

**Resolution no. 23270**

**Adoption of a regulation on the authorisation and supervision of entities entitled to bid on the emission allowances auctioning market pursuant to Article 20-ter, paragraph 1 of Italian Legislative Decree 58/1998**

LA COMMISSIONE NAZIONALE PER LE SOCIETÀ E LA BORSA  
[THE NATIONAL COMMISSION FOR COMPANIES AND THE STOCK EXCHANGE]

HAVING REGARD to Commission Regulation (EU) No. 1031/2010 and subsequent amendments relating to the timing, administration and other aspects of auctioning of greenhouse gas emission allowances in accordance with Directive 2003/87/EC of the European Parliament and of the Council (hereinafter "Auction Regulation") which, inter alia, introduced specific rules for participating in the auctioning of emission allowances for entities where the exemption referred to in Article 2, paragraph 1, letter j) of Directive 2014/65/EU applies;

HAVING REGARD to Commission Delegated Regulation (EU) 2023/2830 of 17 October 2023 supplementing Directive 2003/87/EC of the European Parliament and of the Council by establishing the rules relating to the timing, administration and other aspects of auctioning greenhouse gas emission allowances, which, in repealing the aforementioned Regulation (EU) no. 1031/2010, revised certain rules referring to conducting auctions for emission allowances;

HAVING REGARD, in particular, to Article 57, paragraph 2 of Delegated Regulation (EU) 2023/2830, according to which "*references to the repealed Regulation (No. 1031/2010) shall be construed as references to this Regulation and shall be read in accordance with the correlation table in Annex IV*";

HAVING REGARD TO Italian law no. 216 of 7 June 1974, as subsequently amended;

HAVING REGARD TO Italian Legislative Decree no. 58 of 24 February 1998, containing the Consolidated Law on Financial Intermediation (hereinafter, "Consolidated Law on Finance");

HAVING REGARD to Italian Law no. 19 of 3 May 2019 on the "*Provisions for fulfilling the obligations deriving from Italy's membership of the European Union - European Law 2018*", which introduced amendments to the Consolidated Law on Finance in order to implement the Auction Regulation;

HAVING REGARD to Article 20-ter of the Consolidated Law on Finance, which vested Consob with authorisation and supervisory powers over parties benefiting from the exemption provided for in Article 4-terdecies, paragraph 1, letter l) of the Consolidated Law on Finance and, in particular, paragraph 4 of the aforementioned article, which vested Consob with the power to impose implementing provisions with reference to the authorisation procedure and the rules of conduct to observe for the purposes of participating in the auctioning of emission allowances;

HAVING REGARD to Consob's general regulation on administrative proceedings pursuant to Article 24 of Italian Law no. 262 of 28 December 2005 and Article 2, paragraph 5 of Law no. 241 of 7 August 1990, as amended, adopted by Consob Resolution no. 18388 of 29 November 2012, as amended;

HAVING REGARD to the regulation on the procedures for adopting general regulations, pursuant to Article 23 of Italian Law no. 262 of 28 December 2005, as amended, adopted by Resolution no. 19654



of 5 July 2016 and subsequent amendments;

HAVING REGARD to the comments received in response to the consultation document on the Regulation referring to authorisation and supervision of entities entitled to bid on the emission allowances auctioning market pursuant to Article 20-ter, paragraph 1 of Italian Legislative Decree no. 58/1998 published on 22 March 2024, as outlined in the explanatory report published on the Consob website;

## **RESOLVES:**

### **Art. 1**

*(Approval of the Regulation on the authorisation and supervision of entities entitled to bid on the emission allowances auctioning market pursuant to Article 20-ter, paragraph 1 of Italian Legislative Decree no. 58/1998)*

1. The attached “*Regulation on the authorisation and supervision of entities entitled to bid on the emission allowances auctioning market pursuant to Article 20-ter, paragraph 1 of Italian Legislative Decree no. 58/1998*” is approved.

### **Art. 2**

*(Entry into force)*

1. This resolution shall be published on the Consob website and in the Official Gazette of the Italian Republic. It shall enter into force on the day following its publication in the Official Gazette<sup>1</sup>.

3 October 2024

THE CHAIRMAN  
Paolo Savona

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<sup>1</sup> Published in the Official Gazette of the Italian Republic No. 241 of 14 October 2024, in force since 15 October 2024.



**REGULATION ON THE AUTHORISATION AND SUPERVISION OF ENTITIES  
ENTITLED TO BID IN THE GREENHOUSE GAS EMISSION ALLOWANCE AUCTION  
MARKET PURSUANT TO ARTICLE 20-TER, PARAGRAPH 1 OF ITALIAN  
LEGISLATIVE DECREE NO. 58/1998**

**PART I  
GENERAL PROVISIONS**

Art. 1  
*(Regulatory sources)*

1. This Regulation is adopted pursuant to Article 20-ter, paragraphs 1 and 4 of Italian Legislative Decree no. 58 of 24 February 1998.

Art. 2  
*(Definitions)*

2. In this Regulation:

- a) “Consolidated Law on Finance”: means Italian Legislative Decree no. 58 of 24 February 1998;
- b) “Regulation (EU) 2023/2830”: means Commission Delegated Regulation no. 2830 of 17 October 2023 supplementing Directive 2003/87/EC of the European Parliament and of the Council by establishing the rules relating to the timing, administration and other aspects of auctioning greenhouse gas emission allowances;
- c) “parties authorised pursuant to Article 20-ter, paragraph 1 of the Consolidated Law on Finance”: means natural or legal persons established in Italy who benefit from the exemption provided for in Article 4-terdecies, paragraph 1, letter l) of Legislative Decree no. 58 of 24 February 1998, authorised to bid on the auction market for greenhouse gas emission allowances, in accordance with the provisions of Articles 18, paragraph 2 and 50 of Regulation (EU) 2023/2830.

3. Unless specified otherwise, for the purposes of this Regulation, the definitions contained in Regulation (EU) 2023/2830, in the Consolidated Law and in the related implementing provisions shall apply.

**PART II  
REGULATION FOR PARTICIPATION IN THE AUCTIONS FOR EMISSION  
ALLOWANCES**

**TITLE I  
REGISTRATION**

Art. 3  
*(Registration)*

1. Consob records the parties duly authorised pursuant to Article 20-ter, paragraph 1 of the Consolidated Law, in a special register.



Art. 4  
*(Contents of the register)*

1. The following shall be specified for each registered party in the register referred to in Article 3:

*a)* in the case of natural persons:

- a.1) surname and first name;
- a.2) place and date of birth;
- a.3) address of elected address for service and, if different, residential address;
- a.4) details of the authorisation and registration order number.

*b)* in the case of legal entities:

- b.1) company name;
- b.2) registered office and, if different, headquarters of general management;
- b.3) LEI identification code;
- b.4) details of the authorisation and registration order number.

Art. 5  
*(Publication of the register)*

1. The register is published in the appropriate section of the Consob website.

**TITLE II**  
**AUTHORISATION AND CANCELLATION PROCEDURE**

Art. 6  
*(Application for authorisation)*

1. The application for authorisation to submit bids on the emission allowance auction market pursuant to Article 20-ter, paragraph 1 of the Consolidated Law is prepared in accordance with the provisions of Annex 1 and is accompanied by a report, prepared in compliance with the provisions of Annex 2, containing details of the ways in which the activity subject to authorisation is intended to be carried out, including the procedural and organisational measures adopted by the applicant for exercising the same.

2. Within twenty working days of receipt, Consob verifies whether the application is compliant and complete and notifies the applicant of any missing documentation, which needs to be sent to Consob within thirty working days of receipt of this notification, failing which the application will not be admissible.

3. The application is dated from the day of its submission or, in the case of incomplete documentation, from the day when the documentation is complete.

4. During its investigation, Consob may request further information:

- a) from the applicant;
- b) from the parties performing administrative, management and control functions for the applicant, if the latter is a legal entity;
- c) from the parties controlling the applicant, if the latter is a legal entity;
- d) from any other party, including non-Italian parties.

5. In the cases referred to under paragraph 4, the deadline for concluding proceedings is suspended from the date on which the information request is sent until the date on which Consob receives the same. Proceedings are terminated if the applicant fails to submit the requested material within the deadline set for this purpose by Consob.

6. Any changes to the requirements for the issuance of the authorisation that may arise during the investigation or if significant changes are made to the report referred to in Annex 2, these shall be brought to the attention of Consob without delay. The applicant party shall send the relevant documentation to Consob within seven working days of the occurrence of the event. In this case, the deadline for concluding proceedings is interrupted from the date on which the communication concerning the changes made is received and resumes from the date when Consob receives the relevant documentation.

7. Consob resolves on the application within sixty working days.

8. Authorisation is denied where the conditions under Article 50 of Regulation (EU) 2023/2830 are not met or if the applicant does not meet the requirements under Articles 7, 8 and 9 of this Regulation.

#### Art. 7

##### *(Requirements of integrity and professionalism)*

1. For the purposes of Article 50, paragraph 5, letter a) of Regulation (EU) 2023/2830, the issuance of the authorisation shall be subject to compliance with the conditions set in paragraphs 2 and 3.

2. The applicant or, if the latter is a legal entity, whoever performs the administration, management and control functions for the same, declare under their own responsibility and in the manner indicated in Annex 1, that:

- a) there is no ban, disqualification in their regard or that they have not been convicted with a penalty that entails the ban, albeit temporarily, from public offices or the inability to exercise managerial offices;
- b) they have not been subjected to preventive measures ordered by the judiciary pursuant to Italian Legislative Decree no. 159 of 6 September 2011, without prejudice to the effects of rehabilitation;
- c) have not been convicted with an irrevocable sentence, without prejudice to the effects of rehabilitation:
  - 1) to imprisonment for one of the offences provided for by the rules governing banking, financial, securities, insurance and by the rules on markets, securities and payment instruments;

- 2) to imprisonment for one of the offences provided for in Title XI of Book V of the Italian Civil Code and in Royal Decree no. 267 of 16 March 1942;
  - 3) imprisonment for a period of not less than one year for a crime against the public administration, against public confidence, against property, against public order, against the public economy or for a tax-related offence;
  - 4) imprisonment for a period of not less than two years for any non-criminal offence;
  - d) not convicted for one of the penalties specified under letter c), with a sentence that applies the penalty at the request of the parties, without prejudice to the case where the offence is extinguished;
  - e) not to have criminal convictions or other sanctioning measures imposed in foreign States for cases corresponding to those that would result in the loss of the integrity requirements in terms of Italian law.
3. The parties specified under paragraph 2 are chosen according to criteria of professionalism among those who have gained at least two years proven experience in exercising:
- a) administrative or control activities or managerial tasks at companies;
  - b) professional activities in matters relating to the credit, financial, securities and insurance sectors;
  - c) teaching at university level in legal or economic subjects;
  - d) administrative or managerial functions in private entities, public entities or public administrations relating to the credit, financial, securities or insurance sector or in public entities or public administrations that do not relate to the aforementioned sectors provided that the functions involve the management of economic-financial resources.

#### Art. 8

##### *(Integrity requirements for parties in control)*

1. For the purposes of issuing the authorisation, if those controlling the applicant are a legal entity, they declare under their own responsibility and in the manner indicated in Annex 1, that they meet the integrity requirements specified under Article 7, paragraph 2.
2. If none of the shareholders has control, paragraph 1 shall apply to shareholders with at least a twenty percent shareholding of the company's capital.
3. Where the control or shareholding referred to in paragraph 2 is held through one or more legal entities, the integrity requirements in paragraph 1 shall apply to the directors and the general manager or to persons holding equivalent offices, as well as to the natural persons controlling such legal entities.

#### Art. 9

##### *(Capital requirements)*

1. For the purposes of issuing the authorisation, applicants must take out insurance to cover the liability for damages deriving from providing the professional activity to the clients on behalf of whom they submit bids to the emission allowances auction market, which ensures coverage of at least EUR

40,000 for each claim for compensation, and EUR 2 million per year for the total amount of the claims for compensation.

2. Failure to comply with the requirement referred to in paragraph 1 shall result in the authorisation lapsing, unless this requirement is remedied within a maximum period of two months.

3. Parties shall not submit new bids to the emission allowance auction market during the period specified in paragraph 2.

#### Art. 10

##### *(Deletion from the register)*

1. Deletion from the register referred to in Article 3 shall be undertaken:

- a) at the request of the party;
- b) if the authorisation was obtained by making false declarations or by any other irregular means;
- c) following the loss of the prescribed requirements for granting the authorisation;
- d) following the non-payment of the supervisory contribution to the extent determined annually by Consob;
- e) following the revocation of the authorisation due to the serious and systematic breach of the provisions governing the submission of bids to the emission allowance auction market.

2. Parties who intend relinquishing the authorisation to bid on the emission allowance auction market shall submit a specific request to Consob. Consob resolves on the application within a maximum period of sixty working days from receipt of the same. Article 6, paragraphs 4 and 5 shall apply.

3. In the cases provided for in paragraph 1, letters c) and d), parties deleted from the register may be re-registered on application, provided that they meet the requirements prescribed for the issuance of the authorisation or have paid the required supervisory contribution.

### **TITLE III RULES OF CONDUCT**

#### Art. 11

##### *(Conflicts of interest)*

1. Without prejudice to the provisions of Article 50, paragraphs 2, 3 and 5 of Regulation (EU) 2023/2830, the entities authorised pursuant to Article 20-ter, paragraph 1 of the Consolidated Law shall avoid any conflicts of interest that may arise in the performance of the activity from adversely affecting the interests of the clients on behalf of whom they submit bids. More specifically, the parties authorised pursuant to Article 20-ter, paragraph 1 of the Consolidated Law draw up, implement and maintain an effective policy on conflicts of interest, formulated in writing, which makes it possible to identify the circumstances that generate or could generate a conflict of interest that is prejudicial to one or more customers, and which defines the procedures to be followed and the measures to be taken to prevent or manage such conflicts. Only when the developed procedures and measures are insufficient to ensure, with reasonable certainty, that the risk of prejudicing the interests of customers is avoided, as an extreme measure, the parties authorised pursuant to Article 20-ter, paragraph 1 of the Consolidated Law, shall clearly communicate the general nature and/or sources of said conflicts to



them, with the measures taken to mitigate the related risks. Excessive recourse to these communications to customers is deemed a shortcoming in the conflicts of interest policy. Parties authorised pursuant to Article 20-ter, paragraph 1 of the Consolidated Law shall periodically evaluate and review, at least once a year, the conflicts of interest policy that was drawn up and take appropriate measures to remedy any shortcomings.

#### Art. 12

##### *(Holding amounts of money as an advance payment)*

2. Parties authorised pursuant to Article 20-ter, paragraph 1 of the Consolidated Law which, in accordance with the provisions of Article 50, paragraph 2, letter e) of Regulation (EU) 2023/2830, require amounts of money from clients on behalf of whom they submit bids to the emission allowance auction market as an advance payment, take appropriate measures to ensure the protection of clients' rights and minimise the risk of loss or misappropriation of said amounts of money.

3. Parties authorised pursuant to Article 20-ter, paragraph 1 of the Consolidated Law shall deposit, within the working day following their receipt, the cash received from customers with an authorised depository in accounts held by the depository with the specification that these are third-party assets; these accounts are kept separate from those of the parties authorised pursuant to Article 20-ter, paragraph 1 of the Consolidated Law.

4. The parties authorised pursuant to Article 20-ter, paragraph 1 of the Consolidated Law establish and keep specific records for the amounts of money pertaining to customers. The records relate to each customer and specify the authorised depositories where the cash was deposited. Records are updated promptly and on a continual basis, so that the position of each customer can be unequivocally reconstructed at any time.

5. Parties authorised pursuant to Article 20-ter, paragraph 1 of the Consolidated Law entrust a party registered in the Register of Statutory Auditors with the six-monthly task of reconciling the cash received from customers and the amounts deposited in the accounts opened with the authorised depositories. The verification of the reconciliation referred to in this provision may be entrusted to the independent auditor or the independent audit firm, which may already be appointed for the statutory audit of the accounts of the authorised parties pursuant to Article 20-ter, paragraph 1 of the Consolidated Law.

6. The independent auditor or audit firm shall carry out the verification activities referred to in paragraph 4 within the framework of procedures and in accordance with the procedures defined in the contract with the parties authorised pursuant to Article 20-ter, paragraph 1 of the Consolidated Law. The checks carried out and the related outcomes form the subject of a specific report addressed to the party conferring the appointment. A copy of the report is sent at the same time to Consob via certified email.

#### Art. 13

##### *(Communications to Consob)*

1. The parties authorised pursuant to Article 20-ter, paragraph 1 of the Consolidated Law shall immediately notify Consob of the start, any interruption and the resumption of activities.

2. The parties authorised pursuant to Article 20-ter, paragraph 1 of the Consolidated Law notify Consob without delay and, in any case, no later than two working days, regarding the loss of the insurance coverage provided for pursuant to Article 9, paragraph 1.



3. If the person authorised pursuant to Article 20-ter, paragraph 1 of the Consolidated Law is a legal entity, any changes concerning the corporate officers and the holders of a qualifying holding in the company shall be brought to the attention of Consob within ten working days of the occurrence of the event, together with the documentation certifying that they meet the professional and integrity requirements referred to in Articles 7 and 8.

4. Without prejudice to the provisions of article 4-terdecies, paragraph 1, letter l), number 3 of the Consolidated Law, the parties authorised pursuant to article 20-ter, paragraph 1 of the same Consolidated Law shall send Consob by 31 March of each year:

- a) the report on the activities carried out and on the organisational and procedural measures adopted according to the schedule in Annex 2, highlighting the changes that have occurred in respect of the information already communicated. In the event of significant interim changes, these shall be notified to Consob within thirty days of the occurrence of the event. If no changes have occurred, the report may not be sent, with it being understood that this circumstance must be communicated;
- b) data on operations, specifying the information relating to bids submitted on own account and/or on behalf of customers during the previous year and the relative outcomes, according to the schedule prepared by Consob;
- c) data on the complaints received in writing, the measures adopted to remedy any shortcomings detected, as well as the planned activities.



## ANNEX 1

### **INSTRUCTIONS FOR SUBMITTING AN APPLICATION FOR AUTHORISATION TO BID ON THE EMISSION ALLOWANCES MARKET PURSUANT TO ARTICLE 20-TER, PARAGRAPH 1, CONSOLIDATED LAW ON FINANCE**

#### **A) IN THE CASE OF NATURAL PERSONS**

1. The application for authorisation, signed by the applicant and in compliance with current legislation on stamp duty, must indicate:

- a)* the full details of the applicant, including the address elected for service in Italy and the residential address, if this differs from the address for service, the tax code or VAT number, together with a copy of a valid identification document;
- b)* an active certified email address.

2. The application for authorisation must contain the specification of the elements on the basis of which the applicant considers that the activity carried out pursuant to Article 4-*terdecies*, paragraph 1, letter *l)* of the Consolidated Law on Finance is ancillary to the main activity, also based on the provisions of the delegated acts of Directive 2014/65/EU relating to the criteria for determining when an activity must be considered ancillary to the main activity. In this regard, details must be provided of any communication made to Consob pursuant to Article 4-*terdecies*, paragraph 1, letter *l)*, number 3) of the Consolidated Law on Finance.

The application for authorisation must also contain the declaration in lieu of an affidavit/certification, drawn up pursuant to Articles 46 and 47 of Italian Presidential Decree no. 445 of 28 December 2000 and subsequent amendments, certifying:

- a)* the absence of causes for the lapsing, suspension or prohibition referred to in Article 67 of Italian Legislative Decree no. 159/2011 ("Code of anti-Mafia laws and prevention measures, as well as new provisions on anti-Mafia documentation") and subsequent amendments;
- b)* the absence of one of the circumstances referred to in Article 7, paragraph 2 of the Regulation;
- c)* the existence of the professional requirements referred to in Article 7, paragraph 3 of the Regulation.

3. The application for authorisation is accompanied by a report on the methods whereby the activity subject to authorisation is to be carried out, including the procedural and organisational measures adopted, prepared in accordance with the schedule in Annex 2, as well as a copy of the insurance contract stipulated pursuant to Article 9, paragraph 1.

#### **B) IN THE CASE OF LEGAL ENTITIES**

1. The application for authorisation, signed by the company's legal representative and in compliance with current legislation on stamp duty, specifies the company name, registered office and administrative headquarters of the company, the LEI identification code, the name and contact details of a company contact person and the list of attached documents.

2. The application for authorisation must contain the specification of the elements on the basis of which the applicant considers that the activity carried out pursuant to Article 4-*terdecies*, paragraph 1,

letter *l*) of the Consolidated Law on Finance is ancillary to the main activity, also based on the provisions of the delegated acts of Directive 2014/65/EU relating to the criteria for determining when an activity must be considered ancillary to the main activity. In this regard, any communication made to Consob pursuant to Article 4-*terdecies*, paragraph 1, letter *l*), number 3) of the Consolidated Law on Finance must be provided.

The application for authorisation shall also be accompanied by the following documents:

- a*) copy of the articles of incorporation and by-laws, accompanied by an affidavit made pursuant to Italian Presidential Decree no. 445 of 28 December 2000 for the certificate of validity issued by the Companies' Register Office;
- b*) a list of the names of all the parties who perform administrative, management and control functions;
- c*) the minutes of the meeting, during which the administrative body verified that each of the parties called upon to perform administrative, management and control functions meets the professional and integrity requirements referred to in Article 7 of the Regulation, together with the relevant annexes.
- d*) a list of the parties who have control, specifying their respective shareholdings in absolute value and percentage terms, and the party through which the indirect shareholding is held;
- e*) the documentation verifying the integrity requirements for the parties who control the company:
  - i*) *in the case of natural persons*:
    - affidavit/certification (pursuant to Articles 46 and 47 of Presidential Decree no. 445 of 28 December 2000), certifying the absence of grounds for the lapsing, suspension or prohibition referred to in Article 67 of Legislative Decree no. 159/2011 and the non-existence of one of the situations referred to in Article 8 of the Regulation.
  - ii*) *in the case of legal entities*:
    - minutes of the Board of Directors or equivalent body, showing that verification was done on the requirements referring to the directors and manager or parties holding equivalent positions in the participating company or entity;
- f*) copy of the insurance contract stipulated pursuant to Article 9, paragraph 1.

3. The application for authorisation is accompanied by a report on the methods whereby the activity subject to authorisation is to be carried out, including the procedural and organisational measures adopted, prepared in accordance with the schedule in Annex 2.

## ANNEX 2

### REPORT ON ACTIVITIES AND ORGANISATIONAL AND PROCEDURAL MEASURES

The party requesting authorisation pursuant to Article 20-ter, paragraph 1 of the Consolidated Law describes in detail the activities it intends carrying out, specifying, in particular, whether it intends applying to participate in the emission allowances auction market on its own behalf and/or on behalf of the clients of its main activity. In the case of the latter, details must be provided on the type of customer on whose behalf bids will be submitted, also to ensure compliance with the provisions of Article 18, paragraph 3 of Regulation (EU) 2023/2830.

In addition, the applicant shall describe in detail the methods, including IT methods, to ensure compliance with the obligations referred to in Article 50, paragraphs 2, 3 and 5, of Regulation (EU) 2023/2830.

More specifically, the applicant provides at least the following detailed information:

1. the systems and procedures ensuring fair and non-discriminatory treatment of applications for participation in auctions submitted on behalf of clients and efficient participation in auctions;
2. a description of the policy for identifying and managing conflicts of interest;
3. a description of the criteria and remuneration policies for the activity carried out in favour of customers;
4. the method for determining the amounts that may be held as an advance payment in accordance with the provisions of Article 50, paragraph 2, letter *e*) of Regulation (EU) 2023/2830 and the measures taken to ensure asset separation and the safeguarding of customers' rights, including information regarding the appointment conferred pursuant to Article 12, paragraph 4;
5. the safeguards, including IT safeguards, adopted for the receipt of payments provided by customers and for the transfer of allowances to customers on whose behalf they operate;
6. the place and method for storing the documentation and information received or produced in the performance of the assignment for the management of bids on behalf of customers;
7. the measures taken to deal with complaints submitted by customers;
8. safeguards to ensure the confidentiality of information acquired by customers as a result of the activity carried out;
9. measures to ensure compliance with legislation relating to preventing the use of the financial system for the purpose of money laundering or terrorist funding;
10. a description of the business continuity plans, including the systems and human resources dedicated to the activity;
11. any other useful element to illustrate the characteristics of the activity carried out.