

Consultazione pubblica sul funzionamento del regolamento Aste nell'ambito dell'EU ETS

(http://ec.europa.eu/clima/news/articles/news_2015122201_en.htm)

La consultazione pubblica ha ad oggetto il funzionamento del sistema d'asta dell'EU ETS ed è aperta sino al 15 Marzo 2016. Possono prendervi parte le istituzioni (ministeri per la specifica parte di attuazione), enti, associazioni di categoria, NGO, rappresentanti del Governo, della società civile, imprese, università o istituti di ricerca.

Pervenire ad una "risposta nazionale" alla consultazione sarebbe auspicabile, in linea con l'approccio tenuto su tutti gli altri aspetti della riforma dell'EU ETS. Tuttavia, tenendo conto del fatto che la Commissione svolge sulle risposte alla consultazione un'analisi di tipo statistico-quantitativo, potrebbe essere utile che ciascun soggetto nazionale coinvolto nell'attuazione del Sistema rispondesse formalmente alla consultazione reiterando la posizione comune concordata tra le Istituzioni.

Le risposte (in blu) sono frutto dell'esperienza maturata dal GSE in quanto Responsabile del collocamento, ai sensi del D.Lgs. 30/2013 e nelle modalità definite dalla Convenzione MEF-GSE del 9 maggio 2014.

1. PROFILO

* P.1 WHAT IS YOUR PROFILE?

- Small or medium sized enterprise (SME) ¹
- Large enterprise
- Trade association representing large enterprises
- SME business organisation
- **Government entity/regulatory authority**
- Academic/research institution
- Non-governmental organisation Citizen Other

* PLEASE EXPLAIN: *

Please enter the name of your business/organisation/association etc. :

Italian Government. Responses to the consultation have been elaborated with the technical support of the national auctioneer, Gestore dei servizi energetici – GSE Spa, and the Italian representative from Consip Spa within the JPSC.

P.2 PLEASE ENTER YOUR CONTACT DETAILS: Presidency of Council of Ministers - Department of European Affairs – CIAE Secretariat [REDACTED] (ITALY); [REDACTED] [@governo.it](mailto:[REDACTED]@governo.it) |

P.3 IF RELEVANT, PLEASE STATE IF THE SECTOR/INDUSTRY YOU REPRESENT FALLS WITHIN THE SCOPE OF THE EU ETS: Yes / NO *

¹ The category of micro, small and medium-sized enterprises (SMEs) is considered to be made up of enterprises which employ fewer than 250 persons and which have an annual turnover not exceeding EUR 50 million, and/or an annual balance sheet total not exceeding EUR 43 million (are defined in the EU recommendation 2003/361). * Please explain.

P.4 Please state what sector you/ the entity you represent is active in/ represents: Select all that apply:

- Electricity generation
- Non-electricity energy sector
- Non-energy-intensive manufacturing sector
- Energy-intensive manufacturing sector
- Aviation sector
- Financial sector
- Other (Public Administration)

P.5 SINCE THE INTRODUCTION OF LARGE SCALE AUCTIONS OF ALLOWANCES (FROM 2012 TO 2015) HAVE YOU/ THE ENTITY YOU REPRESENT PARTICIPATED DIRECTLY OR INDIRECTLY IN THE PRIMARY MARKET FOR ALLOWANCES (AUCTIONS OF ALLOWANCES)? Select all that apply

- **Yes, directly** Yes, via intermediary
- No

***P.6 IN THE PAST YEAR (2015) HAVE YOU/ THE ENTITY YOU REPRESENT DIRECTLY OR INDIRECTLY PARTICIPATED IN THE PRIMARY MARKET FOR ALLOWANCES (AUCTIONS OF ALLOWANCES)?**

- Yes, directly
- Yes, via intermediary
- **No**

How was the entity you represent eligible for access to auctions of emission allowances?

- a) ETS operator
- b) Investment Firm authorised under the Markets in Financial Instruments Directive (MiFID)
- c) Credit institution authorised under the Capital Requirements Directive
- d) Business groupings of ETS operators
- e) Public body or State-owned entity controlling ETS operators
- f) Person exempt under Markets in Financial Instruments Directive (MiFID)

By means of what type of intermediary did you/ the entity you represent obtain access to auctions of emission allowances?

- a) Investment Firm authorised under Markets in Financial Instruments Directive (MiFID)
- b) Credit institution authorised under the Capital Requirements Directive
- c) Business groupings of ETS operators
- **d) Person exempt under Markets in Financial Instruments Directive (MiFID)**

P.7 HAVE YOU/ THE ENTITY YOU REPRESENT EVER BEEN DENIED DIRECT ACCESS TO AUCTIONS OF ALLOWANCES?

- Yes

- **No**
- Never requested direct access to auctions

*** P.8 IN 2015 HAVE YOU/ THE ENTITY YOU REPRESENT PARTICIPATED IN THE SECONDARY MARKET FOR ALLOWANCES (IN NON-AUCTION EXCHANGES OR OVER THE COUNTER)?** Select all that apply

- Yes, directly in non-auction exchanges
- Yes, via intermediary in non-auction exchanges
- Yes, directly over the counter
- Yes, via intermediary over the counter
- **No**

P.9 FROM 2012 TO 2014 HAVE YOU/ THE ENTITY YOU REPRESENT PARTICIPATED IN THE SECONDARY MARKET FOR ALLOWANCES (VIA NON-AUCTION EXCHANGES OR OVER THE COUNTER)?

Select all that apply

- Yes, directly in non-auction exchanges
- Yes, via intermediary in non-auction exchanges
- Yes, directly over the counter
- Yes, via intermediary over the counter
- **No**

***P.10 PLEASE INDICATE YOUR PREFERENCE FOR THE PUBLICATION OF YOUR RESPONSE ON THE COMMISSION'S WEBSITE.** (NOTE THAT WHATEVER OPTION IS CHOSEN, YOUR CONTRIBUTION MAY STILL BE SUBJECT TO REQUESTS FOR 'ACCESS TO DOCUMENTS' UNDER REGULATION 1049/2001)

- **Under the name given: I consent to publication of all information in my contribution and I declare that none of it is subject to copyright restrictions that prevent publication;**
- Anonymously: I consent to publication of all information in my contribution and I declare that none of it is subject to copyright restrictions that prevent publication;
- Not at all — please keep my contribution confidential (it will not be published, but will be used internally within the Commission).

P.11 **TRANSPARENCY REGISTER ID NUMBER** (IF YOU/ THE ENTITY YOU REPRESENT IS REGISTERED)

<http://ec.europa.eu/transparencyregister/public/homePage.do?redir=false&locale=en>

QUESTIONS

CHAPTER II of the Auctioning Regulation covers general provisions on the design of the auctions.

Q.1 Articles 4 to 7 of the auctioning regulation lay out provisions determining which products are to be auctioned, the auction format, how the submission and withdrawal of bids is to take place, how to determine the auction clearing price and how to resolve tied bids.

IN THE LIGHT OF YOUR EXPERIENCE WITH THE AUCTIONS PERFORMED, DO YOU CONSIDER CHANGES TO BE NECESSARY REGARDING THE GENERAL PROVISIONS ON THE DESIGN OF THE AUCTIONS TO FURTHER IMPROVE THE EFFECTIVENESS AND EFFICIENCY OF THE AUCTIONS?

- Yes
- No

CHAPTER III of the Auctioning Regulation covers provisions regarding the auction calendar.

Q.2 The date and volumes of every auction are currently set on the basis of calendar years (from January to December). Following the 2015 MSR Decision (Decision 2015/1814/EU), in principle for each year, from 2019 onwards, a certain number of allowances may need to be deducted or added to the number of allowances to be auctioned over a 12-month period running from September to August. When this happens, if the calendar-year cycle is kept for establishing the auction calendars, the volumes to be auctioned in September to December of each year would have to be revised, and the corresponding auction calendars amended.

Once the MSR is in place, would you:

- a) prefer to continue the auction calendars on a calendar-year cycle (January to December);
- b) **prefer the auction calendars to be changed to a September to August cycle;**
- c) have no preference?

*** Q.3 Please explain the reasons for your answer to the previous question:**

The calendar cycle should grant predictability to the ETS and market operators, reducing as much as possible the need for adjustments. Predictability is equally important also for Member States, in order to reduce as much as possible uncertainties regarding annual revenue forecasts. To satisfy the need of providing predictability to firms and to the system as a whole and to avoid uncertainty and volatility in the market, which would impact negatively on the efficiency of the EU ETS, the auction calendar should be set in advance and should not change during the calendar-year cycle. For these reasons, changes in the calendars at the end of the cycle are not advisable. Therefore, it would be preferable to change the current calendar-year cycle to a September to August cycle. The publication of the calendar could be scheduled in June. This would allow to take into account the yearly assessment of the surplus and its effects on the MSR mechanism, which is due by May 15 each year (Dec. 1814/2015, art. 1. 4). Operators and Member States would still have access to the calendars with a 2 to 3 month notice.

*** Q.4 Since auctions started, the monthly auction volume for August has always been substantially lower than in other months,** pursuant to Article 8(5) of the Auctioning Regulation. Article 8(5) of the Auctioning

Regulation establishes that the volume to be auctioned is to be distributed evenly over the auctions held over a given year, except that volumes in August auctions are to be half the volumes of auctions in other months. This provision would also apply to annual cycles when the implementation of the MSR Decision would lead to deductions in the number of allowances to be auctioned.

Do you consider that:

- a) maintaining the reduction of volumes in August is appropriate;
- b) the reduction of volumes in August should be modified?**

How should the reduction of volumes in August be modified? Please explain the reasons for your reply:

The rationale of provisions for reduced volumes in August lays on an expected reduction of demand during summer breaks. However in the past 3 years we have not registered a particular decrease of demand in August. The broader period between May and October tend to have lower trading volumes, probably due to the dynamics produced on the market by compliance cycles, forward contracts delivery dates and fluctuations in energy consumption. As a matter of fact, in August the reduced offer combined with a substantially constant demand produces high cover ratios and prices. The same dynamics can be observed in the secondary market. Therefore, maintaining the reduction of volumes in August seems unnecessary. Italy is in favour of a uniform distribution of allowances across the calendar.

CHAPTER IV of the Auctioning Regulation covers provisions regarding access to the auctions.

Q.5 Article 8(2) of the Auctioning Regulation stipulates that auctions should not occur during public holidays that affect international financial markets, or in the 2 weeks over Christmas and New Year.

As a result, although the volume of each auction (except for those in August) is the same, by virtue of variations in the number of auctions within each month, the total volume auctioned varies in different months. In particular, there is often a sharp reduction in total volumes auctioned in December.

Do you consider that the existing provisions (the volume to be auctioned is distributed evenly over the year, leading to the auctioning of a fixed amount per auction but a differing amount per month) are:

- a) **Appropriate;**
- b) should be modified to ensure a fixed volume per month;
- c) should be modified in another way?

*** Q.6 Do you have any further comments regarding the provisions of the Auctioning Regulation on the auction calendar?**

With respect to the previous question (Q5) on the distribution of allowances, we strongly advise to maintain current provisions that reduce the number of auctions in the second half of December. Differently from the reduction of volumes in single auctions, the pre-scheduled variations of volumes on a monthly

basis do not seem to have a particular impact on the markets. December is often characterized by a bearish trend on the market that, according to our analysis (cfr. *Rapporto Aste 2014*, *Rapporto Aste 2015* in <<http://www.gse.it/it/Gas%20e%20servizi%20energetici/Aste%20CO2/Pagine/default.aspx>>), is due in part to the impact of the December UN Climate Conference, in part to the delivery cycle of future contracts on the secondary market. Maintaining current provisions will help avoid unwanted effects on prices.

* Q.7 **Article 18 of the Auctioning Regulation establishes that bidding in the auctions of emission allowances is restricted to:** a) **ETS operators** bidding on own account; b) **investment firms** authorised under the Markets in Financial Instruments Directive (MiFID) bidding on their own account or on behalf of their clients; c) **credit institutions** authorised under the Capital Requirements Directive (CRD) IV bidding on their own account or on behalf of their clients; d) **business groupings** of persons listed in point (a) bidding on their own account and acting as an agent on behalf of their members; (e) public bodies or state-owned entities of the Member States that control any of the persons listed in point (a); and f) **Persons exempt under Markets in Financial Instruments Directive** (MiFID) (for an ancillary activity) but authorized by the competent authorities of Member states bidding either on their own account or on behalf of clients of their main business.

To date, some means of access to auctions have been more used than others. Moreover, the implementation of Markets in Financial Instruments Directive (MiFID) II may de facto indirectly influence the portfolio of persons falling under the eligible categories listed in Article 18 of the Auctioning Regulation.

Do you consider this list of persons eligible to participate in auctions adequate?

- a) Yes
- b) No
- c) No opinion**

Please indicate which other persons should be included in your opinion:

Without prejudice to the different categories of persons allowed to participate in the auction, it is of the utmost importance to avoid provisions that could produce different and therefore distortive access conditions at the level of member States. During Phase 3, the different transposition of art. 18 into national legislation has asymmetrically affected access to auctions for traders in different Member States.

Under MiFID II/MAR provisions, emission allowances are to be treated as financial instruments, so this problem should, at least in theory, be solved, as the institutions that oversee financial markets should be assigned the responsibility of overseeing the carbon market and its participants. A harmonized application of the relevant MiFID II/MAR provisions in all Member states will be necessary to ensure, however, that this will effectively be so. To reinforce such harmonization, Auctioning regulation provisions should be aligned to the relevant MiFID II/MAR provisions, ensuring, for example, similar requirements of participation for both the secondary and the primary market.

Broadly speaking, any revision of the Auctioning Regulation should prevent further distortions arising and strive to ensure a higher level of harmonization as far as auction access is concerned.

CHAPTER VIII of the Auctioning Regulation covers provisions regarding the appointment of auction platforms for Member States opting-out of the Common Auction Platform.

* Q.8 As explained in Recital 8 to the Auctioning Regulation, in order to mitigate any risk of reduced competition in the carbon market, in its Article 30 the Auctioning Regulation provides the possibility for Member States to opt out of the Common Auction Platform by appointing their own auction platforms under certain conditions. This has led to the appointment of a limited number of opt-out auction platforms in parallel to the Common Auction Platform, and the experience obtained to date indicates that the resulting auctioning process has been open, transparent, non-discriminatory and without any distortion or market malfunction.

Do you agree that this set-up, with a Common Auction Platform and a limited number of opt-out platforms, performs satisfactorily?

The current setting seems to be appropriate. Since 2012, the existing platforms have had similar performance results, in line with the secondary market (See *Rapporti GSE sulle aste 2012 to 2015* <<http://www.gse.it/it/Gas%20e%20servizi%20energetici/Aste%20CO2/Pagine/default.aspx>>).

In general, we reaffirm our preference for a common platform both for reducing transaction costs and keeping the system as simple as possible.

Q.9 Do you have any recommendations for improvements in this set-up?

We reaffirm our preference for a common platform both for reducing transaction costs and keeping the system as simple as possible.

Q.10 Articles 60 to 63 of the Auctioning Regulation lay down provisions regarding the announcement and notification of auction results, publication of other non-confidential information related to the performance of the auctions and protection of confidential information related to the performance of the auctions.

In the light of your experience with the auctions performed, **are there any changes regarding the transparency and confidentiality provisions that you would deem necessary to further improve effectiveness or efficiency?**

Confidentiality provisions should be reviewed with the aim to increase transparency. As like in the case of electricity markets, information on the identity of participants to the single auctions should be available as well as detailed information on the bids in order to avoid information asymmetries among market participants but also to allow public Institutions and authorities and/or interested third parties to develop and publish relevant analytical work on them. The information should include (at least) the number of permits and the price at which each participant bids (accepted and rejected bids) in each auction session.

We stress that greater overall transparency is of the utmost importance especially given the absence of the Single Auction Monitor, which has never been appointed, leaving the auctioning system effectively

unsupervised. As a matter of fact, no private entity proved to be in a position to take on the huge burden of responsibilities that performing the functions of the SAM implies.

As a consequence, despite the efforts of the Commission and the authorities in Germany and UK, the provisions of art. 10.4 of the ETS Directive, according to which Member States refer on the proper application of auctioning rules, have not been regularly carried out.

This is not acceptable. Some applicable and more effective provisions should be introduced to tackle the problem.

Public authorities should be considered for fulfilling the role of the SAM, with the aim to ensure the right level of supervision over auctions and enforcement capacity, if needed.

Solutions that align the supervision of the primary market to the supervision of the secondary market would be welcomed.

Finally, for the sake of transparency and exchange of experiences, we would support sharing, via the Commission website, any analysis or report on auctions produced by Member States.

Q.11 Do you have any other specific comments on the Auctioning Regulation, and in particular on the way EU ETS auctions have been designed and implemented, that you would like to share?

Despite the large range of persons allowed to participate in the auctions, since 2012 participants have decreased and their number has always been largely below the number of those potentially allowed: around 20 participants per auction (similar numbers on all platforms), only 68 accredited participants on EEX platforms (no data available for ICE). These are very small numbers compared with the number of installations covered by the EU ETS. It has become evident that many operators subject to the EU ETS do not participate in the primary market, they rather make use of intermediaries and services providers (*Rapporto GSE sulle Aste 2014*, *Rapporto GSE sulle Aste 2015*, February 2015, <<http://www.gse.it/it/Gas%20e%20servizi%20energetici/Aste%20CO2/Pagine/default.aspx>>).

Any review of the auctioning regulation should take this into account.

Finally, with respect to Q12, while assessing the different components and dimensions of the auctioning system is an important exercise in order to revise the current provisions, a comprehensive assessment of the auctioning Regulation in terms of “**predictable, with full, fair and equitable access**, avoiding distortions to competition, and with a cost-efficient organization and participation mechanism compared to alternative modes of organizing auctions of EU ETS allowances” does not lend itself well to a yes or no answer. Instead, In our view, it has been successful in achieving some important objectives, but should be reviewed and improved to better meet others, as we have suggested in our answers to the above questions.

Q.12 Do you consider that the Auctioning Regulation has been successful in achieving its objectives of ensuring that auctioning of EU ETS allowances is predictable, with full, fair and equitable access, avoiding

distortions to competition, and with a cost-efficient organization and participation mechanism compared to alternative modes of organizing auctions of EU ETS allowances?

a) Yes

b) No