

# Consultation on the functioning of the Auctioning Regulation pursuant to the scheme for greenhouse gas emission allowances trading within the Community (EU ETS).

Fields marked with \* are mandatory.

## Introduction

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Auctioning is the default method of allocating allowances within the EU emissions trading system (EU ETS, established by Directive 2003/87/EC). This means that the majority of allowances are brought into circulation by auctioning and businesses have to buy an increasing proportion of allowances through auctions or in the secondary market. Auctioning is the most transparent allocation method and puts into practice the principle that the polluter should pay with no distortion in the markets.

Following a [detailed consultation in 2009](#) and an in-depth [Impact Assessment](#) of several options, the modalities for conducting auctions of allowances (constituting the primary market of the EU ETS) were established through the [Auctioning Regulation](#) (Regulation (EU) No 1031/2010) in 2010 (Regulation on the timing, administration and other aspects of auctioning of greenhouse gas emission allowances pursuant to the EU Emission Trading System). The Auctioning Regulation was amended in 2011 to determine the volume of greenhouse gas emission allowances to be auctioned prior to 2013, in 2013 to improve certain technical aspects concerning procurement procedures for appointing auction platforms and the auction monitor, and the holding of auctions, and otherwise only to list the auction platforms appointed to conduct the auctions and to incorporate the [Backloading Regulation](#) (Regulation (EU) No 176/2014).

Europe's carbon market was the first cap-and-trade system in the world to put in place large-scale auctioning as of 2012. In no other existing carbon market have as many allowances, covering such a large proportion of the total allowances issued, been put in circulation via auctioning as in the EU ETS. To date over 700 auctions for more than 2 billion EU ETS emission allowances (hereafter "allowances" this reference also includes allowances for aviation) having taken place without any noticeable distortion or malfunctioning, indicating that the infrastructure established is performing well.

Further amendments of the Auctioning Regulation are required to make adjustments to certain modalities stemming from the forthcoming introduction of the Market Stability Reserve (MSR) ([Decision 2015/1814/EU](#)). This consultation addresses two objectives. Firstly, it aims to collect stakeholders' views on the changes to the Auctioning Regulation directly related to the technical aspects of implementation of the MSR (Decision EU 1814/2015). In addition, this consultation

contains questions that allow stakeholders to share their views on the functioning of the Auctioning Regulation in order to assess the extent to which the more than 700 auctions of allowances executed to date have been implemented effectively and efficiently and to identify any potential areas for further technical improvements. The functioning of the ETS Directive was the subject of a recent consultation (Consultation on revision of the EU Emission Trading System (EU ETS) Directive, carried out 19/12/2014 - 16/03/2015). In order to avoid overlap, the scope of this consultation is limited to those aspects directly related to the implementation of auctions for emissions allowances covered in the Auctioning Regulation.

## Profile

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\* P.1 What is your profile?

Large enterprise

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

European Energy Exchange AG

P.2 Please enter your contact details:

\* Street & number:

██████████

\* Office/apt:

████████████████████

\* Locality:

██████████

\* Postal code:

██████

\* Country:

Germany

\* Telephone:

[REDACTED]

\* Email:

[REDACTED]@eex.com

P.3 If relevant, please state if the sector/industry you represent falls within the scope of the EU ETS:

- Yes  
 No

\* 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

\* 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

\* P.7 Have you/ the entity you represent ever been denied direct access to auctions of allowances?

Never requested direct access to auctions of emission allowances



\* 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):

09579576238-53

## Questions

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**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

\* Please explain your answer:

Overall, and from an auction platform provider perspective, the design of the auctions has proven successful requiring no major changes. In particular, using price random allocation method to resolve tied bids has proven successful to avoid strategic bidding and improve the quality of auctions. The current established clearing price calculation method is considered as well accepted by the market, requiring no changes.

There however may be some potential in further aligning the auction product with the standards established on the secondary market. As an example, harmonising the minimum lot size in the auction product to 1000 EUAs across platforms would simplify trading in particular for those traders active on both the primary and secondary market, as it would facilitate for instance automatic deal capturing.

### **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 general 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:

Both a calendar-year cycle and a September to August cycle have their merits. However, changing the auction calendar cycle to a September to August cycle seems preferable, as in this case the auction calendar would remain unaltered (at least from any MSR-related changes) for a full 12-month period, which would give greater certainty to market participants. This assumes that once the MSR is in place, MSR-related adjustments to the auction calendars are very likely from today's perspective, which would mean at least one adjustment to the auction calendar for a calendar-year cycle.

- \* 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?

#### **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?

The functioning of opt-out platforms could further be improved by waiving the requirement for minimum auction volumes in each auction. This would allow more flexibility to optimize the auction calendar to reflect market needs.

- \* 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?

- Yes
- No
- No opinion

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

1. The participation criteria for operators should also be reviewed. Based on the current definition of Article, a firm with less than 51% share in an EU ETS operator cannot participate in the auctions. This is inappropriate given that the holding company may often be responsible for managing the compliance needs also for its minority shareholdings. EEX has received several enquiries from potential bidders that could not participate due to participation criteria as is. Therefore, the current definition seems to be too tightly defined.

2. Transparent information should be provided on the rules for MiFiD exempted firms, in particular, for the authorization process required for those types of bidders, as these rules differ between EU Member States (some countries seem not to provide this possibility at all). This leads to market distortion at the expense of potential bidders that seek access under this bidder category. At least, a comprehensive list of responsible authorities in each Member State including the exact point of contact for enquiries should be published and regularly updated. This would support the market by ensuring participants have access to correct and timely information directly from the regulator in charge. It would be even better if the additional authorization effort would be waived, thus reducing the administrative burden for that type of bidders.

3. Extending participation to brokers and other financial players could further improve liquidity in the auctions and the functioning of the overall market. Participation of brokers could also offer a simple method of participation in the auctions for small and medium sized enterprises, increasing their participation in the auctions. Brokers could compete to aggregate demand for allowances by SMEs. By conducting the auctions through regulated markets, this already provides for high security standards, including thorough customer due diligence checks.

4. Allowing market participants based outside the EU ETS region (Switzerland, United States, other jurisdictions) to participate would further contribute to the quality of auctions. Such participation would strengthen the connection between the EU ETS and these regions, facilitating future

cooperation.

5. The bidder category “business grouping of operators” may be removed as it has not generated significant interest in the market.

**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?

Yes, this setup has performed satisfactorily. The functioning of opt-out platforms could further be improved by waiving the requirement for minimum auction volumes in each auction. This would allow more flexibility to optimize the auction calendar to reflect market needs.

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

No answer

**Chapter XVI of the Auctioning Regulation covers provisions regarding transparency and confidentiality in performing the auctions.**

\* 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?

No answer

\* 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?

No answer

\* 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?

Yes

No

\* Please explain your answer:

Yes, the Auctioning Regulation has been successful as the basis for successful, liquid, established auctions in place today. The objectives of the Auctioning Regulation could even better be achieved by reviewing the rules for the fee structure.

- Under current rules, fees in the auctions are paid only by bidders. This is in contrast to the secondary market where both sides, buyers and sellers, are charged. The revision of the Auction Regulation should allow for more flexible arrangements in sharing fees.
- At the same time, the current Auctioning Regulation caps fees for auctioning at the level of fees in the secondary market. This provision needs to be reviewed as it does not reflect the much higher requirements for operating auctions in contrast to operating the secondary market.

## Contact

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