



- Consultation Response -

Europex response to the consultation on the draft Delegated Regulation adjusting the EU ETS auction process for 2021-30

Brussels, 6 August 2019 | Europex welcomes the opportunity to comment on the proposal for a Commission Delegated Regulation to align the auctioning of allowances with the EU ETS rules for the Fourth Trading Period and with the classification of allowances as financial instruments as published on 9 July 2019.

In this context, we have taken particular positive note of the following suggested changes:

- The simplified procedure for the determination and publication of auction calendars;
- The clarification of rules on the distribution of auction volumes in case of multiple auction cancellations;
- The clarification of the notification procedure for the voluntary cancellation of allowances.

In the following, and with a view to further improve the efficient functioning of the European emissions market, Europex would like to suggest a number of additional changes to Regulation (EU) No 1031/2010:

1) Auction calendar (Arts. 8, 11, 13, 32)

- a) From a market perspective and with a view to ensure stability and transparency, it would be highly beneficial to decrease the number of auction calendar adjustments. The current calendar cycle is very complex. In particular, the publication of indicative auction volumes increases the level of complexity. A solution could be to change the cycle to a calendar-year cycle or to a September-to-August cycle for both the MSR adjustment and the regular auction calendar. This way, indicative volumes would be avoided and only one calendar would be valid at a time. To this end, we suggest changes to Articles 11, 13 and 32 of Regulation (EU) No 1031/2010 (additions in bold, deletions crossed out):

*Article 11: 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~~ **in the period from September of the current year until August of the following year** having previously consulted the Commission. The auction platforms concerned shall publish the auction calendar by 15 July of the ~~previous~~ **current** 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.

*Article 13, paragraph 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~~ **in the period from September of the current year until August of the following year**, having previously consulted the Commission. The auction platforms concerned shall publish the auction calendar by ~~30 September~~ **15 July** of the ~~previous~~ **current** 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.*

Article 32, paragraph 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~~ **15 July** of the ~~previous~~ **current** year or as soon as practicable thereafter, and for those covered by Chapter III of that Directive, by 15 July of the ~~previous~~ **current** 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.*

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

- b) A minimum lead time for announcing adjustments to the auction calendar should be introduced. As an example, this could be four weeks and would not apply to adjustments caused by auction cancellations.
- c) Auction platforms should be allowed to choose to submit one draft calendar for EUA and EUAA auctions.
- d) The requirement for minimum and maximum auction volumes per auction for opt-out platforms should be removed to allow for greater flexibility.
- e) Instead of defining auction volumes in detail, the amended Regulation (EU) No 1031/2010 should leave more flexibility for auction platforms to determine volumes (e.g. reduced volumes in August, December and January).

- f) The requirement for a two-hour pause between bidding windows should be removed. There is no operational reason for this pause and removing it could support market liquidity as market participants could go straight from one auction to the next.
- g) Where the annual auction volume of allowances of a Member State may not be distributed evenly over the auctions in a given year, the auction platform should be allowed to agree on a mode of auctioning with the Member State. To this end, we suggest changes to Article 8 of Regulation (EU) No 1031/2010 (additions in bold, deletions crossed out):

*Paragraph 5, last subparagraph: 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~~ **1,000** 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~~ **agree with the Member State on the distribution of the respective allowances.***

2) Multiples of lots of 500 allowances (Art. 6)

The lot sizes for the auctions and the secondary market should be harmonised to the standard lot size of 1,000 allowances of the secondary market.

3) Auction accessibility (Arts. 18-20)

- a) The eligibility criteria should be modified to facilitate the access for market participants. The aim should be to avoid any additional requirements on top of the criteria applicable to a secondary market organised by an exchange, which is a regulated market.
- b) The requirements for MiFID-exempt firms should be harmonised between Member States where they differ with a view to facilitate trading by companies based in- and outside the EU. For instance, the related implementing legislation of MiFID II in EU Member States, such as the German Banking Act (*Kreditwesengesetz - KWG*), provide for (i) exemptions for third-country investment firms or credit institutions as well as (ii) the non-applicability of the licensing requirement, leading in combination to the ability of third-country firms to act as investment firms in Germany without an explicit license. This explicit license, however, is currently required to participate in EU ETS auctions.

The requirements for bidding on behalf should be reduced to make this option more attractive for market participants to use.

4) Transaction reporting (Art. 36)

- a) The rules on the obligation to report transactions should be further clarified. To this end, we suggest a number of changes to Article 36 of Regulation (EU) No 1031/2010 (additions in bold, deletions crossed out):

Paragraph 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 **buy side** transaction executed on the auction platform that results in the transfer of emission allowances **from a European Union Member State** to the successful bidders. **The European Union Member States shall be identified by a single legal identifier to be provided by the European Commission to the auction platforms.**

*Paragraph 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 auctioneers** shall submit such information to the auction platform.*

*Paragraph 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 ~~or sold~~, 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 **exactly the same** 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.*

5) Structure and level of fees (Art. 51)

Services under the common auction platform contract are remunerated on a fixed cost basis, whereby the auction platform's costs are allocated over the annual auction volume, translated into variable auction fees to be paid by the successful bidders. At the same time, the resulting auction fees must not exceed the level of comparable standard fees applied to the secondary market in accordance with Article 51. In light of a significant drop in auction volumes, this poses challenges for the auction platform in recouping the agreed remuneration for the common auction platform contract. In our view, the dilemma described is an unintended consequence of Article 51 of Regulation (EU) No 1031/2010: "an auction platform provider should not be forced to increase its fees in other market segments in order to recover its costs for the auction services". There are two possible ways to solve this issue: by following the principle of charging both sides in the auctions, buyers and sellers, just as in the secondary market or by setting a relative or absolute cap in case the auction fees would exceed the comparable standard fees on the secondary market. Europex welcomes the proposed amendment to Article 51, paragraph 1, as a positive step in the right direction to ensure the commercial viability of the auction platform's services. In light of increasing requirements, however, the suggested amendment should be further improved as the current wording still puts the commercial viability of the auction platform's services at risk.

Furthermore, as a general remark for future consultations, we would indeed welcome a mark-up version of the suggested amendments to substantially facilitate the review process.

About

Europex is a not-for-profit association of European energy exchanges with 27 members. It represents the interests of exchange-based wholesale electricity, gas and environmental markets, focuses on developments of the European regulatory framework for wholesale energy trading and provides a discussion platform at European level.

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