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

COMMISSION REGULATION (EU) 2017/1902

of 18 October 2017

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(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC[(1)], and in particular Articles 3d(3) and 10(4) thereof,

Whereas:

(1) Commission Regulation (EU) No 1031/2010[(2)] provides for rules on the timing, administration and other aspects of the auctioning of allowances under Directive 2003/87/EC. In particular, Regulation (EU) No 1031/2010 determines the volumes of allowances to be auctioned each year. Regulation (EU) No 1031/2010 thus ensures that the auctioning of allowances is a well functioning process. It is currently conducted by a common auction platform for 25 Member States and by a small number of opt-out platforms.

(2) Pursuant to Decision (EU) 2015/1814 of the European Parliament and of the Council[(3)], a market stability reserve (the 'reserve') is to be established in 2018 and is to start operating from 1 January 2019. In accordance with the pre-defined rules of this Decision volumes of allowances are to be placed in or released from the reserve adjusting the volumes of allowances to be auctioned over a period of 12 months beginning on 1 September of a given year. That rules for the functioning of the reserve are necessary to address situations where the total number of allowances in circulation for the previous year, published by the Commission on 15 May of the given year, is outside a predefined range. In the first year of the reserve's operation, the first adjustment to the auction volumes is to be made from 1 January to 1 September 2019.

(3) Decision (EU) 2015/1814 also provides that 900 million allowances originally planned to be reintroduced in 2019 and 2020, as determined by Commission Regulation (EU) No 176/2014[(4)], are no longer to be auctioned but are to be placed in the reserve. Furthermore, Decision (EU) 2015/1814 provides that the allowances not allocated from

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the new entrant reserve, or those not allocated to installations because of their closure or partial cessation in accordance with Articles 10a(7), 10a(19) and 10a(20) of Directive 2003/87/EC, are to be placed in the reserve in 2020 rather than auctioned.

(4) Pursuant to Decision (EU) 2015/1814, the auction calendars of the common auction platform and, where applicable, of opt-out auction platforms are to be adjusted to take account of the volume of allowances placed in or to be released from the reserve.

(5) In view of providing clarity and certainty to market participants about the volumes of allowances to be auctioned within a period of at least 12 months, the changes to the auction calendar of a given year stemming from the application of Decision (EU) 2015/1814 should be made together with the determination and publication of theauction calendar of the subsequent year. Furthermore, in order to ensure a smooth implementation of the adjustments to the auction volumes, avoiding negative impacts on the auctions, market participants should be timely informed about the impact of Decision (EU) 2015/1814 on the auction volumes for the next 12 months. Accordingly, the relevant changes to the auction calendars of a given year and the auction calendars for the subsequent year should be published well in advance before 1 September of a given year when the relevant adjustments to the auction volumes will start to apply.

(6) Articles 1(5) and 1(8) of Decision (EU) 2015/1814 contain derogations from the general rules for the functioning of the reserve concerning the 10 % of total quantity of allowances to be auctioned being distributed among some Member States for solidarity purposes pursuant to Article 10(2)(b) of Directive 2003/87/EC. Therefore, Member States' shares of allowances to be auctioned for any given year are to be established also in accordance with the provisions of the second subparagraph of Article 1(5) and of Article 1(8) of Decision (EU) 2015/1814 regarding the specific rules for determining Member States' shares contributing to the placement of allowances in the reserve until the end of 2025 and the subsequent release of allowances from the reserve.

(7) Article 60(1) of Regulation (EU) No 1031/2010 provides a non-exhaustive list of non-confidential information to be published on the dedicated up-to-date auctioning web-site maintained by the auction platform concerned. The list of persons admitted to bid in the auctions should be deemed to constitute a non-confidential piece of information pertinent to the auctions on a given auction platform.

(8) Regulation (EU) No 1031/2010 contains several inconsistencies stemming from previous amendments to that Regulation, which should be corrected. In particular, Article 10(3) should be amended to clarify that the calculation of the volume of allowances to be auctioned each year takes into account any adjustment pursuant to Articles 24 and 27 of Directive 2003/87/EC. Commission Regulation (EU) No 1143/2013[(5)] introduced in Regulation (EU) No 1031/2010 the rule that an entity may only be appointed as auction platform if it is authorised as a regulated market whose operator organises a secondary market in allowances or allowances derivatives. In order to ensure consistency with that rule, it is necessary to amend Articles 19, 20 and 35 of Regulation (EU) No 1031/2010.

(9) In accordance with Article 30(4) of Regulation (EU) No 1031/2010, on 18 February 2011 the United Kingdom informed the Commission of its decision not to participate in

the joint action as provided in Article 26(1) and (2) of that Regulation, and to appoint its own auction platform.

(10) On 30 April 2012, the United Kingdom notified the Commission of its intention to appoint ICE Futures Europe ('ICE') as an auction platform referred to in Article 30(1) of Regulation (EU) No 1031/2010. The terms of appointment and the applicable conditions for ICE as auction platform for the United Kingdom for the period from 10 November 2012 until 9 November 2017 were introduced in Annex III to Regulation (EU) No 1031/2010 by Commission Regulation (EU) No 1042/2012[6].

(11) On 16 November 2016, the United Kingdom notified the Commission of its intention to appoint ICE Futures Europe ('ICE') as its second auction platform pursuant to in Article 30(1) of Regulation (EU) No 1031/2010. Under the notification, the terms and requirements of ICE's appointment remain the same as those notified on 30 April 2012 and the exchange rules of ICE applicable to the auctions have been amended to ensure compliance with the conditions and obligations for its listing in Annex III to Regulation (EU) No 1031/2010, in accordance with point 6 of the row on obligations of the table for Auction platforms appointed by the United Kingdom set out in that Annex. In addition, following a request from the Commission, the United Kingdom has provided further information and clarification supplementing the notification accordingly.

(12) In order to ensure that the proposed appointment of ICE as the second United Kingdom auction platform referred to in Article 30(1) of Regulation (EU) No 1031/2010 and in particular that the exchange rules of ICE satisfy the requirements of that Regulation and are in conformity with the second subparagraph of Article 10(4) of Directive 2003/87/EC, it is appropriate to extend the conditions and obligations on ICE set out in Annex III toRegulation (EU) No 1031/2010 to the listing of ICE as the second United Kingdom opt-out auction platform with the adaptations necessary to ensure that their objective is achieved taking into account the specific terms of implementation provided in the applicable exchange rules of ICE.

(13) Regulation (EU) No 1031/2010 should therefore be amended accordingly.

(14) The measures provided for in this Regulation are in accordance with the opinion of the Climate Change Committee,

HAS ADOPTED THIS REGULATION:

Article 1

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

(1) Article 10 is amended as follows:

(a) paragraph 2 is amended as follows:

(i) the first and the second subparagraphs are replaced by the following:

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

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that Directive for the calendar year concerned, less the allocation free of charge provided for in Articles 10a(7) and 11(2) of that Directive, less half of the total volume of any allowances auctioned in 2012.

The volume of allowances covered by Chapter III of Directive 2003/87/EC to be auctioned each calendar year in 2015-2018 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(2) of that Directive.;

(ii) the fifth subparagraph is replaced by the following:

The volume of allowances covered by Chapter III of Directive 2003/87/EC to be auctioned as from 2019 shall be the quantity of allowances established in accordance with Articles 10(1) and 10(1a) of that Directive.;

(iii) the ninth subparagraph is replaced by the following:

Without prejudice to Decision (EU) 2015/1814 of the European Parliament and of the Council[7], 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, any adaptation of the level of free allocation pursuant to Article 10a(20) of that Directive and of allowances remaining in the reserve for new entrants provided for in Article 10a(7) of that Directive.;;

(b) paragraph 3 is replaced by the following:

3. The volume of allowances covered by Chapter III of Directive 2003/87/EC to be auctioned each calendar year as from 2013 shall be based on Annex I and on the Commission's determination and publication pursuant to Article 10(1) of that Directive of the estimated amount of allowances to be auctioned or on the most recent amendment of the Commission's original estimate as published by 31 January of the preceding year, taking into account Decision (EU) 2015/1814 where relevant and to the extent possible any transitional free allocations deducted or to be deducted from the quantity of allowances that a given Member State would otherwise auction pursuant to Article 10(2) of Directive 2003/87/EC as provided for in Article 10c(2) of that Directive, as well as any adjustment pursuant to Articles 24 and 27 of that Directive.

Without prejudice to Decision (EU) 2015/1814, any subsequent change to the volume of allowances to be auctioned in a given calendar year shall be accounted for in the volume of allowances to be auctioned in the subsequent calendar year.;

(c) paragraph 4 is replaced by the following:

4. Without prejudice to Article 10a(7) of Directive 2003/87/EC, for any given calendar year each Member State's share of allowances to be auctioned covered by Chapter III of that Directive shall be the

share determined pursuant to Article 10(2) of the same Directive, taking into account any transitional free allocation made by that Member State pursuant to Article 10c of Directive 2003/87/EC in that calendar year, any allowances to be auctioned by that Member State in the same calendar year pursuant to Article 24 of that Directive, as well as the allowances to be placed in or released from the market stability reserve pursuant to the second subparagraph of Article 1(5) and to Article 1(8) of Decision (EU) 2015/1814.;

(2) in Article 11, paragraph 1 is replaced by the following:

1. The auction platforms appointed pursuant to Article 26(1) or (2) of this Regulation shall determine and publish the bidding windows, individual volumes, auction dates as well as the auctioned product, payment and delivery dates of the allowances covered by Chapter III of Directive 2003/87/EC to be auctioned in individual auctions each calendar year, by 30 June 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.;

(3) in Article 14, paragraph 1 is amended as follows:

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

(k) the necessity for an auction platform to avoid conducting an auction in breach of this Regulation or Directive 2003/87/EC;;

(b) the following point (l) is added:

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

(4) Article 19 is amended as follows:

(a) paragraph 1 is replaced by the following:

1. Members or participants of the secondary market organised by an auction platform appointed pursuant to Article 26(1) or 30(1) that are eligible persons pursuant to Article 18(1) or (2) shall be admitted to bid directly in the auctions conducted by that auction platform without any further admission requirements, provided that all of the following conditions are fulfilled:

a the requirements for admission of the member or participant to trade allowances through the secondary market organised by the auction platform appointed pursuant to Article 26(1) or 30(1) are no less stringent than those listed under paragraph 2 of this Article;

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

(b) in paragraph 2, the second subparagraph is deleted;

(5) in Article 20(1), the second subparagraph is replaced by the following: