

EOS

Routti-Hietala Nina

07.05.2010

Suuri valiokunta

Viite

Asia

Päästöoikeuksien huutokauppa; komission huutokauppa -asetuksen valmistelu

U/E-tunnus:

EUTORI-numero:

Ohessa lähetetään perustuslain 97 §:n mukaisesti selvitys komission asetusehdotuksesta liittyen päästöoikeuksien huutokauppojen ajoitukseen, hallinnointiin ja muihin näkökohtiin.

Taisto Turunen

Osastopäällikkö
Ylijohtaja

Nina Routti-Hietala

Vanhempi hallitussihteeri

LIITTEET Muistio 3.5.2010 (TEM2010-00177)

Komission asetusehdotus, päivätty 6.4.2010, päästöoikeuksien huutokauppojen ajoituksesta, hallinnoinnista ja muista näkökohdista, englanninkielinen

Asiasanat	energia, päästökauppa
Hoitaa	TEM, YM
Tiedoksi	MMM, VM, LVM, ALR, EUE, SM, VNEUS, UM

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03.05.2010
JULKINEN

Asia

Komission asetusehdotus päästöoikeuksien huutokauppojen ajoituksesta, hallinnoinnista ja muista näkökohdista

Kokous

Liitteet

Viite

EUTORI/Eurodoc nro:

-

U-tunnus / E-tunnus:

-

Käsittelyn tarkoitus ja käsittelyvaihe:

Komissio julkaisi päästöoikeuksien huutokauppaa koskevan asetusehdotuksensa 6.4.2010. Asetusehdotus oli komission teknisen huutokaupparyhmän sekä ilmastonmuutoskomitean eli CCC:n käsittelyssä ensimmäistä kertaa 15.–16.4.2010. CCC äänestää asetuksesta luultavasti touko- tai kesäkuussa 2010. Perusmuistio toimitetaan eduskunnalle erittäin kireän käsittelyaikataulun vuoksi E-kirjeenä. Eduskuntaa on informoitu U 9/2008 vp kirjelmällä päästökauppadirektiivin 2003/87/EY muuttamisesta, jossa on tuotu esille myös huutokauppaan liittyviä näkökohtia.

Asiakirjat:

Komission asetus päästöoikeuksien huutokauppojen ajoituksesta, hallinnoinnista ja muista näkökohdista, koska kyseessä on luonnos asetuksen numeroa ei vielä ole saatavilla (Commission Regulation (EU) No (xxx/xxxx) of [xx.xx.xxxx] 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 the Council establishing a scheme for greenhouse gas emission allowances trading within the Community)

Komission vaikutusarvioraportti 8.2.2010, SEC(2010), englanninkielinen

EU:n oikeuden mukainen oikeusperusta/päätöksentekomenettely:

EY:n päästökauppadirektiivin 2003/87/EY (muutettu direktiivillä 2009/29/EY) 10 artiklan 4 kohdan sekä 3 d artiklan 3 kohdan mukaan komissio antaa viimeistään 30.6.2010 huutokaupan ajoitusta, hallinnointia ja muita näkökohtia koskevan asetuksen.

Asetus tehdään neuvoston komitologiapäätöksen 1999/468/EY 5a artiklan mukaisessa valvonnan käsittävässä sääntelymenettelyssä. Komitea antaa lausuntonsa asetusehdotuksesta määräenemmistöllä.

Käsittelijä(t):

Työ- ja elinkeinoministeriö, vanhempi hallitussihteeri Nina Routti-Hietala, puh. 010 606 2055

Työ- ja elinkeinoministeriö, hallitusneuvos Päivi Janka, puh. 010 606 4833

Liikenne- ja viestintäministeriö, hallitusneuvos Kaisa Leena Välipirtti, puh. 160 28483

Suomen kanta/ohje:

Huutokauppamalli

Komissio ehdottaa pääsääntönä, että päästöoikeuksien huutokauppoja järjestettäisiin keskitetysti jäsenmaiden yhteisesti valitsemien kauppapaikkojen kautta. Tämän lisäksi jäsenmaille annettaisiin myös mahdollisuus jättäytyä pois keskitetystä järjestelmästä, jolloin kyseiset jäsenmaat voisivat järjestää itse omat huutokauppansa.

Suomi kannattaa ensisijaisesti keskitettyä huutokauppamallia, jossa kaikki päästöoikeudet huutokaupataan komission ja jäsenmaiden yhteisesti valitseman huutokauppapaikan kautta. Tarvittavan määräenemmistön saamiseksi asetusehdotuksen tueksi Suomi voi hyväksyä myös komission ehdotuksen keskitetystä ja sen rinnalla rajoitetun ajan voimassaolevista jäsenmaiden omista huutokaupoista. Keskitetyn huutokauppamallin mukainen markkinapaikka valittaisiin komission ja jäsenmaiden järjestämässä kilpailumenettelyssä enintään 5 vuodeksi kerrallaan. Vuosina 2011 ja 2012 voitaisiin järjestää ns. aikaisia huutokauppoja, joiden toteuttamiseen voitaisiin käyttää enintään kahta markkinapaikkaa. Myös nämä markkinapaikat valittaisiin kilpailumenettelyn kautta. Suomi kannattaa aikaisten huutokauppojen järjestämistä. Tietyt suuret jäsenmaat (Iso-Britannia, Saksa, Puola ja Espanja) ovat todenneet, että ne eivät tule kannattamaan pelkkää keskitettyä systeemiä. Asetusehdotuksen mukaan jäsenmaiden tulee ilmoittaa komissiolle kolmen kuukauden kuluttua huutokauppa-asetuksen hyväksymisen jälkeen, haluavatko ne järjestää omat huutokauppansa. Jäsenmaan, joka haluaa järjestää oman huutokauppansa, tulee notifioida komissiolle oma järjestelmänsä. Tällainen erillinen huutokauppapaikka voitaisiin nimetä vain 31.12.2015 saakka. Komissio arvioi vuoden 2015 puolen välin jälkeen, miten markkinat ja miten eri markkinapaikkojen vuorovaikutus on toiminut ja ehdottaa sen jälkeen mahdollisia toimia 1.1.2016 alkaen. Suomi kannattaa komission tekemää arviota markkinoiden toiminnasta vuoden 2015 aikana.

Keskitetyt huutokaupat järjestettäisiin vuodesta 2013 lähtien yhden kierroksen suljettuina huutokauppoina, joissa hinta määräytyisi yhtenäisen hinnoittelun mukaan, ts. kaikki voittavat tarjoukset maksaisivat päästöoikeuksista saman hinnan. Päästöoikeudet myytäisiin 500 päästöoikeuden erissä. Ostettavien erien maksimimäärää ei ole rajoitettu, ellei sitä teknisistä syistä harkita tarpeelliseksi, jolloin erien määrä ei kuitenkaan saa olla alle 200. Ns. aikaisissa huutokaupoissa päästöoikeudet myytäisiin 1 000 päästöoikeuden erissä.

Suomalaiset toiminnanharjoittajat ja eri etujärjestöt ovat laajasti kannattaneet keskitettyä huutokauppamallia. Keskitetty malli on saanut Euroopan laajuisesti eri etujärjestöjen tuen. Myös ympäristöjärjestöt ovat kannattaneet keskitetyn mallin hyväksymistä. Huutokaupasta saatavat tulot tulevat jokaiselle jäsenvaltiolle valittavasta

huutokaupparamallista riippumatta. Ottaen huomioon työ- ja elinkeinoministeriön alustavan arvion päästöoikeuksien vuosittaisesta määrästä (Suomen osuus noin 15–20 miljoonaa päästöoikeutta/vuosi) on realistista ajatella, että Suomen edun mukaista olisi osallistua keskitettyjen huutokauppojen järjestämiseen.

Mahdollisimman keskitetyllä huutokauppajärjestelmällä pyritään avoimen, yhdenmukaisen ja syrjimättömän järjestelmän luomiseen päästökauppadirektiivin asettamien vaatimusten mukaisesti. Komission käsityksen mukaan keskitetty huutokaupparamalli olisi kustannustehokkain ja läpinäkyvin. Pienten ja keskisuurten yritysten näkökulmasta se olisi myös yksinkertainen, koska yhteisen huutokauppapaikan kautta olisi mahdollisuus osallistua EU-alueen laajuisesti kaikkien päästöoikeuksien kauppaan. Keskitetty malli loisi yhtenäisen päästöoikeuksien markkina-alueen Eurooppaan ja sitä kautta turvattaisiin myös se, että pienet jäsenmaat, joilla on jaettavana suhteellisesti pieni päästöoikeusmäärä, saisivat päästöoikeuksista kilpailukykyisen hinnan. Erilliset huutokauppapaikat luonnollisesti hajauttavat markkinoita, minkä vuoksi arvio markkinoiden toiminnasta vuonna 2015 on tarpeen tehdä.

Huutokauppojen tarkkailua ja valvontaa varten ehdotetaan erillisen monitorioijan asettamista. Monitorioija olisi jäsenvaltioiden ja komission kaupallisin perustein valitsema taho, jonka toimivalta kestäisi enintään viisi vuotta kerrallaan. Monitorioijan tehtävänä on myös raportoida komissiolle ja jäsenmaille vuosittain huutokauppojen toteuttamisesta ja niiden sujumisesta. Suomi kannattaa ehdotusta monitorioijasta.

Osallistumisoikeus ja siihen liittyvä huutokauppapaikan tietojensaantioikeus sekä salassa pidettävät tiedot ja asetettavat sanktiot

Huutokauppoihin saisivat osallistua päästökaupan toiminnanharjoittajat, ilma-alusten käyttäjät, sijoituspalveluyritykset, luottolaitokset ja mahdolliset muut tahot, jotka on hyväksytty osallistujiksi. Toiminnanharjoittajien emo- ja tytäryhtiöillä olisi myös oikeus osallistua huutokauppoihin. Toiminnanharjoittajilla ja ilma-alusten käyttäjillä olisi mahdollisuus osallistua huutokauppoihin joko suoraan tai välittäjän kautta. Asetusehdotuksen mukaan kaikki huutokauppaosallistujat joutuisivat läpikäymään tarkat osallistumistarkastukset (know-your-customer checks). Päätettäessä huutokauppaan osallistujista pitäisi turvata se, että oikeussuojakeinot ovat käytettävissä. Tätä seikkaa ei ole säädetty riittävän tarkasti asetusehdotuksessa.

Suomi kannattaa komission ehdotusta osallistumisoikeudesta. Suomi pitää tärkeänä, että osallistumiseen liittyvät tarkastukset voitaisiin hoitaa mahdollisimman selkeästi sekä turhia kustannuksia välttämällä.

Yhteiselle huutokauppapaikalle ehdotetaan asetusehdotuksessa annettavan laaja tietojensaantioikeus (art. 21 ja liite II) suhteessa huutokaupan tarjoajiin. Tätä seikkaa ei ole säädetty riittävän tarkasti asetusehdotuksessa. Huutokaupan toimittaja on kaupallisin perustein valittu yksityinen taho, ei siis viranomainen. Mainittu artikla saattaa olla ristiriidassa Suomen lainsäädännön kanssa (laki sijoituspalveluyrityksistä 922/2007, 67–68 §:t). Komission tulee varmistaa se, että luovutettavat tiedot on selkeästi määritelty, eivätkä ne ole ristiriidassa asiakastietojen salassapitoa koskevien normien kanssa. Artiklassa 56 säädetään salassa pidettävistä tiedoista. Asetusehdotuksessa ei ole säädetty riittävän tarkasti siitä, onko salassapitovelvollisuuksien harmonisointi EU-tasolla niin pitkällä, että ehdotettava asetusta on linjassa jäsenmaiden luottamuksellisten tietojen salassapitoa ja tietojen luovuttamista koskevien sääntöjen kanssa.

Artikloissa 49 ja 50 todetaan, että jos huutokauppapaikka epäilee rahanpesua, terrorismin rahoitusta, rikollista toimintaa tai markkinoiden väärinkäyttöä, tulee sen ilmoittaa havainnoistaan asianomaiselle kansalliselle viranomaiselle. Suomi kannattaa sitä, että varsinaisten sanktioiden määrääminen on osoitettu viranomaisten tehtäväksi. Artiklan 51 sanktiotoini (tarjottavan määrän rajoittaminen) voidaan luonnehtia lähinnä hallinnolliseksi seuraamukseksi. Tältä osin komission tulee tarkentaa asetusehdotusta siten, että säännöksistä käy riittävän tarkasti ilmi, mistä teoista seuraamus voi tulla ja mitä oikeussuojakeinoja toimenpiteen kohteeksi joutuneella on.

Huutokaupattava tuote

Komissio esittää, että päästöoikeuksia huutokaupattaisiin vuodesta 2013 lukien joko niin sanottuina kahden päivän spotteina tai viiden päivän futuureina. Tämä on Suomen hyväksyttävissä. Kahden päivän spotit olisivat hyödykkeitä, jotka toimitettaisiin kahden päivän kuluessa huutokaupan toimittamisesta. Viiden päivän futuurit huutokaupattaisiin rahoitusvälineinä ja niiden toimitus tapahtuisi aikaisintaan kahden päivän kuluessa, kuitenkin viimeistään viiden päivän kuluessa, huutokaupan toimittamisesta. Viiden päivän futuurit ovat rahoitusvälineitä, joiden välittämiseen sovelletaan rahoitusvälineiden markkinat -direktiivin (MiFID, 2004/39/EY) mukaista valvontaa. MiFID:n noudattamisen valvonta kohdistuu välittäjiin, ei esim. toiminnanharjoittajiin, jotka hankkivat päästöoikeuksia omien velvoitteidensa täyttämiseen. Komission mukaan juuri tämä markkinavalvonnan näkökohta tekee viiden päivän futuureista paremman tuotteen kuin pelkkä spot olisi. Toisaalta spot-tuote yksinkertaisempaan hyödykkeenä saattaa olla pienten toiminnanharjoittajien kannalta yksinkertaisempi tuote hankkia. Suomessa Finanssivalvonta valvoo MiFID:n noudattamista. Kansallisesti MiFID on voimaansaatettu muun muassa lailla sijoituspalveluyrityksistä. Puhtaat spotkaupat ovat Finanssivalvonnan toimivallan ulkopuolella. Se, kumpia tuotteita huutokaupassa lopulta myydään, selviää vasta huutokauppapaikkaa koskevan kilpailumenettelyn ratkettua.

Suomi on asetusehdotuksen alustavassa valmisteluvaiheessa suhtautunut alustavasti avoimesti sekä spot että futuuri -huutokauppojen järjestämiseen. Toiminnanharjoittajien, lentoliikenteen ja edunvalvontajärjestöjen kautta on esitetty sekä kansallisella että Euroopan tasolla, että myös perinteiset futuurikaupat pitäisi saada mukaan päästöoikeuksien huutokauppoihin. Viiden päivän futuurit eivät kuitenkaan ole tällaisia perinteisiä futuureita, joissa toimitus olisi vasta 1-2 vuoden päässä huutokaupan toimittamisesta. Tällaisten perinteisten futuurikauppojen toteuttaminen olisi hallinnollisesti monimutkaisempaa kuin spotkauppojen tai viiden päivän futuurikauppojen toteuttaminen, mm. vakuusjärjestelyiden kannalta.

Aikaisissa huutokaupoissa komission ehdotus lähtee siitä, että huutokaupan kohteena voisi olla joko forward- tai futuuri-tuote. Jäsenmaiden tulee yhdessä tehdä päätös siitä, järjestetäänkö aikaisia huutokauppoja vai ei. Forward-sopimus tarkoittaa sopimusta, jolla ostetaan tai myydään hyödyke tulevaisuudessa. Sopimishetkellä sovitaan kaikki kaupan ehdot. Kauppa netotetaan vasta toimitusaikana. Futuuri-sopimus on samankaltainen tulevaisuuteen kohdistuva johdannainen kuin forward, mutta se eroaa netottamiskäytännön suhteen forwardista. Futuuri netotetaan sovituin väliajoin ja sen arvonmuutokset johtavat kassavirtoihin jo ennen toimitushetkeä. Komission ehdotus lähtee siitä, että päästöoikeuksien huutokaupassa molempien tuotteiden erääntymispäivä olisi viimeistään joulukuussa 2013. Jokaisen jäsenvaltion tulee ilmoittaa erikseen, kumpaa tuotetta haluaa aikaisissa huutokaupoissa myydä. Suomessa pitää erikseen myöhemmin selvittää, mitä aikaisissa huutokaupoissa on Suomen kannalta järkevää myydä.

Huutokaupoissa käytettävä kieli

Komission ehdotus lähtee siitä, että huutokaupassa käytettävä kieli olisi englanti. Jäsenmaiden tehtävänä on järjestää tarvittavat käännökset ja koulutus omalla kielellään. Koska huutokauppa on tarkoitus järjestää sähköisesti samaan tapaan kuin nykyisin päästöoikeuksien myynti pörseissä tapahtuu, ei ole käytännössä mahdollista käydä kauppaa jokaisen jäsenmaan kansallisella kielellä. Asetuksessa jäsenmaille annetaan kuitenkin mahdollisuus sitoutua siihen, että ne kääntävät huutokauppapaikan ja huutokaupan monitorioijan laatiman materiaalin omalle kielelleen. Jos jäsenmaa antaa tällaisen sitoumuksen, voivat kyseisen jäsenmaan toiminnanharjoittajat toimittaa omalta osaltaan osan tarvittavasta materiaalista omalla kielellään. Huutokauppapaikalla on kuitenkin mahdollisuus tällaisessakin tilanteessa vaatia englanninkieliset käännökset asiapapereista. Suomessa ei tällä hetkellä suunnitella kyseisen kaltaisen sitoumuksen antamista. Tällä hetkellä ei ole vielä tietoa siitä, kuinka paljon ja minkä tyyppistä käännettävää materiaali olisi. Käännettävä materiaali voi vaihtua hyvinkin nopeasti ja muutoksiin olisi reagoitava välittömästi, jotta mahdollisilta oikeudenmenetyksiltä vältyttäisiin. Tällaisen vastuun ottaminen markkinatiedon kääntämisen osalta ei olisi luultavasti mahdollista. Suomalaisten toiminnanharjoittajien aseman turvaamiseksi on järjestettävä tiedotusta ja koulutusta. Asetusehdotuksen mukaan myös välittäjän käyttö on mahdollista huutokauppaan osallistumisessa.

Suomi voi hyväksyä komission ehdotuksen.

Huutokauppojen ajankohdat ja huutokaupattavat määrät (huutokauppakalenteri)

Keskitetty huutokaupat on tarkoitus järjestää vähintään viikottain. Jos eri huutokauppapaikkojen toimittamat huutokaupat sijoittuvat samalle päivälle, tulee huutokauppojen toimittamisen välillä olla ainakin kahden tunnin tauko. Viiden ensimmäisen huutokaupan toimittamisen osalta voidaan sopia myös muista järjestelyistä. Aikaisten huutokauppojen toimittamisen osalta noudatettaisiin samaa käytäntöä. Suomi kannattaa myös tältä osin komission ehdotusta.

Huutokauppa-asetuksessa on tärkeää ottaa huomioon myös huutokauppojen ennakoitavuuteen liittyviä näkökohtia. Komission ehdotus lähtee siitä, että huutokauppakalenteri, ts. se, milloin huutokaupat järjestetään sekä se, kuinka paljon päästöoikeuksia määrällisesti huutokaupataan, olisi tiedossa noin vuotta ennen huutokauppojen toimittamista. Tämä tarkoittaisi sitä, että vuonna 2012 helmikuussa olisi tiedossa vuoden 2013 huutokauppojen ajoittuminen ja huutokaupattavat määrät. Lentoliikenteen päästöoikeuksien osalta noudatettaisiin samaa aikataulua sillä poikkeuksella, että vuoden 2012 osalta huutokauppojen ajankohtia ja määriä koskevat tiedot olisivat tiedossa 30.9.2011 mennessä.

Suomi katsoo, että huutokauppakalenterin ennakoitavuus pitäisi ottaa paremmin huomioon asetuksessa niin aikaisten huutokauppojen kuin vuodesta 2013 toimitettavien huutokauppojen osalta. Lopulliset huutokaupattavat määrät ja huutokauppojen ajoitus voisivat olla tiedossa vasta noin vuotta ennen huutokauppojen toimittamista, mutta alustavat tiedot voitaisiin julkaista jo esimerkiksi kaksi tai kolme vuotta ennen huutokauppojen toimittamista. Tämä olisi tärkeää, jotta toiminnanharjoittajat ja ilma-alusten käyttäjät voivat suunnitella päästöoikeuksien hankintatarpeensa hyvissä ajoin.

Lentoliikenteen päästöoikeuksien huutokauppa

Lentoliikenteen päästöoikeuksien huutokauppoihin ehdotetaan sovellettavaksi lähes samoja sääntöjä kuin ns. yleisen päästökaupan päästöoikeuksien huutokauppoihin. Lentoliikenteen huutokauppoja järjestettäisiin jo vuodesta 2012 lukien ja vähintään joka toinen kuukausi. Ilma-alusten käyttäjillä olisi mahdollisuus osallistua kaikkiin järjestettäviin huutokauppoihin, joten lentoliikenteen päästöoikeuksien huutokauppojen harvempi toteuttaminen ei hankaloittaisi päästöoikeuksien hankintaa. Suomi kannattaa lentoliikenteen päästöoikeuksien huutokauppaa koskevia komission ehdotuksia ja pitää tarkoituksenmukaisena, että lentoliikenteen päästöoikeudet huutokaupataan samojen sääntöjen mukaan kuin yleisen päästökaupan päästöoikeudetkin.

Pääasiallinen sisältö:

Joulukuussa 2008 hyväksyttiin osana ns. ilmasto- ja energiapakettia direktiivi päästökauppadirektiivin 2003/87/EY muuttamisesta. Direktiivimuutokset (2009/29/EY) koskevat vuoden 2012 jälkeistä aikaa. Direktiivissä varaudutaan EU:n yksipuoliseen, muiden maiden päästöjen rajoittamisvelvoitteista riippumattoman 20 %:n päästöjen vähennystavoitteen täytäntöönpanoon. Uudistetun direktiivin 10 artiklassa on säännökset päästöoikeuksien huutokaupasta. Direktiivin artiklassa 10 todetaan, että vuodesta 2013 lähtien jäsenvaltiot huutokauppaavat kaikki päästöoikeudet, joita ei jaeta maksutta. Komission arvion mukaan yli puolet kauden 2013–2020 päästöoikeuksista huutokaupataan. Komissio tulee julkaisemaan huutokaupattavien päästöoikeuksien arvioidun määrän viimeistään 31.12.2010 mennessä. Jäsenvaltiot saavat itse päättää, miten huutokaupasta saatavat tulot käytetään. Direktiivissä on suositusluontoinen korvamerkintä, jonka mukaan vähintään 50 prosenttia päästöoikeuksien huutokaupasta saatavista tuloista, taikka näitä tuloja vastaava määrä olisi käytettävä yhteen tai useampaan direktiivin 10 artiklan 3 kohdan mainitsemiin tarkoituksiin. Tällaisia tarkoituksia olisivat muun muassa kasvihuonekaasupäästöjen vähentäminen, ilmastonmuutoksen vaikutuksiin sopeutuminen, uusiutuvien energiamuotojen kehittäminen sekä toimenpiteet, joilla pyritään välttämään metsien häviäminen sekä lisäämään metsitystä ja metsien uudelleenistutusta kehitysmaissa, jotka ovat ratifioineet kansainvälisen ilmastonmuutossopimuksen sekä siirtämään teknologiaa ja helpottamaan ilmastonmuutossopimuksen kielteisiin vaikutuksiin sopeutumista näissä maissa. Edelleen mainitussa kohdassa mainitaan hiilidioksidin talteenotto ja geologinen varastointi, vähäpäästöisiin ja julkisiin liikennemuotoihin siirtymiseen rohkaiseminen, energiatehokkuuden ja puhtaan teknologian tutkimuksen ja kehittämisen rahoittaminen sekä energiatehokkuuden ja lämpöeristyksen parantaminen.

Komission tulee antaa päästökauppadirektiivin mukaisesti asetus huutokaupan järjestämiseen liittyvistä asioista 30.6.2010 mennessä. Asetuksessa annetaan säännöksiä huutokaupan ajoituksesta, hallinnoinnista ja muista näkökohdista sen varmistamiseksi, että huutokauppa toteutetaan avoimella, yhdenmukaistetulla ja syrjimättömällä tavalla. Direktiivi edellyttää, että huutokaupan menettelyjen tulee olla ennakoitavissa erityisesti ajoituksen ja sen kanssa, kuinka usein huutokauppoja toteutetaan sekä huutokaupattavien päästöoikeuksien määrän osalta. Huutokaupat tulee suunnitella siten, että toiminnanharjoittajilla, ja erityisesti pienillä ja keskisuurilla toiminnanharjoittajilla, on täydet, yhtäläiset ja oikeudenmukaiset mahdollisuudet osallistua huutokauppoihin. Kaikilla huutokauppaan osallistujilla tulee olla mahdollisuus saada samat tiedot samaan aikaan. Huutokaupan organisoinnin ja siihen osallistumisen tulee olla kustannustehokasta ja turhia hallinnollisia kuluja tulee välttää. Lisäksi päästöoikeuksia tulee olla vähäisten päästöjen aiheuttajien saatavilla. Asetusta on valmisteltu valvonnan käsittävää sääntelymenettelyä noudattavassa komitologiamenettelyssä.

Komissio on esitellyt asian valmisteluvaiheessa kolme erilaista huutokaupparamallia: keskitetty, hybridi ja koordinoitu malli. *Keskitetty malli* lähtee siitä, että huutokauppa toimitetaan yhden keskitetyn huutokauppapaikan kautta ja käytössä ovat vain yhdet säännöt Euroopan laajuisesti. Kaikki päästöoikeudet myytäisiin ja niitä koskevat tarjoukset menisivät siis vain yhden kauppapaikan kautta. *Hybridimallissa* huutokauppa voitaisiin toteuttaa usean eri kauppapaikan kautta siten, että yksittäiset kauppapaikat (lähinnä pörssit) toimittaisivat kaikki tehdyt tarjoukset hinnanmääräytymistä varten erilliselle keskuskauppapaikalle, jossa kaikki tehdyt tarjoukset käytäisiin läpi ja jossa hinta määräytyisi. Tarjoajia koskevat osallistumistarkastukset tehtäisiin erikseen eri kauppapaikoilla. Yksittäiset kauppapaikat voisivat antaa omat määräyksensä mm. kauppapaikan maksuista, tarvittavista vakuuksista ja toimituksen ehdoista. Eri kauppapaikkojen välillä pitäisi sopia esim. siitä, milloin huutokauppoja ajallisesti järjestetään, muissa asioissa harmonisointi olisi mahdollista vain vähäisessä määrin. Eri kauppapaikoista saattaa muodostua eriarvoisia mm. sillä perusteella, millaisia maksu- ja vakuusjärjestelyitä niissä noudatetaan. *Koordinoidussa mallissa* jäsenvaltiot huolehtisivat huutokauppojen toteuttamisesta ja harmonisointi liittyisi lähinnä vain aikataulujen yhteensovittamiseen. Koordinoidussa mallissa ongelmaksi on koettu se, että huutokauppasäännöt vaihtelisivat jäsenvaltioittain, ja tämä olisi yksittäisen huutokauppaan osallistujan näkökulmasta monimutkaista. Osallistumiskriteerit saattaisivat vaihdella huomattavasti maasta toiseen ja käytännössä se rajoittaisi osallistumismahdollisuuksia, ainakin pienten toiminnanharjoittajien osalta, koska kaikilla ei ole resursseja tehdä tarjouksia usean eri kauppapaikan kautta. Eurooppalaiset ja suomalaiset päästökaupan piirissä toimivat etujärjestöt ovat kannattaneet keskitettyä huutokaupparamallia.

Komission ehdotus lähtee siitä, että keskitettyjen huutokauppapaikkojen rinnalle hyväksyttäisiin jäsenvaltioiden omat huutokaupat. Tähän ratkaisuun päädyttiin, koska tietyt suuret jäsenvaltiot ovat vastustaneet voimakkaasti pelkkään keskitettyyn järjestelmään nojaavaa huutokauppajärjestelmää. Komissio haluaa kuitenkin pitää myös keskitetyn järjestelmän ulkopuolella järjestettävät huutokaupat tarkasti omissa harkinnassaan muun muassa siten, että jäsenmaiden tulee notifioida keskitetyn järjestelmän ulkopuolelle jäävät huutokaupansa komissiolle.

Komission 8.2.2010 päivätyssä vaikutusarvioraportissa ei ole arvioitu keskitetyn järjestelmän ja erillisten huutokauppapaikkojen keskinäistä vaikutusta ja niiden vaikutusta hiilimarkkinoiden toimintaan yleisesti.

Komissio seuraa Euroopan päästöoikeusmarkkinoiden toimintaa. Se toimittaa Euroopan parlamentille ja neuvostolle päästöoikeusmarkkinoiden toiminnasta vuosittain kertomuksen, mukaan luettuna huutokauppojen toteuttamisesta, likviditeetistä ja kaupuista määräistä.

Lentoliikenteen päästöoikeuksien huutokauppa

Lentoliikenteen päästöoikeuksien huutokauppaan on tarkoitus soveltaa lähtökohtaisesti samoja sääntöjä kuin muidenkin päästöoikeuksien huutokauppoihin. Päästökauppadirektiivin 3 d artiklan 3 kohdassa todetaan huutokauppa-asetuksen säätämisestä. Lentoliikenteen päästöoikeuksien huutokauppoja ehdotetaan toteutettavaksi vähintään kahden kuukauden välein. Lentoliikenteen päästökauppa on puoliavoin järjestelmä, mikä tarkoittaa sitä, että lentoliikenteen toiminnanharjoittajat voivat käyttää päästökaupasta aiheutuvien velvoitteidensa täyttämiseen myös muille sektoreille tarkoitettuja päästöoikeuksia. Muut päästökaupan piiriin kuuluvien sektoreiden toiminnanharjoittajat eivät voi käyttää lentoliikenteen päästöoikeuksia omien

velvoitteidensa täyttämiseen. Näin ollen ilma-alusten käyttäjillä on mahdollisuus osallistua kaikkiin järjestettäviin huutokauppoihin. Lentoliikenteen huutokaupat aloitetaan jo vuonna 2012. Lentoliikenteen päästökauppaa koskevat säännökset on annettu Euroopan parlamentin ja neuvoston direktiivillä 2008/101/EY, jolla on muutettu päästökauppadirektiiviä 2003/87/EY. Kansallisesti lentoliikenteen päästökauppa on voimaansaatettu lailla lentoliikenteen päästökaupasta (34/2010). Lain 10 §:n kolmannessa momentissa todetaan, että liikenne- ja viestintäministeriön asetuksella voidaan säätää huutokaupan järjestämisestä, ajankohdasta ja menettelytavoista vuoden 2012 osalta. EU-säädösten keskeneräisyyden vuoksi ei tiedetä tarkasti, vaaditaanko Suomessa asetusta lentoliikenteen päästöoikeuksien huutokauppojen toimittamisen sääntelemiseen.

Komission valmistelu ja muiden jäsenmaiden kantoja

Komissio on järjestänyt kesäkuussa 2009 ensimmäisen sidosryhmäkuulemisen huutokaupan tiimoilta. Syksyn aikana järjestettiin kaksi lisäkuulemistä. Sidosryhmäkuulemisten yhteydessä on järjestetty jäsenmaiden edustajien kanssa teknisen ryhmän kokouksia. Käsittelyä on hankaloittanut se, että varsinaista komission ehdotusta ei ole ollut saatavilla. Komissio on esittänyt ainoastaan alustavia näkemyksiä power point -esityksinä. Kymmenkunta jäsenmaata ei ole ollut lainkaan läsnä komission teknisen ryhmän kokouksissa. Tiedossa ei myöskään ole, mitä järjestelmää kyseiset maat kannattavat. Jäsenmaat ovat jakautuneet alustavien kantojensa mukaan kahteen leiriin, joista toinen on kannattanut keskitettyä järjestelmää. Iso-Britannia, Saksa, Puola ja Espanja ovat vastustaneet komission ajatuksia keskitetystä järjestelmästä ja ajaneet koordinoitua mallia, jossa mailla olisi mahdollisuus huolehtia itse omista huutokaupoista omien sääntöjensä mukaisesti. Koordinointi tapahtuisi viimeksi mainittujen maiden mukaan lähinnä huutokauppojen ajoitukseen liittyvissä asioissa. Mainittujen maiden linjausten mukaisesti komissio on ottanut asetusehdotukseen vaihtoehdoksi sen, että jäsenmaat voivat halutessaan järjestää omat huutokauppansa. Viimeksi mainituilla neljällä jäsenmaalla on yhteensä 112 ääntä. Päätös asiassa tehdään määräenemmistöllä, joka tarkoittaa sitä, että 90 ääntä pystyy kaatamaan komission ehdotuksen. Suomella on 7 ääntä.

Päästöoikeuksien jakoperiaatteet kaudella 2013–2020

Päästöoikeuksien jaossa siirrytään eri toimialojen harmonisointuihin jakomenetelmiin. Päästöoikeuksien jako huutokaupalla on ensisijainen jakomenetelmä. Energiaintensiivinen teollisuus eli hiilivuodolle alttiit toimialat saisivat päästöoikeuksia edelleen ilmaiseksi. Ilmaisjako ei kuitenkaan tarkoita päästöoikeuksien saamista tarpeen mukaan, vaan tiukkojen harmonisoitujen jakosääntöjen mukaisesti. Päästökauppadirektiivissä toiminnot on jaettu jakomenetelmän osalta kolmeen ryhmään:

1. *100 %:n huutokauppa*: kaikki sähkön tuotanto sekä kasvihuonekaasupäästöjen talteenotto- ja varastointilaitokset. Poikkeuksena on teollisuuden jätteenkäsittelyssä tuotettu sähkö ja uusia jäsenvaltioita koskevat määräaikaisten poikkeukset.

2. *Asteittain aleneva ilmaisjako*, jolloin 80 % päästöoikeuksista jaetaan ilmaiseksi harmonisoitujen jakosääntöjen mukaisesti vuonna 2013. Ilmaisen jaon määrä alenee lineaarisesti vuosittain ollen 30 % vuonna 2020 ja loppuen kokonaan vuonna 2027. Tähän ryhmään kuuluvat pääsääntöisesti muut sektorit kuin sähköntuotanto ja hiilivuotosektorit. Kaukolämpö ja kaukojäähdytys sekä osa teollisuutta kuuluvat tähän ryhmään. Direktiivin mukaan sähköntuottajiksi määritellyt laitokset saavat ilmaisia päästöoikeuksia tehokkaissa yhteistuotantolaitoksissa tuotetulle lämmölle.

3. 100 %:n harmonisoitu ilmaisjako niille teollisuuden aloille, jotka ovat alttiita merkittävälle hiilivuotoriskille. Tällä tarkoitetaan riskiä, että toimiala siirtää tuotantoa EU:n ulkopuolelle ilmastopolitiikasta aiheutuvien kustannusten vuoksi.

Lentoliikennesektorilla lentoliikenteen päästöoikeuksia jaetaan vuonna 2012 ilma-alusten käyttäjille 97 % vuosien 2004–2006 päästöjen keskiarvosta. Oikeuksien kokonaisuutta kiristetään vuonna 2013 alkavalla toisella lentoliikenteen päästökauppakaudella niin, että se on 95 % vuosien 2004–2006 keskiarvopäästöistä kutakin päästökauppavuotta kohden. Lentoliikenteen päästöoikeuksista kolme prosenttia jaetaan maksutta erityisvarannosta uusille ilma-alusten käyttäjille ja sellaisille ilma-alusten käyttäjille, joiden liikenne on kasvanut voimakkaasti. Jäljelle jäävistä jaettavista lentoliikenteen päästöoikeuksista 85 % jaetaan ilma-alusten käyttäjille EU-tasolla tehtävän vertailun perusteella maksutta. Maksuttomien päästöoikeuksien jakomenetelmässä määräävät tekijät ovat ilma-aluksen tonnikipometrit. Loput 15 % lentoliikenteen päästöoikeuksista huutokaupataan.

Kansallinen käsittely:

Työ- ja elinkeinoministeriössä kokoontunut epävirallinen ad hoc huutokaupparyhmä (kirjallinen)

Työ- ja elinkeinoministeriön asettama päästökauppalaki 2013–2020 –työryhmä
12.4.2010

Energia- ja Euratomjaosto (kirjallinen) 29.4.2010

Ympäristöjaosto (kirjallinen) 29.4.2010

Liikennejaosto (kirjallinen) 29.4.2010

Rahoituspalvelut ja pääomanliikkeet -jaosto (kirjallinen) 14.4.2010

EU-ministerivaliokunta 7.5.2010

Eduskuntakäsittely:

-

Käsittely Euroopan parlamentissa:

Asetusehdotus toimitetaan Euroopan parlamentin käsittelyyn ilmastonmuutoskomitean päätöksen jälkeen. Euroopan parlamentilla on kolme (3) kuukautta aikaa ilmoittaa, vastustaako se asetusta.

Kansallinen lainsäädäntö, ml. Ahvenanmaan asema:

Huutokauppaa koskevat perussäännöt tulee antaa lakitasolla päästökauppalaissa. Laissa tulee antaa myös asetuksenantovaltuus komission huutokauppa-asetuksen tarkemmasta soveltamisesta ja mahdollisista muista toteuttamiseen liittyvistä asioista. Työ- ja elinkeinoministeriö on asettanut päästökauppalainsäädännön kokonaisuudesta pohtivat työryhmän, jossa on tarkoitus valmistella myös huutokauppaan liittyvien säädösten kansallista toimeenpanoa. Komission huutokauppa-asetuksen vaikutukset lentoliikenteen päästökaupasta annettuun lakiin tulee arvioida myöhemmin.

Taloudelliset vaikutukset:

Päästökauppakaudella 2013–2020 merkittävä osa päästöoikeuksista huutokaupataan. Huutokaupattavista päästöoikeuksista saatavat tulot jaetaan jäsenvaltioille pääosin päästökauppasektorin vuoden 2005 tai vuosien 2005–2007 keskimääräisten päästöjen perusteella. Jäsenvaltiot saavat siten huutokauppatuloja, joiden suuruus huutokaupattavasta määrästä, huutokauppojen toteutustavoista ja markkinatilanteesta johtuvista syistä voi vaihdella vuosittain merkittävästi.

Päästökauppadirektiivin muutetun 10 artiklan 3 kohdan mukaan jäsenvaltiot päättävät, miten päästöoikeuksien huutokaupasta saatuja tuloja käytetään. Kohdassa on myös suositusluontoinen säännös, jonka mukaan vähintään 50 % huutokauppatuloista tulisi käyttää mm. kasvihuonekaasupäästöjen vähentämiseen ja ilmastomuutoksen vaikutuksiin sopeutumiseen. Suomessa hallitusohjelmilla määritellään hallituskausittain muun muassa ilmastopoliittiset tavoitteet ja toimenpiteet; niiden toteutumista seurataan strategia-asiakirjoilla. Vuosittain kehyspäättös- ja talousarvioprosessien yhteydessä päätetään valtion talousarvion tuloperusteista sekä määrärahojen kohdentamisesta muun muassa hallituksen ja EU:n ilmastopoliittisten tavoitteiden ja sopimusten täyttämiseksi.

EU:n yksipuolisen 20 prosentin päästöjen vähennystavoitteeseen perustuvan direktiivin perusteella Suomen saamien huutokaupattavien päästöoikeuksien suuruusluokaksi on työ- ja elinkeinoministeriössä tehdyn alustavan arvion mukaan saatu noin 15–20 miljoonaa hiilidioksiditonnia vastaava määrä vuodessa. Lopullinen määrä voidaan laskea vasta päästöoikeuksien ilmaisjaon sääntöjen ja niiden laitokohtaisen soveltamisen sekä päästökauppasektorin lopullisen päästöoikeusmäärän vahvistamisen jälkeen. Jos päästöoikeuden hinta-arviona käytetään 15, 20 ja 30 euroa, olisi valtion huutokaupasta saamien tulojen määrä kaudella 2013–2020 noin 225–300 miljoonaa euroa vuodessa sekä vastaavasti 300–400 miljoonaa euroa ja 450–600 miljoonaa euroa vuodessa.

Päästöoikeuksien jako huutokaupalla tarkoittaa tulojen kertymistä valtiolle ja kustannuksia päästökaupan piirissä oleville yrityksille. Kyse on näin ollen tulonsiirrosta sähkö- ja lämmöntuottajilta sekä teollisuudelta ja lentoliikenteeltä valtiolle. Huutokaupattavien päästöoikeuksien kokonaismäärään ja päästöoikeuksien hintaan sisältyy runsaasti epävarmuuksia, minkä vuoksi valtion tulojen arviointi on hankalaa. Hintaan liittyvät epävarmuudet ja hinnan vaihtelut jatkuvat koko päästökauppakauden.

Asetusehdotuksen mukaan jäsenmaiden tulee vastata huutokaupan monitorointiin liittyvistä kustannuksista. Nämä kulut olisi tarkoitus vähentää suoraan huutokauppatuloista, ennen kuin ne toimitetaan jäsenmaiden nimeämälle huutokaupanpitäjälle. Näiden kulujen suuruudesta ei ole arviota. Huutokauppapaikan toiminnasta aiheutuneet kustannukset on asetusehdotuksen mukaan tarkoitus periä tarjousten tekijöiltä.

Hallinnollisten vaikutusten taloudellisista vaikutuksista ei ole tarkempaa tietoa. Näitä vaikutuksia on mahdollista arvioida vasta siinä vaiheessa, kun kansallisten viranomaisten mahdolliset tehtävät ovat tarkemmin selvillä.

Muut mahdolliset asiaan vaikuttavat tekijät:

Hallinnolliset vaikutukset

Huutokauppa-asetuksen tarkoituksena on sopia hallinnollisesta järjestelystä huutokauppojen toteuttamisessa. Suomessa tarkoitus on, että päästöoikeuksista kirjaa pitävänä kansallisena viranomaisena Energiamarkkinavirasto huolehtii huutokaupan

järjestämisestä aiheutuvista kansallisista viranomaistehtävistä. Tästä on myös maininta lentoliikenteen päästökaupasta annetun lain 11 §:ssä. Kansallisella tasolla huutokauppojen toimittaminen tulee ainakin lisäämään tarvetta tiedotukseen ja koulutukseen, jotta pystyttäisiin turvaamaan suomalaisten toiminnanharjoittajien, ilmalusten käyttäjien ja muiden mahdollisten tahojen osallistuminen huutokauppoihin.

Jos Suomessa päädytään siihen, että huutokaupan kohteena on komission ehdottama viiden päivän futuuri -rahoitusväline, tulee rahoitusvälineiden markkinat -direktiivi sovellettavaksi, mistä seuraa valvontatehtäviä Finanssivalvonnalle. Finanssivalvonta valvoo Suomessa pääomamarkkinoilla toimivia yhteisöjä ja muun muassa sijoituspalveluyrityksiä. Spotkauppojen valvonta ei kuulu Finanssivalvonnan toimivaltaan.

Jäsenmaiden tulee nimittää niin sanottu huutokaupanpitäjä (auctioneer) edustamaan itseään huutokaupoissa. Ilman mainittua tahoa jäsenmaa ei voi antaa päästöoikeuksia huutokaupattavaksi. Jäsenmaat voivat nimittää myös yhteisen huutokaupanpitäjän. Huutokaupanpitäjän tehtävänä on huutokaupata päästöoikeudet, ottaa vastaan jäsenmaan huutokauppatulot sekä siirtää nämä tulot jäsenmaan tilille. Huutokaupanpitäjän tarkemmista ominaisuuksista ei ole vielä selvyyttä. Mainitun tahon nimittäminen tulee aiheuttamaan hallinnollisia vaikutuksia. Mahdollisia huutokaupanpitäjänä toimivia tahoja ei ole vielä kartoitettu, koska tiedossa ei ole, mitä ominaisuuksia tältä odotetaan.

Asiasanat	energia, päästökauppa
Hoitaa	TEM, YM
Tiedoksi	MMM, VM, LVM, ALR, EUE, SM, VNEUS, UM

AUCTIONING REGULATION – Commission proposal, 6 April 2010

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of [xx.xx.xxxx]

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 the Council establishing a scheme for greenhouse gas emission allowances trading within the Community

(Text with EEA relevance)

THE EUROPEAN COMMISSION

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

Having regard to Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC¹, and in particular Articles 3d(3) and 10(4) thereof,

Whereas:

- (1) Directive 2003/87/EC was revised and amended by Directive 2009/29/EC of the European Parliament and of the Council of 23 April 2009 amending Directive 2003/87/EC so as to improve and extend the greenhouse gas emission allowance trading scheme of the Community². One of the improvements determined in the revision of Directive 2003/87/EC was that auctioning should be the basic principle for allocation, as it is the simplest, and generally considered to be the most economically efficient means of doing so. The efficiency of the emissions trading scheme relies on a clear carbon price signal to achieve abatement of greenhouse gas emissions at least cost. Auctioning should support and strengthen such a carbon price signal.
- (2) Article 10(1) of Directive 2003/87/EC requires Member States to auction allowances covered by Chapter III 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.
- (3) Article 10(4) of Directive 2003/87/EC lays down various objectives for the auctioning process. It should be predictable, in particular as regards the timing and sequencing of auctions and the estimated volumes of allowances to be made available. Auctions

¹ OJ L 275, 25.10.2003, p. 32.

² OJ L 140, 5.6.2009, p. 63.

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should be designed to ensure that small and medium-sized enterprises covered by the emissions trading scheme 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.

- (4) These objectives should be read in the context of the overarching aims of the revision of Directive 2003/87/EC, *inter alia* more harmonisation, avoidance of distortions of competition and greater predictability, all of which should reinforce the carbon price signal to achieve abatement of emissions at least cost. Indeed, the increased emissions reduction effort requires the highest possible degree of economic efficiency on the basis of fully harmonised conditions of allocation within the Union.
- (5) A common auctioning infrastructure where a common auction platform administers the auctions best achieves the overarching objectives of the review of Directive 2003/87/EC. Such an approach avoids any distortions of the internal market. It allows for the highest degree of economic efficiency, and permits allowances to be allocated through auctioning on the basis of fully harmonised conditions within the Union. Moreover, administering the auctions by means of a common auction platform best strengthens the carbon price signal required for economic operators to make the investment decisions necessary to achieve abatement of greenhouse gas emissions at least cost.
- (6) A common auctioning infrastructure where a common auction platform administers the auctions best achieves the objectives in Article 10(4) of Directive 2003/87/EC as well. This approach is the most cost-effective means of auctioning allowances without 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 scheme and access to small emitters as the cost of becoming familiar and registering with as well as participating in more than one auction platform would be particularly burdensome for such companies. 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.
- (7) The choices as regards the number of auction platforms and the type of entity that may become an auction platform underpin the provisions adopted in this Regulation for a predictable auction calendar as well as the measures on accessing the auctions, the design of the auctions, the provisions on the management of collateral, payment and delivery and on auction supervision. Such provisions could not be adopted by the Commission in a harmonised regulation without knowing the number of auction platforms and the specific capabilities of the entity chosen to administer the auctions. Therefore, the measures adopted in this Regulation are based on auctions being

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administered through a common auction platform which should be a regulated market and, for the period until 2015, provide for a procedure to ascertain the number and quality of any other auction platform a Member State may decide to use on a transitional basis.

- (8) This Regulation should apply to the auctioning of allowances covered by Chapter III of Directive 2003/87/EC from 1 January 2013 onwards and Chapter II of Directive 2003/87/EC from 1 January 2012. It should also apply to the auctioning of any allowances covered by Chapter III of Directive 2003/87/EC prior to the start of the period from 2013, if necessary to ensure an orderly functioning of the carbon and electricity markets.
- (9) For reasons of simplicity and accessibility, the allowances auctioned should be available for delivery within five days at the latest. Such short term delivery deadlines would limit any potential negative impact on competition between the auction platforms and trading places in the secondary market for allowances. Moreover, it is simpler, encourages wide participation thereby mitigating the risk of market abuse and better ensures accessibility for small and medium-sized enterprises covered by the scheme and small emitters. Rather than providing forwards and futures in the auctions, it is for the market to offer optimal solutions to respond to the demand for allowances derivatives. It is appropriate to provide for a choice between two-day spot and five-day futures to be made following a competitive procurement process to assess the best solution for the most optimal type of contract to be selected. Whilst two-day spot is a commodity, five-day futures are financial instruments within the meaning of financial market regulation. Auctioning a financial instrument allows the auctioneer and bidders alike to benefit from protections analogous to those available to them within the context of the harmonised Union-wide regulatory framework applicable to financial markets, such as investor protection, prohibition of market abuse, or money laundering and terrorist financing, market supervision. The auctioning of two-day spot could potentially be easier to access for small and medium-sized enterprises and small emitters. The final choice will depend on the possible solutions offered by potential candidates taking part in the competitive tendering process to combine cost efficiency, equitable access for small and medium-sized enterprises covered by the scheme and small emitters with adequate protections and market supervision.
- (10) For as long as the legal measures and technical means necessary to deliver allowances are not in place, it is appropriate to provide for an alternative means of auctioning allowances. To this end, this Regulation provides for the possibility of auctioning futures and forwards with delivery no later than 31 December of the year to which the quantity of allowances auctioned are attributed. Such futures and forwards are financial instruments which allow the auctioneer and bidders alike to benefit from protections analogous to those available to them within the context of the regulatory framework applicable to financial markets. For the purposes of this Regulation, futures differ from forwards in that whilst the former are subject to cash margining, the latter are margined through non-cash collateral. It is appropriate to provide the Member States with the option of choosing which type of product to use for the auctioning of allowances in line with which margining provisions would best meet their budgetary situation. If it were necessary to resort to such alternative means of auctioning allowances, futures and forwards would be auctioned on a provisional basis

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through, in principle two auction platforms since at present no single trading platform offers both futures and forwards.

- (11) In view of the desire for simplicity, fairness and cost-efficiency and 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 that collude on the price they are bidding. There should be no limit on the number of bids which a bidder may submit unless such a limit is provided for in the contract appointing the auction platform. Such a limit should be introduced only if justified for technical reasons and their associated costs.
- (12) A relatively high frequency of the auctions is desirable to limit the impact of the auctions on the functioning of the secondary market, whilst ensuring that auctions are large enough to attract sufficient participation. A high frequency reduces the risk of market abuse because 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 these reasons, this Regulation should provide for a frequency of at least weekly auctions for allowances covered by Chapter III of Directive 2003/87/EC. Given the much smaller volume of allowances covered by Chapter II of Directive 2003/87/EC, the appropriate frequency for auctions for these allowances is once in two months.
- (13) To provide predictability to the secondary market, the Regulation should, provide the following rules and procedures. Firstly, it should provide for determining the volumes of any allowances to be auctioned in 2011 and 2012 as soon as practicable following the adoption of this Regulation. The volumes so determined as well as the auctioned products through which they are to be auctioned will be listed in an Annex to this Regulation. Secondly, it should provide clear and transparent rules that determine the volume of allowances to be auctioned in each year thereafter. Thirdly, it should contain rules and procedures to establish for each calendar year a detailed auction calendar, with all relevant information for each individual auction well before the beginning of that year. Any subsequent changes to the auction calendar should only be possible in a limited number of prescribed situations. Any adjustments should be made in a manner least affecting the predictability of the auction calendar.
- (14) As a rule, the volume to be auctioned in each year should be equal to the volume of allowances attributed to that year. Any allowances covered by Chapter III of Directive 2003/87/EC to be auctioned in 2011 and 2012 would be an exception. Given the expected availability of allowances banked from the second into the third trading period, the expected availability of certified emission reductions or CERs and the expected volume of allowances to be sold pursuant to Article 10a(8) of Directive 2003/87/EC, it is appropriate to address the impact from any 'early auctions' in 2011 and 2012 by rebalancing the volume of allowances to be auctioned in 2013 and 2014.
- (15) In line with demand on the secondary market, the volume of allowances to be auctioned in each year should be spread evenly throughout the year.

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- (16) 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 for adequate customer due diligence 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 and aircraft operators covered by the emissions trading scheme, as well as regulated financial entities such as investment firms and credit institutions. Thus, it would be prudent to circumscribe eligibility to apply for admission to the auctions at the beginning without precluding the possibility of enlarging access to the auctions to further categories of participants in the light of the experience acquired through the auctions.
- (17) In addition, for reasons of legal certainty, this Regulation should provide for relevant provisions of Directive 2005/60/EC of the European Parliament and the Council of 26 October 2005 on the prevention of the use of the financial system for the purposes of money laundering and terrorist financing³ to apply to the auction platform. This is particularly important in view of the fact that the auction platform is required to provide access not only to investment firms and credit institutions but also to operators and aviation operators as well as other persons authorised to bid on their own account and on behalf of others, which are not themselves subject to Directive 2005/60/EC.
- (18) This Regulation should provide participants with the choice of accessing the auctions directly *via* either the internet or proprietary connections, through authorised and supervised financial intermediaries or other persons authorised by the Member States to bid on behalf of clients of their main business, subject to such other persons complying with investor protection measures and customer due diligence measures equivalent to those applicable to investment firms.
- (19) 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.
- (20) Each Member State should appoint an auctioneer, who would be responsible for the auctioning of allowances on behalf of its appointing Member State. The auction platform should be responsible solely for administering the auctions. It should be possible for the same auctioneer to be appointed by more than one Member State. The auctioneer should act separately on behalf of each appointing Member State. It should be responsible for auctioning the allowances on the auction platform and for receiving and disbursing the auction proceeds pertaining to each appointing Member State to

³ OJ L 309, 25.11.2005, p. 15.

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that Member State. It is important for the agreement(s) between the Member States and their auctioneer to be compatible with the agreement(s) between the auctioneer and the auction platform, and in case of any conflict for the latter to prevail.

- (21) The requirement that the auction platform is a regulated market is founded on the desire to use the organisational infrastructure available on the secondary market for the administration of the auctions. In particular, regulated markets are bound under Directive 2004/39/EC of the European Parliament and of the Council on markets in financial instruments amending Council Directives 85/611/EC and 93/6/EC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC⁴ and under Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse)⁵, to provide a number of safeguards in the conduct of their operations. Those safeguards include arrangements to identify and manage the potential adverse consequences of any conflicts of interest for the operation of the regulated market or its participants, to identify and manage the risks to which they are exposed and to put in place effective measures to mitigate them, to provide for the sound management of the technical operations of their systems establishing effective contingency arrangements to cope with risks of systems disruptions, to have transparent and non-discretionary rules and procedures for fair and orderly trading and establish objective criteria for the efficient execution of orders, to facilitate the efficient and timely finalisation of the transactions executed under their systems; to have available sufficient financial resources to facilitate their orderly functioning, having regard to the nature and extent of the transactions concluded on the market and the range and degree of risks to which they are exposed.
- (22) The requirement that the auction platform is a regulated market has various further advantages. It allows relying on the organisational infrastructure, experience, capabilities and transparent mandatory operational rules of the market. This relevant is *inter alia* with regard to the admission of the auctioned products for trading, access requirements, the clearing and 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. This is cost-effective and helps safeguard the operational integrity of the auctions. The conflict of interest rules of regulated markets would require the auctioneer to be independent of the auction platform, its owners or its 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.
- (23) Under Directive 2004/39/EC, regulated markets and their market operators are authorised and supervised by the competent national authorities in the Member State where the regulated market or its market operator are either registered or situated (i.e. the home Member State). Without prejudice to any relevant provisions of Directive 2003/6/EC, notably any criminal sanctions provided for in national legislation on

⁴ OJ L 145, 30.04.2004, p. 1.

⁵ OJ L 96, 12.4.2003, p. 16.

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market abuse, the law applicable to regulated markets is the public law of the home Member State so they are subject to the jurisdiction of the administrative courts in the home Member State, as determined under national law. This regulatory framework applies to trading and not to auctioning and only to financial instruments, not spot products. Therefore, it is appropriate for reasons of legal certainty for this Regulation to provide for the home Member State of the regulated market being appointed as the auction platform to ensure that its national law extends the aforementioned regulatory framework for its relevant parts to the auctions, being administered by the auction platform coming under its jurisdiction. In addition, this Regulation should require the auction platform to provide for extra-judicial dispute resolution and for the Member State to provide for the right of appeal of the decisions of the extra-judicial dispute resolution mechanism to the appropriate courts.

- (24) Competition between different potential auction platforms should be ensured by the competitive procurement process for the appointment of the auction platform. The auction platform should be connected to at least one clearing system or settlement system. More than one clearing or settlement systems may connect to the auction platform. The appointment of the common auction platform should be for a limited period of maximum five years after which there will be a new competitive procurement process. The appointment of auction platforms other than the common auction platform should be for a limited period of maximum three years during which the arrangements governing auction platforms other than the common auction platform should be reviewed. Upon expiry of each appointment period there should be a new competitive procurement process. Any impact on the secondary market resulting from the selection of a common auction platform to carry out the auctions is expected to be limited, as only allowances with delivery within five days at the latest should be auctioned.
- (25) 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, within the meaning of the third paragraph of Article 91(1) of Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities⁶ (Financial Regulation). The need for such joint action is derived from the Union-wide ambit of the emissions trading scheme, the overarching policy objectives of the review of Directive 2003/87/EC, and the fact that the Commission is directly responsible under Directive 2003/87/EC for the detailed implementation of a number of features of the emissions trading scheme which have a direct impact in particular on the auction calendar and on the monitoring of the auctions. Therefore, this Regulation should provide for the competitive procurement process for the appointment of the auction platform and the auction monitor to be carried out through a joint procurement by the Commission and the Member States within the meaning of Article 125c of Commission Regulation (EC, Euratom) No 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the

⁶ OJ L 248, 16.09.2002, p. 1.

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European Communities⁷. Article 125c of Regulation (EC, Euratom) No 2342/2002 allows for the use of the procurement rules applicable to the Commission to a joint procurement between the Member States and the Commission. Given the Union-wide ambit of the procurement, it is appropriate to apply to the extent relevant the procurement rules of the Financial Regulation and Regulation (EC, Euratom) No 2342/2002 to the joint procurement process. This Regulation should specify the auctioning services to be procured by the Member States and the technical support services to be procured by the Commission, in particular with respect to potential decisions on completion of incomplete Annexes of this Regulation, the appropriate frequency of the auctions, on the coordination of the auction calendars of the various auction platforms, on the imposition of a maximum bid-size, any amendment of the Regulation, in particular as regards linking to other schemes and services to foster a proper understanding of the auctioning rules outside Europe. It is appropriate for the Commission to procure such services from the common auction platform with the most experience in conducting auctions on behalf of more than one Member State. This would preclude other auction platforms from being heard by the Commission, although the cost of any work done by other auction platforms should be borne by the appointing Member State.

- (26) The auction platform should be procured through an open, transparent and competitive selection procedure. In appointing the auction platform and the clearing or the settlement system(s) account should be taken of the solutions offered by candidates to provide for cost-efficiency, full, fair and equitable access to bid in the auctions for small and medium-sized enterprises and access for small emitters, and robust auction supervision including the provision of an extra-judicial dispute resolution mechanism. The auction platform auctioning forwards or futures may, by way of exception, be procured on the basis that it may apply the access provisions, payment and delivery rules and market supervision rules applicable on the secondary market. The specific procedures to be followed for the procurement of the common auction platform should be specified in an agreement agreed between the Commission and the Member States, in which the practical modalities for the evaluation of the requests for participation or the tenders and 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 125c of Regulation (EC, Euratom) No 2342/2002.
- (27) It is appropriate that Member States that decide not to participate in a joint auction for the appointment of the common platform but decide to appoint their own common should inform the Commission of their decision within a relatively short period following the entry into force of this Regulation. In addition, it is necessary for the Commission to assess that Member States appointing other auction platforms are doing so by procuring an auction process which satisfies the provisions of this Regulation as well as the objectives of Article 10(4) of Directive 2003/87/EC in line with the objectives of that Directive. Furthermore, it is necessary for the Commission to coordinate the detailed auction calendars proposed by auction platforms other than the common auction platform with the auction calendars proposed by the common platform. Once the Commission has conducted its assessment for all other auction

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OJ L 357, 31.12.2002, p. 1.

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platforms it should list such auction platforms, their appointing Member States and any applicable conditions, including any conditions relating to their respective auction calendars in an Annex to this Regulation. Such listing would not constitute endorsement by the Commission of the compliance of the appointing Member State with any public procurement rules applicable to the procurement of their chosen auction platform.

- (28) Article 10(3) of Directive 2003/87/EC provides that the Member States determine the use of revenues generated from the auctioning of allowances. For the avoidance of any doubt, this Regulation should provide for the transfer of the auction proceeds directly to the auctioneer appointed by each Member State.
- (29) Given that the auctioning of allowances consists of their primary issuance into the secondary market instead of allocating them directly to operators and aircraft operators free of charge, it is inappropriate for the clearing or settlement system to be bound by any obligations of specific performance of the delivery of allowances to successful bidders in the event of any failure in delivery, outside its control such as a failure of the Union registry. Thus, this Regulation should provide that the only remedies available to successful bidders and their successors in title in the event of any failure to deliver auctioned allowances should be either to rescind their contracts or to accept deferred delivery.
- (30) It is not appropriate for the Member States to have to deposit collateral other than the allowances themselves when auctioning, since the Member States' only commitments relate to the delivery of allowances. Thus, this Regulation should provide that the only obligations of the Member States when auctioning two-day spot or five-day futures as defined in this Regulation consist of pre-depositing the allowances being auctioned into an escrow account held in the Union registry.
- (31) It is appropriate for the structure and level of fees applied by the auction platform and their clearing or settlement systems 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, itemised and publicly available. As a general rule, the costs of the auction process should be borne by the fees paid by the bidders as set out in the contract appointing the auction platform. However, it is appropriate to provide for the costs of the auction monitor to be deducted from the auction proceeds.
- (32) An impartial auction monitor should be appointed to monitor and report on compliance of the auction process with the objectives of Article 10(4) of Directive 2003/87/EC, on the compliance with the provisions of this Regulation, and on any evidence of anti-competitive behaviour, or market abuse. The monitoring of the auctions requires a joint action by the Member States and the Commission, similarly as is the case for the auctions, and therefore a joint procurement is appropriate. The auction platforms, the auctioneers and the competent national authorities responsible for supervising the auction platform, investment firms or credit institutions or other persons authorised to bid on behalf of others participating in the auctions or for the investigation and prosecution of market abuse, should be required to cooperate with

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the auction monitor in fulfilling its functions.

- (33) To ensure the auction monitor's impartiality, the requirements for appointing the auction monitor should take account of candidates that exhibit 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 functions, in a timely manner, in accordance with the highest professional and quality standards.
- (34) Anti-competitive behaviour and market abuse is incompatible with the principles of openness, transparency, harmonisation and non-discrimination which underpin this Regulation. Therefore, this Regulation should include appropriate provisions to mitigate the risk of such behaviour in the auctions. A common auction platform, a simple auction design, a relatively high frequency, random resolution of tied-bids, adequate access to the auctions, equal information disclosure and transparency of the rules are all features that help to mitigate the risk of market abuse. The choice of financial instruments as a means for auctioning allowances allows the auctioneer and bidders alike to benefit from the protections available to them within the context of the regulatory framework applicable to financial markets. An impartial auction monitor should assess the auctions themselves and the implementation of its rules.
- (35) In addition, it is desirable to provide for the auction platform to monitor the behaviour of bidders and to notify the national competent authorities in the event of market abuse, money laundering and terrorist financing, in line with the reporting obligations laid down in Directive 2003/6/EC and by applying the reporting obligations laid down in Directive 2005/60/EC.
- (36) Moreover, it is desirable for this Regulation to provide for the option of imposing a maximum limit on what a single bidder can bid for as a share of the total volume of allowances to be auctioned in individual auctions or over a calendar year, or any other appropriate remedial measures. In view of the potential administrative burden that this option could generate, the option should only be activated after the competent national authorities have been notified of any market abuse, money laundering and terrorist financing, and have decided not to act, provided that the need for its activation and its effectiveness are demonstrated. The views of the auction platform, the auction monitor's reports and the Commission's own assessment of whether the market for emissions allowances is sufficiently protected from market abuse pursuant to Article 12(1a) of Directive 2003/87/EC will be relevant in this respect.
- (37) It is also appropriate that other persons authorised by the Member States to bid on behalf of clients of their main business established in the same Member State abide by a code of conduct provided for in this Regulation to ensure that their clients are adequately protected.
- (38) It is necessary for this Regulation to provide for the language regime applicable to the common auction platform, in a way that ensures transparency, and balances the twin objective of non-discriminatory access to the auctions whilst providing for the most

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cost-efficient language regime. All documentation not published in the *Official Journal of the European Union* should be published in a language customary in the sphere of international finance. The use of a language customary in the sphere of international finance has already been applied by the Member States in Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectuses to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC⁸. Member States may provide at their own cost for the translation of all documentation into their national official language(s), in which case auction platforms should be required to gear up to deal with the languages concerned at the option of applicants to bid, persons admitted to bid or bidders in an auction.

- (39) In view of legal certainty and transparency, this Regulation should contain detailed provisions on other aspects of auctioning such as publication, announcement and notification of the auction results, protection of confidential information, the correction of errors in any payment or allowance transfers made and collateral given or released under this Regulation, right to appeal the decisions of the common auction platform, and entry into force.
- (40) For the purposes of this Regulation, investment firms submitting bids relating to financial instruments on their own account or on behalf of clients should be considered to be performing an investment service or activity.
- (41) This Regulation does not prejudice the Commission's examination under Article 12(1a) of Directive 2003/87/EC of whether the secondary market for allowances is sufficiently protected from market abuse, and, if appropriate, bring forward proposals to ensure such protection.
- (42) This Regulation is without prejudice to the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union, for instance in the context of arrangements for ensuring fair, full and equitable access for SMEs covered by the EU ETS and access to small emitters.
- (43) This Regulation is without prejudice to the application of any applicable internal market rules.
- (44) In order to ensure predictability and timely auctions, the present Regulation should enter into force on the day of publication in the *Official Journal of the European Union*.
- (45) The measures provided for in this Regulation are in accordance with the opinion of the Committee referred to in Article 23(1) of Directive 2003/87/EC,

HAS ADOPTED THIS REGULATION

⁸ OJ L 345, 31.12.2003, p. 64.

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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 Chapter II (aviation activities listed in Annex I) of Directive 2003/87/EC and to the allocation through auctions of allowances valid for surrendering in trading periods as from 2013 under Chapter III (stationary installations) of Directive 2003/87/EC.

Article 3

Definitions

1. For the purposes of this Regulation, the following definitions shall apply:
 - (a) ‘regulated market’ means the same as in point (14) of Article 4(1) of Directive 2004/39/EC;
 - (b) ‘futures’ means allowances auctioned as financial instruments, pursuant to Article 38(3) of Regulation (EC) No 1287/2006, with physical delivery deferred to a specified date and with margining provisions based on cash collateral;
 - (c) ‘margining’ means the process by which collateral is to be pledged by an auctioneer or a bidder, or an intermediary 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, intended to ensure that all payment commitments of a bidder and all delivery commitments of an auctioneer or an intermediary acting on their behalf can be met within a very short period of time;
 - (d) ‘forwards’ means allowances auctioned as financial instruments, pursuant to Article 38(3), of Regulation (EC) No 1287/2006, with physical delivery deferred to a specified date and with margining provisions based on non-cash collateral;

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- (e) ‘two-day spot’ means allowances auctioned as commodities for physical delivery within two trading days of the day of the auction, pursuant to Article 38(2)(a) of Commission Regulation (EC) No 1287/2006⁹;
- (f) ‘five-day futures’ means allowances auctioned as financial instruments, pursuant to Article 38(3), of Regulation (EC) No 1287/2006, for physical delivery no earlier than on the second trading day and no later than the fifth trading day from the day of the auction;
- (g) ‘bid’ means an offer in an auction to acquire a given volume of allowances;
- (h) ‘bidding window’ means the time period during which bids may be submitted;
- (i) ‘investment firm’ means the same as in point (1) of Article 4(1) of Directive 2004/39/EC;
- (j) ‘credit institution’ means the same as in Article 4(1) of Directive 2006/48/EC of the European Parliament and of the Council¹⁰;
- (k) ‘money laundering’ means the same as in Article 1(2) having regard to Articles 1(3) and (5) of Directive 2005/60/EC;
- (l) ‘terrorist financing’ means the same as in Article 1(4) having regard to Article 1(5) of Directive 2005/60/EC;
- (m) ‘criminal activity’ means the same as in Article 3(4) of Directive 2005/60/EC;
- (n) ‘market abuse’ means insider dealing and market manipulation collectively, where ‘insider dealing’ means the same as in Article 1(1) and Article 2 of Directive 2003/6/EC and ‘market manipulation’ means the same as in Article 1(2) of that Directive;
- (o) ‘auction process’ means the process encompassing the setting of the auction calendar, the requirements for admission to bid, the submission of bids, the running of the auction, the calculation and announcement of the auction results, the arrangements for payment of the price due, allocation of the allowances and the management of the collateral needed to cover any transaction risks, the supervision and monitoring of the proper conduct of the auctions;
- (p) ‘parent undertaking’ means the same as in Articles 1 and 2 of Seventh Council

⁹ OJ L 241, 02.09.2006, p. 1.

¹⁰ OJ L 177, 30.6.2006, p. 1.

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Directive 83/349/EEC¹¹;

- (q) ‘subsidiary undertaking’ means the same as in Articles 1 and 2 of Directive 83/349/EEC;
- (r) ‘control’ means the same as defined in Article 3(2) and (3) of Council Regulation (EC) No 139/2004¹²;
- (s) ‘auctioneer’ means any public or private entity appointed by a Member State, to auction allowances on its behalf;
- (t) ‘clearing system’ means one or more infrastructure connected to the auction platform that can provide clearing, margining, netting and any other services, including management of collateral and settlement, carried out by a central counterparty, accessed either directly or indirectly through members of the central counterparty who act as intermediaries between their clients and the central counterparty;
- (u) ‘clearing’ means all processes preceding the opening of the bidding window and following the announcement of the results of an auction until settlement, involving the management of any risks arising during that interval, involving amongst other things netting, margining or novation, carried out possibly by a clearing or settlement system;
- (v) ‘settlement’ means payment by a successful bidder of the sum due for allowances to be delivered to that bidder and delivery of the allowances to a successful bidder or its successor in title;
- (w) ‘central counterparty’ means an entity which interposes either directly between an auctioneer and a bidder or its successor in title, or between intermediaries representing them, that 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, subject to Article 42;
- (x) ‘settlement system’ means any infrastructure whether or not connected to the auction platform that can provide settlement services, which may include clearing, netting, management of collateral, or any other necessary services, which ultimately enable the allocation of the allowances from an auctioneer to a bidder or its successor in title, and the payment of the sum due for the delivered allowances from a bidder to an auctioneer, carried out through either of the following:
 - (i) the banking system and the Union registry;

¹¹ OJ L 193, 18.07.1983, p. 1.

¹² OJ L 024, 29.01.2004, p. 01.

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- (ii) 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;
- (y) ‘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 the payment of the auction clearing price by the successful bidders or an intermediary representing it are safely executed either simultaneously or nearly simultaneously in a guaranteed manner;
- (z) ‘secondary market’ means the market in which persons trade allowances after they are allocated either free of charge or through auctioning;
- (aa) ‘nominated holding account’ means one or more type of holding account provided for in the applicable Commission regulation adopted under Article 19(3) of Directive 2003/87/EC for the purposes of participating in or administering the auction process including the holding of allowances in escrow, pending their delivery under this Regulation;
- (bb) ‘nominated bank account’ means a bank account designated by an auctioneer or a bidder for the receipt of payments due under this Regulation;
- (cc) ‘beneficial owner’ means the same as in Article 3(6) of Directive 2005/60/EC;
- (dd) ‘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;
- (ee) ‘collateral’ means the forms of guarantee referred to in Article 2(m) of Directive 98/26/EC of the European Parliament and of the Council¹³, including any allowances accepted as security by the clearing and/or settlement systems;
- (ff) ‘conflict of interest’ means where one's own business dealings either on its own account or on account of its clients would preclude it from frankly and faithfully representing the interests of another;
- (gg) ‘SMEs’ means operators or aircraft operators that are small and medium sized enterprises within the meaning of Commission Recommendation 2003/361/EC¹⁴;

¹³ OJ L 166, 11.6.1998, p. 45.

¹⁴ OJ L 124, 20.05.2003, p. 36.

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- (hh) ‘small emitters’ means operators or aircraft operators that emitted 25 000 tonnes of carbon dioxide equivalent emissions or less on average in the three calendar years preceding the year in which they participate in an auction, as determined by their verified emissions;
- (ii) ‘customer due diligence measure’ means the same as Article 8(1) having regard to Article 8(2) of Directive 2005/60/EC.

CHAPTER II

THE DESIGN OF THE AUCTIONS

Article 4

Auctioned products

1. Allowances shall be offered for sale on an auction platform by means of standardised electronic contracts that are fully fungible and tradable on a regulated market operated by the same auction platform (hereinafter referred to as the "auctioned product").
2. Until the legal measures and technical means necessary to deliver the allowances are put in place, allowances shall be auctioned by each Member State in the form of only one of the following auctioned products:
 - (a) futures;
 - (b) forwards;with physical delivery deferred to a date no later than December 2013.
3. When the legal measures and technical means necessary to deliver the allowances are put in place, allowances shall be auctioned by each Member State in the form of only one of the following auctioned products:
 - (a) two-day spot;
 - (b) five-day futures.

Article 5

Auction format

Auctions shall be carried out through an auction format whereby bidders submit their bids during one given bidding window without seeing bids submitted by other bidders, and each successful bidder pays the same auction clearing price for each allowance regardless of the

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price bid.

Article 6

Submission and withdrawal of bids

1. The minimum volume bid for the auctioned products referred to in Article 4(3) shall be 500 allowances, representing one lot.

One lot of the auctioned products referred to in Article 4(2) shall be 1 000 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.

Where the client is in turn bidding on behalf of its client, the identity of that client shall also be stated. The same shall apply to all further clients down the chain bidding indirectly in the auctions;

- (c) the number of allowances in integral multiples of lots of 500 or 1 000 allowances;
 - (d) the price bid in euros for each allowance specified to two decimal points.
3. Each bid may only be submitted, modified or withdrawn during a given bidding window.

Bids submitted may be modified or withdrawn, by a given deadline before the close of the bidding window. The deadline shall be set by the auction platform concerned and published on that auction platform's website at least five trading days prior to the opening of the bidding window.

Each bid shall only be submitted, modified or withdrawn by a natural person established in the Union who is appointed pursuant to Article 20(2)(c) and authorised to bind a bidder for all purposes relating to the auctions including the submission of a bid (hereinafter referred to as the "representative of the bidder").

Each bid shall be binding once it has been submitted, unless it is withdrawn or modified pursuant to this paragraph or withdrawn pursuant to paragraph 5.

4. Where for technical reasons a limit on the number of bids which a bidder may submit is desirable, this limit shall not be less than 200.

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5. Any auction platform may, upon request of a representative of the bidder, treat a bid submitted by that bidder to the auction platform concerned as withdrawn after the close of the bidding window, but before the auction clearing price has been determined if it is satisfied that a genuine mistake has been made in the submission of the bid.
6. The submission of a bid by an investment firm or credit institution on any auction platform shall be deemed to constitute an investment service within the meaning of Article 4(1)(2) of Directive 2004/39/EC.

Article 7

Rejection of a bid

1. An auction platform shall reject a bid if it has reasonable grounds to suspect money laundering, terrorist financing, criminal activity or market abuse provided that such rejection is unlikely to frustrate efforts by the competent national authorities, to pursue or apprehend the perpetrators of such activities.
2. Any auction platform may, before the close of the bidding window, reject a bid submitted to the auction platform concerned, if it has reasonable grounds to believe that the bidder:
 - (a) is not or is no longer eligible to bid under Article 19(1) or (2);
 - (b) is otherwise in breach of this Regulation;
 - (c) has behaved in a manner that is prejudicial to the orderly or efficient conduct of an auction.
3. The bidder whose bid has been rejected pursuant to paragraph 2 shall be notified by the auction platform concerned of its decision at the latest at the same time as it notifies the bidder of the results of the auction, pursuant to Article 55(3).
4. The bidder referred to in paragraph 3 may request the auction platform concerned to review a decision made under paragraph 2, no later than five trading days from the date of that auction platform's decision to reject a bid.

Upon receipt of such a request, the auction platform concerned shall carry out a review and inform the bidder of its decision, no later than 20 trading days from the receipt of the request for review.

Where the auction platform decides to revoke its earlier decision to reject a bid, any allowances due to the successful bidder shall be delivered from the volume of allowances earmarked to be auctioned at the next auction.

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Article 8

Auction clearing price and resolution of tied bids

1. The auction clearing price shall be determined upon closure of the bidding window.
2. 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 they shall be sorted through a random selection. The auction platform concerned shall publish a description of the means used for this random selection of bids on its website.

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 last bid making up the sum of the volumes bid, referred to in paragraph 2 shall be allocated the remaining volume of the auctioned allowances.
5. Where the total volume of bids sorted pursuant to paragraph 2 falls short of the volume of auctioned allowances, the auction shall be cancelled.
6. Where the auction clearing price is significantly under the price on the secondary market prevailing during and immediately before the auction, the auction shall be cancelled.
7. Where an auction is cancelled pursuant to paragraphs 5 or 6, the auctioned volume shall be distributed evenly over the next auctions scheduled on the same auction platform.

In case of allowances covered by Chapter III of Directive 2003/87/EC, the volume to be auctioned shall be distributed over the next four auctions.

In case of allowances covered by Chapter II of Directive 2003/87/EC the volume to be auctioned shall be distributed over the next two scheduled auctions.

CHAPTER III

AUCTION CALENDAR

Article 9

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Timing and frequency

1. Any auction platform shall conduct auctions separately through its own regularly recurring bidding window. The bidding window shall be opened and closed on the same trading day. The bidding window shall be kept open for no less than two hours. The bidding windows of any two or more auction platforms may not overlap and there shall be at least a two-hour delay between two consecutive bidding windows.
2. The dates and times of the auctions shall be determined 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 necessitating changes. No auctions shall be held in the two weeks over Christmas and the New Year of each year.
3. In exceptional circumstances, any auction platform may, after consulting the Commission and obtaining its opinion thereon, 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.
4. At least as from the sixth auction, the auction platform appointed pursuant to Article 28(1) or (2) shall conduct auctions of allowances covered by Chapter III of Directive 2003/87/EC at least on a weekly basis and auctions of allowances covered by Chapter II of Directive 2003/87/EC at least on a two-monthly basis.
5. At least as from the sixth auction, the volume of allowances to be auctioned on the auction platform appointed pursuant to Article 28(1) or (2) shall be equally distributed over the auctions held in a given year, except that volumes auctioned in auctions held in August of each year shall be half of the volume auctioned in auctions held in other months of the year.
6. The provisions on the timing and frequency of the auctions conducted by any auction platform other than the auction platforms appointed pursuant to Article 28 (1) or (2) are set out in Article 34(1) or (2).

Article 10

Circumstances preventing the conduct of auctions

Where the proper conduct of an auction is disrupted or is likely to be disrupted, due to any circumstance affecting the security or reliability of the information technology system needed to apply for admission to bid, to access or execute an auction, the auction shall be cancelled.

In case of allowances covered by Chapter III of Directive 2003/87/EC the volume to be auctioned shall be distributed evenly over the next four scheduled auctions.

In case of allowances covered by Chapter II of Directive 2003/87/EC the volume to be

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auctioned shall be distributed evenly over the next two scheduled auctions.

Article 11

Annual volumes of the auctioned allowances covered by Chapter III of Directive 2003/87/EC

1. The volume of any allowances covered by Chapter III of Directive 2003/87/EC to be auctioned in 2011 or 2012 and the auctioned products by means of which the allowances are to be auctioned shall be set out in Annex I to this Regulation.
2. The volume of allowances covered by Chapter III of Directive 2003/87/EC to be auctioned in 2013 and 2014 shall be the quantity of allowances determined pursuant to Articles 9 and 9a of that Directive for the calendar year concerned, less the allocation free of charge provided for in Articles 10a(7) and 11(1) of that Directive, less half of the total volume of any allowances auctioned in 2011 and 2012.

The volume of allowances covered by Chapter III of Directive 2003/87/EC to be auctioned each year as from 2015 onwards shall be the quantity of allowances determined pursuant to Articles 9 and 9a of that Directive for the calendar year concerned, less the allocation free of charge provided for in Articles 10a(7) and 11(1) of that Directive .

Any quantity to be auctioned pursuant to Article 24 of Directive 2003/87/EC or any extension of the scope of that Directive shall be added to the volume of allowances to be auctioned attributed to a given calendar year, determined pursuant to the first or second subparagraphs.

The volume of allowances covered by Chapter III of Directive 2003/87/EC to be auctioned in the final year of each trading period shall take account of any cessation of operations of an installation pursuant to Article 10a(19) of that Directive and of any adaptation of the level of free allocation pursuant to Article 10a(20) of that Directive or allowances remaining in the reserve for new entrants provided for in Article 10a(7) of that Directive .

3. The volume of allowances covered by Chapter III of Directive 2003/87/EC to be auctioned each calendar year as from 2013 shall be based on the Commission's determination and publication pursuant to Article 10(1) of that Directive of the estimated amount of allowances to be auctioned or on the most recent amendment of the Commission's original estimate as published by 31 January of the preceding year.

Any subsequent change to the volume of allowances to be auctioned in a given calendar year shall be accounted for in the volume of allowances to be auctioned in the subsequent calendar year.

Article 12

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Calendar for individual auctions of allowances covered by Chapter III of Directive 2003/87/EC auctioned by the auction platforms appointed pursuant to Article 28(1) or (2)

1. The auction platforms appointed pursuant to Article 28(1) or (2) of this Directive shall publish the bidding windows, individual volumes, auction dates as well as the type of contract, payment and delivery dates of the allowances covered by Chapter III of Directive 2003/87/EC to be auctioned in individual auctions each year, by 28 February of the previous year, or as soon as practicable thereafter, having previously consulted the Commission and obtained its opinion thereon. The auction platforms concerned shall take the utmost account of the Commission's opinion.
2. The auction platforms appointed pursuant to Article 28(1) or (2) shall base their publications under paragraph 1 of this Article on the Commission's determination and publication of the estimated amount of allowances to be auctioned or on the most recent amendment of the Commission's original estimate referred to in Article 11(3).
3. The bidding windows, individual volumes, auction dates as well as the auctioned product, payment and delivery dates of the allowances covered by Chapter III of Directive 2003/87/EC to be auctioned in individual auctions for the final year of each trading period, may be adjusted by the auction platform concerned to take account of any cessation of operations of an installation pursuant to Article 10a(19) of that Directive, any adaptation of the level of free allocation pursuant to Article 10a(20) of that Directive or allowances remaining in the reserve for new entrants provided for in Article 10a(7) of that Directive.
4. The provisions on the calendar for individual auctions of allowances covered by Chapter III of Directive 2003/87/EC conducted by an auction platform other than the auction platforms appointed pursuant to Article 28(1) or (2) of this Regulation are set out in Article 34 (3) and (4) of this Regulation.

Article 13

Annual volumes of auctioned allowances covered by Chapter II of Directive 2003/87/EC

The volume of allowances covered by Chapter II of Directive 2003/87/EC to be auctioned each calendar year as from 2012 shall be the volume calculated and decided by the Commission pursuant to Article 3d(1) or (2) of that Directive, divided equally over the number of years making up the trading period in question.

However, the volume of allowances to be auctioned in the final year of each trading period shall take account of allowances remaining in the special reserve referred to in Article 3f of Directive 2003/87/EC.

Article 14

Calendar for individual auctions of allowances covered by Chapter II of Directive

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2003/87/EC auctioned by the auction platforms appointed pursuant to Article 28(1) or (2)

1. The auction platforms appointed pursuant to Article 28(1) or (2) of this Regulation shall publish the bidding windows, individual volumes, auction dates as well as the auctioned product, payment and delivery dates of the allowances covered by Chapter II of Directive 2003/87/EC to be auctioned in individual auctions for 2012, by 30 September 2011, or as soon as practicable thereafter, having previously consulted the Commission and obtained its opinion thereon. The auction platforms concerned shall take the utmost account of the Commission's opinion.
2. As from 2012, the auction platforms appointed pursuant to Article 28(1) or (2) of this Regulation shall publish the bidding windows, individual volumes, auction dates as well as the auctioned product, payment and delivery dates of the allowances covered by Chapter II of Directive 2003/87/EC to be auctioned in individual auctions for each year by 28 February of the previous year, or as soon as practicable thereafter, having previously consulted the Commission and obtained its opinion thereon. The auction platforms concerned shall take the utmost account of the Commission's opinion.

The bidding windows, individual volumes, auction dates as well as the auctioned product, payment and delivery dates of the allowances covered by Chapter II of Directive 2003/87/EC to be auctioned in individual auctions for the final year of each trading period, may be adjusted by the auction platform concerned to take account of allowances remaining in the special reserve referred to in Article 3f of that Directive.

3. The auction platforms appointed pursuant to Article 28(1) or (2) of this Regulation shall base their publications under paragraphs 2 and 3 on the Commission's decision adopted pursuant to Article 3e(3) of Directive 2003/87/EC or the most recent amendment of that decision.

Article 15

Adjustments of the auction calendar

Articles 11, 12, 13 and 14 shall be without prejudice to any adjustments due to any of the following:

- (a) the cancellation of an auction pursuant to Articles 8(5) and (6), 10 and 34(4);
- (b) a decision following the review of a rejection of a bid pursuant to Article 7(4);
- (c) any decision by a Member State made pursuant to Article 32(8);
- (d) the failure to deliver allowances in a given auction, pursuant to Article 42(5);
- (e) any allowances remaining in the special reserve referred to in Article 3f of Directive

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2003/87/EC;

- (f) the cessation of operations of an installation pursuant to Article 10a(19) of Directive 2003/87/EC, any adaptation of the level of free allocation pursuant to Article 10a(20) of that Directive or allowances remaining in the reserve for new entrants provided for in Article 10a(7) of that Directive ;
- (g) any unilateral inclusion of additional activities and gases pursuant to Article 24 of Directive 2003/87/EC;
- (h) any measures adopted pursuant to Article 29a of Directive 2003/87/EC;
- (i) the entry into force of amendments to this Regulation or Directive 2003/87/EC.

CHAPTER IV

ACCESS TO THE AUCTIONS

Article 16

Persons who may submit bids directly in an auction

Only a person that is either established in the EU or an aircraft operator, who is eligible pursuant to Article 19 and is admitted to bid pursuant to Article 20 may submit bids directly in an auction.

Article 17

Means of access

1. Any auction platform shall provide for the means to access its auctions on a non-discriminatory basis.
2. Any auction platform auctioning the auctioned products provided for in Article 4(3) shall ensure that its auctions can be accessed remotely by means of an electronic interface accessible securely and reliably through the internet.

In addition, any auction platform auctioning the auctioned products provided for in Article 4(3) shall offer bidders the option of accessing its auctions through proprietary connections to the electronic interface.

3. Any auction platform auctioning the auctioned products provided for in Article 4(3) shall offer at least three alternative means of accessing its auctions, should the main means of access be inaccessible for whatever reason.

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Such alternative shall include secure and reliable means of access by telephone, facsimile and electronic mail, including proprietary telephone, facsimile or electronic mail lines.

Article 18

Training and helpline

Any auction platform auctioning the auctioned products provided for in Article 4(3) shall offer a practical web-based training module on the auction process it is conducting including guidance on how to complete and submit any forms and a mock auction simulation. It shall also supply a helpline accessible by telephone, facsimile and electronic mail at least during the working hours of each trading day.

Article 19

Persons eligible to submit bids

1. The following persons shall be eligible to submit bids directly in the auctions:
 - (a) an operator or an aircraft operator having an operator holding account, bidding on its own account including any parent undertaking or subsidiary undertaking forming part of the same group of companies as an operator or an aircraft operator;
 - (b) investment firms bidding on their own account or on behalf of their clients;
 - (c) credit institutions bidding on their own account or on behalf of their clients.
 - (d) a partnership, joint venture, consortium acting as agent on behalf of its members, or any other business grouping of persons listed in point (a) bidding on its own account, whether or not it has legal personality;
 - (e) public bodies or state-owned entities that control any of the persons listed in point (a).
2. Without prejudice to the exemption in Article 2(1)(i) of Directive 2004/39/EC, other authorised persons shall be eligible 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 authority in that Member State to authorise them to bid on behalf of clients of their main business. A competent authority shall only grant an authorisation where the person fulfils all of the following conditions:
 - (a) it ensures investor protection and has put in place the necessary processes and checks to manage conflicts of interest pursuant to the provisions of Article

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53(1);

- (b) it complies with the requirements of national legislation transposing Directive 2005/60/EC;
 - (c) it complies with any other measures deemed necessary by the competent authority in the Member State of establishment 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.
- 3. The Member State where the person referred to in paragraph 2 is authorised shall monitor and enforce the conditions listed in points (a) to (d) of paragraph 2. The Member State shall ensure that:
 - (a) its competent authorities have at their disposal the necessary 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.
- 4. Where the persons referred to in paragraph 1(b) and (c) and paragraph 2 bid on behalf of their clients, those clients shall themselves be eligible to bid indirectly under paragraph 1.

Where the clients of the persons referred to in the first subparagraph are themselves bidding on behalf of their own clients, those clients shall also be eligible to bid indirectly under paragraph 1 or 2. The same shall apply to all further clients down the chain bidding indirectly in the auctions.
- 5. The following persons may not submit bids on their own account or on behalf of any other person:
 - (a) the auctioneers;
 - (b) any auction platform including any clearing or settlement systems connected to them;
 - (c) the auction monitor;
 - (d) persons who are in a position to exercise, directly or indirectly, significant influence over the management of the persons under points (a), (b) or (c);
 - (e) persons working for persons under points (a), (b) or (c) in connection with the

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auctions.

Article 20

Requirements for admission to bid

1. Members or participants of the secondary market organised by an auction platform auctioning the auctioned products provided for in Article 4(3) that are eligible persons pursuant to Article 19 shall be admitted to bid directly in the auctions without any further admission requirements, provided that all of the following conditions are fulfilled:
 - (a) the requirements for admission to trade allowances through the secondary market organised by an auction platform auctioning the auctioned products provided for in Article 4(3) are no less stringent than those listed under paragraph 2 of this Article;
 - (b) the auction platform auctioning the auctioned products provided for in Article 4(3) receives any additional information necessary to verify the fulfilment of any requirements referred to in paragraph 2 of this Article that have not been previously verified.
2. Persons, who are not members or participants of the secondary market organised by an auction platform auctioning the auctioned products provided for in Article 4(3), and that are eligible persons pursuant to Article 19 shall be admitted to bid directly in the auctions either as members or participants provided that they:
 - (a) hold a nominated holding account;
 - (b) hold a nominated bank account;
 - (c) appoint at least two representatives of the bidder as defined in the third subparagraph of Article 6(3);
 - (d) satisfy the auction platform concerned as to their identity, the identity of their beneficial owners, integrity, business and trading profile having regard to the means of establishing the auctioning relationship, the type of bidder, the nature of the auctioned product, the size of prospective bids, and the means of payment and delivery;
 - (e) satisfy the auction platform concerned as to the requirements governing access to or membership of that auction platform, established and maintained in a transparent and non-discriminatory manner based on objective criteria in accordance with Article 42 of Directive 2004/39/EC;
 - (f) satisfy the auction platform concerned of their financial standing, in particular,

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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 51;
 - (h) fulfil the requirements of Article 43(1).
3. Persons falling under the scope of Article 19(1)(b) and (c) or Article 19(2) submitting bids on behalf of their clients shall, in addition to paragraph 2, demonstrate that all of the following conditions are fulfilled:
- (a) their clients are eligible persons under Article 19(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 the submission of bids, collection of payment and transfer of allowances;
 - (ii) prevent the disclosure of confidential information from that part of their business responsible for receiving, preparing and submitting bids on behalf of their clients to that part of their business responsible for preparing and submitting bids on their own account;
 - (iii) ensure that their clients who themselves are acting on behalf of clients bidding in the auctions apply the requirements set out in paragraph 2 and in this paragraph and that they require the same of their clients and of the clients of their clients as provided for in Article 19(4).

Article 21

Submission and processing of applications for admission to bid

1. Before submitting their first bid directly through any auction platform auctioning the auctioned products provided for in Article 4(3), persons eligible under Article 19(1) and (2) shall apply to the auction platform concerned for admission to bid.
2. An application for admission to bid made under paragraph 1 shall be made by completing an electronic application accessible through the internet, at least 15 trading days before the opening of the bidding window of the first auction in which the applicant wishes to bid. The electronic application and its access through the internet shall be provided and maintained by the auction platform concerned.

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3. An application for admission to bid shall be supported by duly certified copies of all supporting documents required to show that the applicant satisfies the requirements of Article 20(2) and (3). An application for admission to bid shall at least include the elements listed in Annex II.
4. An application for admission to bid, including any supporting documents, shall upon request be made available for inspection by the auction monitor, the competent national law enforcement authorities of a Member State conducting an investigation, referred to in Article 56(3)(e) and any competent Union bodies involved in investigations conducted on a cross-border basis.
5. Any auction platform auctioning the auctioned products provided for in Article 4(3) may refuse admission to bid in its auctions if the applicant refuses any of the following:
 - (a) to comply with requests for additional information or clarification or substantiation of information provided;
 - (b) to attend an invitation to interview any officers of the applicant including at its business premises or elsewhere;
 - (c) to allow investigations or verifications, including on-site visits or spot-checks at the applicant's business premises;
 - (d) to comply with requests for any information required from the clients of an applicant or the clients of their clients as provided for in Article 19(4) necessary to check compliance with the requirements of Article 19(2)(d).

The auction platform concerned may rely on reliable checks carried out by the applicant or the applicant's clients, or the clients of their clients as provided for in Article 19(4).

6. Any auction platform auctioning the auctioned products provided for in Article 4(3) of this Regulation shall apply the measures provided for in Article 13(4) of Directive 2005/60/EC in respect of its transactions or business relationships with politically exposed persons within the meaning of Article 3(8) of Directive 2005/60/EC.
7. Any auction platform auctioning the auctioned products provided for in Article 4(3) shall require an applicant for admission to bid in its auctions to ensure that clients of the applicant comply with any request made pursuant to paragraph 5 and that any client of the applicant's clients as provided for in Article 19(4) does the same.
8. An application for admission shall be deemed to be withdrawn if the applicant fails to submit information requested within a reasonable period specified in a request for information made by the auction platform concerned, which shall not be less than five trading days from the date of the request for information, or fails to respond or submit to or co-operate in an interview or any investigations or verifications under paragraph

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5(b) and (c).

9. An applicant shall not provide any auction platform auctioning the auctioned products provided for in Article 4(3), with false or misleading information. An applicant shall notify the auction platform concerned fully, frankly and promptly of any changes in its circumstances that could affect its application for admission to bid in auctions conducted by that auction platform or any admission to bid already granted to it.
10. Any auction platform auctioning the auctioned products provided for in Article 4(3) shall decide on an application submitted to it and inform the applicant of its decision.

The auction platform concerned may:

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

Article 22

Refusal, revocation or suspension of admission

1. Any auction platform auctioning the auctioned products provided for in Article 4(3) shall refuse to grant admission to bid in its auctions, revoke or suspend any admission to bid already granted to any person who:
 - (a) is not or is no longer eligible to bid under Article 19(1) or (2);
 - (b) does not or no longer meets the requirements of Articles 19 and 20;
 - (c) is wilfully or repeatedly in breach of this Regulation, the terms and conditions of its admission to bid in the auctions conducted by the auction platform concerned or any other related instructions or agreements.
2. Any auction platform auctioning the auctioned products provided for in Article 4(3) shall refuse to grant admission to bid in its auctions, revoke or suspend any admission to bid already granted, if it suspects money laundering, terrorist financing, criminal activity or market abuse in relation to an applicant, provided that such refusal, revocation or suspension is unlikely to frustrate efforts by the competent national authorities, to pursue or apprehend the perpetrators of such activities.

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In such a case, the auction platform concerned shall consider making a report to the financial intelligence unit (FIU) referred to in Article 21 of Directive 2005/60 in accordance with Article 49(2) of this Regulation.

3. Any auction platform auctioning the auctioned products provided for in Article 4(3) may refuse to grant admission to bid in its auctions, revoke or suspend any admission to bid already granted, to any person:
 - (a) who is negligently in breach of this Regulation the terms and conditions of it admission to bid in the auctions conducted by the auction platform concerned or any other related instructions or agreements;
 - (b) who has otherwise behaved in a manner that is prejudicial to the orderly or efficient conduct of an auction;
 - (c) who is referred to in Article 19(1)(b) and (c) and has not bid in any auction during the preceding 220 trading days.
4. The person in question shall be informed of the refusal to grant admission, or the revocation or suspension of admission, and be given a reasonable period specified in the decision of refusal to admit, revocation or suspension of admission, to respond in writing.

After considering the person's written response, the auction platform concerned shall if warranted:

- (a) grant or reinstate admission with effect from a given date;
 - (b) grant conditional admission or conditional reinstatement of admission subject to fulfilment of the specified conditions by a given date, which shall be duly verified by the auction platform concerned;
 - (c) confirm the refusal to grant admission, the revocation or suspension of admission with effect from a given date.
5. Persons refused admission to bid or 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, the terms and conditions of their admission to bid in the auctions or any other

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related instructions or agreements;

- (d) does not compromise their obligations regarding the protection of confidential information pursuant to Article 20(3)(b)(ii) which shall remain in force for 20 years following their removal from the auctions.

The refusal to grant admission, the revocation or suspension of admission, referred to in paragraphs 1, 2 and 3, shall specify any measures needed to comply with this paragraph.

Article 23

Voluntary withdrawal from an auction platform auctioning the auctioned products provided for in Article 4(3)

1. Any person admitted to bid may voluntarily withdraw from an auction platform auctioning the auctioned products provided for in Article 4(3) provided that its withdrawal fulfils the following conditions:
 - (a) it submits a request to withdraw its admission to bid to the auction platform concerned;
 - (b) it informs all its clients in the case of persons submitting bids on behalf of others;
 - (c) it submits its request to withdraw 120 trading days prior to the proposed date of withdrawal;
 - (d) the request to withdraw states the measures the bidder proposes to take to comply with its obligations under paragraph 3;
 - (e) its withdrawal is accepted by the auction platform concerned pursuant to paragraph 2.
2. The auction platform concerned shall duly verify whether the conditions in paragraph 1 have been fulfilled and, where necessary, make withdrawal subject to compliance with these conditions.

The person submitting the request to withdraw shall be informed of the decision of the auction platform concerned, no later than 60 trading days from the date of the person's request to withdraw.

3. Persons voluntarily withdrawing from the auctions shall ensure that their withdrawal:
 - (a) is orderly;

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- (b) does not prejudice the interests of their clients or interfere with the efficient functioning of an auction;
- (c) does not affect their obligations to comply with any payment provisions, the terms and conditions of their admission to bid in the auctions or any other related instructions or agreements;
- (d) does not compromise their obligations regarding the protection of confidential information pursuant to Article 20(3)(b)(ii) which shall remain in force for 20 years following their withdrawal from the auctions.

CHAPTER V

APPOINTMENT OF THE AUCTIONEER AND ITS FUNCTIONS

Article 24

Appointment of the auctioneer

1. No Member State shall auction allowances without appointing an auctioneer. More than one Member States may appoint the same auctioneer.
2. The allowances to be auctioned on behalf of those Member States shall be retained from the auctions until an auctioneer is duly appointed, and the agreements referred to in paragraph 2 are concluded and implemented.
3. Member States shall notify the identity of the auctioneer and its contact details to the Commission.

The auctioneer's identity and contact details shall be published on the Commission's website.

Article 25

The auctioneer's functions

The auctioneer shall:

- (a) auction, the volume of allowances to be auctioned by each Member State appointing it;
- (b) receive the auction proceeds due to each Member State appointing it;
- (c) disburse the auction proceeds due to each Member State appointing it.

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Where the same auctioneer is appointed by more than one Member State it shall auction the allowances on behalf of each appointing Member State separately.

CHAPTER VI

APPOINTMENT OF THE AUCTION MONITOR AND ITS FUNCTIONS

Article 26

The auction monitor

1. The auction process shall be monitored by an auction monitor.
2. Member States shall appoint an auction monitor following a joint procurement procedure between the Commission and the Member States, pursuant to the third paragraph of Article 91(1) of Regulation (EC, Euratom) No 1605/2002 and Article 125c of Regulation (EC, Euratom) No 2342/2002.
3. The period for which the auction monitor is appointed shall be no longer than 5 years.

At least 20 trading days prior to the expiry of the term of appointment or termination of the appointment of the auction monitor, a successor shall be appointed, pursuant to paragraph 2.

4. The identity and contact details of the auction monitor shall be published on the Commission's website.

Article 27

The auction monitor's functions

1. The auction monitor shall monitor each auction and report thereon to the Commission on behalf of the Member States, within the deadline provided for in the fourth subparagraph of Article 10(4) of Directive 2003/87/EC, including:
 - (a) the proper implementation of the auctions conducted in the preceding month, pursuant to the fourth subparagraph of Article 10(4) of Directive 2003/87/EC in particular with respect:
 - (i) fair and open access;
 - (ii) transparency;
 - (iii) price formation;

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- (iv) technical and operational aspects.
 - (b) any failure to comply with:
 - (i) this Regulation;
 - (ii) the contract appointing an auction platform;
 - (c) any evidence of anti-competitive behaviour or market abuse.
2. The auction monitor shall provide to the Member States and the Commission an annual consolidated report which shall comprise:
- (a) the matters referred to in paragraph 1;
 - (b) the relationship between the auctions covered in the consolidated report and between them and the functioning of the secondary market, pursuant to Article 10(5) of Directive 2003/87/EC;
 - (c) information about the number, nature and status of any complaints made pursuant to Article 53(3) as well as any other complaints made to the national competent authorities supervising credit institutions and investment firms;
 - (d) any recommendations deemed appropriate to improve the auction process or for any review of the following:
 - (i) this Regulation including the review referred to in Article 35;
 - (ii) Directive 2003/87/EC including the review of the functioning of the carbon market provided for in Articles 10(5) and 12(1a) of that Directive.
3. The reports provided for in paragraphs 1 and 2 shall be drawn up in a comprehensible, standardised easily accessible format determined in the contract appointing the auction monitor.

CHAPTER VII

APPOINTMENT OF AN AUCTION PLATFORM BY MEMBER STATES PARTICIPATING IN A JOINT ACTION WITH THE COMMISSION AND THEIR FUNCTIONS

Article 28

Appointment of an auction platform through joint action of the Member States with the

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Commission

1. Without prejudice to Article 32, Member States shall appoint following a joint procurement procedure between the Commission and the Member States participating in the joint action, pursuant to the third paragraph of Article 91(1) of Regulation (EC, Euratom) No 1605/2002 and Article 125c of Regulation (EC, Euratom) No 2342/2002, one auction platform for auctioning the auctioned products referred to in Article 4(3).
2. Without prejudice to Article 32, Member States shall appoint following a joint procurement procedure between the Commission and the Member States participating in the joint action, pursuant to the third paragraph of Article 91(1) of Regulation (EC, Euratom) No 1605/2002 and Article 125c of Regulation (EC, Euratom) No 2342/2002 no more than two auction platforms for auctioning the auctioned products referred to in Article 4(2), provided that these auction products are listed in Annex I.
3. The period for which the auction platforms referred to in paragraphs 1 or 2 are appointed shall be no longer than five years.
4. The identity and contact details of the auction platforms referred to in paragraphs 1 or 2 shall be published on the Commission's website.

Article 29

Functions of the auction platform appointed pursuant to Article 28(1)

1. The auction platform appointed pursuant to Article 28(1) shall provide the following services to the Member States:
 - (a) access to the auctions, pursuant to Articles 16 to 23, including the provision and maintenance of the necessary internet-based electronic interfaces and website;
 - (b) conducting the auctions in accordance with Articles 4 to 8;
 - (c) managing the auction calendar in accordance with Articles 9 to 15;
 - (d) announcing and notifying the results of an auction, pursuant to Article 55;
 - (e) providing, or ensuring through sub-contracting the provision of, the requisite clearing or settlement systems needed for the:
 - (i) handling of payments made by successful bidders and distribution of the proceeds of the auctions to the auctioneer, pursuant to Articles 38 and 39;

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- (ii) delivering the auctioned allowances to successful bidders or their successors in title, pursuant to Articles 40 to 42;
 - (iii) managing collateral, including any margining, provided by the auctioneer or bidders, pursuant to Articles 43 and 44;
 - (f) providing the auction monitor with any information relating to the conduct of the auctions, required for the carrying out of the auction monitor's functions, pursuant to Article 47;
 - (g) supervising the auctions, notifying suspicions of money laundering, terrorist financing, criminal activity or market abuse, administering any required remedial measures or sanctions, pursuant to Articles 48 to 53.
2. At least 20 trading days prior to the opening of the first bidding window run by the auction platform appointed pursuant to Article 28(1), the auction platform shall be connected to at least one clearing or settlement system.

Article 30

Functions of the auction platform appointed pursuant to Article 28(2)

1. An auction platform appointed pursuant to Article 28(2) shall provide the following services to the Member States:
- (a) providing access to the auctions pursuant to the arrangements in place in the secondary market, as modified in the contracts appointing them;
 - (b) conducting the auctions in accordance with Articles 4 to 8;
 - (c) managing the auction calendar in accordance with Articles 9 to 15;
 - (d) announcing and notifying the results of an auction, pursuant to Article 55;
 - (e) providing, pursuant to the arrangements in place in the secondary market, as modified in the contract appointing them, the clearing or settlement systems needed for the:
 - (i) handling of payments made by bidders and the distribution of the proceeds of the auctions to the auctioneer;
 - (ii) delivering auctioned allowances to successful bidders or their successors in title;
 - (iii) managing collateral, including any margining, provided by the

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auctioneer or bidders.

Article 42 shall apply in any case.

- (f) providing the auction monitor with any information relating to the conduct of the auctions, required for the carrying out of the auction monitor's functions, pursuant to Article 47;
 - (g) supervising the auctions, notifying suspicions of money laundering, terrorist financing, criminal activity or market abuse, administering any required remedial measures or sanctions, pursuant to the arrangements in place in the secondary market, as modified in the contract appointing them.
2. At least 20 trading days prior to the opening of the first bidding window run by an auction platform appointed pursuant to Article 28(2), the auction platform concerned shall be connected to a clearing or settlement system.
3. Article 17(2) and (3), Articles 18, 20 to 23, 48,49 and 50, Article 57(4), and Articles 58 and 59 shall not apply with respect to the auctions conducted by an auction platform appointed pursuant to Article 27(3).

Article 31

Services provided by the auction platforms appointed pursuant to Article 28(1) or (2) to the Commission

Auction platforms appointed pursuant to Article 28(1) or (2) shall provide the Commission with technical support services with respect to the Commission's work relating to the following:

- (a) completion of any incomplete Annexes to this Regulation;
- (b) the reports or any proposal made by the Commission pursuant to Article 10(5) and Article 12(1a) of Directive 2003/87/EC;
- (c) any amendment of this Regulation or Directive 2003/87/EC which has an impact on the functioning of the carbon market including the implementation of the auctions;
- (d) any review of this Regulation or Directive 2003/87/EC 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 the carbon market including the implementation of the auctions agreed between the Commission and the Member States participating in the joint action.

CHAPTER VIII

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APPOINTMENT OF AUCTION PLATFORMS BY MEMBER STATES OPTING TO HAVE THEIR OWN AUCTION PLATFORM AND THEIR FUNCTIONS

Article 32

Appointment of any auction platform other than an auction platform appointed pursuant to Article 28(1) or (2) for the auctioning of allowances covered by Chapter III of Directive 2003/87/EC

1. Any Member State not participating in the joint action provided for in Article 28 of this Regulation may appoint its own auction platform for the auctioning of its share of the volume of allowances covered by Chapters II and III of Directive 2003/87/EC to be auctioned by means of the auctioned products referred to in Article 4(3) of this Regulation.
2. Any Member State not participating in the joint action provided for in Article 28 of this Regulation may appoint its own auction platform for the auctioning of its share of the volume of allowances covered by Chapters II and III of Directive 2003/87/EC to be auctioned by means of the auctioned products referred to in Article 4(2) of this Regulation, provided that these products are listed in Annex I to this Regulation.
3. Member States not participating in the joint action provided for in Article 28 may appoint the same auction platform or separate auction platforms for the auctioning of the auctioned products referred to in Article 4(2) and (3) respectively.
4. Any Member State not participating in the joint action provided for in Article 28, shall inform the Commission of its decision to appoint its own auction platform pursuant to paragraphs 1 to 3 of this Article within three months of the entry into force of this Regulation.
5. Any Member State not participating in the joint action provided for in Article 28, shall select its own auction platform appointed pursuant to paragraphs 1 to 3 of this Article on the basis of an open, transparent and competitive selection procedure.

The initial period for which the auction platforms referred to in paragraphs 1 to 3 of this Article are appointed shall expire no later than 31 December 2015.

6. Each Member State not participating in the joint action provided for in Article 28 but opting to appoint its own auction platform pursuant to paragraphs 1 to 3 of this Article shall provide the Commission with a complete notification containing all of the following:
 - (a) the identity of the auction platform it proposes to appoint indicating whether the same auction platform or separate auction platforms shall auction the auctioned products referred to in Article 4(2) and (3) respectively;

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- (b) the detailed operative rules that would govern the auction process to be conducted by the auction platform(s) it proposes to appoint, including the contract appointing the auction platform concerned;
- (c) the proposed bidding windows, individual volumes, auction dates indicating the occurrence of relevant public holidays, as well as the type of contract, payment and delivery dates of the allowances to be auctioned in individual auctions in a given year and any other information necessary for the Commission to assess whether the proposed auction calendar is compatible with the auction calendar of the auction platforms appointed pursuant to Articles 28(1) or (2) as well as other auction calendars proposed by other Member States not participating in the joint action provided for in Article 28 but opting to appoint their own auction platforms;
- (d) the detailed rules protecting against money laundering, terrorist financing, criminal activity or market abuse, to which its proposed auction platform appointed to auction the auctioned products provided for in Article 4(2) shall be subject, as provided for in Article 37(3).

For the auction platforms appointed pursuant to Article 32(2), the notifying Member State shall provide detailed information on supervising the auctions, notifying suspicions of money laundering, terrorist financing, criminal activity or market abuse, administering any required remedial measures or sanctions, pursuant to the arrangements in place in the secondary market, as modified in the contract appointing them.

The notification shall demonstrate the compatibility with the provisions of this Regulation and the respecting of the principles specified in Article 10(4) of Directive 2003/87/EC.

A notifying Member State may modify its original notification prior to the listing referred to in paragraph 7 of this Article.

Each notifying Member State shall present its original and modified notification in the Committee referred to in Article 23(1) of Directive 2003/87/EC.

7. Auction platforms other than those appointed pursuant to Article 28(1) or (2), the Member States appointing them and any applicable conditions shall be set out in Annex III when the requirements of this Regulation and Article 10(4) of Directive 2003/87/EC in line with the objectives of that Directive are satisfied.

In the absence of any listing provided for in the first subparagraph, Member States not participating in the joint action provided for in Article 28 but opting to appoint their own auction platform pursuant to paragraphs 1 to 3 of this Article shall use the auction platforms appointed pursuant to Article 28(1) or (2) to auction their share of the annual volume of allowances to be auctioned in a given calendar year.

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8. Any Member State not participating in the joint action provided for in Article 28 but opting to appoint its own auction platform pursuant to paragraphs 1 to 3 of this Article may join the joint action provided for in Article 28, at any time.

The volume of allowances that were scheduled to be auctioned on an auction platform other than the auction platforms appointed pursuant to Article 28(1) or (2) shall be spread evenly over the auctions conducted by the relevant auction platform.

Article 33

Functions of auction platforms other than the auction platforms appointed pursuant to Article 28(1) or (2)

1. Any auction platform appointed pursuant to Article 32(1) shall carry out the same functions as the auction platform appointed pursuant to Article 28(1) as provided for in Article 29 except for Article 29(1)(c) on the auction calendar which shall not apply.
2. Any auction platform appointed pursuant to Article 32(2) shall carry out the same functions as the auction platforms appointed pursuant to Article 28(2) as provided for in Article 30 except for Article 30(1)(c) on the auction calendar which shall not apply.
3. The provisions on the auction calendar provided for in Article 9(1) to (3), Articles 10, 11, 13, 15 and 34 shall apply to the auction platforms appointed pursuant to Article 32 (1) or (2).

Article 34

Auction calendar for any auction platform other than the auction platforms appointed pursuant to Article 28(1) or (2)

1. The volume of allowances auctioned in individual auctions conducted by an auction platform appointed pursuant to Article 32(1) or (2) shall be no greater than 20 million allowances and no less than 10 million allowances save where the total volume of allowances to be auctioned by the appointing Member State is less than 10 million in a given calendar year.
2. The total volume of allowances to be auctioned by all auction platforms appointed pursuant to Article 32(1) or (2) collectively shall be distributed evenly over any given year, except that volumes auctioned in auctions held in August of each year shall be half of the volume auctioned in auctions held in other months of the year.
3. The auction platforms appointed pursuant to Article 32(1) or (2) of this Regulation shall publish the bidding windows, individual volumes, auction dates as well as the type of contract, payment and delivery dates of the allowances covered by Chapter III of Directive 2003/87/EC to be auctioned in individual auctions each year, by 31 March of the previous year, or as soon as practicable thereafter, having previously

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consulted the Commission and obtained its opinion thereon. The auction platforms concerned shall take the utmost account of the Commission's opinion.

Published calendars referred to in the first subparagraph shall be consistent with any relevant conditions listed in Annex III.

4. Where an auction conducted by an auction platform appointed pursuant to Article 32(1) or (2) is cancelled pursuant to Articles 8(5) or (7) or 10, the auctioned volume shall be distributed evenly either over the next four auctions scheduled on the same auction platform, or over the next two auctions scheduled on the same auction platform, in case the auction platform concerned conducts less than four auctions in a given year.

Article 35

Review of the arrangements applicable to auction platforms other than the auction platforms appointed pursuant to Article 28(1) or (2)

By 31 June 2015, all Member States and the auction platforms they have appointed, shall provide the auction monitor and the Commission with all the necessary information regarding the implementation of their auctions that would enable the auction monitor to report thereon pursuant to Article 27(2)(b) and the Commission to review the arrangements applicable to auction platforms appointed pursuant to Article 32(1) or (2) and to propose for the period from 1 January 2016 following the consultation of stakeholders any measures necessary to deal with any distortion or malfunctioning of the internal market or the carbon market arising from such arrangements taking into account the experience acquired with regard to the interaction between the auction platforms appointed pursuant to Article 32(1) or (2) and the auction platforms appointed pursuant to Article 28(1) or (2).

CHAPTER IX

APPOINTMENT REQUIREMENTS APPLICABLE TO THE AUCTION MONITOR AND ANY AUCTION PLATFORM

Article 36

Appointment requirements applicable to the auction monitor

When appointing the auction monitor, the Member States shall take into account the extent to which candidates:

- (a) exhibit the least risk of conflict of interest or market abuse having regard to the following:
 - (i) any activities on the secondary market;

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- (ii) any internal processes and procedures to mitigate the risk of conflict of interest or market abuse;
- (b) without affecting, their ability to fulfil the auction monitor's functions, in a timely manner, in accordance with the highest professional and quality standards.

Article 37

Appointment requirements applicable to any auction platform

1. Auctions shall not be conducted on any auction platform that is not a regulated market.
2. When appointing any auction platform, the Member States shall take into account the extent to which candidates demonstrate fulfilment of the following requirements:
 - (a) ensuring 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 scheme and access to bid in the auctions for small emitters;
 - (c) ensuring cost-efficiency and avoiding undue administrative burden;
 - (d) robust auction supervision, notification of suspicions of money laundering, terrorist financing, criminal activity or market abuse, administration of any required remedial measures or sanctions, including the provision of an extra-judicial dispute resolution mechanism;
 - (e) avoiding distortions of competition in the internal market;
 - (f) ensuring the proper functioning of the carbon market including the implementation of the auctions;
 - (g) connecting to more than one clearing or settlement system in the case of auction platforms auctioning the auctioned products provided for in Article 4(3).
3. An auction platform auctioning of the auctioned products provided for in Article 4(3) of this Regulation shall only be appointed where the Member State of establishment of the candidate regulated market and its market operator applies or will apply in good time prior to the opening of the first bidding window, the national measures implementing the provisions of Directive 2004/39/EC and Directive 2003/6/EC, to the auctioning of the auctioned products provided for in Article 4(3) of this Regulation as provided for in Annex IV to this Regulation.

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

CHAPTER X

PAYMENT AND TRANSFER OF THE AUCTION PROCEEDS

Article 38

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

1. Each successful bidder, including any intermediaries acting on its behalf, shall pay the sum due notified to it pursuant to Article 55(3)(e) for the allowances won as notified to it pursuant to Article 55(3)(a), by transferring or arranging for the transfer of the sum due, into the auctioneer's nominated bank account in cleared funds either before or at the latest upon allocation of the allowances into the bidder's nominated holding account.
2. Payments made by the bidders arising from the auctioning of allowances covered by Chapter III of Directive 2003/87/EC shall be transferred to the auctioneer appointed by each Member State in proportion to the quantity of allowances to be auctioned by each Member State, pursuant to Article 10(2) of Directive 2003/87/EC, having regard to Article 10c(2) of that Directive.
3. Payments made by the bidders arising from the auctioning of allowances covered by Chapter II of Directive 2003/87/EC shall be transferred to the auctioneer appointed by each Member State in proportion to the quantity of allowances to be auctioned by each Member State, pursuant to Article 3d(3) of that Directive.
4. Payments made by the bidders arising from the auctioning of allowances allocated as a result of the unilateral inclusion of additional activities and greenhouse gases, pursuant to Article 24 of Directive 2003/87/EC, shall be transferred to the auctioneer appointed by the Member State opting-in, pursuant to Article 24 of that Directive.
5. Any deposit forfeited by the bidders, pursuant to Article 39(4)(b) shall be transferred to the auctioneer, pursuant to paragraphs 2, 3 and 4 of this Article, respectively.

Article 39

Consequences of late or non-payment

1. A successful bidder shall only be delivered the allowances notified to it pursuant to Article 55(3)(a), if the entire sum due notified to it under Article 55(3)(d), is paid to the auctioneer pursuant to Article 38(1).

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2. A successful bidder that fails to meet its obligations under paragraph 1 of this Article in full by the due date notified to it pursuant to Article 55(3)(e) shall be in default of payment.
3. Any allowances not delivered to a bidder in default of payment shall be withheld for up to five trading days or until payment is effected in full whichever is earlier.

Where payment is not effected in full within the delay provided for in the first subparagraph, the allowances shall be auctioned at the next two auctions scheduled on the auction platform concerned.

4. A bidder in default of payment:
 - (a) may be charged interest for each day beginning with the date on which payment was due pursuant to Article 55(3)(e) 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) shall forfeit forthwith any deposit given, which shall accrue to the auctioneer less any costs deducted by the clearing or settlement systems.
5. Without prejudice to paragraphs 1 to 4, where a successful bidder is in default of payment and does not effect payment as provided for in the third subparagraph of this paragraph any of the following shall occur:
 - (a) the central counterparty shall interpose to 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.

CHAPTER XI

DELIVERY OF THE AUCTIONED ALLOWANCES

Article 40

Transfer of the auctioned allowances

1. Allowances auctioned pursuant to Article 4(2) of this Regulation shall be transferred by the Union registry prior to the deadline for their delivery, into a nominated holding account, to be held in escrow, until delivery of the allowances to successful bidders or their successors in title, pursuant to the results of the auction, as provided for in the applicable Commission regulation adopted under Article 19(3) of Directive 2003/87/EC.

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2. Allowances auctioned pursuant to Article 4(3) of this Regulation shall be transferred by the Union registry prior to the opening of a bidding window, into a nominated holding account, to be held in escrow, until delivery of the allowances to successful bidders or their successors in title, pursuant to the results of the auction, as provided for in the applicable Commission regulation adopted under Article 19(3) of Directive 2003/87/EC.

Article 41

Delivering the auctioned allowances

1. Each allowance auctioned by a Member State shall be allocated to a successful bidder by the clearing or settlement systems, until the total volume allocated matches the volume of allowances notified to the bidder pursuant to Article 55(3)(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 55(3)(a).

2. Upon payment of the sum due, pursuant to Article 38(1), each successful bidder or its successor 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 by transferring the whole or part of the allowances notified to the bidder pursuant to Article 55(3)(a) from a nominated holding account held in escrow, into a nominated holding account held by the successful bidder or by its successors in title.

Article 42

Failure to deliver the auctioned allowances

1. Where the clearing or settlement system fails to deliver the whole or part of the auctioned allowances, due to circumstances outside its control, the successful bidder may either rescind its bid or accept delivery at a later date.
2. In case of any failure to deliver the whole or part of the auctioned allowances, referred to in paragraph 1, the successful bidder's successor in title, may either rescind its contract with the successful bidder, or accept delivery at a later date.
3. Where the successful bidder or its successor in title rescinds its bid, pursuant to paragraphs 1 or 2 respectively, it shall be entitled to the release of any deposit given pursuant to Article 39(4)(b), any collateral given pursuant to Article 43, or any payment made pursuant to Article 38(1), plus any interest accrued on any cash deposit, collateral or payment made calculated on a daily basis.
4. The remedies provided for in paragraphs 1, 2 and 3 shall be the sole remedies to which a successful bidder or its successors in title shall be entitled to in case of any failure to

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deliver auctioned allowances, due to circumstances outside the control of the clearing or settlement systems.

5. Any undelivered allowances due to the successful bidder rescinding its bid under paragraph 1 shall be auctioned at the next two auctions scheduled on the auction platform concerned.

CHAPTER XII

MANAGEMENT OF COLLATERAL

Article 43

Collateral given by the bidder

1. Prior to the opening of the bidding window for the auctioning of the products covered by Article 4(3), bidders or any intermediaries acting on their behalf, shall be required to give collateral.
2. Any unused collateral together with any interest accrued on cash collateral, shall be released, as soon as practicable after the close of the bidding window.

Article 44

Collateral given by the auctioneer

1. Prior to the opening of the bidding window for the auctioning of the products covered by Article 4(3), the auctioneer shall only be required to give allowances as collateral to be held in escrow, pending their delivery.
2. Where any collateral provided for in paragraph 1 is not used the clearing or settlement systems shall retain it, in a nominated holding account held in escrow, pending its delivery.

CHAPTER XIII

FEES

Article 45

Structure and level of fees

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

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2. Any auction platform and its clearing or 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 46

Costs of the auction process

1. The costs of the services provided for in Article 29(1), Article 30(1) and Article 33 shall be paid for through fees paid by the bidders.
2. Costs of the auction monitor borne by the Member States shall be deducted from the auction proceeds payable to the auctioneers, pursuant to paragraphs 2 to 5 of Article 38.

CHAPTER XIV

AUCTION SUPERVISION, REMEDIAL MEASURES AND SANCTIONS

Article 47

Co-operation with the auction monitor

1. Each auctioneer, auction platforms and the competent national authorities supervising them shall upon request, with due respect to professional secrecy considerations, provide the auction monitor with any information in their possession relating to the auctions, which is reasonably required for the carrying out of the auction monitor's functions.
2. The auction monitor shall be entitled to observe the conduct of the auctions.
3. Each auctioneer, auction platforms and the competent national authorities supervising them shall assist the auction monitor in fulfilling its functions by actively co-operating with the auction monitor each within their own remit and with due respect to professional secrecy considerations.
4. The competent national authorities supervising credit institutions and investment firms and the competent national authorities supervising persons authorised to submit bids on behalf of others pursuant to Article 19(2) shall assist the auction monitor in fulfilling its functions by actively co-operating with the auction monitor within their competence and with due respect to professional secrecy considerations.

Article 48

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Monitoring the auctioning relationship with bidders

1. Any auction platform auctioning the auctioned products provided for in Article 4(3) shall monitor the auctioning relationship with bidders admitted to bid in its auctions throughout its subsistence, by doing the following:
 - (a) scrutinising bids made throughout the course of that relationship to ensure that the bidding behaviour of bidders is consistent with the auction platform's knowledge of the customer, its business and risk profile, including, where necessary, the source of funds;
 - (b) maintaining effective arrangements and procedures for the regular monitoring of the compliance by persons admitted to bid pursuant to Article 20(1), (2) and (3) with its market conduct rules;
 - (c) monitoring transactions undertaken by persons admitted to bid pursuant to Article 20(1), (2) and (3) using its systems in order to identify breaches of the rules referred to in point (b) of this subparagraph, disorderly auctioning conditions or conduct that may invoke market abuse.

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

2. Any auction platform auctioning the auctioned products provided for in Article 4(3) shall ensure that the documents, data or information it holds on a bidder are kept up-to-date. For this purpose, such an auction platform may:
 - (a) request any information of the bidder, pursuant to Article 20(2) or (3), for the purposes of monitoring the auctioning relationship with a bidder following its admission to bid in the auctions, throughout the subsistence of that relationship and for a period of five years following its termination;
 - (b) require any person admitted to bid to re-submit an application for admission to bid at regular intervals;
 - (c) require any person admitted to bid to promptly notify the auction platform concerned of any changes to the information submitted to it pursuant to Article 20(2) or (3).
3. An auction platform auctioning the auctioned products provided for in Article 4(3) shall keep records of:
 - (a) the application for admission to bid submitted by an applicant, pursuant to Article 20(2) and (3) including any amendments thereto;

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- (b) the checks carried out in:
 - (i) processing the application for admission to bid submitted, pursuant to Article 20(2) and (3);
 - (ii) monitoring the auctioning relationship, pursuant to point (a) of paragraph 1, following an applicant's admission to bid;
 - (c) all information relating to a given bid submitted by a given bidder in an auction, including any withdrawal or modification of such bids, pursuant to the second subparagraph of Article 6(3) and Article 6(5);
 - (d) all information relating to the conduct of each auction in which a bidder has submitted a bid.
4. An auction platform auctioning the auctioned products provided for in Article 4(3) 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 five years following the termination of the auctioning relationship with that bidder.

Article 49

Notification of money laundering, terrorist financing or criminal activity

1. The competent national authorities referred to in Article 37(1) of Directive 2005/60/EC shall monitor and take the necessary measures to ensure compliance of an auction platform auctioning the auctioned products provided for in Article 4(3) of this Regulation with the customer due diligence requirements of Article 20 of this Regulation, the monitoring and record keeping requirements of Article 48 and the notification requirements of the second and third subparagraphs of this Article.

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

An auction platform auctioning the auctioned products provided for in Article 4(3) of this Regulation can be held liable for infringements of Articles 20 and 43 of this Regulation and the second and third subparagraphs of this Article. The national measures implementing Article 39 of Directive 2005/60/EC shall apply in this regard.

2. An auction platform auctioning the auctioned products provided for in Article 4(3), its directors and employees, shall cooperate fully by promptly:
- (a) informing the FIU referred to in Article 21 of Directive 2005/60/EC, on their own initiative, where they know, suspect or have reasonable grounds to suspect that money laundering, terrorist financing or criminal activity is being or has been committed or attempted in the auctions;

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- (b) furnishing the FIU, at its request, with all necessary information, in accordance with the procedures established by the applicable legislation.
- 3. The information referred to in paragraph 1 shall be forwarded to the FIU of the Member State in whose territory an auction platform auctioning the auctioned products provided for in Article 4(3) is situated.

The national measures implementing the compliance management and communication policies and procedures, referred to in Article 34(1) of Directive 2005/60/EC, shall designate the person or persons responsible for forwarding information under this Article.

- 4. The Member State in whose territory an auction platform auctioning the auctioned products provided for in Article 4(3) of this Regulation is situated shall ensure that the national measures implementing Articles 26 to 29, 32, 34(1) and Article 35 of Directive 2005/60/EC apply to the auction platform concerned.

Article 50

Notification of market abuse

- 1. An auction platform auctioning the auctioned products provided for in Article 4(3) of this Regulation, shall notify the competent national authorities designated under Article 43(2) of Directive 2004/39/EC, responsible for supervising the auction platform concerned or for investigating and prosecuting market abuse, occurring on or through the systems of the auction platform concerned, of suspicion of insider dealing or market manipulation by any person admitted to bid in the auctions or by any person on whose behalf the person admitted to bid in the auctions is acting.

National measures implementing Article 25(2) of Directive 2005/60/EC shall apply.

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

Article 51

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 may be imposed by any auction platform after consulting the Commission and obtaining its opinion thereon, provided that implementation of a maximum bid-size or any other remedial measures would effectively mitigate the risk in question. The auction platform concerned shall take the utmost account of the Commission's opinion.

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2. The maximum bid-size shall either be 25% of the total number of auctioned allowances in any given auction or 25% of the total number of auctioned allowances in any given year, whichever may be most appropriate to deal with the risk of market abuse identified in Article 50(1).
3. For the purposes of this Article, maximum bid-size means the maximum number of allowances that may be bid for, either directly or indirectly, by the persons listed in Article 19(1) or (2) controlled by the same:
 - (a) group of undertakings with the same parent undertaking;
 - (b) partnership, joint venture, consortium acting as agent of its members, or any other business grouping, regardless of whether it has a separate legal personality;
 - (c) public bodies or state-owned entities.

Article 52

Market conduct rules or any other contractual arrangements

Articles 47 to 51 shall be without prejudice to any other action that an auction platform auctioning the auctioned products provided for in Article 4(3), is entitled to take under its market conduct rules or any other contractual arrangements in place either directly or indirectly with any bidders admitted to bid in the auctions; provided that such action does not conflict with or undermine the provisions of Articles 47 to 51.

Article 53

Conduct rules for other persons authorised to bid on behalf of others pursuant to Article 19(2)

1. Bidders submitting bids on behalf of others eligible to bid pursuant to Article 19(2) shall apply the following conduct rules:
 - (a) they shall accept instructions from their clients on comparable terms;
 - (b) they may 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 implementing Articles 24 and 28 of Directive 2005/60/EC;
 - (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 they are seeking to bid;

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- (d) they shall enter into a written agreement with their clients. Agreements entered into shall not impose any unfair conditions or restrictions on the client concerned. They shall provide for all the terms and conditions relating to the services offered including in particular payment and delivery of the allowances;
- (e) they shall provide any information requested by any auction platform where they are admitted to bid or by the auction monitor to fulfil their respective functions under this Regulation;
- (f) they may require their clients to make a deposit by way of advance payment for allowances.
- (g) they may not limit the number of bids that a client might submit;
- (h) they may not prevent or restrict their clients from engaging the services of other entities eligible under Article 19(1)(b) to (e) and Article 19(2) to bid on their behalf in the auctions;
- (i) they shall pay due regard to the interests of their clients who request them to submit bids on their behalf in the auctions;
- (j) they shall act with integrity, reasonable skill, care and diligence;
- (k) they shall treat clients fairly and without discrimination;
- (l) 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, collect payment and collateral from and transfer allowances to clients for whom they act;
- (m) they shall prevent the disclosure of confidential information from that part of their business responsible for receiving, preparing and submitting bids on behalf of their clients to that part of their business responsible for preparing and submitting bids on their own account;
- (n) 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 creation of such record.

[The amount of the deposit referred to in point (f) shall be calculated on a just and reasonable basis.

The method of calculating the deposit referred to in point (f) shall be set out in the agreements entered into pursuant to point (d).

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Any part of the deposit referred to in point (f) not used to satisfy payment for allowances shall be refunded to the payee within a reasonable period after the auction stated in the agreements entered into pursuant to point (d).

2. The competent authorities supervising the persons referred to in Article 19(2) shall be responsible for monitoring and enforcing compliance with the conduct rules provided for in paragraph 1 of this Article.
3. Clients of bidders referred to in paragraph 1 of this Article may direct any complaints that they may have with regard to compliance with the conduct rules to the competent authorities mentioned in paragraph 2 of this Article in accordance with the procedural rules laid down for the handling of such complaints in the Member State where the person referred to in Article 19(2) is supervised.

CHAPTER XV

TRANSPARENCY AND CONFIDENTIALITY

Article 54

Publication

1. All legislation, guidance, instructions, forms, documents, announcements, including the auction calendar, any other non-confidential information pertinent to the auctions on a given auction platform, any decision, including any decision pursuant to Article 51, 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 that auction platform, shall be published on a dedicated up-to-date auctioning web-site maintained by the auction platform concerned.

Information which is no longer relevant shall be archived. Such archives shall be accessible through the same auctioning web-site.

2. Non-confidential versions of the auction monitor's reports to the Member States and the Commission, pursuant to Article 27(2) shall be published on the Commission's website.

Reports which are no longer relevant shall be archived. Such archives shall be accessible through the Commission's web-site.

3. A list of the names, addresses, telephone and facsimile numbers, electronic mail addresses, and websites of all persons admitted to bid on behalf of others in auctions conducted by any auction platform auctioning the auctioned products provided for in Article 4(3), shall be published on the website maintained by the auction platform concerned.

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Article 55

Announcement and notification of the auction results

1. An auction platform shall announce the results of each auction it conducts as soon as is reasonably practicable and no later than 15 minutes after the close of the bidding window.
2. The announcement made pursuant to paragraph 1 shall at least include the following:
 - (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) information that allows bidders of tied bids to identify whether or not, or to what extent, their tied bids were successful;
 - (f) the volume of allowances that is not allocated and the auctions to which that volume will be carried over;
 - (g) the total revenue earned from the auction;
 - (h) the distribution of the revenue between the Member States, in the case of auction platforms appointed pursuant to Articles 28(1) and (2).
3. An auction platform shall notify each successful bidder bidding through its systems:
 - (a) the total number of allowances to be allocated to that bidder;
 - (b) which of its tied bids, if any, were randomly selected;
 - (c) which bids, if any, were rejected;
 - (d) the payment due either in euros or in the currency of a Member State not member of the euro-zone, chosen by the bidder;
 - (e) 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 any auction platform shall notify

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a successful bidder bidding in auctions conducted by it of the exchange rate it has used to calculate the amount due in the currency chosen by the successful bidder.

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.

5. An auction platform shall notify its clearing or settlement systems of the information notified to each successful bidder, pursuant to paragraph 3.

Article 56

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 would be likely to:
 - (i) give an indication as to the demand for allowances at any auction;
 - (ii) give an indication as to the auction clearing price at any auction;
 - (iii) have an effect on the auction clearing price at any auction;
 - (e) information provided by persons in the framework of the establishment or maintenance of the auction relationship or in the framework of the supervision of that relationship pursuant to Article 19 to 21 and 48;
 - (f) the auction monitor reports made pursuant to Articles 27(2) except for the parts contained in the non-confidential versions of the auction monitor's reports published by the Commission pursuant to Article 54(2);

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- (g) business secrets provided by persons participating in a competitive process to appoint any auction platform, or the auction monitor;
 - (h) information on the precise means used for the random selection of tied bids referred to in Article 8(4);
 - (i) information on the methodology to define what constitutes an auction clearing price significantly under the prevailing secondary market price during and immediately before the auction referred to in Article 8(6).
2. Confidential information shall not be disclosed by any person who obtained that information, whether directly or indirectly, other than in accordance with 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 with the written consent of a bidder, person admitted to bid, or person applying for admission to bid;
 - (c) is required by an obligation under Union law;
 - (d) is made in pursuance of a court order;
 - (e) is made for the purposes of any criminal, administrative, or judicial investigations or proceedings carried out in the Union;
 - (f) is disclosed by any auction platform to the auction monitor for the purpose of enabling or assisting the auction monitor to carry out its functions or fulfilling its obligations in relation to the auctions;
 - (g) is aggregated or redacted prior to its disclosure, so that it is unlikely that information relating to the following is discernable:
 - (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 auctioning relationships;

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- (h) is confidential under paragraph 1(f) provided that it is disclosed to the public in a non-discriminatory and orderly fashion by the competent authorities of the Member States in the case of information covered by Article 27(1)(c) and by the Commission in the case of information covered by Article 27(2);
 - (i) is confidential under paragraph 1(g) provided that it is disclosed to persons working for the Member States or the Commission involved in the competitive process referred to in paragraph 1(g), who are themselves bound by an obligation of professional secrecy under their terms of employment;
 - (j) is made after the end of a period of 30 months starting from either of the following dates:
 - (i) the date of the opening of the bidding window of the auction in which the confidential information is first disclosed with respect to confidential information in paragraph 1(a) to (d);
 - (ii) the date of the termination of the auctioning relationship with respect to confidential information in paragraph 1(e);
 - (iii) the date of the auction monitor's report with respect to confidential information in paragraph 1(f);
 - (iv) the date of submission of the information in the competitive process with respect to confidential information in paragraph 1(g).
4. The measures required to ensure that confidential information is not wrongfully disclosed and the consequences of any such wrongful disclosure by any auction platform, or the auction monitor including any persons contracted to work for them shall be set out in the contracts appointing them.
5. Confidential information obtained by any auction platform, or the auction monitor including any persons contracted to work for them shall be used solely for the purpose of the performance of their obligations or the exercise of their functions with respect to the auctions.
6. Paragraphs 1 to 5 shall not preclude the exchange of confidential information between any auction platform and the auction monitor, nor between any one of them and:
- (a) the competent national authorities supervising of any auction platform;
 - (b) the competent national authorities responsible for investigating and prosecuting money laundering, terrorist financing, criminal activity or market abuse;
 - (c) the Commission.

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Confidential information exchanged under this paragraph shall not be wrongfully disclosed to other persons than those referred to in points (a), (b) and (c) contrary to paragraph 2.

7. Any person who works or has worked for any auction platform or the auction monitor, 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 57

Language regime

1. Written information provided by any auction platform or the auction monitor under this Regulation or the contract appointing them, 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. Member States may provide, at their own cost, for the translation of all information covered by paragraph 1 of any auction platform, into the official language(s) of that Member State.
3. Applicants for admission to bid and persons admitted to bid may submit the following in the official language of the Union they have chosen under paragraph 4 provided that a Member State has decided to provide a translation in that language under 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 points (a) or (b).

Any auction platform may request a certified translation 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 under this Regulation.

All other oral or written communication by any auction platform shall be made in the language chosen under the first subparagraph at no additional cost provided that a Member State has decided to provide a translation in that language under paragraph 2.

However, even where a Member State has decided to provide a translation in the language chosen under the first subparagraph as provided for in paragraph 2, the applicant for admission to bid, the person admitted to bid or the bidder participating in

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an auction may waive its right under the second subparagraph by giving prior written consent for the auction platform concerned to use only a language customary in the sphere of international finance.

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

Persons submitting a translated document under paragraph 3 and any auction platform notifying a translated document under paragraph 4 shall be responsible for ensuring that it is an accurate translation of the original.

CHAPTER XIII

FINAL PROVISIONS

Article 58

Right of appeal

1. An auction platform shall ensure that it has in place an extra-judicial mechanism to deal with complaints from applicants for admission to bid, bidders admitted to bid, or whose admission to bid has been refused, revoked or suspended.
2. Member States where a regulated market appointed as an auction platform or its market operator are supervised, shall ensure that any decisions made by the extra-judicial mechanism dealing with complaints referred to in paragraph 1 of this Article are properly reasoned and are subject to the right to apply to the courts designated under Article 52(1) of Directive 2004/39/EC. That right shall be without prejudice to any rights of appealing directly to the courts or competent administrative bodies provided for in the national measures implementing in Article 52(2) of Directive 2004/39/EC.

Article 59

Correction of errors

1. Any errors in any payment or allowance transfers made and collateral or deposit given or released under this Regulation shall be notified to the clearing or settlement systems as soon as it comes to the notice of any person.
2. The clearing or settlement systems shall take whatever measures necessary to rectify any errors in any payment or allowance transfers made and collateral or deposit given or released under this Regulation, which come to their attention by whatever means.
3. Any person benefitting from an error under paragraph 1 which cannot be rectified under paragraph 2, due to the intervening rights of a third party, who knew of or ought

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to have known of the error and failed to notify it to the clearing or settlement systems shall be liable to make good any damage caused.

Article 60

Entry into force

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

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

Done at Brussels, [xxxx].

For the Commission

[name]

Member of the Commission

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ANNEX I

Allowances auctioned prior to 2013 and the auctioned product through which they shall be auctioned referred to in Article 11(1)

Volume	Member State	Auctioned product	Year
[...]	[...]	[...]	[...]

ANNEX II

List of the elements referred to in Article 21(3)

1. Proof of eligibility pursuant to Article 19(1) or (2).
2. The applicant's name, address, telephone and facsimile numbers.
3. The account identifier of the applicant's nominated holding account.
4. Full details of the applicant's nominated bank account.
5. The name, address, telephone and facsimile numbers, as well as the electronic mail address of two or more representatives of the bidder as defined in the third subparagraph of Article 6(3).
6. For legal persons, proof of:
 - (a) their incorporation stating: the legal form of the applicant; the law by which it is governed; whether or not the applicant is a publicly listed company of one or more recognised stock exchange(s);
 - (b) if applicable, the registration number of the applicant in the relevant register where the applicant is registered, failing which the applicant shall provide the memorandum, statutes or other document attesting to its incorporation.
7. For legal persons and/or legal arrangements, such information as is required to identify the beneficial owner and understanding the ownership and control structure of such legal person or arrangement.
8. For natural persons, proof of their identity, by means of an identity card, driving licence, passport or similar government issued document containing the full name, photograph, date of birth and permanent residential address in the Union of the applicant concerned.
9. For operators the permit referred to in Article 4 of Directive 2003/87/EC.
10. For aircraft operators, the monitoring plan submitted and approved pursuant to Article 3(g) of Directive 2003/87/EC.
11. Such information as is required to carry out the customer due diligence measures referred to in Article 20(2)(d).
12. Such information as is required to grant access pursuant to the requirements referred to in Article 20(2)(e).

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13. The applicant's latest audited annual report and accounts including their profit and loss account and balance sheet and annual report, if any, if none, VAT return, or such further information as required to be satisfied as to the applicant's solvency and creditworthiness.
14. VAT registration number, if any, and, where the applicant is not registered for VAT, any other means of identifying the applicant by the tax authorities of the Member State of establishment or where it is tax resident, or such further information as required to be satisfied as to the applicant's fiscal status within the Union.
15. A statement that to the best of the applicant's knowledge the applicant satisfies the requirements of Article 20(2)(f).
16. Proof of compliance with the requirements of Article 20(2)(g).
17. Proof that the applicant satisfies the requirements of Article 20(3).
18. A statement that the applicant has the necessary legal capacity and authority to bid on its own account or on behalf of others in an auction.
19. A statement that to the best of the applicant's knowledge there is no legal, regulatory, contractual or any other impediment preventing it from performing its obligations under this Regulation.
20. A statement of whether the applicant proposes to pay in euros or in a currency of a Member State that is not part of the euro-zone, with an indication of the currency chosen.

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ANNEX III

Auction platforms other than those appointed pursuant to Article 28(1) or (2), their appointing Member States and any applicable conditions referred to in Article 32(7)

Auction Platform	Member State	Conditions
[...]	[...]	[...]

ANNEX IV

List of the relevant parts of Directive 2004/39/EC and Directive 2003/6/EC referred to in Article 37(3)

1. Directive 2003/6/EC to the extent relevant to the auctioning of the auctioned products provided for in Article 4(3). The competent national authorities of the Member State where the regulated market or market operator of an auction platform auctioning the auctioned products provided for in Article 4(3) shall supervise them in accordance with the national measures implementing Articles 11 to 16 of that Directive.
2. Title III of Directive 2004/39/EC to the extent relevant to the auctioning of the auctioned products provided for in Article 4(3).
3. The competent national authorities designated under Article 36(2) of Directive 2004/39/EC shall authorise and supervise an auction platform auctioning the auctioned products provided for in Article 4(3) established in their Member State in accordance with Title IV of Directive 2004/39/EC to the extent relevant to the auctioning of the auctioned products provided for in Article 4(3).