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<sup>(1)</sup> Text with EEA relevance.

## II

(Non-legislative acts)

## INTERNATIONAL AGREEMENTS

COUNCIL DECISION (EU) 2019/1864

of 24 October 2019

**on the signing, on behalf of the Union, of the Agreement in the form of an Exchange of Letters between the European Union and the Swiss Confederation in the context of negotiations under Article XXVIII of the GATT 1994 on the modification of Switzerland's WTO concessions with regard to seasoned meat**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular the first subparagraph of Article 207(4), in conjunction with Article 218(5) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) On 6 December 2018, the Council authorised the Commission to open negotiations pursuant to Article XXVIII of the General Agreement on Tariffs and Trade ('GATT') 1994 on an adequate compensation following Switzerland's decision to modify the tariff concession in Schedule LIX — Switzerland-Liechtenstein for meat not further prepared than seasoned.
- (2) The negotiations have been concluded and an Agreement in the form of an Exchange of Letters between the European Union and the Swiss Confederation in the context of negotiations under Article XXVIII of the GATT 1994 on the modification of Switzerland's WTO concessions with regard to seasoned meat (hereinafter referred to as 'the Agreement') was initialled on 17 July 2019.
- (3) This Decision relates exclusively to Union trade policy and implements an agreement following negotiations in the framework of the Article XXVIII of the GATT 1994, a Union right under the Agreement establishing the World Trade Organization (WTO).
- (4) The Agreement should therefore be signed,

HAS ADOPTED THIS DECISION:

*Article 1*

The signing, on behalf of the Union, of the Agreement in the form of an Exchange of Letters between the European Union and the Swiss Confederation in the context of negotiations under Article XXVIII of the GATT 1994 on the modification of Switzerland's WTO concessions with regard to seasoned meat is hereby authorised, subject to the conclusion of the said Agreement <sup>(1)</sup>.

*Article 2*

The President of the Council is hereby authorised to designate the person(s) empowered to sign the Agreement on behalf of the Union.

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<sup>(1)</sup> The text of the Agreement will be published together with the decision on its conclusion.

*Article 3*

This Decision shall enter into force on the date of its adoption.

Done at Luxembourg, 24 October 2019.

*For the Council*  
*The President*  
A.-K. PEKONEN

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# REGULATIONS

## COMMISSION DELEGATED REGULATION (EU) 2019/1865

of 6 June 2019

**correcting the Romanian language version of Delegated Regulation (EU) 2015/35 supplementing Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II)**

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) <sup>(1)</sup> and in particular Article 111(1)(k) thereof,

Whereas:

- (1) The Romanian language version of Commission Delegated Regulation (EU) 2015/35 <sup>(2)</sup> contains an error in Annex XVII, Part F, point 2(g) as regards the inverse meaning of a sentence.
- (2) Delegated Regulation (EU) 2015/35 should therefore be corrected accordingly. The other language versions are not affected,

HAS ADOPTED THIS REGULATION:

### *Article 1*

*(does not concern the English language)*

### *Article 2*

This Regulation shall enter into force on the twentieth 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, 6 June 2019.

*For the Commission*  
*The President*  
Jean-Claude JUNCKER

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<sup>(1)</sup> OJ L 335, 17.12.2009, p. 1.

<sup>(2)</sup> Commission Delegated Regulation (EU) 2015/35 of 10 October 2014 supplementing Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ L 12, 17.1.2015, p. 1).

## COMMISSION DELEGATED REGULATION (EU) 2019/1866

of 3 July 2019

**amending Delegated Regulation (EU) 2017/653 to align the transitional arrangement for PRIIP manufacturers offering units of funds referred to in Article 32 of Regulation (EU) No 1286/2014 of the European Parliament and of the Council as underlying investment options with the prolonged exemption period under that Article**

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs) <sup>(1)</sup>, and in particular Article 8(5) thereof,

Whereas:

- (1) Pursuant to Article 32(1) of Regulation (EU) No 1286/2014, management companies as defined in Article 2(1) (b) of Directive 2009/65/EC of the European Parliament and of the Council <sup>(2)</sup>, investment companies as referred to in Article 27 thereof and persons advising on, or selling, units of UCITS as referred to in Article 1(2) thereof are exempt from the obligations under that Regulation until 31 December 2019. When a Member State applies rules on the format and content of the key information document, as laid down in Articles 78 to 81 of Directive 2009/65/EC, to non-UCITS funds offered to retail investors, the exemption laid down in Article 32(1) of Regulation (EU) No 1286/2014 applies to management companies, investment companies and persons advising on, or selling, units of such funds to retail investors. To provide those funds with a consistent transitional legal regime, the third paragraph of Article 18 of Commission Delegated Regulation (EU) 2017/653 <sup>(3)</sup> allows manufacturers of packaged retail and insurance-based investment products ('PRIIP manufacturers') to continue using such documents drawn up in accordance with those Articles until 31 December 2019, where at least one of the underlying investment options is a UCITS or non-UCITS fund.
- (2) Regulation (EU) No 1286/2014 has been amended to extend the transitional arrangements referred to in Article 32 thereof until 31 December 2021 <sup>(4)</sup>. In order to enable PRIIP manufacturers to determine their obligations with certainty, the date set out in the third paragraph of Article 18 of Delegated Regulation (EU) 2017/653 should be changed accordingly.
- (3) Delegated Regulation (EU) 2017/653 should therefore be amended accordingly.
- (4) This Regulation is based on draft regulatory technical standards submitted to the Commission by the European Banking Authority, the European Insurance and Occupational Pensions Authority and the European Securities and Markets Authority (the 'European Supervisory Authorities').

<sup>(1)</sup> OJ L 352, 9.12.2014, p. 1.

<sup>(2)</sup> Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (recast) (OJ L 302, 17.11.2009, p. 32).

<sup>(3)</sup> Commission Delegated Regulation (EU) 2017/653 of 8 March 2017 supplementing Regulation (EU) No 1286/2014 of the European Parliament and of the Council on key information documents for packaged retail and insurance-based investment products (PRIIPs) by laying down regulatory technical standards with regard to the presentation, content, review and revision of key information documents and the conditions for fulfilling the requirement to provide such documents (OJ L 100, 12.4.2017, p. 1).

<sup>(4)</sup> Regulation (EU) 2019/1156 of the European Parliament and of the Council of 20 June 2019 on facilitating the cross-border distribution of collective investment undertakings and amending Regulations (EU) No 345/2013, (EU) No 346/2013 and (EU) No 1286/2014 (OJ L 188, 12.7.2019, p. 55).

- (5) The European Supervisory Authorities have not conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, nor analysed potential related costs and benefits, as an impact assessment has already been produced for regulatory technical standards laid down in Delegated Regulation (EU) 2017/653. This Regulation neither alters the substance of Delegated Regulation (EU) 2017/653 nor creates new obligations for PRIIPs manufacturers or persons advising on or selling PRIIPs, including those referred to in Article 32 of Regulation (EU) No 1286/2014. The European Supervisory Authorities have requested the opinion of the Banking Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council <sup>(5)</sup>, the Insurance and Reinsurance Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1094/2010 of the European Parliament and of the Council <sup>(6)</sup> and the Securities and Markets Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council <sup>(7)</sup>,

HAS ADOPTED THIS REGULATION:

*Article 1*

In Article 18 of Delegated Regulation (EU) 2017/653, the third paragraph is replaced by the following:

‘Article 14(2) shall apply until 31 December 2021.’

*Article 2*

This Regulation shall enter into force on the twentieth 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, 3 July 2019.

*For the Commission*  
*The President*  
Jean-Claude JUNCKER

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<sup>(5)</sup> Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p. 12).

<sup>(6)</sup> Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC (OJ L 331, 15.12.2010, p. 48).

<sup>(7)</sup> Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

**COMMISSION DELEGATED REGULATION (EU) 2019/1867****of 28 August 2019****supplementing Regulation (EU) No 1303/2013 of the European Parliament and of the Council with regard to the establishment of flat-rate financing**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 1303/2013 of 17 December 2013 of the European Parliament and of the Council laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006 <sup>(1)</sup>, and in particular Article 67(5a) thereof,

Whereas:

- (1) With a view to simplifying the use of the European Regional Development Fund ('ERDF'), the European Social Fund ('ESF'), the Cohesion Fund, the European Agricultural Fund for Rural Development ('EAFRD') and the European Maritime and Fisheries Fund ('EMFF') financing and reducing both administrative burden and the risk of error, it is appropriate to lay down a flat rate for the reimbursement of costs to one or more beneficiaries of operations supported under technical assistance, without the need to justify the rate. This includes cases where the managing authority or the paying agency or another body is implementing technical assistance operations.
- (2) The level of the flat rate is based on the ceilings and the actual allocation for technical assistance in programmes as well as absorption data from past programming periods. The use of the flat-rate reimbursement method does not have an impact on the financial allocation for technical assistance in the adopted programmes. It may also be used in programmes supported by more than one fund even if the technical assistance priority receives support from a different fund than the one providing support for priorities other than technical assistance in the same programme.
- (3) In addition, in order to facilitate financial management within the existing programming arrangements, it should be specified for the ERDF, the ESF and the Cohesion Fund as well as for the EMFF that the basis for the application of the rate is the eligible expenditure under priority axes other than the technical assistance priority axis of the programme in which this flat-rate reimbursement method is used. Therefore, this flat rate is not to be used where a programme covers exclusively technical assistance. Furthermore, for the aforementioned Funds there is no requirement to amend the programme where this flat-rate reimbursement method is used.
- (4) It is necessary to specify that the basis for the application of the flat rate is the eligible expenditure for which the managing authority or the relevant control body has completed the management verifications or, in the case of the EAFRD, the relevant administrative checks.
- (5) In order to avoid the risk of double-financing where Member States make use of this option, the flat-rate financing should only be applied to expenditure that has been subject to management verification after this Regulation has entered into force and then until the end of the eligibility period. For the same reason, for the EAFRD, the flat-rate financing should only be applied to expenditure which has been subject to administrative checks as from the beginning of the agricultural financial year, as provided for in Article 39 of Regulation EU (No) 1306/2013 of the European Parliament and of the Council <sup>(2)</sup>, starting on 16 October 2019 or from any subsequent agricultural financial year and then until the end of the eligibility period. In order to ensure sound financial management, Member States need to make sure that the amounts reimbursed in form of flat-rate financing are calculated based on expenditure of non-technical assistance projects, which is legal and regular.

<sup>(1)</sup> OJ L 347, 20.12.2013, p. 320.

<sup>(2)</sup> Regulation (EU) No 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy and repealing Council Regulations (EEC) No 352/78, (EC) No 165/94, (EC) No 2799/98, (EC) No 814/2000, (EC) No 1290/2005 and (EC) No 485/2008 (OJ L 347, 20.12.2013, p. 549).



- (6) The flat-rate financing mechanism can only be used in accounting years which at the date of entry into force of this Regulation have not yet been closed. In order to allow for checks in the context of Article 9 and Article 47 of Regulation (EU) No 1306/2013 of the basis for the calculation of the flat-rate financing, for the EAFRD the flat-rate financing mechanism may only be used for expenditure as from the beginning of the agricultural financial year starting on 16 October 2019 or from any subsequent agricultural financial year.
- (7) In order to allow for prompt application of the measures provided for in this Regulation, in view of making use of it early enough in the current accounting year, and in the case of the EAFRD in the agricultural financial year starting on 16 October 2019, this Regulation should enter into force on the day following that of its publication in the *Official Journal of the European Union*,

HAS ADOPTED THIS REGULATION:

#### Article 1

##### Subject matter

1. This Regulation establishes flat-rate financing for the reimbursement by the managing authority of the costs of operations financed under the priority axis concerning technical assistance at the initiative of Member States to one or more beneficiaries within a programme.
2. In the case of the EAFRD, this Regulation establishes flat-rate financing for the reimbursement by the Paying Agency or other body as referred to in Article 7(1) of Regulation (EU) No 1306/2013 of the costs of technical assistance operations at the initiative of Member States to one or more beneficiaries within a programme. In case a Paying Agency or other body is directly undertaking technical assistance operations, the reimbursement of the cost of these operations may also be established based on this flat-rate financing.

#### Article 2

##### Flat-rate financing

1. The overall amount to be reimbursed for operations financed under the priority axis concerning technical assistance in a programme may be calculated as a flat rate of the amounts of expenditure of operations under the priority axes of the programme other than the one concerning technical assistance. In the case of the EAFRD, technical assistance may be calculated as a flat rate of the amounts of expenditure of operations under the rural development measures referred to in Chapter I of Title III of Regulation (EU) No 1305/2013 of the European Parliament and of the Council <sup>(3)</sup>.
2. This flat rate is established at 4 % for programmes supported by the ERDF, the ESF, the Cohesion Fund or the EAFRD and at 6 % for programmes supported by the EMFF. For programmes supported by the ERDF under the European Territorial Cooperation goal the flat rate is established at 6 %. The calculated amount may be reimbursed to one beneficiary or may be split for reimbursement to more beneficiaries.
3. Only expenditure which has been subject to management verifications in accordance with Article 125(4)(a) of Regulation (EU) No 1303/2013 following the entry into force of this Regulation may be included in the basis for the calculation of the flat rate as from the accounting year starting on 1 July 2019 or from any subsequent accounting year. In the case of the EAFRD, only expenditure which has been subject to administrative checks in accordance with Article 59 of Regulation (EU) No 1306/2013 as from the agricultural financial year starting on 16 October 2019 or as from any subsequent agricultural financial year may be included in the basis for calculation of the flat rate.
4. Where this flat-rate financing is used, it shall be exclusively applied until the end of the eligibility period for reimbursing the costs for technical assistance and, for the EAFRD, throughout the relevant agricultural financial year.

<sup>(3)</sup> Regulation (EU) No 1305/2013 of the European Parliament and of the Council of 17 December 2013 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and repealing Council Regulation (EC) No 1698/2005 (OJ L 347, 20.12.2013, p. 487).

*Article 3*

**Entry into force**

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

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

Done at Brussels, 28 August 2019.

*For the Commission*  
*The President*  
Jean-Claude JUNCKER

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**COMMISSION DELEGATED REGULATION (EU) 2019/1868****of 28 August 2019****amending Regulation (EU) No 1031/2010 to align the auctioning of allowances with the EU ETS rules for the period 2021 to 2030 and with the classification of allowances as financial instruments pursuant to Directive 2014/65/EU of the European Parliament and of the Council****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a system for greenhouse gas emission allowance trading within the Union and amending Council Directive 96/61/EC <sup>(1)</sup>, and in particular Articles 3d(3), 10(4) and 10a(8) thereof,

Whereas:

- (1) Since 2012, emission allowances are auctioned in accordance with Commission Regulation (EU) No 1031/2010 <sup>(2)</sup>. The auctioning of allowances is conducted by a common auction platform for 25 Member States and three EEA EFTA states and by a small number of opt-out platforms.
- (2) Directive 2003/87/EC has been amended by Directive (EU) 2018/410 of the European Parliament and of the Council <sup>(3)</sup> to enhance cost-effective emission reductions and low-carbon investments through the system for greenhouse gas emission allowance trading within the Union ('EU ETS') as from 2021. The auctioning of allowances remained the general rule for allocation of allowances whereby the share of allowances to be auctioned should be 57 % of the total quantity of allowances.
- (3) It is appropriate to incorporate the new elements introduced by Directive (EU) 2018/410, related to the determination of the annual auction volume, into Regulation (EU) No 1031/2010. In particular, it is necessary to take into account the possibility to reduce the auction volume by up to 3 % of the total quantity of allowances to increase the amount available for free allocation (free allocation buffer). Furthermore, the revised Directive 2003/87/EC allows for changes to be made to the annual auction volumes due to: voluntary cancellation of allowances by the Member States in the event of closure of electricity generation capacity; the reintroduction into the EU ETS of installations that emit less than 2 500 tonnes of carbon dioxide; and the flexibility established between the ETS and non-ETS sectors to facilitate the achievement of Member States national reduction targets in non-ETS sectors as provided for by Article 6 of Regulation (EU) 2018/842 of the European Parliament and of the Council <sup>(4)</sup>.
- (4) Directive 2003/87/EC establishes the Modernisation Fund to improve energy efficiency and modernise the energy systems of certain Member States and the Innovation Fund to support investments in innovative technologies. Both funds are financed through the auctioning of allowances on the common auction platform by the European Investment Bank ('EIB'). To this end, the EIB should become the auctioneer for the two funds without becoming part of the joint procurement procedure for the common auction platform. The relevant volumes of allowances should be auctioned at the same auctions as the volumes auctioned by the Member States and the EEA EFTA states participating in the common auction platform.

<sup>(1)</sup> OJ L 275, 25.10.2003, p. 32.

<sup>(2)</sup> 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 (OJ L 302, 18.11.2010, p. 1).

<sup>(3)</sup> Directive (EU) 2018/410 of the European Parliament and of the Council of 14 March 2018 amending Directive 2003/87/EC to enhance cost-effective emission reductions and low-carbon investments, and Decision (EU) 2015/1814 (OJ L 76, 19.3.2018, p. 3).

<sup>(4)</sup> Regulation (EU) 2018/842 of the European Parliament and of the Council of 30 May 2018 on binding annual greenhouse gas emission reductions by Member States from 2021 to 2030 contributing to climate action to meet commitments under the Paris Agreement and amending Regulation (EU) No 525/2013 (OJ L 156, 19.6.2018, p. 26).

- (5) In view of establishing the Modernisation Fund, Directive 2003/87/EC provides that 2 % of the total quantity of allowances are to be auctioned and, in addition, the eligible Member States may add to this fund allowances under Articles 10(2)(b) and 10c of Directive 2003/87/EC. The EIB is required to ensure that those allowances are auctioned in accordance with the principles and modalities of the auctioning process, where the equal distribution of auction volumes is a key element.
- (6) To ensure the availability of funds for innovation in low carbon technologies and the proper functioning of the carbon market, the volumes of the Innovation Fund should in principle be auctioned in equal annual volumes. However, the Commission should review in two-year intervals the distribution of allowances to be auctioned for the Innovation Fund taking into account the results of each call for proposals. The first review should be carried out no later than by 30 June 2022.
- (7) With a view to enable that a Member State can cancel allowances from its auction volumes in the event of closure of electricity generation capacity in its territory, a notification procedure should be established. The Member State concerned should notify the Commission of its intention to cancel allowances using a uniform template providing evidence and information about the closed installation, the intended volume and timing of the cancellation. To preserve the functioning of the market stability reserve ('MSR') established by Decision (EU) 2015/1814 of the European Parliament and of the Council <sup>(6)</sup>, the volume of the cancellation should be deducted from the auction volumes of the Member State only after the MSR adjustments are made for the respective year. To ensure transparency, the Commission should publish the information provided by the Member States in accordance with the template, except where this information is protected for reasons of confidentiality.
- (8) In order to reinforce the integrity of the carbon market, since 2018, allowances are classified as financial instruments by Directive 2014/65/EU of the European Parliament and of the Council <sup>(6)</sup>. Previously, Directive 2004/39/EC of the European Parliament and of the Council <sup>(7)</sup> recognised only derivatives of allowances as financial instruments. The new classification brings the secondary market spot trade in allowances in the scope of, inter alia, Directive 2014/65/EU, Regulation (EU) No 596/2014 of the European Parliament and of the Council <sup>(8)</sup> and Regulation (EU) No 600/2014 of the European Parliament and of the Council <sup>(9)</sup>. However, the process of auctioning of allowances (primary market) is only in the scope of Regulation (EU) No 596/2014.
- (9) To align the auctioning of allowances with the new financial market regulatory regime, the system established for monitoring and reporting of auctions should be revised. Because the scope of Regulation (EU) No 596/2014 has been extended and applies also to the auctioning of allowances, the functions of monitoring and preventing market abuse with respect to auctions are a responsibility of the competent national authorities. The competent national authorities are required by Regulation (EU) No 596/2014 to actively detect and investigate occurrences of market abuse. The necessary auction monitoring functions should be carried out by the auction platforms, the Commission, the Member States and the competent national authorities and the provisions laying down an obligation to appoint an auction monitor should be deleted. Further, as Regulation (EU) No 596/2014 applies directly to auctions, the specific market abuse provisions of Regulation (EU) No 1031/2010 have become redundant and should be deleted.
- (10) To provide the necessary reporting data to the competent national authorities responsible for surveillance of market abuse in a cost-efficient and proportionate manner, Regulation (EU) No 1031/2010 should mirror the necessary transaction reporting obligations set out in Regulation (EU) No 600/2014 and make them applicable to auction platforms with respect to reporting on auction transactions. This is necessary since Regulation (EU) No 596/2014 that is now applicable to auctions, does not establish a self-standing transaction reporting mechanism, but relies on data collection under Regulation (EU) No 600/2014.

<sup>(6)</sup> Decision (EU) 2015/1814 of the European Parliament and of the Council of 6 October 2015 concerning the establishment and operation of a market stability reserve for the Union greenhouse gas emission trading scheme and amending Directive 2003/87/EC (OJ L 264, 9.10.2015, p. 1).

<sup>(6)</sup> Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).

<sup>(7)</sup> Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC (OJ L 145, 30.4.2004, p. 1).

<sup>(8)</sup> Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC (OJ L 173, 12.6.2014, p. 1).

<sup>(9)</sup> Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 (OJ L 173, 12.6.2014, p. 84).

- (11) It is essential to ensure a competitive procurement process for auction platforms and that the relevant criteria are set accordingly. In relation to the fees to be paid by the successful bidders, it should be possible to increase the current maximum fee level in a limited manner where this is foreseen by the procurement procedure and the annual auction volumes are reduced by more than 200 million allowances due to the operation of the market stability reserve.
- (12) The public procurement for the common auction platform may provide for expanding the selection criteria also to regulated markets in energy products which have not yet established a secondary market in emission allowances. In case such regulated market is selected to become an auction platform, it should be required to put it in place at least 60 trading days prior to the first auction. This is necessary to establish the price of the secondary market at the time of the auctions ('reserve price') for the cases of cancellation of auctions, and the bidder's fees, which are linked to the comparable fee paid in the secondary market. In addition, the Commission and the participating Member States should be able to extend the current five years maximum duration of the contracts to seven years in accordance with the provisions of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council <sup>(10)</sup> ('Financial Regulation') in circumstances which would be difficult to foresee by a diligent contracting authority. In order to verify the market conditions and to prepare the new procurements during the contract duration, the Commission should be able to undertake preliminary market consultation in accordance with the Financial Regulation.
- (13) To simplify the auction process, the setting of the annual auction volumes should be made more flexible in case changes up to 50 000 allowances are needed. Any change below that threshold should not lead to changing the auction volume of the subsequent year, unless a Member State explicitly requests so. Furthermore, the procedure for the determination and publication of auction calendars should be simplified in the sense that the Commission would no longer provide an opinion thereon. However, the auction calendar should be published after the Commission takes an internal decision on the auction table corresponding to the auction calendar under the delegated acts adopted pursuant to Article 19(3) of Directive 2003/87/EC.
- (14) To simplify the reappointment of opt-out platforms, an amendment to Annex III to Regulation (EU) No 1031/2010 should be required only for the listing of new entities as opt-out platforms, or for a re-listing under changed conditions. Thus, in case the same opt-out platform is appointed by its Member State under the same conditions, its listing should be prolonged under the same terms and conditions as the initial listing without an amendment to Annex III to Regulation (EU) No 1031/2010. This should be subject to a confirmation from the Member State and the Commission that the requirements of this Regulation and the objectives of Article 10(4) of Directive 2003/87/EC are satisfied.
- (15) To avoid accumulation of cancelled volumes in case several auctions are cancelled, it should be made possible that the cancelled volumes are distributed evenly over the next auctions that do not include cancelled volumes from previously cancelled auctions.
- (16) Regulation (EU) No 1031/2010 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

#### *Article 1*

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

- (1) The title is replaced by the following:

**'Commission Regulation (EU) No 1031/2010 of 12 November 2010 on the timing, administration and other aspects of auctioning of greenhouse gas emission allowances pursuant to Directive 2003/87/EC of the European Parliament and of the Council establishing a system for greenhouse gas emission allowances trading within the Union'.**

<sup>(10)</sup> Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193, 30.7.2018, p. 1).

(2) Article 3 is amended as follows:

(a) points (1) and (2) are deleted;

(b) points (3) and (4) are replaced by the following:

‘3. “two-day spot” means allowances auctioned for delivery at an agreed date no later than the second trading day from the day of the auction;

4. “five-day futures” means allowances auctioned for delivery at an agreed date no later than the fifth trading day from the day of the auction;’;

(c) points (8), (9) and (10) are replaced by the following:

‘8. “investment firm” means the same as in point (1) of Article 4(1) of Directive 2014/65/EU of the European Parliament and of the Council (\*);

9. “credit institution” means the same as in Article 4(1) of Regulation (EU) No 575/2013 of the European Parliament and of the Council (\*\*);

10. “financial instrument” means the same as in point (15) of Article 4(1) of Directive 2014/65/EU;

(\*) Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).

(\*\*) Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).;

(d) points (12), (13) and (14) are replaced by the following:

‘12. “parent undertaking” means the same as in Article 2(9) of Directive 2013/34/EU of the European Parliament and of the Council (\*);

13. “subsidiary undertaking” means the same as in Article 2(10) of Directive 2013/34/EU;

14. “affiliate undertaking” means the same as in Article 2(12) of Directive 2013/34/EU;

(\*) Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19).;

(e) points (17) to (19) are replaced by the following:

‘17. “money laundering” means the same as in Article 1(3) of Directive (EU) 2015/849 of the European Parliament and of the Council (\*) having regard to Article 1(4) and (6) of that Directive;

18. “terrorist financing” means the same as in Article 1(5) of Directive (EU) 2015/849 having regard to Article 1(6) of that Directive;

19. “criminal activity” means the same as in Article 3(4) of Directive (EU) 2015/849;

(\*) Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73).;

(f) point 21 is replaced by the following:

‘21. “nominated holding account” means one or more type of holding account provided for in the applicable delegated acts adopted pursuant to Article 19(3) of Directive 2003/87/EC for the purposes of participating in or conducting the auction process including the holding of allowances in escrow, pending their delivery under this Regulation;’;

(g) points (23) and (24) are replaced by the following:

‘23. “customer due diligence measures” means the same as the customer due diligence measures in Article 13 of Directive (EU) 2015/849 and the enhanced customer due diligence measures in Article 18, Article 18a and Article 20 having regard to Articles 22 and 23 of that Directive;

24. “beneficial owner” means the same as in Article 3(6) of Directive (EU) 2015/849;’;

(h) points (26), (27) and (28) are replaced by the following:

- '26. "politically exposed persons" means the same as in Article 3(9) of Directive (EU) 2015/849;
- 27. "market abuse" means the same as in Article 1 of Regulation (EU) No 596/2014 of the European Parliament and of the Council (\*);
- 28. "insider dealing" means the same as in Article 8 of Regulation (EU) No 596/2014 and as prohibited by points (a) and (b) of Article 14 of that Regulation;

(\*) Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC (OJ L 173, 12.6.2014, p. 1).;

(i) the following point (28a) is inserted:

'28a. "unlawful disclosure of inside information" means the same as in Article 10 of Regulation (EU) No 596/2014 and as prohibited by point (c) of Article 14 of that Regulation;';

(j) points (29) and (30) are replaced by the following:

- '29. "inside information" means the same as in Article 7 of Regulation (EU) No 596/2014;
- 30. "market manipulation" means the same as in Article 12 of Regulation (EU) No 596/2014 and as prohibited by Article 15 of that Regulation;';

(k) point (39) is replaced by the following:

'39. "regulated market" means the same as in point (21) of Article 4(1) of Directive 2014/65/EU;';

(l) point (41) is deleted;

(m) point(42) is replaced by the following:

'42. "market operator" means the same as in point (18) of Article 4(1) of Directive 2014/65/EU;';

(n) in point (43), points (b) to (f) are replaced by the following:

- '(b) the same as in point (55)(a) of Article 4(1) of Directive 2014/65/EU taking into account the requirements of Article 5(4) of that Directive for the purposes of Article 18(2) of this Regulation;
- (c) the same as in point (55)(a) of Article 4(1) of Directive 2014/65/EU taking into account the requirements of Article 5(4) of that Directive for the purposes of Article 19(2) of this Regulation, in the case of persons referred to in point (b) of Article 18(1) of this Regulation;
- (d) the same as in point (43) of Article 4(1) of Regulation (EU) No 575/2013 for the purposes of Article 19(2) of this Regulation, in the case of persons referred to in point (c) of Article 18(1) of this Regulation;
- (e) the same as in point (55)(a) of Article 4(1) of Directive 2014/65/EU for the purposes of Article 19(2) of this Regulation in the case of business grouping referred to in point (d) of Article 18(1) of this Regulation;
- (f) the same as in point (55)(b) of Article 4(1) of Directive 2014/65/EU for the purposes of Article 35(4), (5) and (6) of this Regulation;';

(o) point (44) is replaced by the following:

- '44. "exit strategy" means one or more documents determined in accordance with the contracts appointing the auction platform concerned, setting out detailed measures planned to ensure the following:
  - (a) the transfer of all tangible and intangible assets necessary for the uninterrupted continuation of the auctions and the smooth operation of the auction process by an auction platform's successor;
  - (b) the provision of all information relating to the auction process, that is necessary for the procurement procedure for the appointment of the auction platform's successor;
  - (c) the provision of the technical assistance that enables the contracting authorities or the auction platform's successor or any combination of these, to understand, access or use the relevant information provided pursuant to points (a) and (b).';

(3) Article 6 is amended as follows:

(a) in paragraph 1, the third subparagraph is deleted;

(b) in paragraph 2, point (c) is replaced by the following:

‘(c) the volume bid as a number of allowances in integral multiples of lots of 500 allowances;’;

(c) paragraph 5 is replaced by the following:

‘5. The reception, transmission and submission of a bid by an investment firm or credit institution on any auction platform shall be deemed to constitute an investment service within the meaning of point (2) of Article 4 (1) of Directive 2014/65/EU.’.

(4) In Article 7, paragraphs 7 and 8 are replaced by the following:

‘7. Before an auction is started, the auction platform shall determine the methodology for the application of paragraph 6 of this Article, after consulting the relevant contracting authority pursuant to Article 26(1) or Article 30 (5), and notifying the competent national authorities referred to in Article 56.

In between two bidding windows on the same auction platform, the auction platform concerned may modify the methodology. It shall notify the relevant contracting authority pursuant to Article 26(1) or Article 30(5) and the competent national authorities referred to in Article 56 without delay.

The auction platform concerned shall take the utmost account of the opinion of the relevant contracting authority, where provided.

8. Where an auction of allowances covered by Chapter III of Directive 2003/87/EC is cancelled, its volume shall be distributed evenly over the next four auctions scheduled on the same auction platform. Where the Member State volume from cancelled auctions may not be distributed evenly in accordance with the first sentence, the Member State concerned shall auction those allowances over less than four auctions in volumes pursuant to Article 6(1) of this Regulation.

Where an auction of allowances covered by Chapter II of Directive 2003/87/EC is cancelled, its volume shall be distributed evenly over the next two auctions scheduled on the same auction platform. Where the Member State volume from cancelled auctions may not be distributed evenly in accordance with the previous sentence, the Member State concerned shall auction these allowances in the first following auction in volumes pursuant to Article 6(1) of this Regulation.

Where an auction that already includes volumes from a previously cancelled auction is cancelled, its volume shall be spread in accordance with the first and second subparagraphs starting from the first auction which is not subject to other adjustments due to previous cancellations.’.

(5) In Article 8, paragraphs 3 to 6 are replaced by the following:

‘3. In exceptional circumstances, any auction platform may, after consulting the Commission, change the times of any bidding window, by giving notice to all persons likely to be affected. The auction platform concerned shall take the utmost account of the Commission’s opinion, where delivered.

4. As from the sixth auction or earlier, the auction platform appointed pursuant to Article 26(1) of this Regulation 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.

No other auction platform shall conduct an auction on any of a maximum of two days a week during which an auction platform appointed pursuant to Article 26(1) conducts an auction. Where the auction platform appointed pursuant to Article 26(1) conducts auctions on more than two days a week, it shall determine and publish on which two days no other auctions may take place. It shall do so no later than when it makes the determination and publication referred to in Article 11.

5. The volume of allowances covered by Chapter III of Directive 2003/87/EC to be auctioned on the auction platform appointed pursuant to Article 26(1) of this Regulation shall be distributed evenly over the auctions held in a given year, except that volumes auctioned in August of each year shall be half of the volume auctioned in auctions held in other months of the year.



The volume of allowances covered by Chapter II of Directive 2003/87/EC to be auctioned on the auction platform appointed pursuant to Article 26(1) of this Regulation shall in principle be distributed evenly over the auctions held in a given year, except that volumes auctioned in August of each year shall be half of the volume auctioned in auctions held in other months of the year.

Where the annual auction volume of allowances of a Member State may not be distributed evenly over the auctions in a given year in lots of 500 allowances in accordance with Article 6(1), the relevant auction platform shall distribute that volume over fewer auction dates, ensuring that the volume is at least auctioned on a quarterly basis.

6. Additional provisions on the timing and frequency of the auctions conducted by any auction platform other than the auction platforms appointed pursuant to Article 26(1) are set out in Article 32.

(6) Article 9 is amended as follows:

(a) the first paragraph is replaced by the following:

‘Without prejudice to the application of the rules referred in Article 58 where appropriate, an auction platform may cancel an auction where the proper conduct of that auction is disrupted or is likely to be disrupted. The volume of allowances of the cancelled auctions shall be distributed pursuant to Article 7(8).’;

(b) the second and the third paragraphs are deleted.

(7) In Article 10, paragraphs 1 to 4 are replaced by the following:

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

2. The volume of allowances covered by Chapter III of Directive 2003/87/EC to be auctioned in any given calendar year by each Member State shall be based on the volume of allowances pursuant to paragraph 1 of this Article and the share of allowances of that Member State determined pursuant to Article 10(2) of that Directive.

3. The volume of allowances covered by Chapter III of Directive 2003/87/EC to be auctioned each calendar year by each Member State pursuant to paragraphs 1 and 2 of this Article shall take into account Article 10a(5a) of Directive 2003/87/EC, the changes to be made pursuant to Articles 1(5) and (8) of Decision (EU) 2015/1814 of the European Parliament and of the Council (\*), the changes pursuant to Articles 10c, 12(4), 24, 27 and 27a of Directive 2003/87/EC, and pursuant to Article 6 of Regulation (EU) 2018/842 of the European Parliament and of the Council (\*\*).

4. 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.

In exceptional circumstances, in particular where the cumulative annual value of such changes does not exceed 50 000 allowances for a given Member State, these changes may be accounted for in the volume of allowances to be auctioned in subsequent calendar years, unless a Member State requests the Commission by 30 April 2020 that this threshold shall not apply to it for the period starting from 2021.

Any volume of allowances that may not be auctioned in a given calendar year due to the rounding required by Article 6(1) shall be accounted for in the volume of allowances to be auctioned in the subsequent calendar year.

(\*) Decision (EU) 2015/1814 of the European Parliament and of the Council of 6 October 2015 concerning the establishment and operation of a market stability reserve for the Union greenhouse gas emission trading scheme and amending Directive 2003/87/EC (OJ L 264, 9.10.2015, p. 1).

(\*\*) Regulation (EU) 2018/842 of the European Parliament and of the Council of 30 May 2018 on binding annual greenhouse gas emission reductions by Member States from 2021 to 2030 contributing to climate action to meet commitments under the Paris Agreement and amending Regulation (EU) No 525/2013 (OJ L 156, 19.6.2018, p. 26).

- (8) Article 11 is replaced by the following:

*'Article 11*

**Calendar for individual auctions of allowances covered by Chapter III of Directive 2003/87/EC auctioned by auction platforms appointed pursuant to Article 26(1) of this Regulation**

The auction platforms appointed pursuant to Article 26(1) of this Regulation shall determine the auction calendar, including 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 having previously consulted the Commission. The auction platforms concerned shall publish the auction calendar by 15 July of the previous year or as soon as practicable thereafter, provided that the Commission has instructed the central administrator of the European Union Transaction Log ("EUTL") to enter the auction table corresponding to the auction calendar into the EUTL in accordance with the delegated acts adopted pursuant to Article 19(3) of Directive 2003/87/EC.'

- (9) Article 12 is amended as follows:

- (a) in the first subparagraph of paragraph 1, the following sentence is added:

'Article 10(4) shall apply to any subsequent change to the volume of allowances to be auctioned.'

- (b) paragraph 2 is replaced by the following:

'2. For each calendar year in a given trading period, the volume of allowances covered by Chapter II of Directive 2003/87/EC to be auctioned by each Member State shall be determined on the basis of the volume pursuant to paragraph 1 of this Article and the share of that Member State determined in accordance with Article 3d(3) of Directive 2003/87/EC.'

- (10) Article 13 is amended as follows:

- (a) the heading is replaced by the following:

**'Calendar for individual auctions of allowances covered by Chapter II of Directive 2003/87/EC auctioned by auction platforms appointed pursuant to Article 26(1) of this Regulation'**

- (b) paragraph 1 is deleted;

- (c) in paragraph 2, the first subparagraph is replaced by the following:

'2. The auction platforms appointed pursuant to Article 26(1) of this Regulation shall determine the auction calendars, including 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 calendar year, having previously consulted the Commission. The auction platforms concerned shall publish the auction calendar by 30 September of the previous year, or as soon as practicable thereafter provided that the Commission has instructed the central administrator of the EUTL to enter the auction table corresponding to the auction calendar into the EUTL in accordance with the delegated acts adopted pursuant to Article 19(3) of Directive 2003/87/EC. Without prejudice to the deadline for publication of the auction calendar for allowances covered by Chapter III of Directive 2003/87/EC under Article 11 of this Regulation, the auction platforms concerned may simultaneously determine the auction calendars for allowances covered by Chapter II and Chapter III of Directive 2003/87/EC.'

- (d) paragraphs 3 and 4 are replaced by the following:

'3. The auction platforms appointed pursuant to Article 26(1) of this Regulation shall base their determinations and publications under paragraph 2 of this Article on the Commission's decision adopted pursuant to Article 3e(3) of Directive 2003/87/EC.

4. The provisions on the calendar for individual auctions of allowances covered by Chapter II of Directive 2003/87/EC conducted by an auction platform other than the auction platforms appointed pursuant to Article 26(1) of this Regulation shall be determined and published pursuant to Article 32 of this Regulation.

Article 32 shall also apply with respect to the auctions conducted pursuant to the second subparagraph of Article 30(7) by the auction platform appointed pursuant to Article 26(1).'

(11) Article 14 is amended as follows:

(a) paragraph 1 is amended as follows:

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

‘(b) any suspension of an auction platform other than the auction platforms appointed pursuant to Article 26(1) of this Regulation provided for in the delegated acts adopted pursuant to Article 19(3) of Directive 2003/87/EC.’;

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

‘(f) allowances remaining in the reserve for new entrants provided for in Article 10a(7) of Directive 2003/87/EC and allowances not allocated pursuant to Article 10c of that Directive.’;

(iii) point (j) is replaced by the following:

‘(j) any withholding of allowances from the auctions pursuant to Article 22(5).’;

(iv) point (l) is replaced by the following:

‘(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.’;

(v) the following point (m) is added:

‘(m) cancellation of allowances pursuant to Article 12(4) of Directive 2003/87/EC.’;

(b) paragraph 2 is replaced by the following:

‘2. Where the manner in which a modification is to be implemented is not provided for in this Regulation, the auction platform concerned shall not implement that modification until it has previously consulted the Commission. Articles 11 and 13(2) shall apply.’.

(12) Article 15 is replaced by the following:

*Article 15*

#### **Persons who may submit bids directly in an auction**

Only a person who is eligible to apply for admission to bid pursuant to Article 18 and is admitted to bid pursuant to Articles 19 and 20 may submit bids directly in an auction.’.

(13) in Article 16(2), the second subparagraph is replaced by the following:

‘In addition, an auction platform appointed pursuant to Article 26(1) or 30(1) may offer bidders the option of accessing its auctions through dedicated connections to the electronic interface.’.

(14) Article 18 is amended as follows:

(a) points (b) and (c) of paragraph 1 are replaced by the following:

‘(b) investment firms authorised under Directive 2014/65/EU bidding on their own account or on behalf of their clients;

(c) credit institutions authorised under Directive 2013/36/EU of the European Parliament and of the Council (\*) bidding on their own account or on behalf of their clients;

(\*) Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).’;

(b) paragraph 2 is replaced by the following:

‘2. Without prejudice to the exemption in Article 2(1)(j) of Directive 2014/65/EU, persons covered by this exemption and authorised pursuant to Article 59 of this Regulation shall be eligible to apply for admission to bid directly in the auctions either on their own account or on behalf of clients of their main business provided that a Member State where they are established has enacted legislation enabling the relevant competent national authority in that Member State to authorise them to bid on their own account or on behalf of clients of their main business.’;

(c) paragraph 3 is deleted;

(d) paragraph 6 is deleted.

(15) Article 20 is amended as follows:

(a) paragraph 4 is replaced by the following:

‘4. An application for admission to bid, including any supporting documents, shall upon request be made available for inspection by the competent national law enforcement authorities of a Member State conducting an investigation, referred to in Article 62(3)(e) and any competent Union bodies involved in investigations conducted on a cross-border basis.’;

(b) paragraph 6 is deleted.

(16) In Article 21(2), the second subparagraph is replaced by the following:

‘In such a case, the auction platform concerned shall report to the financial intelligence unit referred to in Article 32 of Directive (EU) 2015/849 (“FIU”) in accordance with Article 55(2) of this Regulation.’.

(17) In Article 22, paragraphs 3 and 4 are replaced by the following:

‘3. For Member States not participating in the joint actions as provided in Article 26(1), the auctioneer shall be appointed by the appointing Member State so as to conclude and implement the necessary arrangements with the auction platforms appointed pursuant to Article 26(1), including any clearing system and settlement system connected to them, to enable the auctioneer to auction allowances on behalf of the appointing Member State on such auction platforms upon mutually agreed terms and conditions, pursuant to the second subparagraph of Article 30(7) and the first subparagraph of Article 30(8).

4. Member States shall refrain from disclosing inside information to persons working for the auctioneer unless the person working or acting for the Member State makes such disclosure on a need-to-know basis in the normal course of the exercise of their employment, profession or duties and the Member State concerned is satisfied that the auctioneer has in place appropriate measures to prevent insider dealing, or the unlawful disclosure of inside information by any person working for an auctioneer, additional to the measures provided for in Articles 18(8) and 19(10) of Regulation (EU) No 596/2014.’.

(18) The title of Chapter VI is deleted.

(19) Articles 24 and 25 are replaced by the following:

‘Article 24

### **Auctioning of allowances for the Innovation Fund and the Modernisation Fund**

1. The European Investment Bank (EIB) shall be the auctioneer for the allowances to be auctioned from 2021 pursuant to the first subparagraph of Article 10a(8) and to Article 10d(4) of Directive 2003/87/EC on the auction platform appointed pursuant to Article 26(1) of this Regulation. Articles 22(2), 22(4), 23(1) and 52(1) shall apply *mutatis mutandis* to the EIB. The EIB as auctioneer shall ensure that the auction proceeds for the purposes of Article 10a(8) of Directive 2003/87/EC are disbursed to an account notified to it by the Commission, at the latest 15 days following the end of the month within which the auction proceeds were generated. It may deduct prior to disbursement any additional fees for their holding and disbursement, in accordance with the agreement concluded between the Commission and the EIB pursuant to Article 20(3) of Commission Delegated Regulation (EU) 2019/856 (\*).

2. The annual auction volumes of allowances pursuant to paragraph 1 shall be auctioned together with the annual volumes to be auctioned by the Member States participating in the joint action pursuant to Article 26(1) of this Regulation and shall be evenly distributed in accordance with Article 8(5) of this Regulation.

3. The volumes of allowances pursuant to Article 10a(8) of Directive 2003/87/EC shall, in principle, be auctioned in equal annual volumes over the ten-year period beginning from 1 January 2021.

The Commission shall review the distribution of allowances remaining to be auctioned after the award decision of each call for proposals carried out in accordance with the delegated acts adopted pursuant to the fourth subparagraph of Article 10a(8) of Directive 2003/87/EC. Such reviews shall take place every two years, with the first review taking place no later than 30 June 2022. Each review shall pay particular attention to the support available for future calls for proposals, the maximum amount of the Innovation Fund support available for project development assistance, the part of the total amount of the Innovation Fund support available for the call to small-scale projects reserved by the Commission, the support foreseen for the awarded projects as well as the disbursement and the recovery rate.

*Article 25***Procedure for cancellation of allowances pursuant to Article 12(4) of Directive 2003/87/EC**

1. Any Member State that intends to cancel allowances from its total quantity of allowances to be auctioned in the event of closure of the electricity generation capacity in its territory pursuant to Article 12(4) of Directive 2003/87/EC shall notify the Commission of its intention at the latest by 31 December of the calendar year following the year of the closure, using the template set out in Annex I to this Regulation.
2. The volume of allowances to be cancelled pursuant to Article 12(4) of Directive 2003/87/EC shall be deducted from the volume to be auctioned by the Member State concerned established pursuant to Article 10 of this Regulation after any adjustments pursuant to Decision (EU) 2015/1814.
3. The Commission shall publish the information provided by the Member States in accordance with Annex I except for the reports referred to in point 6 of that Annex.

(\*) Commission Delegated Regulation (EU) 2019/856 of 26 February 2019 supplementing Directive 2003/87/EC of the European Parliament and of the Council with regard to the operation of the Innovation Fund (OJ L 140, 28.5.2019, p. 6).'

(20) Article 26 is amended as follows:

- (a) paragraph 2 is deleted;
- (b) paragraphs 3 to 6 are replaced by the following:

'3. The joint procurement procedure referred to in paragraph 1 shall be conducted pursuant to Article 165(2) of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council (\*).

4. Any period of appointment of the auction platforms referred to in paragraph 1 shall be no longer than five years. Where the conditions under Article 172(3) of Regulation (EU, Euratom) 2018/1046 are fulfilled, the Member States and the Commission may extend the maximum period of appointment of the auction platform to seven years. During the contract duration, the Commission may conduct a preliminary market consultation in accordance with Article 166(1) of Regulation (EU, Euratom) 2018/1046 with a view to verify the market conditions and to prepare the new procurement procedure.

5. The identity and contact details of the auction platforms referred to in paragraph 1 shall be published on the Commission's website.

6. Any Member State that joins the joint actions as provided in paragraph 1 after the entry into force of the joint procurement agreement entered into between the Commission and the Member States participating in that action shall accept the terms and conditions agreed by the Commission and the Member States joining the joint action prior to the entry into force of that agreement as well as any decisions already adopted under that agreement.

Any Member State that decides pursuant to Article 30(4) not to participate in the joint action as provided in paragraph 1 of this Article but to appoint its own auction platform may be given observer status upon terms and conditions agreed in the joint procurement agreement between the Member States participating in the joint action as provided in paragraph 1 and the Commission subject to any applicable public procurement rules.

(\*) Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193, 30.7.2018, p. 1).'

(21) Article 27 is amended as follows:

- (a) paragraph 1 is amended as follows:
  - (i) points (f) and (g) are replaced by the following:

'(f) providing the Commission with any information relating to the conduct of the auctions pursuant to Article 53;

(g) surveying the auctions, notifying suspicions of money laundering, terrorist financing, criminal activity or market abuse, administering any required remedial measures or sanctions including the provision of an extra-judicial dispute resolution mechanism, pursuant to Article 54 to 59 and Article 64(1);'

- (ii) the following point (h) is added:  
'(h) reporting, pursuant to Article 36.;
- (b) paragraph 3 is replaced by the following:  
'3. Within three months from the date of its appointment, the auction platform shall submit its detailed exit strategy to the Commission.'
- (22) Article 28 is deleted.
- (23) Article 29 is amended as follows:
- (a) the heading is replaced by the following:  
**'Services provided to the Commission by the auction platforms appointed pursuant to Article 26(1)';**
- (b) the introductory phrase is replaced by the following:  
'Auction platforms appointed pursuant to Article 26(1) shall provide the Commission with technical support services with respect to the Commission's work relating to the following:';
- (c) point (a) is replaced by the following:  
'(a) any coordination of the auction calendar for Annex III;';
- (d) points (b) and (c) are deleted;
- (e) point (d) is replaced by the following:  
'(d) the reports by the Commission pursuant to Articles 10(5) of Directive 2003/87/EC;';
- (f) point (f) is replaced by the following:  
'(f) any review of this Regulation, Directive 2003/87/EC or the delegated acts adopted pursuant to Article 19(3) of that Directive which has an impact on the functioning of the carbon market including the implementation of the auctions;'.
- (24) Article 30 is amended as follows:
- (a) the heading is replaced by the following:  
**'Appointment of any auction platform other than an auction platform appointed pursuant to Article 26(1)';**
- (b) paragraph 1 is replaced by the following  
'1. Any Member State not participating in the joint action as provided in Article 26(1) may appoint its own auction platform for the auctioning of its volume of allowances covered by Chapters II and III of Directive 2003/87/EC to be auctioned as provided for in Article 31(1) of this Regulation.';
- (c) paragraph 2 is deleted;
- (d) paragraphs 3, 4 and 5 are replaced by the following:
- '3. Member States not participating in the joint action as provided in Article 26(1) may appoint the same auction platform or separate auction platforms for the auctioning pursuant to Article 31(1).
4. Any Member State not participating in the joint action as provided in Article 26(1), shall inform the Commission of its decision not to participate in the joint action as provided in Article 26(1) but to appoint its own auction platform pursuant to paragraph 1 of this Article within 3 months of the entry into force of this Regulation.
5. Any Member State not participating in the joint action as provided in Article 26(1) shall select its own auction platform appointed pursuant to paragraph 1 of this Article on the basis of a selection procedure compliant with Union and national procurement law where a public procurement process is required by either Union or national law, respectively. The selection procedure shall be subject to all applicable remedies and enforcement procedures under Union and national law.

Any period of appointment of the auction platform referred to in paragraph 1 shall be no longer than 3 years renewable for no more than a further 2 years.

The appointment of the auction platforms referred to in paragraph 1 shall be subject to listing the auction platform concerned in Annex III pursuant to paragraph 7. It shall not be implemented before the entry into force of the listing of the auction platform concerned in Annex III as provided for in paragraph 7.;

(e) paragraph 6 is amended as follows:

(a) the introductory phrase is replaced by the following:

‘Each Member State not participating in the joint action as provided for in Article 26(1) but opting to appoint its own auction platform pursuant to paragraph 1 of this Article shall provide the Commission with a complete notification containing all of the following:’;

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

‘(c) the auctioned product and any information necessary for the Commission to assess whether the envisaged auction calendar is compatible with any prevailing or envisaged auction calendar of the auction platforms appointed pursuant to Article 26(1) as well as other auction calendars proposed by other Member States not participating in the joint action provided for in Article 26 but opting to appoint their own auction platforms;’;

(f) paragraphs 7 and 8 are replaced by the following:

‘7. Auction platforms other than those appointed pursuant to Article 26(1), the Member States appointing them, their term of appointment, and any applicable conditions or obligations, shall be set out in Annex III where the requirements of this Regulation and the objectives of Article 10(4) of Directive 2003/87/EC are satisfied. The Commission shall act solely on the basis of these requirements and objectives and shall have full regard to any information submitted by the Member State concerned.

In case a Member State having appointed its own auction platform decides to appoint the same auction platform under the same conditions and obligations as per the listing provided for in the first subparagraph, this listing shall continue to be valid where that Member State and the Commission confirm that the requirements of this Regulation and the objectives of Article 10(4) of Directive 2003/87/EC are satisfied. To this end, the Member State shall, in particular, provide a notification containing the information referred to in paragraph 6 to the Commission and share any relevant information with the other Member States. The Commission shall inform the public about the extended validity of the listing.

In the absence of any listing provided for in the first subparagraph, a Member State not participating in the joint action as provided in Article 26(1) but opting to appoint its own auction platform pursuant to paragraph 1 of this Article shall use the auction platforms appointed pursuant to Article 26(1) to auction its share of allowances that would have otherwise been auctioned on the auction platform to be appointed pursuant to paragraph 1 of this Article in the period until the expiry of 3 months after the entry into force of the listing provided for in the first subparagraph.

Without prejudice to paragraph 8, a Member State not participating in the joint action as provided in Article 26(1) but opting to appoint its own auction platform pursuant to paragraph 1 of this Article may nevertheless participate in the joint action for the sole purpose of being able to make use of the auction platforms appointed pursuant to Article 26(1) as provided in the third subparagraph. Such participation shall take place in accordance with the provisions of the second subparagraph of Article 26(6) and subject to the terms and conditions of the joint procurement agreement.

8. Any Member State not participating in the joint action as provided in Article 26(1) but opting to appoint its own auction platform pursuant to paragraph 1 of this Article may join the joint action provided for in Article 26, pursuant to Article 26(6).

The volume of allowances that were scheduled to be auctioned on an auction platform other than the auction platforms appointed pursuant to Article 26(1) shall be spread evenly over the auctions conducted by the relevant auction platform appointed pursuant to Article 26(1);’.

(25) Article 31 is amended as follows:

(a) the heading is replaced by the following:

**‘Functions of auction platforms other than the auction platforms appointed pursuant to Article 26(1)’;**

(b) in paragraph 1, the second subparagraph is replaced by the following:

‘However, an auction platform appointed pursuant to Article 30(1) shall be exempted from the provisions of Article 27(1)(c) and it shall submit the exit strategy referred to in Article 27(3) to the appointing Member State.’;

(c) paragraph 2 is deleted;

(d) paragraph 3 is replaced by the following:

‘The provisions on the auction calendar provided for in Article 8(1), (2) and (3), Articles 9, 10, 12, 14 and 32 shall apply to the auction platforms appointed pursuant to Article 30(1).’.

(26) Article 32 is amended as follows:

(a) the heading is replaced by the following:

**‘Auction calendar for any auction platform other than the auction platforms appointed pursuant to Article 26(1)’;**

(b) paragraphs 1, 2, 3, 4 and 5 are replaced by the following:

‘1. The volume of allowances covered by Chapter III of Directive 2003/87/EC auctioned in individual auctions conducted by an auction platform appointed pursuant to Article 30(1) of this Regulation shall be no greater than 20 million allowances and no less than 3,5 million allowances; save where the total volume of allowances, covered by Chapter III of Directive 2003/87/EC, to be auctioned by the appointing Member State is less than 3,5 million in a given calendar year, in which case the allowances shall be auctioned in a single auction per calendar year. However, the volume of allowances covered by Chapter III of Directive 2003/87/EC auctioned in an individual auction conducted by those auction platforms shall be no less than 1,5 million allowances in the respective periods of 12 months when a number of allowances is to be deducted from the volume of allowances to be auctioned pursuant to Article 1(5) of Decision (EU) 2015/1814.

2. The volume of allowances covered by Chapter II of Directive 2003/87/EC auctioned in individual auctions conducted by an auction platform appointed pursuant to Article 30(1) of this Regulation shall be no greater than 5 million allowances and no less than 2,5 million allowances; save where the total volume of allowances, covered by Chapter II of Directive 2003/87/EC, to be auctioned by the appointing Member State is less than 2,5 million in a given calendar year, in which case the allowances shall be auctioned in a single auction per calendar year.

3. The total volume of allowances covered by Chapters II and III of Directive 2003/87/EC to be auctioned by all auction platforms appointed pursuant to Article 30(1) of this Regulation collectively shall be distributed evenly over any given calendar year, except that the volume auctioned in auctions held in August of each year shall be half of the volume auctioned in other months of the year. These requirements shall be considered to be met where each auction platform appointed pursuant to Article 30(1) meets these requirements individually.

4. The auction platforms appointed pursuant to Article 30(1) of this Regulation shall determine the auction calendar, including the bidding windows, individual volumes, auction dates as well as the auctioned product, payment and delivery dates of the allowances to be auctioned in individual auctions each year, having previously consulted the Commission. The auction platforms concerned shall make their determination of the individual auction volumes in accordance with Articles 10 and 12.

The auction platforms concerned shall publish the auction calendar for the allowances covered by Chapter II of Directive 2003/87/EC, by 31 October of the previous year or as soon as practicable thereafter, and for those covered by Chapter III of that Directive, by 15 July of the previous year or as soon as practicable thereafter, provided that the Commission has instructed the central administrator of the EUTL to enter the respective auction table into the EUTL in accordance with the delegated acts adopted pursuant to Article 19(3) of Directive 2003/87/EC. The auction platforms concerned shall make their determination and publication of the auction calendars only after the determination and publication pursuant to Articles 11 and 13(2) of this Regulation by the auction platforms appointed pursuant to Article 26(1) of this Regulation, unless such an auction platform has not yet been appointed. Without prejudice to the deadline for publication of the auction calendar for allowances covered by Chapter III of Directive 2003/87/EC, the auction platforms concerned may simultaneously determine the auction calendars for allowances covered by Chapter II and Chapter III of Directive 2003/87/EC.

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

5. Where an auction conducted by an auction platform appointed pursuant to Article 30(1) is cancelled by the auction platform pursuant to Article 7(5) or (6) or Article 9, the auctioned volume shall be distributed either pursuant to Article 7(8) or, if the auction platform concerned conducts less than four auctions in a given calendar year, over the next two auctions scheduled on the same auction platform.’

(27) Article 33 is deleted.

(28) The heading of Chapter IX is replaced by the following:

**‘APPOINTMENT REQUIREMENTS APPLICABLE TO THE AUCTIONEER AND ANY AUCTION PLATFORM’.**



(29) Article 34 is amended as follows:

(a) the heading is replaced by the following:

**‘Appointment requirements applicable to the auctioneer’;**

(b) paragraph 1 is amended as follows:

(i) the introductory phrase is replaced by the following:

‘When appointing auctioneers, the Member States shall take into account the extent to which candidates:’;

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

‘(b) are able to fulfil the auctioneer’s functions, in a timely manner, in accordance with the highest professional and quality standards.’.

(30) Article 35 is amended as follows:

(a) in paragraph 1, a second subparagraph is inserted:

‘Without prejudice to the first subparagraph, where it is foreseen in the procurement documents for the joint procurement procedure pursuant to Article 26(1), a regulated market whose operator organises a wholesale energy market as defined in Article 2(6) of Regulation (EU) No 1227/2011 of the European Parliament and of the Council (\*), but does not organise a secondary market in allowances or allowances derivatives, may participate in the procurement procedure pursuant to Article 26(1) of this Regulation. In that case, where such regulated market is appointed as auction platform pursuant to Article 26(1) and its operator does not organise a secondary market in allowances or allowances derivatives by the time of publication of the procurement procedure pursuant to Article 26(1), that operator shall acquire an authorisation and shall organise a secondary market in allowances or allowances derivatives at least 60 trading days prior to the opening of the first bidding window run by the auction platform concerned.

(\*) Regulation (EU) No 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency (OJ L 326, 8.12.2011, p. 1).’;

(b) in paragraph 3, point (b) is replaced by the following:

‘(b) full, fair and equitable access to bid in the auctions for SMEs covered by the Union scheme and access to bid in the auctions for small emitters, as defined in Articles 27(1), 27a(1) and 28a(6) of Directive 2003/87/EC;’;

(c) in paragraph 4, the first and second subparagraphs are replaced by the following:

‘4. An auction platform may only be appointed pursuant to Article 26(1) or 30(1) of this Regulation where the Member State where the candidate regulated market and its market operator are established has ensured that the national measures transposing Title III of Directive 2014/65/EU apply to the auctioning of two-day spot or five-day futures to the extent relevant.

An auction platform shall only be appointed pursuant to Articles 26(1) and 30(1) of this Regulation after the Member State, where the candidate regulated market and its market operator are established, has ensured that the competent authorities of that Member State are able to authorise and supervise them in accordance with the national measures transposing Title VI of Directive 2014/65/EU to the extent relevant.’;

(d) paragraphs 5 and 6 are replaced by the following:

‘5. The competent national authorities of the Member State referred to in the second subparagraph of paragraph 4 of this Article designated under Article 67(1) of Directive 2014/65/EU shall decide on the authorisation of a regulated market appointed, or to be appointed, pursuant to Article 26(1) or 30(1) of this Regulation, provided that the regulated market and its market operator comply with the provisions of Title III of Directive 2014/65/EU, as transposed into the national legal order of the Member State of their establishment pursuant to paragraph 4 of this Article. The decision on authorisation shall be taken in accordance with Title VI of Directive 2014/65/EU as transposed into the national legal order of the Member State of their establishment pursuant to paragraph 4 of this Article.

6. The competent national authorities referred to in paragraph 5 of this Article shall maintain effective market oversight and take the necessary measures to ensure that the requirements referred to in that paragraph are complied with. To that effect, they shall be able to exercise directly, or with the assistance of other competent national authorities designated pursuant to Article 67(1) of Directive 2014/65/EU, the powers provided for in the national measures transposing Article 69 of that Directive with regard to the regulated market and its market operator referred to in paragraph 4 of this Article.

The Member State of each competent national authority referred in paragraph 5 of this Article shall ensure that the national measures transposing Articles 70, 71 and 74 of Directive 2014/65/EU apply in relation to the persons responsible for failure to comply with their obligations under Title III of Directive 2014/65/EU as transposed into the national legal order of the Member State of their establishment pursuant to paragraph 4 of this Article.

For the purposes of this paragraph, national measures transposing Articles 79 to 87 of Directive 2014/65/EU shall apply to cooperation between competent national authorities of different Member States and with European Securities and Markets Authority established pursuant to Regulation (EU) No 1095/2010 of the European Parliament and of the Council (\*).

(\* Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).'

(31) The title of Chapter X is replaced by the following:

**'REPORTING ON TRANSACTIONS'**

(32) Article 36 is replaced by the following:

*'Article 36*

**Obligation to report transactions**

1. The auction platform shall report to the competent national authority designated pursuant to Article 67(1) of Directive 2014/65/EU the complete and accurate details of every transaction executed on the auction platform that results in the transfer of emission allowances to the successful bidders.

2. The reports on the transactions pursuant to paragraph 1 shall be submitted as quickly as possible, and no later than the close of the trading day following the transaction concerned.

3. Where the successful bidder is a legal person, the auction platform shall, in reporting the designation to identify the successful bidder as required under paragraph 5 of this Article, use a legal entity identifier referred to in Article 5 of Commission Delegated Regulation (EU) 2017/590 (\*).

4. The auction platform shall be responsible for the completeness, accuracy and timely submission of the reports. Insofar as there are details to transactions which are not available to the auction platforms, the bidders and the auctioneers shall submit such information to the auction platform.

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

5. The report pursuant to paragraph 1 of this Article shall, in particular, include the name of the allowances or allowances derivatives, the quantity bought, the dates and times of execution, the transaction prices, a designation to identify the successful bidders, and if applicable, the clients on whose behalf the transaction was executed.

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

(\* Commission Delegated Regulation (EU) 2017/590 of 28 July 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the reporting of transactions to competent authorities. (OJ L 87, 31.3.2017, p. 449).'

(33) Articles 37 to 43 are deleted.

(34) In Article 44, paragraph 2 is replaced by the following:

‘2. An auction platform including the clearing system(s) or settlement system(s) connected to it shall transfer the payments made by the bidders or any successors in title arising from the auctioning of allowances covered by Chapters II and III of Directive 2003/87/EC to the auctioneers that auctioned the allowances in question.’.

(35) Article 46 is replaced by the following:

‘Article 46

### **Transfer of the auctioned allowances**

Allowances auctioned by any auction platform shall be transferred by the Union registry prior to the opening of a bidding window, into a nominated holding account, to be held in escrow by the clearing system or settlement system acting as custodian, until delivery of the allowances to successful bidders or their successors in title, pursuant to the results of the auction, as provided for in the applicable delegated acts adopted pursuant to Article 19(3) of Directive 2003/87/EC.’.

(36) In Article 51, in paragraph 1, the following second subparagraph is inserted:

‘Without prejudice to the first subparagraph, where it is foreseen in the procurement documents for the procurement procedures pursuant to Article 26(1) or Article 30(5), the operator of the auction platform may increase the fees paid by the successful bidders pursuant to Article 52(1) of this Regulation to a maximum of 120 % of the comparable standard fees paid by the successful buyers of allowances on the secondary market during the years when the auction volumes are reduced by more than 200 million allowances pursuant to Decision (EU) 2015/1814.’.

(37) Article 52 is amended as follows:

(a) in paragraph 1, the first subparagraph is replaced by the following:

‘1. Without prejudice to paragraph 2, the costs of the services provided for in Articles 27(1) and Article 31 shall be paid for through fees paid by the bidders, except that any cost of the arrangements between the auctioneer and the auction platform referred to in Article 22(2) and (3) allowing the auctioneer to auction allowances on behalf of the appointing Member State, but excluding the costs of any clearing or settlement system connected to the auction platform concerned, shall be borne by the auctioning Member State.’;

(b) in paragraph 2, the first, second and third subparagraphs are replaced by the following:

‘2. Without prejudice to the third subparagraph, the terms and conditions of the joint procurement agreement, referred to in the first subparagraph of Article 26(6) or the contract appointing an auction platform pursuant to Article 26(1) may derogate from paragraph 1 of this Article by requiring Member States that have notified the Commission pursuant to Article 30(4) of their decision not to participate in the joint action as provided in Article 26(1), but subsequently make use of the auction platform appointed pursuant to Article 26(1), to pay to the auction platform concerned, including the clearing system(s) or settlement system(s) connected to it, the costs of the services provided for in Article 27(1) related to the volume of allowances which that Member State auctions from the date when that Member State commences auctioning through the auction platform appointed pursuant to Article 26(1) until the termination or expiry of the term of appointment of that auction platform.’.

The foregoing shall also apply to Member States that have not joined the joint action as provided in Article 26(1) within 6 months of the entry into force of the joint procurement agreement referred to in the first subparagraph of Article 26(6).

The first subparagraph shall not apply where a Member State joins the joint action as provided in Article 26(1) following the expiry of the appointment period referred to in the second subparagraph of Article 30(5), or where it uses the auction platform appointed pursuant to Article 26(1) to auction its share of allowances in the absence of a listing, pursuant to Article 30(7), of an auction platform that has been notified pursuant to Article 30(6).’;

(c) paragraph 3 is deleted.

(38) Article 53 is replaced by the following:

*'Article 53*

### **Monitoring of auctions**

1. By the end of each month, the auction platform appointed pursuant to Article 26(1) or Article 30(1) shall report on the implementation of the auctions it conducted in the preceding month in particular with respect to:

- (a) fair and open access;
- (b) transparency;
- (c) price formation;
- (d) technical and operational aspects of the implementation of the contract appointing the auction platform concerned;
- (e) the relationship between the auction processes and the secondary market in respect of the information under points (a) to (d);
- (f) any evidence of anti-competitive behaviour, market abuse, money laundering, terrorist financing or criminal activity that the auction platform has been made aware while carrying out its functions pursuant to Article 27 or Article 31(1);
- (g) any breach of this Regulation or non-conformity with the objectives of Article 10(4) of Directive 2003/87/EC that the auction platform has been made aware while carrying out its functions pursuant to Article 27 or Article 31(1) of this Regulation;
- (h) follow-up to any information reported under points (a) to (g).

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

2. The auction platform appointed pursuant to Article 26(1) or Article 30(1) of this Regulation shall provide the reports under paragraph 1 to the Commission, its appointing Member States and its competent national authority designated in accordance with Article 22 of Regulation (EU) No 596/2014.

3. The relevant contracting authorities shall monitor the implementation of the contracts appointing the auction platforms. The Member States appointing an auction platform pursuant to Article 30(1) shall notify the Commission of any failure of that auction platform to comply with the contract appointing it that would be likely to have a significant impact on the auction processes.

4. In accordance with Article 10(4) of Directive 2003/87/EC the Commission, on behalf of the Member States participating in the joint action pursuant to Article 26(1), and the Member States appointing an auction platform pursuant to Article 30(1) shall publish summary reports in respect of the elements listed in points (a) to (h) of paragraph 1 of this Article.

5. Auctioneers, auction platforms and the competent national authorities supervising them shall actively cooperate and, upon request, provide the Commission with any information in their possession relating to the auctions, as is reasonably required for the monitoring of the auctions.

6. 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 18(2) shall, within their competence, actively cooperate with the Commission, as is reasonably required for the monitoring of the auctions.

7. The obligations imposed on the competent national authorities in paragraphs 5 and 6 shall take into account professional secrecy considerations to which they are subject under Union law.'

(39) Article 54 is amended as follows:

(a) in paragraph 1, in the first subparagraph, point (c) is replaced by the following:

'(c) monitoring transactions undertaken by persons admitted to bid pursuant to Articles 19(1), (2) and (3) and by persons as defined in Article 3(26) using its systems in order to identify breaches of the rules referred to in point (b) of this subparagraph, unfair or disorderly auctioning conditions or conduct that may invoke market abuse.;

(b) paragraph 2 is amended as follows:

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

'(a) request any information of the bidder, pursuant to Article 19(2) and (3) and Article 20(5) and (7), for the purposes of monitoring the relationship with that bidder following its admission to bid in the auctions, throughout the subsistence of that relationship and for a period of 5 years following its termination.;

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

‘(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 19(2) and (3) and Article 20(5) and (7).’.

(40) Article 55 is replaced by the following:

*Article 55*

### **Notification of money laundering, terrorist financing or criminal activity**

1. The competent national authorities referred to in Article 48(1) of Directive (EU) 2015/849 shall monitor and take the necessary measures to ensure compliance of an auction platform appointed pursuant to Article 26(1) or 30(1) of this Regulation with the customer due diligence measures referred to in Article 19(2)(e) and Article 20(10) of this Regulation, with the obligation to refuse to grant admission to bid, revoke or suspend any admission to bid already granted pursuant to Article 21(1) and (2) of this Regulation, with the monitoring and record keeping requirements of Article 54 of this Regulation and with the notification requirements of the paragraphs 2 and 3 of this Article.

The competent national authorities referred to in the first subparagraph shall have the powers provided for in the national measures transposing Article 48(2) and (3) of Directive (EU) 2015/849.

An auction platform appointed pursuant to Article 26(1) or 30(1) may be held liable for infringements of Article 20(7) and (10), Article 21(1) and (2), and Article 54 of this Regulation and paragraphs 2 and 3 of this Article. The national measures transposing Articles 58 to 62 of Directive (EU) 2015/849 shall apply in this regard.

2. An auction platform appointed pursuant to Article 26(1) or 30(1), its directors and employees, shall cooperate fully with the FIU by promptly:

- (a) informing the FIU, including by filing a report, on their own initiative, where they know, suspect or have reasonable grounds to suspect that funds in relation to the auctions, regardless of the amount involved, are the proceeds of criminal activity or are related to terrorist financing, and by promptly responding to requests by the FIU for additional information in such cases;
- (b) providing the FIU directly, at its request, with all necessary information.

All suspicious transactions, including attempted transactions, shall be reported.

3. The information referred to in paragraph 2 shall be forwarded to the FIU of the Member State in whose territory the auction platform concerned is situated.

The national measures transposing the compliance management and communication policies and procedures, referred to in Article 33(2) of Directive (EU) 2015/849, shall designate the person or persons responsible for forwarding information pursuant to this Article.

4. The Member State in whose territory an auction platform appointed pursuant to Article 26(1) or 30(1) of this Regulation is situated shall ensure that the national measures transposing Articles 37 to 39, 42, Article 45(1) and Article 46 of Directive (EU) 2015/849 apply to the auction platform concerned.’.

(41) In Article 56, paragraphs 1 and 2 are replaced by the following:

‘1. An auction platform appointed pursuant to Article 26(1) or 30(1) of this Regulation, shall report to the competent national authorities in accordance with Article 16 of Regulation (EU) No 596/2014 and with the national measures transposing Article 54 of Directive 2014/65/EU, suspicions of market abuse or attempted market abuse by any person admitted to bid in the auctions or by any person on whose behalf the person admitted to bid in the auctions is acting.

2. The auction platform concerned shall notify the Commission 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 referred to in paragraph 1.’.

(42) In Article 57, paragraphs 1 and 2 are replaced by the following:

‘1. A maximum bid-size, or any other remedial measures necessary to mitigate an actual or potential discernible risk of market abuse, money laundering, terrorist financing or other criminal activity, as well as anti-competitive behaviour, may be imposed by 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 Commission may consult the Member States concerned and obtain their opinion on the proposal made by the auction platform concerned. The auction platform concerned shall take the utmost account of the Commission’s opinion.

2. The maximum bid-size shall either be expressed as a percentage of the total number of auctioned allowances in any given auction or a percentage of the total number of auctioned allowances in any given year, whichever may be most appropriate to deal with the risk of market abuse.’

(43) Article 59 is amended as follows:

(a) in paragraph 1, point (b) is deleted;

(b) in paragraph 2, point (b) is replaced by the following:

‘(b) they shall refuse to bid on behalf of a client if they have reasonable grounds to suspect money laundering, terrorist financing, criminal activity or market abuse, subject to national legislation transposing Articles 35 and 39 of Directive (EU) 2015/849;’

(c) in paragraph 3, point (a) is replaced by the following:

‘(a) they shall provide any information requested by any auction platform where they are admitted to bid to fulfil its functions under this Regulation;’

(d) in paragraph 5, point (c) is replaced by the following:

‘(c) they comply with the requirements of national legislation transposing Directive (EU) 2015/849;’

(44) In Article 60, paragraph 2 is deleted.

(45) Article 61 is amended as follows:

(a) paragraphs 1 and 2 are replaced by the following:

‘1. An auction platform shall announce the results of each auction it conducts including at least the following information:

(a) the volume of the allowances auctioned;

(b) the auction clearing price in euros;

(c) the total volume of bids submitted;

(d) the total number of bidders and the number of successful bidders;

(e) in case of cancellation of an auction, the auctions to which the volume of allowances will be carried over;

(f) the total revenue earned from the auction;

(g) the distribution of the revenue between the Member States, in the case of auction platforms appointed pursuant to Article 26(1).

2. The auction platform shall announce the results of each auction as soon as is reasonably practicable. The information on the auction results pursuant to points (a) and (b) of paragraph 1 shall be announced no later than 5 minutes after the close of the bidding window, whereas the information on the auction results pursuant to points (c) to (g) of paragraph 1 shall be announced no later than 15 minutes after the close of the bidding window.’

(b) the introductory phrase of paragraph 3 is replaced by the following:

‘At the same time as the auction platform announces pursuant to paragraph 2 the information listed in points (a) and (b) of paragraph 1, the auction platform shall notify each successful bidder bidding through its systems.’

(46) Article 62 is amended as follows:

(a) paragraph 1 is amended as follows:

(i) point (f) is deleted;

(ii) point (g) is replaced by the following:

‘(g) business secrets provided by persons participating in a competitive procurement process to appoint an auction platform;’

- (b) paragraph 3 is amended as follows:
- (i) point (f) is deleted;
  - (ii) point (h) is deleted;
  - (iii) in point (j), point (iii) is deleted;
- (c) paragraphs 4 and 5 are replaced by the following:
- ‘4. The measures required to ensure that confidential information is not wrongfully disclosed and the consequences of any such wrongful disclosure by an auction platform, including any persons contracted to work for it, shall be set out in the contract appointing it.
5. Confidential information obtained by an auction platform, including any persons contracted to work for it, shall be used solely for the purpose of the performance of its obligations or the exercise of its functions with respect to the auctions.’;
- (d) in paragraph 6, the introductory phrase is replaced by the following:
- ‘Paragraphs 1 to 5 shall not preclude the exchange of confidential information between an auction platform and.’;
- (e) paragraph 7 is replaced by the following:
- ‘7. Any person who works, or has worked for, an auction platform involved in the auctions, shall be bound by the obligation of professional secrecy and shall ensure that confidential information is protected pursuant to this Article.’.
- (47) In Article 63, paragraph 1 is replaced by the following:
- ‘1. Written information provided by an auction platform pursuant to Article 60(1) and (3) or under the contract appointing it, which is not published in the *Official Journal of the European Union*, shall be in a language customary in the sphere of international finance.’.
- (48) In Article 64, paragraph 2 is replaced by the following:
- ‘2. Member States where a regulated market appointed as an auction platform pursuant to Article 26(1) or 30(1) of this Regulation 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 referred to in Article 74(1) of Directive 2014/65/EU. 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 transposing Article 74(2) of Directive 2014/65/EU.’.
- (49) Annex I is replaced by Annex I to this Regulation.
- (50) Annex III is amended in accordance with Annex II to this Regulation.
- (51) Annex IV is deleted.

## Article 2

This Regulation shall enter into force on the twentieth 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, 28 August 2019.

For the Commission  
The President  
Jean-Claude JUNCKER

## ANNEX I

Annex I to Regulation (EU) No 1031/2010 is replaced by the following:

## 'ANNEX I

**Template for the notification of voluntary cancellation by a Member State under Article 12(4) of Directive 2003/87/EC**

Notification pursuant to Article 12(4) of Directive 2003/87/EC		
1.	Member State and public authority submitting the notification:	
2.	Date of the notification:	
3.	Identification of the closed electricity generation installation ("installation") on the territory of the Member State in accordance with the data recorded in EUTL, established by the delegated act adopted pursuant to Article 19(3) of Directive 2003/87/EC, including:	
a)	The name of the installation:	
b)	The installation identifier from the EUTL:	
c)	The name of the installation operator:	
4.	The date of closure of the installation and revocation of the greenhouse gas permit:	
5.	Description and reference of the additional national measures that triggered the closure of the installation:	
6.	The verified emission reports of the installation for the five years preceding the year of the closure:	
7.	The total volume of allowances to be cancelled:	
8.	The years over which the allowances are to be cancelled:	
9.	The exact volume of allowances to be cancelled in each of the years referred to in point 8:'	



## ANNEX II

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

(1) the heading is replaced by the following:

**'Auction platforms other than those appointed pursuant to Article 26(1), their appointing Member States and any applicable conditions or obligations referred to in Article 30(7)'.**

(2) points 1, 2 and 3 are deleted.

(3) in point 4, in the sixth row 'Obligations', point 5 is deleted.

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**COMMISSION REGULATION (EU) 2019/1869****of 7 November 2019****amending and correcting Annex I to Directive 2002/32/EC of the European Parliament and of the Council as regards maximum levels for certain undesirable substances in animal feed****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2002/32/EC of the European Parliament and of the Council of 7 May 2002 on undesirable substances in animal feed <sup>(1)</sup>, and in particular Article 8(1) thereof,

Whereas:

- (1) Directive 2002/32/EC provides that the use of products intended for animal feed which contain levels of undesirable substances exceeding the maximum levels laid down in Annex I to that Directive is prohibited.
- (2) Data have been received from competent authorities and concerned feed business operators indicating that the general maximum level of 2 mg/kg for arsenic in feed materials of plant origin, is not achievable in the specific feed materials leonardite and peat. It is therefore appropriate to increase the maximum level for total arsenic in these feed materials to ensure the supply. The increase does not adversely affect the animal or public health as the maximum level laid down for arsenic in complementary feed and complete feed remains unchanged.
- (3) Data have been received from concerned feed business operators indicating that the general maximum level of 30 mg/kg for arsenic in feed additives belonging to the functional group of compounds of trace elements is not achievable for the trace element dimanganese chloride trihydroxide. It is therefore appropriate to increase the maximum level for arsenic in dimanganese chloride trihydroxide, based on the data obtained by the analytical method Inductively Coupled Plasma Mass Spectrometry (ICP-MS). The European Reference Laboratory for metals and nitrogenous compounds has confirmed that this method provides the correct results as regards the presence of arsenic in trace elements. This increase does not adversely affect the animal or public health as the maximum level laid down for arsenic in complementary feed and complete feed remains unchanged.
- (4) The Joint Research Centre of the European Commission has examined in cooperation with the concerned parties certain findings concerning fluorine in calcareous marine algae. That examination has established that the background presence of fluorine in calcareous marine algae in some instances exceeds the maximum level laid down for fluorine in calcareous marine algae. It is therefore appropriate to increase the maximum level for fluorine in calcareous marine algae from 1 000 mg/kg to 1 250 mg/kg. This increase does not adversely affect the animal or public health as the maximum level established for fluorine in complementary feed and complete feed remains unchanged.
- (5) Commission Regulation (EU) 2017/2229 <sup>(2)</sup> amended Annex I to Directive 2002/32/EC as regards, inter alia, lead. For reasons of clarity the whole entry for lead was replaced. In this replacement, in the list of feed materials for which the maximum level of 15 mg/kg is applicable, the feed material calcareous marine shells was erroneously omitted. Regulation (EU) 2017/2229 established also a new maximum level for lead in dicopper oxide. However, the International Union of Pure and Applied Chemistry (IUPAC) name of the additive is copper(I) oxide. In line with the European Food Safety Authority's (EFSA) recommendation in its opinion on cupric oxide <sup>(3)</sup> the additive should be named copper(I) oxide, which was not done in the English, Italian and Slovak language versions of the Regulation. Those errors should be corrected.

<sup>(1)</sup> OJ L 140, 30.5.2002, p. 10.

<sup>(2)</sup> Commission Regulation (EU) 2017/2229 of 4 December 2017 amending Annex I to Directive 2002/32/EC of the European Parliament and of the Council as regards maximum levels for lead, mercury, melamine and decoquinat (OJ L 319, 5.12.2017, p. 6).

<sup>(3)</sup> EFSA Journal 2015;13(4):4057.

- (6) Certain feed materials belonging to the category of 'fish, other aquatic animals and products derived thereof' are placed on the market as canned wet feed material for direct feeding of dogs and cats. As this canned wet feed material replaces the compound feed, it is therefore appropriate to apply the same maximum level of mercury to this canned wet feed material as the maximum level applicable to compound feed as this change does not adversely affect the animal health.
- (7) EFSA adopted a scientific statement on the presence of free gossypol in whole cottonseed <sup>(4)</sup>. It concluded that an update to the Scientific opinion as regards the animal health risks of the presence of gossypol as an undesirable substance in animal feed was not necessary. Taking into account the occurrence data referred to in that statement, it is appropriate to establish a higher maximum level for free gossypol in the feed material cottonseed. This increase does not adversely affect the animal health as the maximum level laid down for free gossypol in complete feed remains unchanged.
- (8) Directive 2002/32/EC establishes a maximum level for dioxins, sum of dioxins and dioxin-like PCBs and non-dioxin-like PCBs only in certain feed additives belonging to the functional groups of binders and anti-caking agents. However, recent findings notified through the Rapid Alert System for Food and Feed show high levels of dioxins and dioxin-like PCBs, in other feed additives belonging to that functional group. It is therefore appropriate to establish the maximum level for dioxins and PCBs to all feed additives belonging to the functional groups of binders and anti-caking agents. Furthermore, those maximum levels should also apply where the same feed additives are authorised in the functional groups 'Substances for the control of radionuclide contamination' and 'Substances for reduction of the contamination of feed by mycotoxins'.
- (9) Directive 2002/32/EC should therefore be amended accordingly.
- (10) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on Plants, Animals Food and Feed,

HAS ADOPTED THIS REGULATION:

*Article 1*

Annex I to Directive 2002/32/EC is amended and corrected in accordance with the Annex to this Regulation.

*Article 2*

This Regulation shall enter into force on the twentieth 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 2019.

*For the Commission*  
*The President*  
Jean-Claude JUNCKER

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<sup>(4)</sup> <https://efsa.onlinelibrary.wiley.com/doi/epdf/10.2903/j.efsa.2017.4850>

## ANNEX

Annex I to Directive 2002/32/EC is amended as follows:

(1) Row 1 of Section I, Arsenic, is replaced by the following:

Undesirable substance	Products intended for animal feed	Maximum content in mg/kg (ppm) relative to a feed with a moisture content of 12 %
'1. Arsenic <sup>(1)</sup>	Feed materials	2
	with the exception of:	
	— meal made from grass, from dried lucerne and from dried clover, and dried sugar beet pulp and dried molasses sugar beet pulp;	4
	— palm kernel expeller;	4 <sup>(2)</sup>
	— peat; leonardite;	5 <sup>(2)</sup>
	— phosphates, calcareous marine algae;	10
	— calcium carbonate; calcium and magnesium carbonate <sup>(10)</sup> ; calcareous marine shells;	15
	— magnesium oxide; magnesium carbonate;	20
	— fish, other aquatic animals and products derived thereof;	25 <sup>(2)</sup>
	— seaweed meal and feed materials derived from seaweed.	40 <sup>(2)</sup>
	Iron particles used as tracer.	50
	Feed additives belonging to the functional group of compounds of trace elements	30
	with the exception of:	
	— cupric sulphate pentahydrate; cupric carbonate; dicopper chloride trihydroxide; ferrous carbonate; dimanganese chloride trihydroxide	50
	— zinc oxide; manganous oxide; cupric oxide.	100
Complementary feed	4	
with the exception of:		
— mineral feed;	12	
— complementary feed for pet animals containing fish, other aquatic animals and products derived thereof and/or seaweed meal and feed materials derived from seaweed;	10 <sup>(2)</sup>	
— long-term supply formulations of feed for particular nutritional purposes with a concentration of trace elements higher than 100 times the established maximum content in complete feed;	30	
Complete feed	2	
with the exception of:		
— complete feed for fish and fur animals;	10 <sup>(2)</sup>	
— complete feed for pet animals containing fish, other aquatic animals and products derived thereof and/or seaweed meal and feed materials derived from seaweed.	10 <sup>(2)</sup>	

(2) In Row 3 of section I, fluorine, in the column 'Maximum content in mg/kg (ppm) relative to a feed with a moisture content of 12 %', the figure for the maximum level for calcareous marine algae is replaced by '1 250';

(3) Row 4 of Section I, Lead, is replaced by the following:

Undesirable substance	Products intended for animal feed	Maximum content in mg/kg (ppm) relative to a feed with a moisture content of 12 %
'4. Lead <sup>(12)</sup>	Feed materials	10
	with the exception of:	
	— forage <sup>(?)</sup> ;	30
	— phosphates, calcareous marine algae and calcareous marine shells;	15
	— calcium carbonate; calcium and magnesium carbonate <sup>(10)</sup> ;	20
	— yeasts.	5
	Feed additives belonging to the functional group of compounds of trace elements	100
	with the exception of:	
	— zinc oxide;	400
	— manganous oxide, ferrous carbonate, cupric carbonate, copper (I) oxide.	200
	Feed additives belonging to the functional groups of binders and anti-caking agents	30
	with the exception of:	
— clinoptilolite of volcanic origin; natrolite-phonolite.	60	
Premixtures <sup>(6)</sup>	200	
Complementary feed	10	
with the exception of:		
— mineral feed;	15	
— long-term supply formulations of feed for particular nutritional purposes with a concentration of trace elements higher than 100 times the established maximum content in complete feed.	60	
Complete feed.	5'	

(4) Row 5 of Section I, Mercury, is replaced by the following:

Undesirable substance	Products intended for animal feed	Maximum content in mg/kg (ppm) relative to a feed with a moisture content of 12 %
'5. Mercury <sup>(4)</sup>	Feed materials	0,1
	with the exception of:	
	— fish, other aquatic animals and products derived thereof intended for the production of compound feed for food producing animals;	0,5
— fish, other aquatic animals and products derived thereof intended for the production of compound feed for dogs, cats, ornamental fish and fur animals;	1,0 <sup>(13)</sup>	

Undesirable substance	Products intended for animal feed	Maximum content in mg/kg (ppm) relative to a feed with a moisture content of 12 %
	<ul style="list-style-type: none"> <li>— fish, other aquatic animals and products derived thereof as canned wet feed material for direct feeding of dogs and cats</li> <li>— calcium carbonate; calcium and magnesium carbonate <sup>(10)</sup>.</li> </ul> Compound feed with the exception of: <ul style="list-style-type: none"> <li>— mineral feed;</li> <li>— compound feed for fish;</li> <li>— compound feed for dogs, cats, ornamental fish and fur animals.</li> </ul>	0,3  0,3  0,1  0,2  0,2  0,3'

(5) In row 1 of Section III, Free gossypol, in the column 'Maximum content in mg/kg (ppm) relative to a feed with a moisture content of 12 %', the figure for the maximum level for cottonseed is replaced by '6 000';

(6) In row 1 of Section V, Dioxins, in the column 'Products intended for animal feed', the fourth entry, concerning the feed additives kaolinitic clay, vermiculite, natrolite-phonolite, synthetic calcium aluminates and clinoptilolite of sedimentary origin belonging to the functional groups of binders and anti-caking agents, is replaced by the following:

'Feed additives belonging to the functional groups of binders and anti-caking agents (\*).

(\*) The maximum level is also applicable to the feed additives belonging to the functional groups of substances for the control of radionuclide contamination and substances for reduction of the contamination of feed by mycotoxins which are also belonging to the functional groups of binders and anti-caking agents.;

(7) In row 2 of Section V, Sum of dioxins and dioxin-like PCBs, in the column 'Products intended for animal feed', the fourth entry, concerning the feed additives kaolinitic clay, vermiculite, natrolite-phonolite, synthetic calcium aluminates and clinoptilolite of sedimentary origin belonging to the functional groups of binders and anti-caking agents, is replaced by the following:

'Feed additives belonging to the functional groups of binders and anti-caking agents (\*).

(\*) the maximum level is also applicable to the feed additives belonging to the functional groups of substances for the control of radionuclide contamination and substances for reduction of the contamination of feed by mycotoxins which are also belonging to the functional groups of binders and anti-caking agents.;

(8) In row 3 of Section V, Non-dioxin-like PCBs, in the column 'Products intended for animal feed', the fourth entry, concerning the feed additives kaolinitic clay, vermiculite, natrolite-phonolite, synthetic calcium aluminates and clinoptilolite of sedimentary origin belonging to the functional groups of binders and anti-caking agents, is replaced by the following:

'Feed additives belonging to the functional groups of binders and anti-caking agents (\*).

(\*) The maximum level is also applicable to the feed additives belonging to the functional groups of substances for the control of radionuclide contamination and substances for reduction of the contamination of feed by mycotoxins which are also belonging to the functional groups of binders and anti-caking agents.;

**COMMISSION REGULATION (EU) 2019/1870****of 7 November 2019****amending and correcting Regulation (EC) No 1881/2006 as regards maximum levels of erucic acid and hydrocyanic acid in certain foodstuffs****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EEC) No 315/93 of 8 February 1993 laying down Community procedures for contaminants in food <sup>(1)</sup>, and in particular Article 2(3) thereof,

Whereas:

- (1) Commission Regulation (EC) No 1881/2006 <sup>(2)</sup> sets maximum levels for certain contaminants in foodstuffs, including for erucic acid in certain foodstuffs.
- (2) On 21 September 2016, the Scientific Panel on Contaminants in the Food Chain (CONTAM) of the European Food Safety Authority (EFSA) adopted a scientific opinion on erucic acid in feed and food <sup>(3)</sup>. EFSA established a tolerable daily intake (TDI) of 7 mg/kg body weight (bw) per day for erucic acid. The highest dietary exposure levels were observed for infants and other children with exposure levels above the TDI. This may indicate a risk for young individuals with high erucic acid exposure.
- (3) Data on the presence of erucic acid in vegetable oils and fats indicate that for most vegetable oils and fats, lower levels can be achieved by applying good practices, e.g. by using varieties low in erucic acid. Therefore, it is appropriate to lower the maximum level for vegetable oils, with the exception of camelina oil, mustard oil and borage oil, to the level established by Codex Alimentarius for low-erucic acid rapeseed oil <sup>(4)</sup>.
- (4) For camelina oil, mustard oil and borage oil, evidence has been provided demonstrating that it is not possible to achieve lower levels by applying good practices as for these species there are no varieties of which the vegetable oils extracted from these plants contain levels of erucic acid lower than the maximum level proposed for the other vegetable oils. Therefore and given that these oils are of less significance for the human exposure than other vegetable oils, the maximum level for erucic acid in camelina oil, mustard oil and borage oil should remain the same. Furthermore, in order to avoid the closure of small and micro size enterprises in certain Member States, it is appropriate to exempt mustard oil produced and consumed locally in small quantities of the application of the maximum level, with acceptance of the competent authority.
- (5) Given that the maximum level for vegetable oils and fats applies also to vegetable oils used as ingredient in food, there is no need to establish a maximum level for erucic acid in foods containing added vegetable oils and fats.
- (6) Given the high concentration of erucic acid in mustard there is a risk of significant exposure to erucic acid through consumption of mustard. Therefore, it is appropriate to establish a maximum level for erucic acid in mustard.

<sup>(1)</sup> OJ L 37, 13.2.1993, p. 1.

<sup>(2)</sup> Commission Regulation (EC) No 1881/2006 of 19 December 2006 setting maximum levels for certain contaminants in foodstuffs (OJ L 364, 20.12.2006, p. 5).

<sup>(3)</sup> *EFSA Journal* 2016;14(11):4593

<sup>(4)</sup> Standard for named vegetable oils (CODEX STAN 210-1999), Codex Alimentarius.

- (7) A maximum level for erucic acid in infant formulae and follow-on formulae has already been established by Commission Delegated Regulation (EU) 2016/127 <sup>(5)</sup>. For reasons of clarity, the maximum level for erucic acid in infant formulae and follow-on formulae established by Regulation (EC) No 1881/2006 should be deleted.
- (8) In Commission Regulation (EU) 2017/1237 <sup>(6)</sup>, no unit of measurement is set for the maximum level for hydrocyanic acid. It is therefore appropriate to correct this error in order to provide legal certainty.
- (9) Regulation (EC) No 1881/2006 should therefore be amended accordingly.
- (10) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on Plants, Animals, Food and Feed,

HAS ADOPTED THIS REGULATION:

*Article 1*

The Annex to Regulation (EC) No 1881/2006 is amended in accordance with Annex I to this Regulation.

*Article 2*

The Annex to Regulation (EC) No 1881/2006 is corrected in accordance with Annex II to this Regulation.

*Article 3*

Foodstuffs listed in the Annex to this Regulation that were lawfully placed on the market before the entry into force of this Regulation may remain on the market until their date of minimum durability or use-by-date.

*Article 4*

This Regulation shall enter into force on the twentieth 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 2019.

*For the Commission*  
*The President*  
Jean-Claude JUNCKER

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<sup>(5)</sup> Commission Delegated Regulation (EU) 2016/127 of 25 September 2015 supplementing Regulation (EU) No 609/2013 of the European Parliament and of the Council as regards the specific compositional and information requirements for infant formula and follow-on formula and as regards requirements on information relating to infant and young child feeding (OJ L 25, 2.2.2016, p. 1).

<sup>(6)</sup> Commission Regulation (EU) 2017/1237 of 7 July 2017 amending Regulation (EC) No 1881/2006 as regards a maximum level of hydrocyanic acid in unprocessed whole, ground, milled, cracked, chopped apricot kernels placed on the market for the final consumer (OJ L 177, 8.7.2017, p. 36).



## ANNEX I

In section 8 of the Annex to Regulation (EC) No 1881/2006, entry 8.1 is replaced by the following:

	Foodstuffs <sup>(1)</sup>	Maximum level (g/kg)
8.1	<b>Erucic acid, including erucic acid bound in fat</b>	
8.1.1	Vegetable oils and fats placed on the market for the final consumer or for use as an ingredient in food, with the exception of camelina oil, mustard oil and borage oil	20,0
8.1.2.	Camelina oil, mustard oil <sup>(1)</sup> and borage oil	50,0
8.1.3.	Mustard (condiment)	35,0

<sup>(1)</sup> With acceptance from the competent authority, the maximum level does not apply to mustard oil locally produced and consumed.'

## ANNEX II

In section 8 of the Annex to Regulation (EC) No 1881/2006, entry 8.3 is replaced by the following:

	Foodstuffs <sup>(1)</sup>	Maximum level (mg/kg)
8.3	<b>Hydrocyanic acid, including hydrocyanic acid bound in cyanogenic glycosides</b>	
8.3.1	Unprocessed whole, ground, milled, cracked, chopped apricot kernels placed on the market for the final consumer <sup>(1)</sup> <sup>(2)</sup>	20,0

<sup>(1)</sup> "Unprocessed products" as defined in Regulation (EC) No 852/2004 of the European Parliament and of the Council of 29 April 2004 on the hygiene of foodstuffs (OJ L 139, 30.4.2004, p. 1).

<sup>(2)</sup> "Placing on the market" and "final consumer" as defined in Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety (OJ L 31, 1.2.2002, p. 1).

**COMMISSION REGULATION (EU) 2019/1871****of 7 November 2019****on reference points for action for non-allowed pharmacologically active substances present in food of animal origin and repealing Decision 2005/34/EC****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EC) No 470/2009 of the European Parliament and of the Council of 6 May 2009 laying down Community procedures for the establishment of residue limits of pharmacologically active substances in foodstuffs of animal origin, repealing Council Regulation (EEC) No 2377/90 and amending Directive 2001/82/EC of the European Parliament and of the Council and Regulation (EC) No 726/2004 of the European Parliament and of the Council <sup>(1)</sup>, and in particular Articles 18, 19(3) and 24(4) thereof,

Whereas:

- (1) Where necessary for the purpose of official controls of food of animal origin, the Commission may establish reference values ('reference points for action') for residues of pharmacologically active substances in food of animal origin, for which no maximum residue limit has been laid down. Reference points for action should apply to food of animal origin imported from third countries and to food of animal origin produced in the Union.
- (2) Following a request from the Commission, the EFSA Panel on Contaminants in the Food Chain (EFSA CONTAM Panel) has adopted guidance on methodological principles and scientific methods to be taken into account when assessing the safety of reference points for action ('EFSA guidance') <sup>(2)</sup>. EFSA guidance describes a process for assessing whether the analytical concentration of a pharmacologically active substance, which can be determined by official control laboratories using a validated analytical method, is low enough to adequately protect human health.
- (3) EFSA guidance further specifies situations, in which a substance-specific risk assessment should be undertaken by EFSA in accordance with Regulation (EC) No 470/2009. In particular, in order to ensure an adequate level of health protection, substance-specific risk assessments should be performed for pharmacologically active substances, which cause blood dyscrasias (aplastic anaemia) or allergy (excluding skin sensitisation) or which are high potency carcinogens or inorganic substances.
- (4) Methodological principles and scientific methods for assessing the safety of reference points for action should therefore be adopted.
- (5) Commission Decision 2002/657/EC <sup>(3)</sup> lays down the minimum required performance limits of analytical methods used for detecting a limited number of substances, for which the use is not allowed, or is specifically prohibited in the Union. Those minimum required performance limits correspond to the average limit above which the detection of a substance or its residues can be considered as methodologically meaningful. The minimum required performance limits apply to the matrixes specified in Annex II to that Decision.

<sup>(1)</sup> OJ L 152, 16.6.2009, p. 11.

<sup>(2)</sup> Updated guidance on methodological principles and scientific methods to be taken into account when establishing Reference Points for Action (RPAs) for non-allowed pharmacologically active substances present in food of animal origin. *EFSA Journal* 2018;16(7):5332.

<sup>(3)</sup> Commission Decision 2002/657/EC of 14 August 2002 implementing Council Directive 96/23/EC concerning the performance of analytical methods and the interpretation of results (OJ L 221, 17.8.2002, p. 8).

- (6) Pursuant to Commission Decision 2005/34/EC <sup>(4)</sup>, the minimum required performance limits laid down in Decision 2002/657/EC are to be used as reference points for action irrespective of the food matrix tested for food of animal origin, imported from third countries. Food of animal origin, containing residues of a pharmacologically active substance in a concentration at or above the reference point for action, is to be considered not to comply with Union legislation, while food of animal origin containing concentrations below the reference points for action are not to be prohibited from entering the food chain. However, the setting of reference points for action should in no way serve as a pretext for condoning the illegal use of prohibited or non-allowed substances. Therefore any residues of those substances in food of animal origin should be considered undesirable. The reference points for action laid down in Decision 2005/34/EC have been based solely on analytical considerations, taking into account the lowest residue concentration, which can be detected and confirmed with a validated analytical method, without consideration of the toxic potential of the substances in question.
- (7) For chloramphenicol, malachite green and nitrofurans metabolites reference points for action have been laid down in Decision 2005/34/EC. For these substances, however, EFSA concluded that following EFSA guidance instead of the standard risk assessment methodology a substance-specific risk assessment was needed. Therefore, following the request of the Commission, the EFSA CONTAM Panel adopted scientific opinions on chloramphenicol in food and feed <sup>(5)</sup>, on nitrofurans and their metabolites in food <sup>(6)</sup> and on malachite green in food <sup>(7)</sup>.
- (8) It is therefore appropriate to lay down reference points for action for these substances, which take into account both the analytical considerations and the toxic potential of these substances. In view of the uncertainties, which EFSA identified in its risk assessments for chloramphenicol and the nitrofurans metabolites, the sensitivity of analytical methods should be improved, in order to enable enforcement of the lowest possible concentrations.
- (9) Detection of residues of prohibited or non-allowed substances, even below established reference points for action, could be a signal of misuse of such substances. In such cases Regulation (EC) No 470/2009 requires Member States and, as appropriate, the Commission, to take follow-up measures. To this end, information should be available to the Member States and the Commission through the Rapid Alert System for Food and Feed <sup>(8)</sup>.
- (10) In order to allow official laboratories to adapt their methods to the updated reference points for action for chloramphenicol, malachite green and nitrofurans metabolites, a period of three years should be allowed to elapse before these lowered reference points for action become applicable.
- (11) As this Regulation takes over the provisions of Decision 2005/34/EC, updates and further expands them, for reasons of legal certainty Decision 2005/34/EC should be repealed.
- (12) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on Plants, Animals, Food and Feed,

HAS ADOPTED THIS REGULATION:

#### Article 1

#### Scope

This Regulation lays down:

- (a) rules for the establishment of reference points for action for residues of pharmacologically active substances, for which no maximum residue limit has been laid down in accordance with Regulation (EC) No 470/2009;

<sup>(4)</sup> Commission Decision 2005/34/EC of 11 January 2005 laying down harmonised standards for the testing for certain residues in products of animal origin imported from third countries (OJ L 16, 20.1.2005, p. 61).

<sup>(5)</sup> EFSA CONTAM Panel (EFSA Panel on Contaminants in the Food Chain), 2014. Scientific Opinion on Chloramphenicol in food and feed. *EFSA Journal* 2014;12(11):3907, 145 pp. doi:10.2903/j.efsa.2014.3907.

<sup>(6)</sup> EFSA CONTAM Panel (EFSA Panel on Contaminants in the Food Chain), 2015. Scientific Opinion on nitrofurans and their metabolites in food. *EFSA Journal* 2015;13(6):4140, 217 pp. doi:10.2903/j.efsa.2015.4140.

<sup>(7)</sup> EFSA CONTAM Panel (EFSA Panel on Contaminants in the Food Chain), 2016. Scientific Opinion on malachite green in food. *EFSA Journal* 2016;14(7):4530, 80 pp. doi:10.2903/j.efsa.2016.4530.

<sup>(8)</sup> Commission Regulation (EU) No 16/2011 of 10 January 2011, laying down implementing measures for the Rapid alert system for food and feed (OJ L 6, 11.1.2011, p. 7).

- (b) methodological principles and scientific methods for the risk assessment of the safety of reference points for action;
- (c) reference points for action for residues from certain pharmacologically active substances for which no maximum residue limit has been laid down in accordance with Regulation (EC) No 470/2009;
- (d) specific rules on action to be taken in the case of a confirmed presence of a residue of a prohibited or non-allowed substance at levels above, equal to or below the reference point for action.

## Article 2

### Rules for the establishment of reference points for action

Reference points for action shall be set at the lowest level which can analytically be achieved by the official control laboratories, designated in accordance with Article 37 of Regulation (EU) 2017/625 of the European Parliament and of the Council <sup>(9)</sup>.

Reference points for action shall be regularly reviewed to ensure that they correspond to the lowest levels, which are achievable, taking into account the most recent scientific developments.

When setting or reviewing reference points for action, the Commission shall consult the relevant European Reference Laboratories on the analytical capabilities of National Reference Laboratories and official laboratories, as regards the lowest residue concentration, which can be identified with an analytical method, validated in accordance with the requirements of Decision 2002/657/EC.

## Article 3

### Methodological principles and scientific methods of risk assessment

1. The risk assessment applied for the assessment of the safety of reference points for action shall take into account:
  - (a) the toxic potential and pharmacological activity of the substance;
  - (b) intake of the residue via food.
2. For the purpose of determining the toxic potential and pharmacological activity of the substance, the following toxicological screening values shall be applied:
  - (a) for Group I substances, corresponding to non-allowed pharmacologically active substances for which there is direct evidence of genotoxicity or for which there is an alert for genotoxicity (from structure activity relationships or read across) or for which there is a lack of information on genotoxicity, and hence genotoxicity cannot be excluded 0,0025 µg/kg body weight (b.w.) per day;
  - (b) for Group II substances, corresponding to non-allowed pharmacologically active substances with pharmacological activity on the nervous system or the reproductive system, or that are corticoids 0,0042 µg/kg b.w. per day;
  - (c) for Group III substances, corresponding to non-allowed pharmacologically active substances with anti-infectious, anti-inflammatory and antiparasitic effect and other pharmacologically active agents 0,22 µg/kg b.w. per day.
3. The relevant food intake shall be determined based on food consumption figures, food consumption patterns and the occurrence of the substance in different food commodities.

<sup>(9)</sup> Regulation (EU) 2017/625 of the European Parliament and of the Council of 15 March 2017 on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products, amending Regulations (EC) No 999/2001, (EC) No 396/2005, (EC) No 1069/2009, (EC) No 1107/2009, (EU) No 1151/2012, (EU) No 652/2014, (EU) 2016/429 and (EU) 2016/2031 of the European Parliament and of the Council, Council Regulations (EC) No 1/2005 and (EC) No 1099/2009 and Council Directives 98/58/EC, 1999/74/EC, 2007/43/EC, 2008/119/EC and 2008/120/EC, and repealing Regulations (EC) No 854/2004 and (EC) No 882/2004 of the European Parliament and of the Council, Council Directives 89/608/EEC, 89/662/EEC, 90/425/EEC, 91/496/EEC, 96/23/EC, 96/93/EC and 97/78/EC and Council Decision 92/438/EEC (Official Controls Regulation) (OJ L 95, 7.4.2017, p. 1).

4. The safety of reference points for action shall be assessed, by verifying whether the toxicological screening value, divided by the relevant food intake, is higher than or equal to the analytical capability of the official control laboratories, in which case the safety of the reference point for action at the analytical capability level is guaranteed.

#### Article 4

##### Substance-specific risk assessment

1. A request shall be addressed to EFSA for a substance-specific risk assessment as to whether reference points for action are adequate to protect human health, in particular for substances:

- (a) that cause blood dyscrasias or allergy (excluding skin sensitisation);
- (b) that are high potency carcinogens;
- (c) for which genotoxicity cannot be excluded, if there is experimental or other evidence that the use of the toxicological screening value of 0,0025 µg/kg b.w. per day may not be adequately health protective.

2. The Commission shall, where appropriate, submit a request to EFSA for a substance-specific risk assessment as to whether a reference point for action is adequate to protect human health, where application of the method laid down in Article 3(4) indicates that the toxicological screening value, divided by the relevant food intake, is lower than the analytical capability of the official control laboratories, and that there is little or no possibility of significant improvement in the analytical capability within a short to medium time frame.

3. Where the substance specific risk assessment is inconclusive, due to uncertainties regarding certain aspects of the toxicological or exposure assessment, and no guarantees are available on whether the lowest analytically achievable concentration is sufficiently safe for consumers, the European and National Reference Laboratories shall endeavour to improve the sensitivity of analytical methods in order to be able to enforce lower concentrations and the reference points for action shall be set at levels which are low enough to stimulate improvement of the lowest achievable levels.

#### Article 5

##### Enforcement of reference points for action

For the purpose of control in food of animal origin of some residues of substances, whose use is prohibited or not allowed in the Union, the reference points for action, laid down in the Annex, shall apply irrespective of the food matrix tested.

Food of animal origin, containing residues of a pharmacologically active substance in a concentration at or above the reference point for action, shall be considered not to comply with Union legislation and shall not enter the food chain. Food of animal origin containing residues of a pharmacologically active substance in a concentration at a level below the reference point for action shall not be prohibited from entering the food chain.

#### Article 6

##### Information exchange and investigations in case of confirmed presence of a prohibited or non-allowed substance

Where the results of official controls, including analytical tests, identify residues of prohibited or non-allowed substances at levels above, equal to or below the reference points for action, the competent authority shall carry out the investigations referred to in Articles 137(2) or (3) of Regulation (EU) 2017/625 and Articles 13, 16(2), 17 and 22 to 24 of Directive 96/23/EC<sup>(10)</sup>, to determine whether there has been illegal treatment with a prohibited or non-allowed pharmacologically active substance.

<sup>(10)</sup> Council Directive 96/23/EC of 29 April 1996 on measures to monitor certain substances and residues thereof in live animals and animal products and repealing Directives 85/358/EEC and 86/469/EEC and Decisions 89/187/EEC and 91/664/EEC (OJ L 125, 23.5.1996, p. 10).

In the event of established non-compliance, the competent authority shall take one or more actions referred to in Article 138 of Regulation (EU) 2017/625 and Articles 15(3), 17 and 23 to 25 of Directive 96/23/EC.

The competent authority shall retain a record of the findings. Where the results of official controls, including analytical tests on foods of animal origin from the same operator, show a recurrent pattern pointing to suspicion of non-compliance related to one or several prohibited or non-allowed substances from a particular origin, the competent authority shall inform the Commission and the other Member States in the Standing Committee on Plants, Animals, Food and Feed.

Where the recurrent pattern concerns imported food, the Commission shall bring this to the attention of the competent authority of the country or countries of origin.

Member States shall report the results of official controls, including analytical tests, showing confirmed presence of a prohibited or non-allowed substance at levels above or equal to the reference points for action through the Rapid Alert System for Food and Feed.

#### *Article 7*

### **Repeal of Decision 2005/34/EC**

Decision 2005/34/EC is repealed.

#### *Article 8*

### **Application of the reference points for action**

The reference points for action, set out in the Annex to this Regulation shall apply from 28 November 2022.

Until the date laid down in the first paragraph the minimum required performance limits for chloramphenicol, nitrofurans metabolites and the sum of malachite green and leucomalachite green, included in Annex II to Decision 2002/657/EC, shall apply as reference points for action for food of animal origin imported from third countries and for food of animal origin produced in the Union.

#### *Article 9*

### **Entry into force**

This Regulation shall enter into force on the twentieth 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 2019.

*For the Commission*  
*The President*  
Jean-Claude JUNCKER

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## ANNEX

**Reference points for action (RPA)**

Substance	RPA (µg/kg)	Other provisions
Chloramphenicol	0,15	
Malachite green	0,5	0,5 µg/kg for the sum of malachite green and leucomalachite green
Nitrofurans and their metabolites	0,5 <sup>(1)</sup>	0,5 µg/kg for each of the metabolites of furazolidone (AOZ or 3-amino-2-oxazolidinone), furaltadone (AMOZ or 3-amino-5-methylmorpholino-2-oxazolidinone), nitrofurantoin (AHD or 1-aminohydantoin), nitrofurazone (SEM or semicarbazide) and nifursol (DNSH or 3,5-dinitrosalicylic acid hydrazide)

<sup>(1)</sup> Due to the natural occurrence of SEM in crayfish at levels above the RPA, only levels of AOZ, AMOZ, AHD and DNSH above the RPA are a clear indication of the illegal use of nitrofurans and their metabolites. The RPA of 0,5 µg/kg for SEM in crayfish shall only be applied, when the illegal use of nitrofurazone on crayfish has been established.



**COMMISSION IMPLEMENTING REGULATION (EU) 2019/1872****of 7 November 2019****amending Annex I to Regulation (EC) No 798/2008 as regards the entry for Japan in the list of third countries, territories, zones or compartments from which certain poultry commodities may be imported into or transit through the Union****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

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

Having regard to Council Directive 2002/99/EC of 16 December 2002 laying down the animal health rules governing the production, processing, distribution and introduction of products of animal origin for human consumption <sup>(1)</sup>, and in particular the introductory phrase of Article 8, the first subparagraph of point 1 of Article 8, point 4 of Article 8 and Article 9(4) thereof,

Having regard to Council Directive 2009/158/EC of 30 November 2009 on animal health conditions governing intra-Community trade in, and imports from third countries of, poultry and hatching eggs <sup>(2)</sup>, and in particular Article 23(1) thereof,

Whereas:

- (1) Commission Regulation (EC) No 798/2008 <sup>(3)</sup> lays down veterinary certification requirements for imports into and transit, including storage during transit, through the Union of poultry and poultry products ('the commodities'). It provides that the commodities are only to be imported into and transit through the Union from the third countries, territories, zones or compartments listed in columns 1 and 3 of the table in Part 1 of Annex I thereto.
- (2) Regulation (EC) No 798/2008 also lays down the conditions for a third country, territory, zone or compartment to be considered as free from highly pathogenic avian influenza (HPAI).
- (3) Japan is listed in Part 1 of Annex I to Regulation (EC) No 798/2008 as a third country from which imports into and transit through the Union of eggs and egg products are authorised from the whole of its territory.
- (4) Japan had also requested to be authorised for imports into and transit through the Union of meat of poultry and has submitted the relevant information. The Commission has carried out an audit in Japan to evaluate the animal health controls in place for meat of poultry intended for export to the Union with favourable outcome. However, due to an outbreak of HPAI of subtype H5N6 in January 2018, the country could not satisfy the conditions laid down in Article 9 of Regulation (EC) No 798/2008 for being considered free from that disease and was therefore not authorised for that commodity.
- (5) More than 12 months have now past since HPAI was present in the territory of Japan and the country can now be considered free from that disease in accordance with Article 9 of Regulation (EC) No 798/2008. On the basis of the current epidemiological situation, it is therefore appropriate to amend the entry for Japan in the table in Part 1 of Annex I to Regulation (EC) No 798/2008 to authorise that third country for imports into and transit through the Union of meat of poultry.
- (6) Annex I to Regulation (EC) No 798/2008 should therefore be amended accordingly.

<sup>(1)</sup> OJ L 18, 23.1.2003, p. 11.

<sup>(2)</sup> OJ L 343, 22.12.2009, p. 74.

<sup>(3)</sup> Commission Regulation (EC) No 798/2008 of 8 August 2008 laying down a list of third countries, territories, zones or compartments from which poultry and poultry products may be imported into and transit through the Community and the veterinary certification requirements (OJ L 226, 23.8.2008, p. 1).

- (7) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on Plants, Animals, Food and Feed,

HAS ADOPTED THIS REGULATION:

*Article 1*

Part 1 of Annex I to Regulation (EC) No 798/2008 is amended in accordance with the Annex to this Regulation.

*Article 2*

This Regulation shall enter into force on the third 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 2019.

*For the Commission*  
*The President*  
Jean-Claude JUNCKER

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## ANNEX

In Part 1 of Annex I to Regulation (EC) No 798/2008, the entry for Japan is replaced by the following:

ISO code and name of third country or territory	Code of third country, territory, zone or compartment	Description of third country, territory, zone or compartment	Veterinary certificate		Specific conditions	Specific conditions		Avian influenza surveillance status	Avian influenza vaccination status	Salmonella Control Status <sup>(6)</sup>
			Model(s)	Additional guarantees		Closing date <sup>(1)</sup>	Opening date <sup>(2)</sup>			
1	2	3	4	5	6	6A	6B	7	8	9
JP — Japan	JP-0	Whole country	EP, E							
			POU'							

**COMMISSION IMPLEMENTING REGULATION (EU) 2019/1873****of 7 November 2019****on the procedures at border control posts for a coordinated performance by competent authorities of intensified official controls on products of animal origin, germinal products, animal by-products and composite products****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2017/625 of the European Parliament and of the Council of 15 March 2017 on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products, amending Regulations (EC) No 999/2001, (EC) No 396/2005, (EC) No 1069/2009, (EC) No 1107/2009, (EU) No 1151/2012, (EU) No 652/2014, (EU) 2016/429 and (EU) 2016/2031 of the European Parliament and of the Council, Council Regulations (EC) No 1/2005 and (EC) No 1099/2009 and Council Directives 98/58/EC, 1999/74/EC, 2007/43/EC, 2008/119/EC and 2008/120/EC, and repealing Regulations (EC) No 854/2004 and (EC) No 882/2004 of the European Parliament and of the Council, Council Directives 89/608/EEC, 89/662/EEC, 90/425/EEC, 91/496/EEC, 96/23/EC, 96/93/EC and 97/78/EC and Council Decision 92/438/EEC (Official Controls Regulation) <sup>(1)</sup>, and in particular Article 65(6) thereof,

Whereas:

- (1) Regulation (EU) 2017/625 subjects certain categories of animals and goods to systematic controls at border control posts prior to their entry into the Union.
- (2) It follows from Article 65(4) of Regulation (EU) 2017/625 that in case of suspected fraudulent or deceptive practices by an operator or in the case of serious or repeated infringements of the rules referred to in Article 1(2) of that Regulation, official controls on consignments with the same use or origin performed by the competent authorities at the border control posts should be intensified. Pursuant to Article 65(5) of Regulation (EU) 2017/625, the competent authorities' decision to perform such intensified controls is to be notified to the Commission and the Member States through the information management system for official controls (IMSOC) referred to in Article 131 of that Regulation.
- (3) In order to ensure a harmonised approach to the coordinated performance of intensified official controls on certain goods entering the Union, detailed procedures for the coordinated performance of those controls should be established, including rules on the role of the IMSOC in this respect. For practical reasons, the coordinated performance of intensified controls at borders should be limited to the categories of consignments for which there is an identifiable listed establishment of origin, i.e. consignments of products of animal origin, germinal products, animal by-products and composite products.
- (4) When receiving notifications from the competent authorities in accordance with Article 65(5) of Regulation (EU) 2017/625, the Commission should in particular assess whether the non-compliance is based on suspected fraudulent or deceptive practices or on a potentially serious or repeated infringement of the rules referred to in Article 1(2) of Regulation (EU) 2017/625, for instance the placing on the market of products of animal origin containing levels of contaminants or residues of veterinary medicinal products which exceed the maximum residue limit, or of products which do not comply with Commission Regulation (EC) No 2073/2005 <sup>(2)</sup>.

<sup>(1)</sup> OJ L 95, 7.4.2017, p. 1.

<sup>(2)</sup> Commission Regulation (EC) No 2073/2005 of 15 November 2005 on microbiological criteria for foodstuffs (OJ L 338, 22.12.2005, p. 1).

- (5) In order to reduce the risk of fraudulent or deceptive practices by way of presenting small consignments for official controls, the total weight of compliant consignments required to end the coordinated performance of intensified official controls should amount to at least ten times the weight of the consignment that initially triggered the measure. However, in order to avoid an unacceptable administrative and financial burden for the competent authorities and for operators, a maximum total weight of compliant consignments required to end the coordinated performance of intensified official controls should be set.
- (6) If, during the coordinated performance of intensified official controls, three consignments entering the Union reveal the same type of infringement indicated in the notification in accordance with Article 65(5) of Regulation (EU) 2017/625, the coordinated performance of intensified official controls should be maintained until its results and the action of the competent authorities of the third countries concerned are satisfactory. In that case, the Commission should request the competent authorities of the third countries to carry out the necessary investigations and measures in order to remedy the situation in the establishment of origin and report back to the Commission.
- (7) For reasons of the efficiency of the control system, it should be possible for the Member States to exclude certain consignments from the coordinated performance of intensified official controls, in cases where the consignments are to be refused entry into the Union on grounds other than the infringement for which the coordinated intensified official controls are performed.
- (8) Since Regulation (EU) 2017/625 applies from 14 December 2019, this Regulation should also apply from that date.
- (9) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on Plants, Animals, Food and Feed,

HAS ADOPTED THIS REGULATION:

#### *Article 1*

### **Subject matter and scope**

This Regulation lays down rules relating to the procedures at border control posts for a coordinated performance by competent authorities of intensified official controls on products of animal origin, germinal products, animal by-products and composite products entering the Union for placing on the market.

#### *Article 2*

### **Definition**

For the purpose of this Regulation, 'establishment of origin' means the establishment of origin in a third country, including third country vessels, appearing on lists drawn up regarding the export of products of animal origin, germinal products, animal by-products and composite products to the Union in accordance with the relevant Union legislation.

#### *Article 3*

### **Triggering of the coordinated performance of intensified official controls**

1. When notifying the Commission and the other Member States through the IMSOC of their decision in accordance with Article 65(5) of Regulation (EU) 2017/625, the competent authorities shall indicate the establishment of origin, the category of goods, including their description and code from the Combined Nomenclature set out in Annex I to Council Regulation (EEC) No 2658/87 <sup>(<sup>1</sup>)</sup>, and the infringement for which a coordinated performance of intensified official controls is to be performed.

<sup>(1)</sup> Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 256 7.9.1987, p. 1).

2. After receipt of the notification referred to in paragraph 1, the Commission shall assess whether the following conditions are met:
  - (a) the notification is based on suspected fraudulent or deceptive practices or on a potentially serious or repeated infringement of the rules referred to in Article 1(2) of Regulation (EU) 2017/625;
  - (b) the notification is related to an action or omission for which the establishment of origin of the consignment concerned is responsible;
  - (c) the consignment concerned is not already subject to the coordinated performance of intensified official controls in accordance with this Regulation; and
  - (d) the consignment concerned is not subject to emergency measures adopted in accordance with Article 53 of Regulation (EC) No 178/2002 of the European Parliament and of the Council <sup>(4)</sup> or Article 261 of Regulation (EU) 2016/429 <sup>(5)</sup>, or to special measures adopted in accordance with Article 128 of Regulation (EU) 2017/625, for the same infringement as the one indicated in the notification referred to in paragraph 1.
3. The Commission shall record the outcome of its assessment referred to in paragraph 2 in the IMSOC.
4. Where the outcome of the assessment referred to in paragraph 2 indicates that the requisite conditions have been met, the competent authorities at the border control posts in all Member States shall perform coordinated intensified official controls.

#### Article 4

### Procedures for the coordinated performance of intensified official controls

1. The competent authorities at the border control posts in all Member States shall carry out the identity and physical checks referred to in Article 49 of Regulation (EU) 2017/625 on each consignment coming from the same establishment of origin and containing the same category of goods, for the same type of infringement, as indicated in the IMSOC in accordance with Article 3(1).
2. For the controls referred to in paragraph 1, the consignments shall be selected on the basis of the codes from the Combined Nomenclature indicated in IMSOC in accordance with Article 3(1).
3. Where these codes are not specific enough to properly identify the category of goods, the competent authorities at border control posts shall only subject consignments selected on the basis of these codes to the coordinated performance of intensified official controls if they correspond to the description of the goods indicated in accordance with Article 3(1).
4. The competent authorities shall record in the IMSOC the reasons for not subjecting a selected consignment to the coordinated performance of intensified official controls in accordance with paragraph 3.

#### Article 5

### Imposed checks

1. If, during the coordinated performance of intensified official controls, three consignments entering the Union reveal the same type of infringement indicated in the notification referred to in Article 3(1), the Commission shall request the competent authority of the third country, in which the establishment of origin of the non-compliant consignments is located, to:
  - (a) make the necessary investigations to identify the reasons for the infringements ('imposed checks');
  - (b) adopt an action plan in relation to the establishment of origin to effectively remedy the situation; and

<sup>(4)</sup> Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety (OJ L 31, 1.2.2002, p. 1).

<sup>(5)</sup> Regulation (EU) 2016/429 of the European Parliament and of the Council of 9 March 2016 on transmissible animal diseases and amending and repealing certain acts in the area of animal health ('Animal Health Law') (OJ L 84, 31.3.2016, p. 1).

(c) report back on the actions referred to in points (a) and (b), including the results of the action plan.

2. The Commission shall closely monitor the results of the imposed checks and the action plan and take further action, including measures in accordance with Article 53 of Regulation (EC) No 178/2002 and Article 127(4) of Regulation (EU) 2017/625, when:

- (a) the competent authority of the third country does not take appropriate action to effectively remedy the situation; or
- (b) the competent authorities of the Member States continue to notify unsatisfactory results of the coordinated performance of intensified official controls.

#### *Article 6*

### **Termination of the coordinated performance of intensified official controls**

1. The coordinated performance of intensified official controls shall end in the following cases:

- (a) when a competent authority decides to withdraw its notification referred to in Article 3(1) and informs the Commission and the other Member States thereof through the IMSOC, indicating the reasons justifying their decision; or
- (b) when the following conditions are met:
  - (i) an uninterrupted sequence of at least 10 satisfactory results in the coordinated performance of intensified official controls has been recorded in the IMSOC by the competent authorities of the border control posts of the Member States; and
  - (ii) the total weight of the consignments referred to in point (i) reaches at least 10 times the weight of the consignment to which the notification referred to in Article 3(1) relates, or a net weight of 300 tons, whichever is the lowest.

2. However, where the Commission has requested imposed checks in accordance with point (a) of Article 5(1), the coordinated performance of intensified official controls shall end when:

- (a) an uninterrupted sequence of at least 30 satisfactory results in the coordinated performance of intensified official controls has been recorded in the IMSOC by the competent authorities of the border control posts of the Member States; and
- (b) the competent authority of the third country has adopted a satisfactory action plan in accordance with point (b) of Article 5(1).

#### *Article 7*

### **Costs of the coordinated performance of intensified official controls**

The costs of the coordinated performance of intensified official controls shall be at the expense of the operator responsible for the consignments that are subject to those controls.

#### *Article 8*

### **Consignments excluded from the coordinated performance of intensified official controls**

1. The competent authorities may exclude a consignment from the coordinated performance of intensified official controls, if the consignment is to be refused entry into the Union in accordance with Article 66(1) of Regulation (EU) 2017/625 on grounds other than the infringement for which the coordinated intensified official controls are performed.

2. The competent authorities shall record in the IMSOC the reasons for the exclusion of a consignment from the coordinated performance of intensified official controls in accordance with paragraph 1.

*Article 9*

**Entry into force and application**

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

It shall apply from 14 December 2019.

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

Done at Brussels, 7 November 2019.

*For the Commission*

*The President*

Jean Claude JUNCKER

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# DECISIONS

## COMMISSION IMPLEMENTING DECISION (EU) 2019/1874

of 6 November 2019

### on the adequacy of the competent authorities of the People's Republic of China pursuant to Directive 2006/43/EC of the European Parliament and of the Council

(notified under document C(2019) 7854)

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC <sup>(1)</sup>, and in particular the first subparagraph of Article 47(3) thereof,

Whereas:

- (1) Under Article 47(1) of Directive 2006/43/EC, Member States may allow the transfer of audit working papers or other documents held by statutory auditors or audit firms approved by them, and of inspection or investigation reports relating to the audits in question, to the competent authorities of a third country only if those authorities meet requirements that have been declared adequate by the Commission and there are working arrangements on the basis of reciprocity between them and the competent authorities of the Member States concerned. Member States have a growing interest in further developing cooperation with the competent authorities of the People's Republic of China in the area of statutory audit. In light of that interest, it needs to be determined whether the competent authorities of the People's Republic of China meet requirements that are adequate for those purposes.
- (2) A decision on adequacy under Article 47(3) of Directive 2006/43/EC does not address other specific requirements for the transfer of audit working papers and other documents held by statutory auditors or audit firms and of inspection or investigation reports, such as the agreement on working arrangements on the basis of reciprocity between the competent authorities set out in Article 47(1)(d) of Directive 2006/43/EC, or the requirements for the transfer of personal data set out in Article 47(1)(e) of that Directive.
- (3) Cooperation over the transfer of audit working papers or other documents held by statutory auditors or audit firms and of inspection or investigation reports to the competent authority of a third country reflects the substantial public interest in carrying out independent public oversight. Accordingly, the competent authorities of Member States should, in the framework of the working arrangements referred to in Article 47(2) of Directive 2006/43/EC, ensure that the competent authorities of the People's Republic of China use any documents transferred to them in accordance with Article 47(1) of that Directive only to exercise their functions of public oversight, external quality assurance and investigations of auditors and audit firms.
- (4) When inspections or investigations are carried out, statutory auditors and audit firms are not allowed to grant access to or to transmit their audit working papers or other documents to the competent authorities of the People's Republic of China under any other conditions than those set out in Article 47 of Directive 2006/43/EC and in this Decision.

<sup>(1)</sup> OJ L 157, 9.6.2006, p. 87.

- (5) Without prejudice to Article 47(4) of Directive 2006/43/EC, Member States should ensure that, for the purposes of public oversight, quality assurance and investigations of statutory auditors and audit firms, contacts between the statutory auditors or audit firms approved by them and the competent authorities of the People's Republic of China take place via the competent authorities of the Member States concerned.
- (6) In accordance with Article 47(1)(d) of Directive 2006/43/EC, the possibility for Member States to allow the transfer to the competent authorities of the People's Republic of China of audit working papers or other documents held by statutory auditors or audit firms approved by them and of inspection or investigation reports is subject to the condition that working arrangements are agreed between the competent authorities concerned.
- (7) Member States should ensure that such working arrangements between their competent authorities and the competent authorities of the People's Republic of China are agreed on the basis of reciprocity and subject to the conditions of Article 47(1) and (2) of Directive 2006/43/EC, including the protection of any professional secrets and commercial interests, including industrial and intellectual property, contained in such papers relating to the entities audited or to the statutory auditors and audit firms that audited those entities.
- (8) Where a transfer of audit working papers or other documents held by statutory auditors or audit firms and of inspection or investigation reports to the competent authorities of the People's Republic of China involves the transfer of personal data, such a transfer is lawful only if it also complies with the requirements for international data transfers laid down in Regulation (EU) 2016/679 of the European Parliament and of the Council<sup>(2)</sup>. Article 47(1)(e) of Directive 2006/43/EC therefore requires Member States to ensure that the transfer of personal data between their competent authorities and the competent authorities of the People's Republic of China complies with any applicable data protection principles and rules and, in particular, with the provisions of Chapter V of Regulation (EU) 2016/679. Member States should ensure that appropriate safeguards for the transfer of personal data are provided for, in accordance with Article 46 of Regulation (EU) 2016/679. In addition, Member States should ensure that the competent authorities of the People's Republic of China will not further disclose personal data contained in the documents transferred without the prior agreement of the competent authorities of the Member States concerned.
- (9) The Ministry of Finance and the Securities Regulatory Commission (CSRC) of the People's Republic of China are the two public oversight bodies that have competence in investigating auditors and audit firms, under the Accounting Law, the Law of Certified Public accountants and the Securities law of the People's Republic of China. The Ministry of Finance is responsible for issuing practice licences to accounting firms, enforcing accounting rules, setting auditing standards, carrying out inspections and investigations of accounting firms and certified public accountants, and entering into regulatory cooperative agreements relating to oversight of the profession of certified public accountants. The CSRC, under the auspices of the State Council, is responsible for performing supervision of the securities market and for enforcing the Securities Law. It has powers to inspect companies listed on either the Shanghai Stock Exchange or the Shenzhen Stock Exchange and the accounting firms that perform audits of those listed companies. It is the authority responsible for the supervision and administration of securities issued in either one of those stock exchanges. Among its supervisory duties, the CSRC is competent to administer international cooperation affairs of the securities and futures sector. The CSRC has the power to establish an oversight cooperation mechanism with corresponding authorities of other jurisdictions for the purpose of cross-border oversight of the securities markets including, cooperation on audit matters.

<sup>(2)</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

- (10) Both the Ministry of Finance and the CSRC will be involved in the signing of future bilateral agreements for the transfer of audit working papers. The Ministry of Finance takes the lead in concluding agreements with the Member States and determines the CSRC's participation in the negotiations and in the signing of the agreements depending on the scope and content of the agreements. Existing and former staff of the Ministry of Finance and the CSRC have the obligation to keep confidential the State, trade and work secrets acquired during supervisory activities and not to use such information for any unrelated matters.
- (11) Under the laws and regulations of the People's Republic of China, the Ministry of Finance and the CSRC may transfer to the competent authorities of the Member States documents equivalent to those referred to in Article 47(1) of Directive 2006/43/EC that relate to investigations it may perform on such auditors and audit firms.
- (12) On that basis, taking also into account the technical advice of the Committee of European Auditing Oversight Bodies referred to in Article 30(7)(c) of Regulation (EU) No 537/2014 of the European Parliament and of the Council<sup>(3)</sup>, the Ministry of Finance and the CSRC meet requirements that should be declared adequate for the purposes of Article 47(1)(c) of Directive 2006/43/EC.
- (13) This Decision does not affect the cooperation arrangements referred to in Article 25(4) of Directive 2004/109/EC of the European Parliament and of the Council<sup>(4)</sup>.
- (14) Any conclusion on the adequacy of the requirements met by the competent authorities of a third country pursuant to the first subparagraph of Article 47(3) of Directive 2006/43/EC does not pre-empt any decision that the Commission may adopt on the equivalence of the public oversight, quality assurance, investigation and penalty systems for auditors and audit entities of that third country pursuant to Article 46(2) of that Directive.
- (15) This Decision aims to facilitate effective cooperation between the competent authorities of the Member States and those of the People's Republic of China. Its purpose is to allow those authorities to exercise their functions of public oversight, external quality assurance and investigations and, at the same time, to protect the rights of the parties concerned. Where a competent authority decides to enter into working arrangements on the basis of reciprocity with the competent authorities of the People's Republic of China in order to enable the transfer of audit working papers and other documents held by statutory auditors or audit firms and of inspection or investigation reports, the Member State concerned is under the obligation to communicate to the Commission the reciprocal working arrangements concluded with those authorities to allow the Commission to assess whether cooperation is in accordance with Article 47 of Directive 2006/43/EC.
- (16) The ultimate objective of cooperation on audit oversight between Member States' competent authorities and the competent authorities of the People's Republic of China is to reach mutual reliance on each other's oversight systems and to enhance convergence in audit quality. Such a mutual reliance and enhanced convergence would be based on the equivalence of the audit oversight systems of the Union and of the People's Republic of China. As a consequence, transfers of audit working papers or other documents held by statutory auditors or audit firms and of inspection or investigation reports should ultimately become the exception.
- (17) This Decision reflects the growing interest of Member States in further developing cooperation with the competent authorities of the People's Republic of China in the area of statutory audit as a means to facilitate access of Union entities to the capital market of the People's Republic of China and to encourage capital market activities in the Member States of companies with a registered office in the People's Republic of China.
- (18) Given the present lack of practical experience in supervisory cooperation with the competent authorities of the People's Republic of China this Decision should be applicable for a limited period of time.

<sup>(3)</sup> Regulation (EU) No 537/2014 of the European Parliament and of the Council of 16 April 2014 on specific requirements regarding statutory audit of public-interest entities and repealing Commission Decision 2005/909/EC (OJ L 158, 27.5.2014, p. 77).

<sup>(4)</sup> Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC (OJ L 390, 31.12.2004, p. 38).

- (19) Notwithstanding the time limitation, the Commission will monitor on a regular basis the market developments, evolution of the supervisory and regulatory frameworks and the effectiveness of supervisory cooperation, taking into account experience gained during supervisory cooperation, also based on Member States' input. In particular, the Commission may undertake a specific review of this Decision at any time before the end of its expiration period where relevant developments make it necessary to re-assess the declaration of adequacy granted by this Decision. Such re-assessment could lead to the repeal of this Decision.
- (20) The European Data Protection Supervisor delivered an opinion on 20 May 2019.
- (21) The measures provided for in this Decision are in accordance with the opinion of the Committee established pursuant to Article 48(1) of Directive 2006/43/EC,

HAS ADOPTED THIS DECISION:

*Article 1*

The Ministry of Finance and the Securities Regulatory Commission of the People's Republic of China meet requirements which shall be considered adequate within the meaning of Article 47(1)(c) of Directive 2006/43/EC for the purposes of transfers of audit working papers or other documents and of inspection and investigation reports under Article 47(1) of Directive 2006/43/EC.

*Article 2*

Member States shall ensure that where audit working papers or other documents held by statutory auditors or audit firms are exclusively held by a statutory auditor or audit firm registered in a Member State other than the Member State where the group auditor is registered and whose competent authority has received a request from any of the authorities referred to in Article 1, such papers or documents shall be transferred to the requesting competent authority only if the competent authority of the first Member State has given its express agreement to the transfer.

*Article 3*

This Decision shall apply from 15 November 2019 until 14 November 2024.

*Article 4*

This Decision is addressed to the Member States.

Done at Brussels, 6 November 2019.

*For the Commission*  
Valdis DOMBROVSKIS  
*Vice-President*

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## CORRIGENDA

**Corrigendum to Commission Delegated Regulation (EU) 2019/934 of 12 March 2019 supplementing Regulation (EU) No 1308/2013 of the European Parliament and of the Council as regards wine-growing areas where the alcoholic strength may be increased, authorised oenological practices and restrictions applicable to the production and conservation of grapevine products, the minimum percentage of alcohol for by-products and their disposal, and publication of OIV files**

(Official Journal of the European Union L 149 of 7 June 2019)

On page 9, in Annex I, in Part A, in Table 1, in column 2 of line item 2:

*for:* 'Subject to the conditions set out in files 1.8 (1970), 2.4.4 (1988), 3.4.3 (1988) and 3.4.3.1 (1990) of the OIV Code of Oenological Practices.'

*read:* 'Subject to the conditions set out in files 1.8 (1970), 2.2.4 (1988), 3.4.3 (1988) and 3.4.3.1 (1990) of the OIV Code of Oenological Practices.'

On page 10, in Annex I, in Part A, in Table 1, in column 2 of line item 14, fourth sentence:

*for:* 'Subject to the conditions set out in files 2.1.3.1.3 (2010), 2.1.3.2.4 (2012), 3.1.1.4 (2010), 3.1.2.3 (2012) of the OIV Code of Oenological Practices.'

*read:* 'Subject to the conditions set out in files 2.1.3.1.3 (2010), 2.1.3.2.4 (2012), 3.1.1.4 (2010), 3.1.2.4 (2012) of the OIV Code of Oenological Practices.'

On page 16, in Annex I, in Part A, in Table 2, in column 3 of line item 5.13:

*for:* 'File 2.1.22 (2009); 3.2.1 (2011); 3.2.12 (2009); 3.2.1 (2009)',

*read:* 'File 2.1.22 (2009); 3.2.1 (2011); 3.2.12 (2009)'.

On page 16, in Annex I, in Part A, in Table 2, in column 3 of line item 5.14

*for:* 'File 2.1.23 (2009); 3.2.1 (2011); 3.2.13 (2009); 3.2.1 (2009)',

*read:* 'File 2.1.23 (2009); 3.2.1 (2011); 3.2.13 (2009)'.

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**Corrigendum to Commission Implementing Regulation (EU) 2019/1706 of 10 October 2019 amending Implementing Regulation (EU) 2017/325 imposing a definitive anti-dumping duty on imports of high tenacity yarns of polyesters originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council**

*(Official Journal of the European Union L 260 of 11 October 2019)*

On page 44, in recital (17):

*for:* 'The parties were granted the possibility to submit comments. [No comments were received.]'

*read:* 'The parties were granted the possibility to submit comments. No comments were received.'

On page 44, in Article 1:

<i>for:</i>	Company name	City
	'Wuxi Solead Technology Development Co., Ltd,	Xinjian Town'

<i>read:</i>	Company name	City
	'Wuxi Solead Technology Development Co., Ltd,	Yixing City'



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