Commission Regulation (EU) No 1042/2012 of 7 November 2012 amending Regulation (EU) No 1031/2010 to list an auction platform to be appointed by the United Kingdom (Text with EEA relevance)

COMMISSION REGULATION (EU) No 1042/2012

of 7 November 2012

amending Regulation (EU) No 1031/2010 to list an auction platform to be appointed by the United Kingdom

(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) Members States not participating in the joint action as provided in Article 26(1) and (2) of Commission Regulation (EU) No 1031/2010 of 12 November 2010 on the timing, administration and other aspects of auctioning of greenhouse gas emission allowances pursuant to Directive 2003/87/EC of the European Parliament and of the Council establishing a scheme for greenhouse gas emission allowances trading within the Community[(2)], may appoint their own auction platform for the auctioning of their share of the volume of allowances covered by Chapters II and III of Directive 2003/87/EC. Pursuant to the third subparagraph of Article 30(5) of Regulation (EU) No 1031/2010 the appointment of such auction platforms is subject to listing of the auction platform concerned in Annex III to that Regulation.

(2) In accordance with Article 30(4) of Regulation (EU) No 1031/2010, the United Kingdom informed the Commisssion 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.

(3) 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.

(4) On 25 April 2012, the United Kingdom presented the notification to the Climate Change Committee established under Article 9 of Decision No 280/2004/EC of the European Parliament and of the Council of 11 February 2004 concerning a mechanism for monitoring Community greenhouse gas emissions and for implementing the Kyoto

Changes to legislation: *There are currently no known outstanding effects for the Commission Regulation (EU) No 1042/2012. (See end of Document for details)*

Protocol[3]. In addition, the United Kingdom has provided further information and clarification to the Commission, supplementing the notification accordingly.

(5) In order to ensure that the proposed appointment of ICE as an auction platform referred to in Article 30(1) of Regulation (EU) No 1031/2010 is compatible with the requirements of that Regulation and is in conformity with the objectives set out in Article 10(4) of Directive 2003/87/EC, it is necessary to impose a number of conditions and obligations on ICE.

(6) In accordance with Articles 18 to 21 of Regulation (EU) No 1031/2010, an auction platform is charged with a series of tasks concerning the admission of persons to bid in the auctions which include applying customer due diligence measures to ensure that only eligible persons apply for admission to bid directly in the auctions. Its responsibilities also arise in the context of examining applicants' compliance with certain minimum requirements for admission to bid, in the submission and processing of applications for admission to bid and with regard to decisions to grant or refuse to grant admission to bid, to revoke or to suspend admissions to bid already granted. Under the cooperation model between ICE and its exchange members and their clients, ICE's exchange members and some of their clients will perform such admission functions with respect to their existing or prospective clients. Such cooperation model can be compatible with the provisions of Regulation (EU) No 1031/2010, provided that ICE ensures that compliance with the obligations incumbent upon the auction platform under Regulation (EU) No 1031/2010.

(7) Furthermore, in accordance with point (b) of Article 35(3) of Regulation (EU) No 1031/2010, an appointed auction platform is required to provide full, fair and equitable access to bid in the auctions for small and medium enterprises (SMEs) and access to bid in the auctions for small emitters. To ensure this, ICE should provide such SMEs and small emitters with transparent, comprehensive and up-to-date information, on access possibilities to auctions conducted by ICE for the United Kingdom including all necessary practical guidance on how to make the most of such possibilities. Such information should be publicly available on ICE's webpage. In addition, ICE should report to the auction monitor appointed as provided for in Article 24(2) of Regulation (EU) No 1031/2010 on the coverage obtained under its cooperation model with exchange members and their clients, including on the level of geographic coverage obtained and take the utmost account of the auction monitor's recommendations in this regard so as to ensure fulfilment of its obligations under Article 35(3)(a) and (b) of that Regulation.

(8) In accordance with point (e) of Article 35(3) of Regulation (EU) No 1031/2010, when appointing an auction platform, Member States must take into account the extent to which a candidate aution platform is able to avoid distortions of competition in the internal market including the carbon market. In particular, an auction platform should not be able to use the contract appointing it to leverage the competitiveness of its other activities, notably the secondary market it organises. In addition, the listing of ICE as an auction platform should be conditional upon ICE, including any exchange members or clearing members admitted by ICE, providing the option to candidate bidders to be

admitted to bid in the auctions without being required to become an exchange member or a participant in the secondary market organised by ICE or of any other trading place operated by ICE or by any third party.

(9) In accordance with point (h) of Article 35(3) of Regulation (EU) No 1031/2010, when appointing an auction platform, the Member States have to take into account the extent to which adequate measures are provided to require an auction platform to hand over all tangible and intangible assets necessary for the conduct of the auctions by an auction platform's successor. Such measures have been laid down in an exit strategy that should be reviewed by the auction monitor. ICE should develop its exit strategy in a clear and timely manner taking into utmost account the auction monitor's opinion.

(10) In accordance with Article 51(3) of Regulation (EU) No 1031/2010, all fees and conditions applied by an auction platform as well as those of the clearing system or settlement system must be clearly stated, easily understandable and publicly available. In view of the cooperation model foreseen by ICE, any additional fees and conditions applied by exchange members and clients thereof in relation to the admission functions they perform should be also clearly stated, easily understandable and publicly available on the webpages of those offering the services with direct references to those webpages available on ICE's webpage.

(11) In accordance with Article 64(1) of Regulation (EU) No 1031/2010, a definitive auction platform has to ensure that it has 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. Applicants for admission to bid, bidders admitted to bid or whose admission to bid has been refused, revoked or suspended should be able to avail themselves of their right to appeal under Article 64 of Regulation (EU) No 1031/2010, even when such decisions are taken by ICE's exchange members and their clients.

(12) In addition to the changes to ICE's own exchange rules required to ensure full compliance with the condition and obligations set out in the Annex to this Regulation, ICE should also take any further steps as necessary to ensure that full compliance, which may involve adaptations to contractual arrangements between ICE and its exchange members, between exchange members and the clients, and between the clients down the chain.

(13) Moreover, certain references in Article 25(2) of Regulation (EU) No 1031/2010 should be amended to eliminate gaps in the monitoring of the auction processes by the auction monitor and for reasons of consistency with other provisions of that Regulation.

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

(15) In order to ensure predictable and timely auctions by the auction platform to be appointed by the United Kingdom, this Regulation should enter into force as a matter of urgency.

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

Changes to legislation: *There are currently no known outstanding effects for the Commission Regulation (EU) No 1042/2012. (See end of Document for details)*

HAS ADOPTED THIS REGULATION:

Article 1

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

(1) Article 25, paragraph 2 is amended as follows:

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

(c) any evidence of anti-competitive behaviour, market abuse, money laundering, terrorist financing or criminal activity;;

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

(f) information about the number, nature and status of any complaints made pursuant to Articles 59(4) or 64(1) as well as any complaints made against an auction platform to the national competetent authorities supervising that auction platform, the courts or competent administrative bodies provided for in the national measures transposing Article 52(2) of Directive 2004/39/EC.;

(2) Annex III is amended in accordance with the Annex to this Regulation.

Article 2

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

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

Done at Brussels, 7 November 2012.

For the Commission

The President

José Manuel BARROSO

***Changes to legislation:** There are currently no known outstanding effects for the Commission Regulation (EU) No 1042/2012. (See end of Document for details)*

ANNEX

In the table set out in Annex III to Regulation (EU) No 1031/2010, the following is added:

Auction platforms appointed by the United Kingdom		
2	Auction platform	ICE Futures Europe (ICE)
	Term of appointment	From 10 November 2012 at the earliest until 9 November 2017 at the latest, without prejudice to the second subparagraph of Article 30(5).
	Definitions	For the purposes of the condition and obligations applying to ICE the following definitions shall apply: (a) "ICE exchange rules" — means ICE Regulations, including in particular contract rules and procedures relating to the ICE FUTURES EUA AUCTION CONTRACT and the ICE FUTURES EUAA AUCTION CONTRACT; (b) "exchange member" — means a member as defined in Section A.1 of ICE exchange rules; (c) "client" — means a client of an exchange member, as well as clients of their clients down the chain, who facilitate the admission of persons to bid and act on behalf of bidders.
	Conditions	Admission to the auctions shall not be dependent on becoming an exchange member of or a participant in the secondary market organised by ICE or of any other trading place operated by ICE or by any third party.
	Obligations	1. ICE shall require that any decisions that have