.

²⁰ 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)

²¹ 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).

²² 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).

- (42) In order to further enhance the integrity and transparency of the European carbon market and to improve regulatory reporting and market monitoring in the market of emission allowances and derivatives thereof, to promote the prevention and detection of market abuse and help in maintaining orderly markets for emission allowances and related derivatives, it is necessary to establish an obligation for the auction platform to report the complete and accurate details of every auctioning transaction to their competent national authority designated under Directive 2014/65/EU and also to the European Securities and Markets Authority (ESMA). Such reporting will enhance the efficient monitoring of auctions in emission allowances and relevant linkages with the secondary market.
- (43) Directive 2003/87/EC requires Member States to determine the use of revenues generated from the auctioning of allowances. For the avoidance of doubt, it should be required to transfer the auction proceeds directly to the auctioneer or other entity appointed by each Member State for this purpose.
- (44) To ensure reliability and integrity of the auctioning process, allowances should be delivered to successful bidders against payment of the entire sum due to the auctioneer. Where successful bidders fail to pay the due sums in their entirety within the set deadline, sanctions for such failure should be set out in order to remedy and deter default of payment.
- (45) In order to ensure a successful and reliable auction process, allowances to be auctioned should be transferred prior to the opening of a bidding window. The transfer of the allowances should be done by the Union Registry into a nominated account therein and held in escrow by the clearing system or settlement system acting as custodian. The allowances should be held in escrow until delivery of the allowances to successful bidders pursuant to the results of the auction. The next step in the process should also be set out, namely the delivery by the clearing system or settlement system of the allowances auctioned by one or more Member States to the successful bidders.
- (46) Given that the auctioning of allowances consists of their primary issuance into the secondary market instead of their direct allocation to operators and aircraft operators free of charge, the clearing systems or settlement systems should not be bound by any obligations of performance with regard to the delivery of allowances to successful bidders or their successors in title in the event of any failure in delivery that is outside their control. Thus, the successful bidders or their successors in title should, in the event of any such failure to deliver auctioned allowances, be required to accept deferred delivery.
- (47) Since the Member States are only required to deliver the allowances, they should not be required to deposit collateral other than the allowances themselves when auctioning. Thus, Member States should, when auctioning two-day spot contracts, only be subject to an obligation to pre-deposit the allowances to be auctioned into an escrow account held in the Union registry by the clearing system or settlement system acting as custodian.
- (48) However, it is necessary for an auction platform, including any clearing system or settlement system connected to it, to implement adequate collateral processes and any other risk management processes necessary to ensure that auctioneers receive full payment for the allowances auctioned at the auction clearing price regardless of any payment default by a successful bidder or its successor in title.

- (49) To ensure transparency and level playing field between auctioning and secondary market, it is appropriate for the structure and level of fees applied by auction platforms and the clearing system or settlement system connected to them to be no less favourable than comparable fees and conditions applied to transactions on the secondary market. In the interests of transparency, all fees and conditions should be comprehensible, detailed and publicly available. As a general rule, the costs of the auction process should be covered by the fees paid by the bidders as set out in the contract appointing the auction platform. However, it is important for the procurement of a cost-effective common auction platform for Member States to participate in the joint action from the outset. For this reason, it is appropriate that Member States participating in the joint action at a later stage can be required to bear their own costs and for the amounts of those costs to be deducted from the costs otherwise borne by bidders. Such provisions should, however, not disadvantage Member States wishing to participate in the joint action following the expiry of the appointment of an opt-out platform. Neither should Member States be disadvantaged when they temporarily participate in the joint action due to the absence of listing of a notified opt-out platform. The auctioneer should pay only for access to the auction platform, if anything. The costs of the clearing and settlement system, if any, should be borne by the bidders.
- (50) To ensure a competitive procurement process for auction platforms, it should be possible to increase the maximum level of fees to be paid by the successful bidders in a limited manner where this is provided for by the procurement documents and only during the years where the annual auction volumes are reduced by more than 200 million allowances due to the operation of the market stability reserve.
- (51) Due to their status of regulated market, the auction platforms should monitor the behaviour of bidders and notify the competent national authorities in the event of market abuse, money laundering and terrorist financing, in line with the reporting obligations laid down in Regulation (EU) No 596/2014 and Directive (EU) 2015/849 of the European Parliament and of the Council²³.
- (52) In order to ensure a fair and competitive auctioning process, an auction platform should be provided with the option to impose a maximum limit on what a single bidder can bid for, expressed as a share of the total volume of allowances to be auctioned in individual auctions or over a given calendar year. Activation of this option should be subject to obtaining the Commission's prior opinion thereon. Before giving its opinion, the Commission should consult the Member States on the proposal made by the auction platform. The Commission's own assessment of whether the market for emissions allowances is sufficiently protected from market abuse should be expressed in its opinion.
- (53) To ensure flexibility and integrity of the auctions, it is also appropriate that persons authorised by Member States to bid on behalf of clients of their main business abide by the rules provided for in this Regulation to ensure that their clients are adequately protected.

²³ 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).

- (54) In view of legal certainty and transparency, detailed provisions should be laid down on other aspects of auctioning such as publication, announcement and notification of the auction results, protection of confidential information, correction of errors in any payment or allowance transfer made and any collateral given or released, and the right to appeal the decisions of the auction platform.
- (55) It is necessary to provide for the language regime applicable to any auction platform, in a way that ensures transparency and balances the objective of non-discriminatory access to the auctions with the need for cost-efficiency. Documentation not published in the *Official Journal of the European Union* should be published in a language customary in the sphere of international finance, namely English.
- (56) Member States should have the possibility to provide, at their own cost, for the translation of all documentation into their national official language or languages. Where a Member State chooses to do so, opt-out platforms should also translate all documentation into that language or those languages, at the cost of the Member State that has appointed the opt-out platform concerned. As a corollary, an auction platform should be able to handle all oral and written communications from applicants for admission to bid, persons admitted to bid or bidders bidding in an auction, in any language where a Member State has provided for a translation to that language at its own cost, if the auction platform is requested to do so by such persons. In such case, the auction platforms should not be allowed to charge such persons for the additional cost of the translation. Instead, that cost should be borne equally by all bidders on the auction platform concerned to ensure equal access to the auctions throughout the Union.
- (57) In order to ensure predictable and timely auctions, this Regulation should enter into force as a matter of urgency on the day following that of its publication in the Official Journal of the European Union.

HAS ADOPTED THIS REGULATION:

CHAPTER I

GENERAL PROVISIONS

Article 1

Subject Matter

This Regulation provides for rules on the timing, administration and other aspects of the auctioning of allowances under Directive 2003/87/EC.

Article 2

Scope

This Regulation shall apply to the allocation through auctions of allowances under Directive 2003/87/EC.

Article 3

Definitions

For the purposes of this Regulation, the following definitions shall apply:

- (1) ‘two-day spot contracts’ means contracts by which allowances are auctioned for delivery at an agreed date no later than the second trading day following the day of the auction;
- (2) ‘bid’ means an offer in an auction to acquire a given volume of allowances at a specified price;
- (3) ‘bidding window’ means the time period during which bids may be submitted;
- (4) ‘trading day’ means any day during which an auction platform and the clearing system or settlement system connected to it are open for trading;
- (5) ‘investment firm’ means investment firm as defined in Article 4(1), point (1), of Directive 2014/65/EU of the European Parliament and of the Council²⁴;
- (6) ‘credit institution’ means credit institution as defined in Article 4(1), point (1), of Regulation (EU) No 575/2013 of the European Parliament and of the Council²⁵;
- (7) ‘financial instrument’ means financial instrument as defined in Article 4(1), point (15), of Directive 2014/65/EU;
- (8) ‘secondary market’ means the market in which persons buy or sell allowances either before or after they are allocated either free of charge or through auctioning;
- (9) ‘parent undertaking’ means parent undertaking as defined in Article 2, point (9), of Directive 2013/34/EU of the European Parliament and of the Council²⁶;
- (10) ‘subsidiary undertaking’ means subsidiary undertaking as defined in Article 2, point (10), of Directive 2013/34/EU;
- (11) ‘affiliate undertaking’ means affiliate undertaking as defined in Article 2, point (12), of Directive 2013/34/EU;
- (12) ‘control’ means control as referred to in Article 3(2) and (3) of Council Regulation No 139/2004²⁷;
- (13) ‘auction process’ means the process encompassing the setting of the auction calendar, the procedures for admission to bid, the procedures for submission of bids, the conduct of the auction, the calculation and announcement of the auction results, the arrangements for payment of the price due and transfer of auction proceeds, delivery of the allowances and management of the collateral needed to cover any

²⁴ 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).

²⁵ 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).

²⁶ 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).

²⁷ Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation) (OJ L 24, 29.1.2004, p. 1).

transaction risks, as well as the surveillance and monitoring of the proper conduct of the auctions by an auction platform;

- (14) ‘money laundering’ means money laundering as defined in Article 1(3), (4) and (6) of Directive (EU) 2015/849 of the European Parliament and of the Council²⁸;
- (15) ‘terrorist financing’ means terrorist financing as defined in Article 1(5) and (6) of Directive (EU) 2015/849;
- (16) ‘criminal activity’ means criminal activity as defined in Article 3, point (4), of Directive (EU) 2015/849;
- (17) ‘auction platform’ means any public or private entity appointed to carry out the tasks referred to in Articles 27, 28, 30 and 31;
- (18) ‘common auction platform’ means the auction platform appointed following a joint procurement procedure between the Commission and the Member States, as contracting authorities, pursuant to Article 26(1)
- (19) ‘opt-out auction platform’ means the auction platform appointed by a Member State not participating in the joint action as provided in Article 26(1), as its own auction platform, pursuant to Article 29(1)
- (20) ‘auctioneer’ means any public or private entity appointed to carry out the tasks referred to in Article 23;
- (21) ‘nominated Union Registry account’ means an account in the Union Registry established by Commission Delegated Regulation (EU) 2019/1122;
- (22) ‘nominated bank account’ means a bank account designated by an auctioneer, a bidder or bidder’s successor in title for the receipt of payments due under this Regulation;
- (23) ‘customer due diligence measures’ means the customer due diligence measures as referred to in Article 13 of Directive (EU) 2015/849 and the enhanced customer due diligence measures as set out in Articles 18, 18a and 20 of that Directive;
- (24) ‘beneficial owner’ means beneficial owner as defined in Article 3, point (6), of Directive (EU) 2015/849;
- (25) ‘duly certified copy’ means an authentic copy of an original document that is certified as being a true copy of the original by a qualified lawyer, accountant, notary public or similar professional who is recognised under the national law of the Member State concerned to attest officially as to whether a copy is in fact a true copy of its original;
- (26) ‘politically exposed person’ means politically exposed person as defined in Article 3, point (9), of Directive (EU) 2015/849;
- (27) ‘market abuse’ means market abuse as defined in Article 1 of Regulation (EU) No 596/2014 of the European Parliament and of the Council²⁹;

²⁸ 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).

- (28) ‘inside information’ means inside information as defined in Article 7 of Regulation (EU) No 596/2014;
- (29) ‘insider dealing’ means insider dealing as defined in Article 8 of Regulation (EU) No 596/2014;
- (30) ‘unlawful disclosure of inside information’ means unlawful disclosure of inside information as defined in Article 10 of Regulation (EU) No 596/2014;
- (31) ‘market manipulation’ means market manipulation as defined in Article 12 of Regulation (EU) No 596/2014;
- (32) ‘clearing system’ means an infrastructure connected to the auction platform that provides clearing, margining, netting, management of collateral, settlement and delivery, and any other services, carried out by a central counterparty that is accessed either directly or indirectly through members of the central counterparty who act as intermediaries between their clients and the central counterparty;
- (33) ‘clearing’ means all processes taking place before the opening of the bidding window, during the bidding window and after the closing of the bidding window until settlement, and involving the management of any risks arising during that interval, including during margining, netting, or novation, or any other services, possibly carried out by a clearing or settlement system;
- (34) ‘margining’ means the process by which collateral is pledged by an auctioneer or a bidder, or one or more intermediaries acting on their behalf, to cover a given financial position, encompassing the entire process of measuring, calculating and administering the collateral put up to cover such financial positions, and which is intended to ensure that all payment commitments of a bidder and all delivery commitments of an auctioneer or one or more intermediaries acting on their behalf can be met within a very short period of time;
- (35) ‘settlement’ means payment by a successful bidder or its successor in title, or by a central counterparty or a settlement agent of the sum due for allowances to be delivered to that bidder or its successor in title or to a central counterparty or a settlement agent, and delivery of the allowances to the successful bidder or its successor in title, or to the central counterparty or the settlement agent;
- (36) ‘central counterparty’ means an entity that interposes either directly between an auctioneer and a bidder or its successor in title, or between intermediaries representing them, and acts as the exclusive counterparty to each of them guaranteeing the payment of the auction proceeds to the auctioneer or an intermediary representing it or the delivery of the auctioned allowances to the bidder or an intermediary representing it;
- (37) ‘settlement system’ means any infrastructure, whether or not connected to the auction platform, that provides settlement services, which include clearing, netting, management of collateral, or any other services and which ultimately enable the payment of the sum due by a successful bidder or its successor in title to an auctioneer, and the delivery of allowances on behalf of an auctioneer to a successful

²⁹ 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).

bidder or its successor in title, where those services are carried out through either of the following:

- (a) the banking system and the Union Registry;
 - (b) one or more settlement agents acting on behalf of an auctioneer and a bidder or its successor in title, accessing the settlement agent either directly or indirectly through members of the settlement agent who act as intermediaries between their clients and the settlement agent;
- (38) ‘settlement agent’ means an entity acting as an agent providing accounts to the auction platform, through which accounts instructions for the transfer of the auctioned allowances given by the auctioneer or an intermediary representing it and for the payment of the auction clearing price by a successful bidder, its successor in title or an intermediary representing them are safely executed either simultaneously or nearly simultaneously in a guaranteed manner;
- (39) ‘collateral’ means collateral security as defined in Article 2, point (m), of Directive 98/26/EC of the European Parliament and of the Council³⁰, including any allowances accepted as security by the clearing system or settlement system;
- (40) ‘regulated market’ means regulated market as defined in Article 4(1), point (21), of Directive 2014/65/EU;
- (41) ‘SMEs’ means operators, aircraft operators, shipping companies or regulated entities that are small and medium-sized enterprises within the meaning of Commission Recommendation 2003/361/EC³¹;
- (42) ‘market operator’ means market operator as defined in Article 4(1), point (18), of Directive 2014/65/EU;
- (43) ‘Member State of establishment’ means any of the following:
- (a) in the case of persons referred to in Article 6(3), second subparagraph of this Regulation, the Member State where the person has its place of residence or permanent address;
 - (b) in the case of persons referred to in Article 18(1), point (b), and Article 18(2), and of business groupings referred to in Article 18(1), point (d), of this Regulation, home Member State as defined in Article 4(1), point (55)(a), of Directive 2014/65/EU;
 - (c) in the case of persons referred to in Article 18(1), point (c), of this Regulation, home Member State as defined in Article 4(1), point (43), of Regulation (EU) No 575/2013;
 - (d) in the case of a regulated market referred to in Article 33(4), (5) and (6) of this Regulation, home Member State as defined in Article 4(1), point (55)(b), of Directive 2014/65/EU;

³⁰ Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems (OJ L 166, 11.6.1998, p. 45)

³¹ Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (notified under document number C(2003) 1422) (2003/361/EC) (OJ L 124, 20.5.2003, p. 36).

- (44) ‘exit strategy’ means one or more documents that are determined in accordance with the contracts appointing the auction platform concerned and that set 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 assets provided pursuant to points (a) and (b).

CHAPTER II

THE DESIGN OF AUCTIONS

Article 4

Auctioned products

1. Allowances shall be offered for sale on an auction platform by means of standardised electronic contracts (‘the auctioned product’).
2. Each Member State shall auction allowances in the form of two-day spot contracts.

Article 5

Auction format

Auctions shall be carried out through an auction format whereby bidders shall submit their bids during a given bidding window without seeing bids submitted by other bidders. Each successful bidder shall pay the auction clearing price referred to in Article 7 for each allowance regardless of the price bid.

Article 6

Submission and withdrawal of bids

1. The minimum volume bid for shall be one lot of 500 allowances.
2. Each bid shall state the following:
 - (a) the identity of the bidder and whether the bidder is bidding on its own account or on behalf of a client;
 - (b) where the bidder is bidding on behalf of a client, the identity of the client;
 - (c) the volume bid as a number of allowances in integral multiples of lots referred to in paragraph 1;
 - (d) the price bid in euro for each allowance, rounded to two decimal points.
3. Each bid may only be submitted, modified or withdrawn by a given deadline before the close of the bidding window. The auction platform concerned shall set and

publish this deadline on its website at least five trading days prior to the opening of the bidding window.

Only a natural person established in the Union, appointed pursuant to Article 19(2), point (d), and authorised to bind a bidder for all purposes relating to the auctions, including the submission of a bid (the 'bidder's representative'), is entitled to submit, modify or withdraw a bid on behalf of a bidder.

Once submitted, each bid shall be binding, unless it is withdrawn or modified pursuant to this paragraph or withdrawn pursuant to paragraph 4.

4. Where the relevant auction platform considers that a genuine mistake has been made in the submission of a bid, it may, upon request of the bidder's representative, treat the mistakenly submitted bid as withdrawn after the close of the bidding window, but before the auction clearing price has been determined.
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 and activity within the meaning of Article 4(1), point (2), of Directive 2014/65/EU.

Article 7

Auction clearing price and resolution of tied bids

1. The auction clearing price shall be determined upon closure of the bidding window.
An auction platform shall sort bids submitted to it in the order of the price bid. Where the price of several bids is the same, those bids shall be sorted through a random selection according to an algorithm determined by the auction platform before the auction.
2. The volumes bid shall be added up, starting with the highest bid price. The price of the bid at which the sum of the volumes bid matches or exceeds the volume of allowances auctioned shall be the auction clearing price.
3. All bids making up the sum of the volumes bid determined pursuant to paragraph 2 shall be allocated at the auction clearing price.
4. Where the total volume of successful bids determined pursuant to paragraph 2 exceeds the volume of auctioned allowances, the remaining volume of the auctioned allowances shall be allocated to the bidder that has submitted the last bid making up the sum of the volumes bid.
5. Where the total volume of bids sorted pursuant to paragraph 2 falls short of the volume of auctioned allowances, the auction platform shall cancel the auction.
6. Where the auction clearing price is significantly under the price on the secondary market prevailing immediately before and during the bidding window when taking into account the short-term volatility of the price of allowances over a defined period preceding the auction, the auction platform shall cancel the auction.
7. Before an auction is started, the auction platform shall determine the methodology for the application of paragraph 6, after having consulted the relevant contracting authorities referred to in Article 26(1) or Article 29(4), and notifying the competent national authorities referred to in Article 47.

Between two bidding windows on the same auction platform, the auction platform concerned may modify the methodology referred to in the first subparagraph. It shall consult the relevant contracting authorities referred to in Article 26(1) or Article 29(4) and the competent national authorities referred to in Article 47 on the planned modifications without delay.

The auction platform concerned shall take the utmost account of the opinion of the relevant contracting authority on the methodology referred to in this paragraph, where such an opinion has been provided.

8. Paragraphs 6 and 7 shall not apply to the auctioning of allowances referred to in Article 13 for a period of 2 months starting from the first auction of those allowances.

The auction platform may extend the period referred to in the first subparagraph by 2 months, after having consulted the relevant contracting authorities referred to in Article 26(1) and notifying the competent national authorities referred to in Article 47, provided that such extension is necessary to ensure that a sufficiently liquid secondary market is in place for the application of paragraph 6.

The auction platform concerned shall take the utmost account of the opinion of the relevant contracting authorities on the extension referred to in this paragraph, where such an opinion has been provided.

9. Where an auction of allowances referred to in Article 10 or 13 is cancelled, the volume of allowances shall be distributed evenly over the next four auctions scheduled on the same auction platform.

Where the volume of allowances from cancelled auctions referred to in the first subparagraph cannot be distributed evenly as referred to in that subparagraph in accordance with the rules on minimum volume bid set out in Article 6(1), the Member State concerned shall auction those allowances over fewer than four auctions.

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.

10. Where an auction of allowances covered by Article 11 is cancelled, the volume of allowances shall be distributed evenly over the next two auctions scheduled on the same auction platform.

Where the volume of allowances from cancelled auctions referred to in the first subparagraph cannot be distributed evenly as referred to in that subparagraph in accordance with the rules on minimum volume bid set in Article 6(1), the Member State concerned shall auction those allowances in the next scheduled auction.

From 1 January 2025, where an auction including allowances covered by Article 11 is cancelled, paragraph 9 shall apply.

CHAPTER III

AUCTIONS CALENDARS

Article 8

Timing, frequency and distribution of the volume of allowances

1. An auction platform shall conduct auctions separately through its own regularly recurring bidding window.

The bidding windows for auctions of allowances referred to in Article 13 conducted by the common auction platform shall be separate from the bidding windows for auctions of allowances referred to in Articles 10 and 11.

The bidding window shall be opened and closed on the same trading day and shall be kept open for no less than two hours. There shall be at least a two-hour delay between two consecutive bidding windows. The bidding windows of any two or more auction platforms shall not overlap.

The bidding windows for auctions of allowances referred to in Articles 10, 11 and 13 shall not overlap. From 1 January 2025, the allowances referred to in Articles 10 and 11 shall be auctioned in the same bidding windows.

2. The auction platform shall determine the dates and times of the auctions taking account of public holidays that affect international financial markets and any other relevant events or circumstances that might affect the proper conduct of the auctions. No auctions shall be held in the two weeks over Christmas and New Year of each year.
3. In exceptional circumstances, any auction platform may, after having consulted 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 on the change, where such an opinion is delivered.
4. The common auction platform shall conduct auctions of allowances referred to in Articles 10 and 13 at least on a weekly basis. The common auction platform shall conduct auctions of allowances referred to in Article 11 at least every two months. From 1 January 2025, provisions of this paragraph applying to allowances referred to in Article 10 shall also apply to allowances referred to in Article 11.

By way of derogation from the first subparagraph, the common auction platform may conduct auctions of allowances referred to in Article 13 at other frequencies in the first six auctions, provided that this is necessary to improve the participation in the auctions and ensure the smooth operation of the auction process.

Where the common auction platform conducts auctions in one or two days a week, no other auction platform shall conduct an auction on those days.

Where the common auction platform conducts auctions on more than two days a week, it shall choose two days on which no other auctions may take place. It shall publish those days no later than at the publication of the auction calendar as referred to in Article 12(2).

5. The volume of allowances referred to in Articles 10 and 11 to be auctioned on a common auction platform shall in principle be distributed evenly over the auctions held in a given calendar year.

The volume of allowances referred to in Article 13 to be auctioned on a common auction platform shall in principle be distributed evenly over the auctions held in a given calendar year, except for the additional volumes to be auctioned in accordance with Article 30d, point (2), of Directive 2003/87/EC, which shall in principle be distributed evenly in the period up to 31 May 2028.

Where the annual volume of allowances of a Member State cannot be distributed evenly over the auctions in a given calendar year in accordance with the rules for minimum volume bid set out in Article 6(1), the relevant auction platform shall distribute that volume over fewer auctions, ensuring that the volume is auctioned, in principle, at least every quarter.

Article 9

Circumstances preventing the conduct of auctions

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 in accordance with Article 7(9).

Article 10

Annual volumes of auctioned allowances in respect of maritime transport activities and stationary installations

1. The volume of allowances in respect of maritime transport activities referred to in Article 3ga of Directive 2003/87/EC and in respect of stationary installations falling within the scope of Chapter III of that Directive to be auctioned in any given calendar year shall be the volume of allowances established in accordance with Article 10(1) and 10(1a) of that Directive.
2. The volume of allowances to be auctioned by each Member State in any given calendar year shall be based on the volume of allowances established pursuant to paragraph 1 of this Article and the share of allowances of that Member State determined pursuant to Article 3ga(3) and Article 10(2) of Directive 2003/87/EC.
3. The volume of allowances referred to in paragraphs 1 and 2 of this Article shall take into account changes pursuant to any of the following provisions:
 - (a) Article 3gb, Article 10a(5a), Articles 10c and 10ca, Article 10d(4), Article 10e(3), Article 12(3-e) and (4), and Articles 24, 27, 27a and 29a of Directive 2003/87/EC;
 - (b) Article 1 of Decision (EU) 2015/1814;
 - (c) Article 6 of Regulation (EU) 2018/842 of the European Parliament and of the Council³².

³² 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

4. Any change to the volume of allowances to be auctioned in a given calendar year other than the changes referred to in Article 14 shall be accounted for in the volume of allowances to be auctioned in the subsequent calendar year.

Any volume of allowances that cannot 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.

5. The distribution of allowances pursuant to Article 10a(8) of Directive 2003/87/EC shall be determined taking into account the following:
- (a) the volume of allowances and the date when they are made available to the Innovation Fund pursuant to Article 9, fourth paragraph, Article 10a(1), (1a) and (5b), Article 10a(8), first, third and fourth subparagraphs, and Article 10e(4) of Directive 2003/87/EC;
 - (b) the frontloading of allowances for the Innovation Fund pursuant to Article 10a(8), second subparagraph, of Directive 2003/87/EC;
 - (c) the volume of allowances to be auctioned for the Recovery and Resilience Facility pursuant to Article 10e(2) until 31 August 2026.

Without prejudice to the first subparagraph, the annual volume of allowances to be auctioned pursuant to Article 10a(8) of Directive 2003/87/EC shall be at least 40 000 000 allowances. That volume shall be reflected in the auction calendar referred to in Article 12 of this Regulation.

6. The initial annual volume of allowances to be auctioned pursuant to Article 10e(2) and (3) of Directive 2003/87/EC shall be as follows:
- (a) for 2024: 86 685 000 allowances;
 - (b) for 2025: 86 685 000 allowances;
 - (c) for 2026: 58 000 000 allowances.

The annual volume of allowances that need to be auctioned to reach the revenue referred to in Article 10e(2) and (3) of Directive 2003/87/EC may be adjusted to ensure that the objectives set out in Article 10e of that Directive are met. For the purposes of that adjustment, the revenue already obtained, the average auction clearing price for the six preceding calendar months, and the time remaining until 31 August 2026 shall be taken into account and the auction calendars shall be adjusted accordingly in accordance with Article 14(1), point (o) of this Regulation.

If the auction revenue referred to in Article 10e(2) and (3) of Directive 2003/87/EC is reached before the date of the last auction scheduled for the Recovery and Resilience Facility, the subsequent auctions of allowances for that Facility shall be immediately suspended in line with the relevant provisions for suspension of such auctions set out in Commission Delegated Regulation (EU) 2019/1122. The relevant auction calendars shall be adjusted accordingly in accordance with Article 14(1), point (e) of this Regulation.

Article 11

Annual volumes of auctioned allowances in respect of aviation

1. The volume of allowances in respect of aviation activities referred to in Article 3b of Directive 2003/87/EC to be auctioned each calendar year shall be the volume of allowances established in accordance with Articles 3c and 3d of that Directive.
2. The volume of allowances to be auctioned by each Member State in any given calendar year shall be based on the volume of allowances established pursuant to paragraph 1 of this Article and the share of allowances of that Member State determined pursuant to Article 3d(3) of Directive 2003/87/EC.
3. Any change to the volume of allowances to be auctioned in a given calendar year other than the changes referred to in Article 14 shall be accounted for in the volume of allowances to be auctioned in the subsequent calendar year.
4. Any volume of allowances that cannot 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.

Article 12

Auction calendar for individual auctions of allowances referred to in Articles 10 and 11 auctioned by the common auction platform

1. The common auction platform shall, after consulting the Commission, determine the auction calendars, including the bidding windows, the individual auction volumes, the auction dates, the auctioned product and the payment and delivery dates for the allowances referred to in Articles 10 and 11 to be auctioned in individual auctions each calendar year.
2. The common auction platform shall publish the auction calendar for a given calendar year by 31 July of the previous calendar year with regard to allowances referred to in Articles 10 and Article 11 of this Regulation, or as soon as practicable thereafter, provided that the Commission has instructed the central administrator of the Union Registry to enter the auction table corresponding to the auction calendar into the Union Registry, in accordance with Commission Delegated Regulation (EU) 2019/1122.
3. The auction calendars for allowances referred to in Articles 10 and 11 shall be determined and published separately. From 1 January 2025, the common auction platform shall determine and publish joint auction calendars for allowances referred to in Articles 10 and 11 in accordance with Commission Delegated Regulation (EU) 2019/1122.

Article 13

Annual volumes and calendars for individual auctions of allowances in respect of buildings, road transport and additional sectors

1. The volume of allowances referred to in Article 30a of Directive 2003/87/EC to be auctioned in any given calendar year from 2027 shall be the volume of allowances established in accordance with Articles 30c and 30d of that Directive.
2. The volume of allowances to be auctioned by each Member State in any given calendar year shall be based on the volume of allowances established pursuant to

paragraph 1 of this Article and the share of allowances of that Member State determined pursuant to Article 30d(5) of Directive 2003/87/EC.

3. The volume of allowances referred to in paragraphs 1 and 2 of this Article shall take into account changes pursuant to Article 30e(3) or Articles 30h and 30j of Directive 2003/87/EC or pursuant to Article 1a of Decision (EU) 2015/1814.
4. The common auction platform shall, after having consulted the Commission, determine the auction calendars, including the bidding windows, the individual auction volumes, the auction dates, the auctioned product, and the payment and delivery dates for the allowances to be auctioned each calendar year in individual auctions in accordance with paragraph 2 of this Article. It shall publish the auction calendar for a calendar year by 31 July of the preceding year, or as soon as practicable thereafter, provided that the Commission has instructed the central administrator of the Union Registry to enter the auction table corresponding to the auction calendar into the Union Registry in accordance with Commission Delegated Regulation (EU) 2019/1122.
5. The annual auction volumes of allowances referred to in Article 30d(3) and (4) of Directive 2003/87/EC shall be auctioned together with the respective annual volumes of allowances referred to in paragraph 1 of this Article before 31 August each year. The initial annual volume of allowances to be auctioned in 2027 pursuant to Article 30d(3) and (4) of Directive 2003/87/EC shall be 350 000 000 allowances.
6. Where 75 % of the maximum annual amount of revenue referred to in Article 30d(4) of Directive 2003/87/EC is not generated by 30 June of any given year, the initial annual volume of allowances to be auctioned for the Social Climate Fund shall be increased for the period from September to December of that year.

If the maximum annual amount of revenue is reached earlier than initially foreseen in the auction calendar, the subsequent auctions of allowances for the Social Climate Fund shall be immediately suspended in line with the relevant provisions for suspension of such auctions set out in Commission Delegated Regulation (EU) 2019/1122.

In both cases, the auction calendar shall be adjusted accordingly without undue delay in accordance with Article 14(1), to either increase the number of allowances auctioned for the Social Climate Fund for the period from September to December or to auction any excess volume on behalf of the Member States.

Article 14

Adjustments of auction calendars and of the volume of allowances to be auctioned

1. The determinations and publications of the annual volumes to be auctioned and of the bidding windows, the distribution of allowances, dates, auctioned product, payment and delivery dates in connection with individual auctions pursuant to Articles 10, 11 and 13 and Article 31(3) shall not be modified except for adjustments due to any of the following:
 - (a) the cancellation of an auction pursuant to Article 7(5) and (6), Article 9 and Article 31(4);
 - (b) the suspension of an opt-out platform that is provided for in Commission Delegated Regulation (EU) 2019/1122;

- (c) a decision by a Member State pursuant to Article 29(7);
 - (d) a settlement failure referred to in Article 36(5);
 - (e) the suspension of a process provided for in Commission Delegated Regulation (EU) 2019/1122 that impacts the auction calendars;
 - (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 and Article 10ca of that Directive;
 - (g) a unilateral inclusion of additional activities, greenhouse gases or sectors pursuant to Article 24 or Article 30j of Directive 2003/87/EC;
 - (h) a measure adopted pursuant to Article 29a or Article 30h of Directive 2003/87/EC;
 - (i) the entry into force of amendments to this Regulation or to Directive 2003/87/EC;
 - (j) withholding of allowances from the auctions pursuant to Article 22(4);
 - (k) the necessity for an auction platform to avoid conducting an auction in breach of provisions laid down in this Regulation or in Directive 2003/87/EC;
 - (l) adjustments necessary pursuant to Articles 1 and 1a of Decision (EU) 2015/1814;
 - (m) a cancellation of allowances pursuant to Article 12(4) of Directive 2003/87/EC;
 - (n) adjustments necessary pursuant to Article 10a(9) of Directive 2003/87/EC;
 - (o) adjustments necessary pursuant to Article 10e of Directive 2003/87/EC;
 - (p) adjustments necessary pursuant to Article 30d or Article 30e(3) of Directive 2003/87/EC.
2. The auction platforms concerned shall publish the adjusted auction calendars 4 weeks prior to their date of application, or as soon as practicable thereafter. This requirement shall not apply to adjustments referred to in paragraph 1, points (a) to (e).

CHAPTER IV

ACCESS TO AUCTIONS

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.

Article 16

Means of access

1. An auction platform shall provide for the means of accessing its auctions on a non-discriminatory basis.

2. Admission to the auctions shall not depend on membership or a participation in the secondary market organised by the auction platform or any other trading place operated by the auction platform or by a third party.
3. An auction platform shall ensure that its auctions can be accessed remotely by means of a web-based electronic interface accessible in a secure and reliable manner. It may also offer bidders the option of accessing its auctions through dedicated connections to the electronic interface.
4. In the event that the main means of access becomes inaccessible, an auction platform may offer on its own initiative or at the request of Member States, one or more alternative means of access to its auctions, provided that such alternative means of access are secure and reliable and their use does not lead to any discrimination between bidders.

Article 17

Training and helpline

An auction platform shall offer a practical web-based training module on the conduct of its auction process, including guidance on how to complete and submit any forms and a simulation of how to bid in an auction. It shall also make available a helpline service accessible by telephone and electronic mail at least during the working hours of each trading day.

Article 18

Persons eligible to apply for admission to bid

1. The following persons shall be eligible to apply for admission to bid directly in auctions:
 - (a) an operator, an aircraft operator, a shipping company or a regulated entity having an operator account in the Union Registry which is opened in accordance with Commission Delegated Regulation (EU) 2019/1122, bidding on its own account, including any parent undertaking, subsidiary undertaking or affiliate undertaking forming part of the same group of undertakings as the operator, the aircraft operator, the shipping company or the regulated entity;
 - (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 Council³³ bidding on their own account or on behalf of their clients;
 - (d) business groupings of persons listed in point (a) bidding on their own account and acting as an agent on behalf of their members;
 - (e) public bodies or state-owned entities of the Member States that control any of the persons listed in point (a).

³³ 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).

Operators, aircraft operators and shipping companies may only participate in the auctions of allowances referred to in Article 10 and 11, whereas regulated entities may participate only in the auctions referred to in Article 13, including when they use the services of entities referred to in paragraph 1, points (b) to (e), to bid on their behalf.

2. By way of derogation from paragraph 1, persons covered by the exemption in Article 2(1), point (j), of Directive 2014/65/EU and authorised pursuant to Article 50 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 such clients.
3. Where the persons referred to in paragraph 1, points (b) and (c), and paragraph 2 bid on behalf of their clients, they shall ensure that all the following conditions are fulfilled:
 - (a) their clients are eligible persons to apply for admission to bid directly pursuant to paragraphs 1 or 2;
 - (b) they have, or will have in good time before the opening of the bidding window, adequate internal processes, procedures and contractual agreements necessary to:
 - (i) enable them to process bids from their clients including submission of bids, collection of payment and transfer of allowances;
 - (ii) prevent the disclosure of confidential information from the part of their business that is responsible for receiving, preparing and submitting bids on behalf of their clients to the part of their business that is responsible for preparing and submitting bids on their own account;
 - (iii) ensure that their clients who are themselves bidding on behalf of their own clients in the auctions comply with the requirements set out in Article 19(2) and in this paragraph and that they require the same of their clients. Where there are further clients down the chain that are themselves bidding on behalf of their own clients, the directly preceding client shall require compliance with these requirements from the following client down the chain.

The auction platform concerned shall be able to rely on checks carried out by the persons referred to in the first subparagraph of this paragraph, their clients, or the clients of their clients as provided for in this paragraph.

Persons referred to in the first subparagraph of this paragraph shall be able to demonstrate to the auction platform, upon its request pursuant to Article 20(5), point (d), that the conditions set out in the first subparagraph of this paragraph, points (a) and (b), are fulfilled.

4. The following persons shall not be eligible to apply for admission to bid directly in auctions nor shall they participate in auctions through one or more persons admitted to bid pursuant to Articles 19 and 20, whether for their own account or on behalf of any other person, where they act with respect to the auctions in question as:
 - (a) the auctioneer;

- (b) the auction platform including any clearing system and any settlement system connected to it;
- (c) persons who are in a position to exercise, directly or indirectly, significant influence over the management of the persons referred to in points (a) and (b);
- (d) persons working for persons referred to in points (a) and (b).

Article 19

Requirements for admission to bid

1. Members of or participants in the secondary market organised by an auction platform that are persons referred to in Article 18(1) or (2) shall be admitted to bid directly in the auctions conducted by the auction platform concerned without any further admission requirements, provided that all the following conditions are fulfilled:
 - (a) the requirements for admission of the member or participant to trade allowances on the secondary market organised by the auction platform are no less stringent than those set out in paragraph 2;
 - (b) the auction platform receives any additional information necessary to verify the fulfilment of any requirements referred to in paragraph 2 that have not been previously verified.

2. Persons who are not members of or participants in the secondary market organised by an auction platform, and who are eligible persons pursuant to Article 18(1) or (2) shall be admitted to bid directly in the auctions conducted by an auction platform provided that they:
 - (a) are established in the Union, or are an operator, an aircraft operator, a shipping company or a regulated entity;
 - (b) hold a nominated Union Registry account;
 - (c) hold a nominated bank account;
 - (d) appoint at least one bidder's representative as referred to in Article 6(3), second subparagraph;
 - (e) satisfy the auction platform concerned, in line with applicable customer due diligence measures, as to their identity, the identity of their beneficial owners, integrity, business and trading profile having regard to the means of establishing the relationship with the bidder, the type of bidder, the nature of the auctioned product, the size of prospective bids and the means of payment and delivery;
 - (f) satisfy the auction platform concerned of their financial standing, in particular, that they are able to meet their financial commitments and current liabilities as they fall due;
 - (g) have in place, or are able to put in place when requested, the internal processes, procedures and contractual agreements necessary to give effect to a maximum bid-size imposed pursuant to Article 48;
 - (h) fulfil the requirements set out in Article 40(1).

Submission and processing of applications for admission to bid

1. Before submitting their first bid directly through any auction platform, persons referred to in Article 18(1) or (2) shall apply to the auction platform concerned for admission to bid.

By way of derogation from the first subparagraph, members of or participants in the secondary market organised by the auction platform concerned who fulfil the requirements set out in Article 19(1) shall be admitted to bid without applying to the auction platform concerned for admission to bid.

2. An application for admission to bid made under paragraph 1 shall be made by submitting a completed application form to the auction platform. The application form, and access to it through the internet, shall be provided and maintained by the auction platform concerned.
3. An application for admission to bid shall be accompanied by duly certified copies of all supporting documents required by the auction platform to show that the applicant satisfies the requirements set out in Article 18(3) and in Article 19(2). The auction platform may accept copies of documents that are not duly certified if it can reasonably assume that they are true copies of the originals. An application for admission to bid shall at least include the elements listed in Annex I.
4. An application for admission to bid, including any supporting documents, shall be made available, upon request, for inspection by the competent national law enforcement authorities of a Member State conducting an investigation referred to in Article 53(3), point (e), and any competent Union bodies involved in investigations conducted on a cross-border basis.
5. An auction platform may refuse to grant admission to bid in its auctions if the applicant refuses any of the following:
 - (a) to comply with requests made by the auction platform for additional information or clarification or substantiation of information provided;
 - (b) to provide oral explanations following an invitation made by the auction platform to interview any representative of the applicant;
 - (c) to allow investigations or verifications requested by the auction platform, including on-site visits or spot-checks at the applicant's business premises;
 - (d) to comply with requests made by the auction platform for any information required from the applicant, the clients of an applicant or, where applicable, the clients of their clients as provided for in Article 18(3);
 - (e) to comply with requests made by the auction platform for any information required to check compliance with the requirements set out in Article 19(2).
6. An application for admission to bid shall be deemed to be withdrawn if the applicant fails to submit information requested by an auction platform within a reasonable period of at least five trading days specified in the request for information made pursuant to paragraph 5, point (a), (d) or (e), or fails to cooperate in an interview or an investigation or verification referred to in paragraph 5, points (b) and (c).
7. An applicant shall not provide an auction platform with false or misleading information. An applicant shall notify the auction platform concerned fully, honestly

and promptly of any changes in its circumstances that could affect its application for admission to bid in auctions conducted by that auction platform or any admission to bid already granted to it.

8. An auction platform shall decide on an application submitted to it and notify its decision to the applicant.

The auction platform concerned may:

- (a) grant unconditional admission to bid in its auctions for a period not exceeding the term of its appointment, including any extension or renewal of that appointment;
- (b) grant conditional admission to bid in its auctions for a period not exceeding the term of its appointment, subject to fulfilment of certain specified conditions by a given date, which it shall duly verify;
- (c) refuse to grant admission to bid in its auctions.

Article 21

Refusal, revocation or suspension of an admission to bid

1. An auction platform shall refuse to grant admission to bid in its auctions, or revoke or suspend any admission to bid already granted to any person who:
 - (a) is not eligible to apply for admission to bid under Article 18(1) or (2);
 - (b) does not meet the requirements set out in Articles 18 and 19, and, where applicable, Article 20; or
 - (c) is wilfully or repeatedly in breach of this Regulation, the terms and conditions of the admission to bid in its auctions or any other related instructions or agreements.
2. An auction platform shall refuse to grant admission to bid in its auctions, or revoke or suspend any admission to bid already granted, if it suspects money laundering, terrorist financing, criminal activity or market abuse in relation to an applicant, provided that such refusal, revocation or suspension is unlikely to frustrate efforts by the competent national authorities to pursue or apprehend the perpetrators of such activities.

In case of suspicions referred to in the first subparagraph, 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 46(2) of this Regulation.
3. An auction platform may refuse to grant admission to bid in its auctions, or revoke or suspend any admission to bid already granted, to any person:
 - (a) who is negligently in breach of this Regulation, of the terms and conditions of the admission to bid in its auctions or of any other related instructions or agreements;
 - (b) who has otherwise behaved in a manner that is prejudicial to the orderly or efficient conduct of an auction; or
 - (c) who is referred to in Article 18(1), point (b) or (c), or Article 18(2) and has not bid in any auction during the preceding 220 trading days.

4. Persons referred to in paragraph 3 shall be notified of the refusal to grant admission to bid, or the revocation or suspension of the admission to bid, and be given a reasonable period, specified in the decision of refusal, revocation or suspension, to respond in writing. After considering the person's written response, the auction platform concerned shall, if warranted:
 - (a) grant or reinstate admission to bid with effect from a given date;
 - (b) grant conditional admission to bid or conditional reinstatement of the admission to bid subject to fulfilment of certain specified conditions by a given date, which it shall duly verify; or
 - (c) confirm the refusal to grant admission to bid, or the revocation or suspension of the admission to bid with effect from a given date.

The auction platform shall notify the person in question of its decision under the first subparagraph, points (a), (b) and (c).

5. Persons whose admission to bid is revoked or suspended pursuant to paragraphs 1, 2 or 3 shall take reasonable steps to ensure that their removal from the auctions:
 - (a) is orderly;
 - (b) does not prejudice the interests of their clients or interfere with the efficient functioning of the auctions;
 - (c) does not affect their obligations to comply with any payment provisions or any other related instructions or agreements;
 - (d) does not compromise their obligations regarding the protection of confidential information set out in Article 18(3), point (b)(ii), which shall remain in force for 20 years following their removal from the auctions.

The refusal, revocation and suspension referred to in paragraphs 1, 2 and 3 shall specify any measures needed to comply with this paragraph and the auction platform shall verify compliance with such measures.

CHAPTER V

APPOINTMENT OF THE AUCTIONEER AND ITS TASKS

Article 22

Appointment of the auctioneer

1. Each Member State shall appoint an auctioneer. No Member State shall auction allowances without appointing an auctioneer. The same auctioneer may be appointed by more than one Member State.
2. In good time prior to the start of the auctions, the auctioneer shall be appointed and it shall conclude and implement the necessary arrangements with the auction platform appointed or to be appointed, including any clearing system and settlement system connected to it, upon mutually agreed terms and conditions.
3. A person working or acting for the Member State 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 the auctioneer, in addition to the measures provided for in Article 18(8) and Article 19(10) of Regulation (EU) No 596/2014.

4. The allowances to be auctioned on behalf of a Member State shall be withheld from the auctions where that Member State has not appointed an auctioneer or where the arrangements referred to in paragraph 2 have not been concluded or have not entered in force.
5. In a timely manner after the appointment of its auctioneer, Member States shall notify the identity of its auctioneer and its contact details to the Commission which shall publish them on its website.

Article 23

The auctioneer's tasks

The auctioneer shall carry out the following tasks:

- (a) auctioning of the volume of allowances to be auctioned by each Member State appointing it or for any fund or facility which is to be a recipient of the auction proceeds pursuant to Union law;
- (b) receipt of the auction proceeds due to each Member State appointing it or to any fund or facility referred to under point (a);
- (c) disbursement of the auction proceeds due to each Member State appointing it or to any fund or facility referred to under point (a).

CHAPTER VI

AUCTIONING OF ALLOWANCES FOR FUNDS AND CANCELLATION OF ALLOWANCES

Article 24

Allowances to be auctioned for the Innovation Fund, the Modernisation Fund, the Recovery and Resilience Facility and the Social Climate Fund

1. The European Investment Bank (EIB) shall be the auctioneer for the allowances to be auctioned from 2021 pursuant to Article 10a(8) and (9), Article 10d and Article 10e of Directive 2003/87/EC on the common auction platform. Article 22(2), (3) and (4), Articles 23, 35 and 36 and Article 43(1) of this Regulation shall apply *mutatis mutandis* to the EIB.
2. The EIB shall ensure that the auction proceeds from the allowances pursuant to Article 10a(8) and Article 10e 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. The EIB may deduct, prior to disbursement, any additional fees for holding and disbursing the auction proceeds, in accordance with the agreements concluded with the Commission pursuant to Article

20(3) of Commission Delegated Regulation (EU) 2019/856³⁴ and Article 10e of Directive 2003/87/EC.

3. The Commission shall be the auctioneer for the allowances to be auctioned pursuant to Article 10a(8b) and Article 30d(3) and (4) of Directive 2003/87/EC on the common auction platform. Article 22(2), (3) and (4), Articles 23, 35 and 36 and Article 43(1) of this Regulation shall apply mutatis mutandis to the Commission.
4. The annual auction volumes of allowances referred to in paragraph 1 of this Article and in Article 10a(8b) of Directive 2003/87/EC shall be auctioned together with the respective annual volumes of allowances referred to in Article 10 of this Regulation in the auctions conducted by the common auction platform and shall be evenly distributed in accordance with Article 8(4), first subparagraph, of this Regulation.

Article 25

Procedure for cancellation of allowances

1. A Member State that intends to cancel allowances from its total volume 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 II to this Regulation.

The Member State concerned shall notify to the Commission at the latest by 31 May of a given year the exact number of allowances to be cancelled in the period between 1 September and 31 December of that year. If the total volume of allowances to be cancelled in that period exceeds 5 million allowances, that volume shall be spread over the period between 1 September of that year and 31 August of the following year. The Member State concerned shall make its first notification under this subparagraph at the latest two years after the notification under subparagraph one.

2. A Member State that does not intend to cancel allowances 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 reasons for not cancelling such allowances within its reporting pursuant to Article 21 of that Directive.
3. 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 as established pursuant to Article 10 of this Regulation after any adjustment made pursuant to Decision (EU) 2015/1814 during the periods referred to in paragraph 1, second subparagraph.
4. The Commission shall publish the information provided by the Member States in accordance with Annex II, except for the reports referred to in point 6 of that Annex.

³⁴ 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).

CHAPTER VII

APPOINTMENT OF AND SERVICES PROVIDED BY THE COMMON AUCTION PLATFORM

Article 26

Appointment of a common auction platform

1. Member States shall appoint a common auction platform following a joint procurement procedure between the Commission and the Member States, as contracting authorities, participating in the joint action pursuant to this Article.
2. The joint procurement procedure referred to in paragraph 1 shall be conducted pursuant to Article 165(2) of Regulation (EU, Euratom) 2018/1046.
3. The period of appointment of a common auction platform shall be no longer than 5 years. Where the conditions set out in Article 172(3) of Regulation (EU, Euratom) 2018/1046 are fulfilled, the Member States and the Commission may extend that period to 7 years. During the period of appointment, 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.
4. The identity and contact details of the common auction platform referred to in paragraph 1 shall be published on the Commission's website.
5. A Member State that enters the joint action pursuant to this Article after the entry into force of the joint procurement agreement between the Commission and the Member States already participating in that action shall accept the terms and conditions of that agreement as well as any decisions already adopted under it.

A Member State that decides pursuant to Article 29(4) not to participate in the joint action pursuant to this Article but to appoint its own auction platform may be given observer status under terms and conditions agreed in the joint procurement agreement between the Member States participating in the joint action and the Commission, subject to any applicable Union public procurement rules.

Article 27

Services provided to the Member States by the common auction platform

1. The common auction platform shall provide the following services to the Member States, as more particularly delineated in the contract appointing it:
 - (a) providing access to the auctions, pursuant to Articles 15 to 21, including the provision and maintenance of the necessary web-based electronic interfaces and websites;
 - (b) conducting the auctions in accordance with Articles 4 to 7;
 - (c) managing the auction calendar in accordance with Articles 8 to 14;
 - (d) announcing and notifying the results of an auction, pursuant to Article 52;
 - (e) providing, or ensuring the provision of, the requisite clearing system or settlement system needed for:

- (i) the handling of payments made by successful bidders or their successors in title and distribution of the proceeds of the auctions to the auctioneer, pursuant to Articles 35 and 36;
 - (ii) delivering the auctioned allowances to successful bidders or their successors in title, pursuant to Articles 37, 38 and 39;
 - (iii) managing collateral, including any margining, provided by the auctioneer or bidders, pursuant to Articles 40 and 41;
- (f) 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 Articles 45 to 50 and Article 55(1);
- (g) reporting pursuant to Article 34.
2. At least 20 trading days prior to the opening of the first bidding window run by it, the common auction platform, shall be connected to at least one clearing system or settlement system.
3. Within 3 months from the date of its appointment, the common auction platform shall submit its exit strategy to the Commission.

Article 28

Services provided to the Commission by the common auction platform

The common auction platform shall provide the Commission with technical support services with respect to the Commission's work relating to the following:

- (a) coordination of the auction calendar with opt-out auction platforms listed in Annex III;
- (b) information relating to the conduct of the auctions pursuant to Article 44;
- (c) reports pursuant to Article 10(4), third subparagraph, and Article 10(5) of Directive 2003/87/EC;
- (d) 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;
- (e) any other joint action relating to the functioning of the carbon market, including the implementation of the auctions agreed between the Commission and the Member States participating in the joint action.

CHAPTER VIII

APPOINTMENT AND TASKS OF OPT-OUT AUCTION PLATFORMS

Article 29

Appointment of opt-out auction platforms

1. A Member State not participating in the joint action as provided in Article 26(1) may appoint its own opt-out auction platform for the auctioning of its volume of allowances referred to in Articles 10 and 11.
2. An opt-out auction platform may be the same auction platform as the common auction platform or a different auction platform.
3. A Member State that decides to appoint an opt-out auction platform shall inform the Commission thereof by the last day of the third month after the date of entry into force of Regulation (EU) 1031/2010.
4. An opt-out auction platform shall be selected, based on a selection procedure that is 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.

The period of appointment of an opt-out auction platform referred to in paragraph 1 shall be no longer than 3 years renewable for no more than a further period of 2 years.

The appointment of an opt-out auction platform shall not be effective before the entry into force of the listing of the opt-out auction platform concerned in Annex III, as provided for in paragraph 6.

5. A Member State that decides to appoint an opt-out auction platform shall provide the Commission with a complete notification containing all of the following:
 - (a) the identity of the auction platform it proposes to appoint;
 - (b) the detailed operative rules that are to govern the auction process to be conducted by the auction platform it proposes to appoint, including the contractual provisions concerning the appointment of the auction platform and any clearing system and settlement system connected to the proposed auction platform, stipulating the terms and conditions governing the structure and level of fees, collateral management, payment and delivery;
 - (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 common auction platform, as well as any other auction calendars proposed by other Member States having appointed an opt-out auction platform;
 - (d) the detailed rules and conditions on surveying and supervising the auctions to which its proposed auction platform shall be subject pursuant to Article 33(4), (5) and (6) as well as the detailed rules protecting against money laundering, terrorist financing, criminal activity or market abuse, including any remedial measures or sanctions;
 - (e) the detailed measures put in place to comply with Article 22(3) and Article 32 regarding the appointment of the auctioneer.
6. Opt-out auction platforms appointed under paragraph 1 of this Article, their period of appointment, the Member States appointing them and any applicable conditions or obligations shall be listed in Annex III if the relevant requirements of this Regulation and the objectives of Article 10(4) of Directive 2003/87/EC are satisfied. The

Commission shall act solely based on those requirements and objectives and shall have full regard to any information submitted by the Member State concerned.

In case a Member State having appointed an opt-out auction platform referred to in paragraph 1 decides to reappoint the same auction platform under the same conditions and obligations as per the listing provided for in the first subparagraph, that listing shall continue to be valid where that Member State and the Commission confirm that the relevant 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 provide a notification containing the information referred to in paragraph 5 to the Commission and inform the other Member States of the reappointment. 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 that chooses to appoint an opt-out auction platform shall use the common auction platforms to auction its share of allowances that would have otherwise been auctioned on the opt-out auction platform to be appointed in the period until the expiry of 3 months after the entry into force of the eventual listing provided for in the first subparagraph.

A Member State that chooses to appoint an opt-out 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 common auction platform as provided in the third subparagraph. Such participation shall take place in accordance with the provisions of Article 26(5), second subparagraph, and subject to the terms and conditions of the joint procurement agreement.

7. Any Member State not participating in the joint action as provided in Article 26(1) but choosing to appoint an opt-out auction platform may join the joint action provided for in Article 26(1), pursuant to Article 26(5).

The volume of allowances that were scheduled to be auctioned on an opt-out auction platform shall be spread evenly over the auctions conducted by the relevant common auction platform.

Article 30

Tasks of opt-out auction platforms

An opt-out auction platform shall carry out the same tasks as the common auction platform, as provided for in Article 27, except managing the auction calendar as referred to in Article 27(1), point (c), and it shall submit the exit strategy referred to in Article 27(3) to the appointing Member State.

The provisions provided for in Article 8(1), (2), (3) and (5), first subparagraph, and Articles 9, 10, 12, 14 and 31 shall apply to the opt-out auction platforms.

Article 31

Auction calendar for opt-out auction platforms

1. The volume of allowances referred to in Article 10 auctioned in individual auctions conducted by an opt-out auction platform shall be between 3,5 million and 20 million allowances. Where the total volume of such allowances to be auctioned by the Member State is less than 3,5 million in a given calendar year, the allowances shall be auctioned in a single auction per calendar year. However, the volume of

allowances referred to in Article 10 auctioned in an individual auction conducted by an opt-out auction platform shall be no less than 1 million allowances in any period 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 referred to in Article 11 auctioned in individual auctions conducted by an opt-out auction platform shall be between 2,5 million and 5 million allowances. Where the total volume of such allowances to be auctioned by the Member State is less than 2,5 million in a given calendar year, the allowances shall be auctioned in a single auction per calendar year.

From 1 January 2025, provisions of paragraph 1 of this Article applying to allowances referred to in Article 10 shall also apply to allowances referred to in Article 11.

3. The opt-out auction platform shall, after consulting the Commission, determine the auction calendar, including the bidding windows, the individual auction volumes, the auction dates, the auctioned product and the payment and delivery dates for the allowances to be auctioned in individual auctions for each calendar year. The individual auction volumes shall be determined in accordance with Articles 10 and 11.

The opt-out auction platform concerned shall publish the auction calendar for a given year by 31 July of the previous year with regard to allowances referred to in Articles 10 and 11 of this Regulation, or as soon as practicable thereafter, provided that the Commission has instructed the central administrator of the Union Registry to enter the respective auction table into the Union Registry in accordance with Commission Delegated Regulation 2019/1122.

The opt-out auction platform concerned shall determine and publish the auction calendars only after the common auction platform has determined and published its auction calendars in accordance with Article 12, unless such auction platform has not yet been appointed pursuant to Article 26(1). The auction platforms concerned may simultaneously determine the auction calendars for allowances referred to in Articles 10 and 11, as long as the deadline for publication of the auction calendars referred to in Article 12 is respected.

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

4. Where an auction conducted by an opt-out auction platform is cancelled 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.

CHAPTER IX

APPOINTMENT REQUIREMENTS APPLICABLE TO AUCTIONEERS AND AUCTION PLATFORMS

Article 32

Appointment requirements applicable to auctioneers

1. When appointing auctioneers, the Member States shall take into account the extent to which candidates:
 - (a) exhibit a 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;
 - (b) are able to fulfil the auctioneer's tasks in a timely manner and 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) between the auctioneer and the auction platform concerned.

Article 33

Appointment requirements applicable to auction platforms

1. Only an entity authorised as a regulated market whose operator organises a secondary market in allowances or allowances derivatives may be appointed as auction platform.

However, where it is provided for in the procurement documents for the joint procurement procedure pursuant to Article 26(1), an entity authorised as 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 Council³⁵, 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. Where such entity is appointed as a common auction platform, its operator shall acquire an authorisation for organising a secondary market in allowances or allowances derivatives and shall ensure that it organises such secondary market at least 60 trading days prior to the opening of the first bidding window run by the auction platform concerned.
2. An auction platform appointed under this Regulation for the auctioning of two-day spot contracts shall be authorised, without further legal or administrative requirements by the Member States, to provide appropriate arrangements that facilitate access to and participation in auctions by bidders referred to in Article 18(1) and (2).
3. When appointing an auction platform, the Member States shall take into account the extent to which candidates demonstrate that the following is ensured:
 - (a) respect of the principle of non-discrimination both de facto and de jure;
 - (b) full, fair and equitable access to bid in the auctions for SMEs covered by the Union system and to bid in the auctions for small emitters, as set out in Article 27(1), Article 27a(1) and Article 28a(4) of Directive 2003/87/EC;
 - (c) cost-efficiency and avoidance of undue administrative burden;

³⁵ 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)

- (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) avoidance of distortions of competition in the internal market, including the carbon market;
 - (f) proper functioning of the carbon market, including the implementation of the auctions;
 - (g) connection to one or more clearing systems or settlement systems;
 - (h) adequate measures requiring an auction platform to hand over all tangible and intangible assets necessary for the conduct of the auctions by its successor.
4. An auction platform may only be appointed where the Member State in which 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 contracts and that the competent authorities of that Member State are able to authorise and supervise the candidate regulated market and its market operator in accordance with the national measures transposing Title VI of that Directive.

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

5. The competent national authorities of the Member State in which the candidate regulated market and its market operator are established, designated under Article 67(1) of Directive 2014/65/EU, shall decide on the authorisation of a regulated market appointed, or to be appointed, as an auction platform pursuant to this Regulation, provided that the regulated market and its market operator comply with the national rules transposing Title III of Directive 2014/65/EU. The decision on authorisation shall be taken in accordance with the national rules transposing Title VI of Directive 2014/65/EU.
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 candidate regulated market and its market operator.

For the purposes of appointing auction platforms in accordance with this Regulation, 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 the European Securities and Markets Authority (ESMA).

CHAPTER X

REPORTING ON TRANSACTIONS

Article 34

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 and to ESMA 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 transaction reports shall be submitted as soon as possible, and no later than the close of the trading day following the transaction concerned.
3. The auction platform shall be responsible for the completeness, accuracy and timely submission of the transaction reports. Where there is information on the transactions which are not included in the transaction reports and which are not available to the auction platform, the bidders and the auctioneers shall submit such information to the auction platform.

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

4. The transaction report shall, in particular, include the following:
 - (a) the name of the allowances or allowances derivatives;
 - (b) the volume of allowances bought;
 - (c) the dates and times of execution of the transaction;
 - (d) the transaction prices;
 - (e) the identity of the successful bidders;
 - (f) where applicable, the identity of the clients on whose behalf the transaction was executed.

Where the successful bidder is a legal person, the auction platform shall, when reporting the designation to identify the successful bidder, use a legal entity identifier referred to in Article 5 of Commission Delegated Regulation (EU) 2017/590³⁶.

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

³⁶ 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).

CHAPTER XI

PAYMENT AND TRANSFER OF THE AUCTION PROCEEDS

Article 35

Payment by successful bidders and transfer of proceeds to the Member States

1. Each successful bidder or its successors in title, including any intermediaries acting on their behalf, shall pay the sum due notified to it pursuant to Article 52(3), point (c), for the allowances won as notified to it pursuant to Article 52(3), point (a), by transferring that sum, or arranging for its transfer through the clearing system or settlement system, to the auctioneer's nominated bank account in cleared funds at the latest upon delivery of the allowances into the bidder's nominated Union Registry account or the nominated Union Registry holding account of its successor in title.
2. An auction platform, including the clearing systems or settlement systems connected to it, shall transfer the payments made by the bidders or any successors in title arising from the auctioning of allowances referred to in Articles 10, 11 and 13 to the auctioneers that auctioned the allowances in question.
3. Payments to the auctioneers shall be made in euros or in the currency of the appointing Member State where that Member State is not member of the euro-zone, at the option of the Member State concerned, regardless of what currency is used for the payments made by the bidders, provided that the clearing system or settlement system concerned is capable of handling the currency in question.
4. The exchange rate shall be the rate published on a recognised financial newswire service specified in the contract appointing the auction platform concerned, immediately following the close of the bidding window.

Article 36

Consequences of late or non-payment

1. A successful bidder, or its successors in title, shall only be delivered allowances notified to the successful bidder pursuant to Article 52(3), point (a), if the entire sum due notified to it pursuant to Article 52(3), point (c), is paid to the auctioneer pursuant to Article 35(1).
2. A successful bidder, or its successors in title, that fails to meet its obligations under paragraph 1 of this Article in full by the due date notified to the successful bidder pursuant to Article 52(3), point (d), shall be in default of payment.
3. A bidder in default of payment may be charged with either or both of the following:
 - (a) interest for each day beginning with the date on which payment was due pursuant to Article 52(3), point (d), and ending on the date on which payment is made at an interest rate set out in the contract appointing the auction platform concerned, calculated on a daily basis;
 - (b) a penalty, which shall accrue to the auctioneer less any costs deducted by the clearing system or settlement system.
4. Where a successful bidder is in default of payment one of the following shall also occur:

- (a) the central counterparty shall take delivery of the allowances and effect payment of the sum due to the auctioneer;
 - (b) the settlement agent shall apply collateral taken from the bidder to effect payment of the sum due to the auctioneer.
5. In the event of a failure of settlement, the allowances shall be auctioned at the next two auctions scheduled on the auction platform concerned.

CHAPTER XII

DELIVERY OF THE AUCTIONED ALLOWANCES

Article 37

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 Union Registry 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.

Article 38

Delivering the auctioned allowances

1. The clearing system or settlement system shall allocate each allowance auctioned by a Member State to a successful bidder, until the total volume allocated matches the volume of allowances notified to the bidder pursuant to Article 52(3), point (a).

A bidder may be allocated allowances from more than one Member State auctioning in the same auction if necessary to make up the volume of allowances notified to the bidder pursuant to Article 52(3), point (a).
2. Upon payment of the sum due pursuant to Article 35(1), each successful bidder or its successors in title shall be delivered the allowances allocated to that bidder, as soon as practicable and in any event no later than the deadline for their delivery according to the two-day spot contract by transferring the allowances notified to the bidder pursuant to Article 52(3), point (a), from a nominated Union Registry account held in escrow by the clearing system or settlement system acting as custodian, in whole or in part into one or more nominated Union Registry accounts held by the successful bidder or by its successors in title, or into a nominated holding Union Registry account held in escrow by a clearing system or settlement system acting as custodian for the successful bidder or its successors in title.

Article 39

Late delivery of the auctioned allowances

Where the clearing system or settlement system fails to deliver all or part of the auctioned allowances due to circumstances outside its control, it shall deliver the allowances at the earliest opportunity and the successful bidders or their successors in title shall accept delivery

at that later date. No other remedy for late delivery shall be available for the successful bidder or its successors in title.

CHAPTER XIII

MANAGEMENT OF COLLATERAL

Article 40

Collateral given by the bidder

1. Prior to the opening of the bidding window for the auctioning of two-day spot contracts, bidders or any intermediaries acting on their behalf shall be required to give collateral to the clearing system or settlement system linked to the auction platform conducting the auctions.
2. If so requested, any unused collateral given by an unsuccessful bidder, together with any interest accrued on cash collateral, shall be released, as soon as practicable after the close of the bidding window.
3. If so requested, any collateral given by a successful bidder that has not been used for settlement, together with any interest accrued on cash collateral, shall be released, as soon as practicable after settlement.

Article 41

Collateral given by the auctioneer

1. Prior to the opening of the bidding window for the auctioning of two-day spot contracts, the auctioneer shall be required to give collateral by giving allowances to be held in escrow by the clearing system or settlement system acting as custodian, pending their delivery. The volume and delivery date of those allowances shall be specified in the auction tables corresponding to the auction calendars referred to in Article 12 or 13, in accordance with Commission Delegated Regulation (EU) 2019/1122.
2. Where any allowances given as collateral under paragraph 1 are not used, the clearing system or settlement system may retain them, at the option of the auctioning Member State, in a nominated Union Registry account held in escrow by the clearing system or settlement system acting as custodian, pending their delivery.

CHAPTER XIV

FEES AND COSTS

Article 42

Structure and level of fees

1. The structure and level of fees as well as any related conditions applied by any auction platform and the clearing systems and settlement systems shall be no less favourable than comparable standard fees and conditions applied on the secondary market.

However, where it is provided for in the procurement documents for the procurement procedures pursuant to Article 26(1) or Article 29(4), the operator of the auction platform may increase the fees paid by the successful bidders pursuant to Article 43(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 Articles 1 and 1a of Decision (EU) 2015/1814.

2. An auction platform and the clearing systems and settlement systems may only apply fees, deductions or conditions explicitly set out in the contract appointing them.
3. All fees and conditions applied pursuant to paragraphs 1 and 2 shall be clearly stated, easily understandable and publicly available. They shall be itemised indicating each charge made for each type of service.

Article 43

Costs of the auction process

1. The costs of the services provided for in Article 27(1) and Article 30 shall be borne by the bidders and paid for through fees.

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

The costs referred to in the second subparagraph shall be deducted from the auction proceeds payable to the auctioneers pursuant to Article 35(2) and (3).

2. The terms and conditions of the joint procurement agreement referred to in Article 26(5), first subparagraph, 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 29(3) of their decision not to participate in the joint action as provided in Article 26(1), but subsequently make use of the common auction platform, to pay to the auction platform concerned, including the clearing systems or settlement systems 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 common auction platform until the termination or expiry of the term of appointment of that auction platform.

The first subparagraph 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 force of the joint procurement agreement referred to in the first subparagraph of Article 26(5).

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 Article 29(4), second subparagraph, or where a Member State uses the common auction platform to auction its share of allowances in the absence of a listing referred to in Article 29(6).

3. The costs borne by the bidders in accordance with paragraph 1 shall be reduced by the amount of the costs borne by a Member State in accordance with paragraph 2.

CHAPTER XV

AUCTION SURVEILLANCE, REMEDIAL MEASURES AND SANCTIONS

Article 44

Monitoring of auctions

1. By the end of each month, an auction platform 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 referred to in 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 of while carrying out its tasks pursuant to Article 27 or Article 30;
 - (g) any breach of this Regulation or of Article 10(4) of Directive 2003/87/EC that the auction platform has been made aware of while carrying out its task pursuant to Article 27 or Article 30 of this Regulation;
 - (h) follow-up to any information reported in accordance with points (a) to (g).

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

2. The auction platform shall provide the reports and the summary referred to in paragraph 1 to the Commission, to its appointing Member States, to its competent national authority designated in accordance with Article 22 of Regulation (EU) No 596/2014 and to ESMA.
3. The relevant contracting authorities shall monitor the implementation of the contracts appointing the auction platforms. The Member States appointing an opt-out auction platform 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 shall, on behalf of the Member States participating in the joint action pursuant to Article 26(1) of this Regulation and the Member States appointing an opt-out auction platform, publish summary reports in respect of the information referred to in paragraph 1, points (a) to (h), of this Article.
5. Auctioneers, auction platforms, the competent national authorities supervising them and ESMA shall actively cooperate with the Commission and between themselves and, upon request, provide the Commission with any information in their possession

that relates to the auctions and is reasonably required for the monitoring of the auctions.

6. The competent national authorities supervising credit institutions and investment firms, the competent national authorities supervising persons authorised to submit bids on behalf of others pursuant to Article 18(2) and ESMA shall, within their competence, actively cooperate with the Commission when it is reasonably required for the monitoring of the auctions.
7. When fulfilling their obligations under paragraphs 5 and 6, the competent national authorities shall take into account professional secrecy considerations to which those authorities are subject under Union law.

Article 45

Monitoring the relationship with bidders

1. An auction platform shall monitor the relationship with bidders by taking the following action:
 - (a) scrutinising bids made throughout the course of that relationship to ensure that the bidding behaviour of bidders is consistent with the auction platform's knowledge of the customer, its business and risk profile, including, where necessary, the source of funds;
 - (b) maintaining effective arrangements and procedures for the regular monitoring of the compliance by persons admitted to bid pursuant to Article 18(3) and Article 19 with its market conduct rules;
 - (c) monitoring transactions undertaken by persons admitted to bid pursuant to Article 18(3) and Article 19 and by politically exposed persons using its systems in order to identify breaches of the rules referred to in point (b) of this subparagraph, unfair or disorderly auctioning conditions or conduct that may invoke market abuse.

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

2. An auction platform shall ensure that the documents, data or information it holds concerning a bidder are kept up-to-date. For this purpose, it may:
 - (a) request any information of the bidder, pursuant to Article 18(3), Article 19(2) 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 the termination of its admission to bid;
 - (b) require a bidder to re-submit an application for admission to bid at regular intervals;
 - (c) require a bidder to promptly notify the auction platform concerned of any changes to the information submitted to it pursuant to Article 18(3), Article 19(2) and Article 20(5) and (7).
3. An auction platform shall keep records of the following:

- (a) the application for admission to bid submitted by an applicant pursuant to Article 18(3) and Article 19(2), including any amendments thereto;
 - (b) the checks carried out in:
 - (i) processing the application for admission to bid submitted, pursuant to Articles 19, 20 and 21;
 - (ii) scrutinising and monitoring the relationship with the bidder, pursuant to points (a) and (c) of paragraph 1;
 - (c) all information relating to a given bid submitted by a given bidder in an auction, including any withdrawal or modification of such bid, pursuant to Article 6(3), second subparagraph, and Article 6(4);
 - (d) all information relating to the conduct of each auction in which a bidder has submitted a bid.
4. An auction platform shall keep the records referred to in paragraph 3 for as long as a bidder is admitted to bid in its auctions and for at least 5 years following the termination of the relationship with that bidder.

Article 46

Notification of money laundering, terrorist financing or criminal activity

1. The competent national authorities referred to in Article 48(1a) of Directive (EU) 2015/849 shall monitor, and take the necessary measures to ensure, compliance of an auction platform with the following:
- (a) the customer due diligence measures referred to in Article 19(2), point (e), and Article 20(8) of this Regulation;
 - (b) the obligation to refuse to grant admission to bid or to revoke or suspend any admission to bid already granted pursuant to Article 21(1) and (2) of this Regulation;
 - (c) the monitoring and record keeping requirements set out in Article 45 of this Regulation;
 - (d) the notification requirements set out in paragraphs 2 and 3.
- The competent national authorities shall have the powers referred to in Article 48(2) and (3) of Directive (EU) 2015/849.
- An auction platform may be held liable for infringements of paragraphs 2 and 3 of this Article and of Article 20(5) and (8), Article 21(1) and (2), and Article 45 of this Regulation. The sanctions and measures referred to in Articles 58 to 62 of Directive (EU) 2015/849 shall apply to such infringements.
2. An auction platform, its directors and employees, shall cooperate fully with the FIU by promptly acting the following action:
- (a) informing the FIU, including by submitting to it a report, on their own initiative, where they know, suspect or have reasonable grounds to suspect that any funds in relation to the auctions 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 to fulfil its tasks.

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.
4. The Member State in whose territory an auction platform appointed pursuant to this Regulation is situated shall ensure that the national measures transposing Articles 37, 38, 39 and 42, Article 45(1) and Article 46 of Directive (EU) 2015/849 apply to the auction platform concerned.

Article 47

Notification of market abuse

1. An auction platform shall report to the national authorities competent under Regulation (EU) No 596/2014 suspicions of market abuse or 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 and ESMA 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 market abuse or attempted market abuse referred to in that paragraph.

Article 48

Maximum bid-size and other remedial measures

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 an auction platform after consulting the Commission and obtaining its opinion thereon, provided that implementation of such bid-size or 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 as a percentage of the total number of auctioned allowances in any given year, whichever the auction platforms finds most appropriate to deal with the risk of market abuse.
3. For the purposes of this Article, maximum bid-size means the maximum number of allowances that may be bid for, directly or indirectly, by any group of persons listed in Article 18(1) or (2), which belong to any of the following categories:
 - (a) the same group of undertakings including any parent undertakings, its subsidiary undertakings and affiliate undertakings;
 - (b) the same business grouping;
 - (c) a separate economic unit having an independent power of decision where they are controlled, directly or indirectly, by public bodies or state-owned entities.

Article 49

Market conduct rules and other contractual arrangements

An auction platform shall be entitled to take any other action under its market conduct rules and other contractual arrangements in place, directly or indirectly, with any bidders admitted to bid in the auctions, provided that such action does not conflict with or undermine the provisions set out in Articles 44 to 48.

Article 50

Conduct rules for persons authorised to bid on behalf of others

1. This Article shall apply to:
 - (a) persons authorised to bid pursuant to Article 18(2);
 - (b) investment firms and credit institutions referred to Article 18(1), points (b) and (c).
2. Persons referred to in paragraph 1 shall apply the following conduct rules in their relationship with their clients:
 - (a) they shall accept instructions from their clients on comparable terms;
 - (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) they may refuse to bid on behalf of a client if they have reasonable grounds to suspect that the client is unable to pay for the allowances for which it is seeking to bid;
 - (d) they shall enter into a written agreement with their clients, which shall not impose any unfair conditions or restrictions on the client concerned and which shall provide for all the terms and conditions relating to the services offered, including payment and delivery of the allowances;
 - (e) they may require their clients to make a deposit by way of advance payment for allowances;
 - (f) they may not unduly limit the number of bids that a client might submit;
 - (g) they may not prevent or restrict their clients from engaging the services of other entities eligible pursuant to Article 18(1), points (b) to (e), and Article 18(2) to bid on their behalf in the auctions;
 - (h) they shall pay due regard to the interests of their clients;
 - (i) they shall treat clients fairly and without discrimination;
 - (j) they shall maintain adequate internal systems and procedures to process requests from clients to act as agent in an auction and to be able to participate effectively in an auction, in particular with regard to the submission of bids on behalf of their clients, the collection of payments and collateral from their clients, and the transfer of allowances to their clients;
 - (k) they shall prevent the disclosure of confidential information from the part of their business responsible for receiving, preparing and submitting bids on

behalf of their clients to the part of their business responsible for preparing and submitting bids on their own account or to the part of their business responsible for dealing on their own account on the secondary market;

- (l) they shall keep records of information obtained or created in their role as intermediaries handling bids on behalf of their clients in the auctions, for five years from the date of obtaining or creating the information concerned.

The amount of the deposit referred to in the first subparagraph, point (e), shall be calculated on a just and reasonable basis and shall be set out in the agreements referred to in point (d) of that subparagraph. Any part of that deposit not used to satisfy payment for allowances shall be refunded to the client within a reasonable period after the auction as stated in the agreements referred to in the first subparagraph, point (d).

3. Persons referred to in paragraph 1 shall apply the following conduct rules when bidding on their own account or on behalf of their clients:
 - (a) they shall provide any information requested by any auction platform where they are admitted to bid;
 - (b) they shall act with integrity, reasonable skill, care and diligence.
4. The competent national authorities designated in accordance with Regulation (EU) No 596/2014 and Directive (EU) 2015/849 by the Member States where the persons referred to in paragraph 1 are established shall be responsible for authorising such persons to carry out the activities referred to in that paragraph and for monitoring and enforcing compliance with the conduct rules set out in paragraphs 2 and 3, including the handling of any complaints made for non-compliance with such conduct rules.
5. The competent national authorities referred to in paragraph 4 shall only grant an authorisation to the persons referred to in paragraph 1 where those persons fulfil all of the following conditions:
 - (a) they are of sufficiently good repute and sufficiently experienced as to ensure proper respect of the conduct rules provided for in paragraphs 2 and 3;
 - (b) they have put in place the necessary processes and checks to manage conflicts of interest and to serve the best interests of their clients;
 - (c) they comply with the requirements of Directive (EU) 2015/849;
 - (d) they comply with any other measures deemed necessary having regard to the nature of the bidding services being offered and the level of sophistication of the clients in question in terms of their investor or trading profile as well as any risk-based assessment of the likelihood of money laundering, terrorist financing or criminal activity.
6. The competent national authorities of the Member State where the persons referred to in paragraph 1 are authorised shall monitor and enforce the conditions set out in paragraph 5. The Member State shall ensure that:
 - (a) its competent national authorities have at their disposal investigative powers and sanctions that are effective, proportionate and dissuasive;
 - (b) a mechanism is established for the handling of complaints and the withdrawal of authorisations where the authorised persons are in breach of their obligations pursuant to such authorisation;

- (c) its competent national authorities may withdraw the authorisation granted under paragraph 5 where an authorised person has seriously and systematically infringed the provisions set out in paragraphs 2 and 3.
- 7. Clients of persons referred to in paragraph 1 may direct any complaints that they may have with regard to compliance with the conduct rules set out in paragraphs 2 and 3 to the competent authorities referred to in paragraph 4 in accordance with the procedural rules laid down for the handling of such complaints.
- 8. Persons referred to in paragraph 1 shall be allowed, without further legal or administrative requirements of the Member States, to provide bidding services to clients referred to in Article 18(3), first subparagraph, point (a).

CHAPTER XVI

TRANSPARENCY AND CONFIDENTIALITY

Article 51

Publication

1. The following shall be published on a dedicated up-to-date auctioning website maintained by the auction platform concerned:
 - (a) all legislation, guidance, instructions, forms, documents and announcements, pertinent to the auctions on the auction platform, including the auction calendar;
 - (b) any other non-confidential information pertinent to the auctions on the given auction platform, including the list of persons admitted to bid in the auctions;
 - (c) any decision, including any decision pursuant to Article 48, to impose a maximum bid-size and any other remedial measures necessary to mitigate an actual or potential discernible risk of money-laundering, terrorist financing, criminal activity or market abuse on the auction platform;
 - (d) a list of the names and business addresses, business telephone numbers, business electronic mail addresses and business websites of all persons admitted to bid on behalf of others in auctions conducted by the auction platform.

Information referred to in the first subparagraph which is no longer relevant shall be archived. Such archives shall be accessible through the auctioning website referred to in that subparagraph.

Article 52

Announcement and notification of the auction results

1. An auction platform shall announce the results of each auction it conducts. The announcement shall contain 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;

- (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 and the Funds referred to in Article 24, in the case of the common auction platform.
2. The auction platform shall announce the results of each auction as soon as reasonably practicable. The information referred to in paragraph 1, points (a) and (b), shall be announced no later than 5 minutes after the close of the bidding window, whereas the information referred to in paragraph 1, points (c) to (g), shall be announced no later than 15 minutes after the close of the bidding window.
 3. At the same time as the auction platform announces the information referred to in paragraph 1, points (a) and (b), it shall notify each successful bidder of the following:
 - (a) the total number of allowances to be allocated to that bidder;
 - (b) which of its tied bids, if any, were randomly selected;
 - (c) the payment due either in euros or in the currency of a Member State not member of the euro-zone, chosen by the bidder provided that the clearing system or settlement system is capable of handling the national currency in question;
 - (d) the date by which the payment due must be paid in cleared funds into the auctioneer's nominated bank account.
 4. Where the currency chosen by the bidder is not euros an auction platform shall notify a successful bidder of the exchange rate, as referred to in Article 35(4), it has used to calculate the amount due in the currency chosen by the successful bidder.
 5. An auction platform shall inform the relevant clearing system and settlement system connected to it of the information notified pursuant to paragraph 3.

Article 53

Protection of confidential information

1. The following shall constitute confidential information:
 - (a) the contents of a bid;
 - (b) the contents of any instructions to bid even when no bid is submitted;
 - (c) information which discloses, or from which can be deduced, the identity of the bidder in question and either of the following:
 - (i) the number of allowances which a bidder wishes to acquire in an auction;
 - (ii) the price which a bidder is willing to pay for those allowances;
 - (d) information about, or derived from, one or more bids or instructions to bid which either separately or collectively are likely to:
 - (i) give an indication as to the demand for allowances prior to any auction;

- (ii) give an indication as to the auction clearing price prior to any auction;
 - (e) information provided by persons in the framework of the establishment or maintenance of the relationship with bidders or in the framework of the monitoring of that relationship pursuant to Articles 19, 20, 21 and 45;
 - (f) business secrets provided by persons participating in a competitive procurement process to appoint an auction platform;
 - (g) information on the algorithm used for the random selection of tied bids, referred to in Article 7(1), second subparagraph;
 - (h) information on the methodology to establish what constitutes an auction clearing price significantly under the prevailing secondary market price before and during an auction, referred to in Article 7(7).
2. Confidential information shall not be disclosed by any person who obtained that information, whether directly or indirectly, except as provided for in paragraph 3.
3. Paragraph 2 shall not prevent the disclosure of confidential information which:
- (a) has already lawfully been made available to the public;
 - (b) is made public with the written consent of a bidder, a person admitted to bid, or a person applying for admission to bid;
 - (c) is required to be disclosed or to be publicly available by Union law;
 - (d) is made public pursuant to a court order;
 - (e) is disclosed or made public for the purposes of any criminal, administrative, or judicial investigations or proceedings carried out in the Union;
 - (f) is aggregated or redacted prior to its disclosure, so that it is unlikely that information relating to the following is discernible:
 - (i) individual bids or instructions to bid;
 - (ii) individual auctions;
 - (iii) individual bidders, prospective bidders or persons applying for admission to bid;
 - (iv) individual applications for admission to bid;
 - (v) individual relationships with bidders;
 - (g) is referred to in paragraph 1, point (f), provided that it is disclosed to persons working for Member States or the Commission involved in the competitive procurement process referred to in that point, who are themselves bound by an obligation of professional secrecy under their terms of employment;
 - (h) is made public after the end of a period of 30 months starting from the following dates, subject to any subsisting professional secrecy obligations under Union law:
 - (i) for information referred to in paragraph 1, points (a) to (d), the date of the opening of the bidding window of the auction in which the confidential information is first disclosed;

- (ii) for information referred to in paragraph 1, point (e), the date of the termination of the relationship with the bidder;
 - (iii) for information referred to in paragraph 1, point (f), the date of submission of the information in the competitive procurement process.
- 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 the auction platform.
- 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 tasks with respect to the auctions.
- 6. Paragraphs 1 to 5 shall not preclude the exchange of confidential information between an auction platform and any of the following:
 - (a) the competent national authorities supervising an auction platform;
 - (b) the competent national authorities responsible for investigating and prosecuting money laundering, terrorist financing, criminal activity or market abuse;
 - (c) the Commission.

Confidential information exchanged under this paragraph shall not be disclosed to other persons than those referred to in the first subparagraph, points (a), (b) and (c).
- 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.

Article 54

Language regime

1. Written information provided by an auction platform pursuant to Article 51(1) 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.
2. Any Member State may provide, at its own cost, for the translation of the information referred to in paragraph 1 into the official language or languages of that Member State.

Where a Member State provides, at its own cost, for the translation of all information referred to in paragraph 1 provided by the common auction platform, any Member State having appointed an opt-out auction platform shall also provide, at its own cost, for the translation into the same languages of all information referred to in paragraph 1 provided by that opt-out auction platform.
3. Applicants for admission to bid and persons admitted to bid may submit the following in the language referred to in paragraph 4, provided that a Member State has decided to provide for a translation into that language in accordance with paragraph 2:
 - (a) their applications for admission to bid, including any supporting documents;

- (b) their bids, including any withdrawal or modifications thereof;
- (c) any queries relating to point (a) or (b).

An auction platform may request a certified translation of the information referred to in the first subparagraph into a language customary in the sphere of international finance.

4. Applicants for admission to bid, persons admitted to bid and bidders participating in an auction shall choose any official language of the Union in which they shall receive all notifications made pursuant to Article 8(3), Article 20(8), Article 21(4) and Article 52(3).

Where a Member State has decided to provide for a translation in accordance with paragraph 2 in the language referred to in the first subparagraph, all other oral or written communication by an auction platform to applicants for admission to bid, persons admitted to bid or bidders participating in an auction shall also be made in that language at no additional cost to the applicants, persons and bidders in question.

However, even where a Member State has decided to provide for a translation into the language referred to in the first subparagraph in accordance with paragraph 2, the applicant for admission to bid, the person admitted to bid or the bidder participating in an auction may waive its right under the second subparagraph of this paragraph by giving prior written consent for the auction platform concerned to use only a language customary in the sphere of international finance for communication referred to in that subparagraph.

5. Member States shall be responsible for the accuracy of any translation made pursuant to paragraph 2.

Persons submitting a translation of a document referred to in paragraph 3 and any auction platform notifying a translated document under paragraph 4 shall ensure that it is an accurate translation of the original document.

CHAPTER XVII

FINAL PROVISIONS

Article 55

Right of appeal

1. An auction platform shall ensure that it has in place an extra-judicial mechanism to deal with complaints from:
 - (a) applicants for admission to bid, in particular persons whose application for admission to bid has been refused;
 - (b) persons whose admission to bid has been revoked or suspended;
 - (c) persons admitted to bid;
2. Member States where a regulated market appointed as a common auction platform or an opt-out auction platform, or its market operator, are supervised, shall ensure that any decisions made by the extra-judicial mechanism referred to in paragraph 1 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 appeal directly to the courts or competent administrative bodies provided for in the national measures transposing Article 74(2) of Directive 2014/65/EU.

Article 56

Correction of errors

1. Any errors in the transfer of payment or allowances or in any collateral or deposit given or released under this Regulation shall be notified to the clearing system or settlement system as soon as it comes to the notice of any person.
2. The clearing system or settlement system shall take all measures necessary to rectify any errors referred to in paragraph 1 that are notified to it or that come to its attention by any other means.
3. Any person that benefits from an error referred to in paragraph 1 which cannot be rectified under paragraph 2 due to the intervening rights of a third-party purchaser in good faith, and that knew of or ought to have known of the error but failed to notify it to the clearing system or settlement system, shall be liable to make good any damage caused.

Article 57

Repeal

1. Regulation (EU) No 1031/2010 is repealed.
2. References to the repealed Regulation shall be construed as references to this Regulation and shall be read in accordance with the correlation table in Annex IV.

Article 58

Entry into force

This Regulation shall enter into force on the 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, 17.10.2023

For the Commission
The President
Ursula VON DER LEYEN