

EU Emissions Trading Scheme (ETS) – Consultation on design and organisation of emissions allowance auctions

This document is the questionnaire for this consultation. The survey contains **4** initial questions (A-D) to identify respondents, **86** questions for which responses will be made public and **4** questions that are classified confidential, must be sent directly to the European Commission and will not be made public. The questions that are classified potentially confidential are on two separate pages (2 questions on each page) and highlighted in green boxes.

Period of consultation

From 3 June 2009 to 3 August 2009 inclusive

How to submit your contribution

This consultation seeks to obtain feedback from all categories of stakeholders regarding the different aspects of auction design and implementation covered in the Consultation Paper.

We are sorry for the inconvenience, but the web-based survey is not available yet. If participants wish to complete the survey on this document and send their contributions back to contact_ets_auctions_consultation@icfi.com their responses can be accepted in this format. The web-based survey will be available as soon as possible if participants wish to wait till that is available.

Received contributions will be published on the Internet. It is important to read the specific privacy statement attached to this consultation for information on how your personal data and contribution will be dealt with.

Specific privacy statement

"Received contributions, together with the identity of the contributor, will be published on the Internet, unless the contributor objects to publication of his or her personal data on the grounds that such publication would harm his or her legitimate interests. In such cases the contribution may be published in an anonymous form. Otherwise, the contribution will not be published nor will, in principle, its content be taken into account. Responses for questions deemed confidential in the consultation will not be available for view on the website irrespective of contributor objecting or not. "

Instructions to filling out the questionnaire

- Questions may only be answered in designated response fields
- For certain multiple choice questions, simply click on box to indicate choice
- Answer [Y/N] questions by typing “y” / “Y” or “n” / “N” on underlined area (___)
- Some responses require explanations, additional comments and detailed answers. These will either be identified by underline (___) or an answer section (A: ___). The amount of text that can be entered here is unlimited.
- After completing the survey, please save and send to contact_ets_auctions_consultation@icfi.com
- If any questions seem unclear in context or for method of response, please mail contact_ets_auctions_consultation@icfi.com to clarify

Thank you

Section 1: Questions to categorize participants

Question A

Name of Company/Organization:

EnBW Energie Baden-Württemberg AG

Principal nature of activities:

Number of employees in 2008:

World-wide 20.357

Europe-wide 20.357

Turnover in 2008:

World-wide 16.305,3 Mio Euro
Euro

Europe-wide 16.305,3 Mio

Question B

Type of respondent:

Member State

Company operating one or more installations covered by the EU ETS

Electricity generators

Energy companies other than electricity generators

Industrial sectors

Aviation

Other. Please specify: _____

Approx Annual Emissions: _____ tCO₂

Intermediary

Financial institution

Trading arm of non-financial institution

Other. Please specify _____

Trader on own account

Financial institution

- Trading arm of non-financial institution*
- Other. Please specify _____*
- Regulated market
 - Carbon only
 - Carbon and electricity
 - Carbon and other energy products
- Other carbon market
 - Multilateral trading facility trading carbon derivatives
 - Carbon exchange trading spot carbon
 - Other. Please specify _____
- Clearing house
- Central counterparty
- Other (multiple choices apply)
 - Non-governmental organisation
 - Trade association
 - Carbon analyst
 - Carbon publication
 - Academic
 - Other. Please specify _____

Question C

Contact details will not be made public.

Question D

Questions relating to the "Specific privacy statement" above.

- Do you object to publication of your personal data because it would harm your legitimate interests? [Y/N]

If so, please provide an explanation of the legitimate interests that you think will be harmed:

A:

- Are any of your responses confidential? [Y/N]

If so, please indicate which ones and provide an explanation:

A:

Section 2: Survey questions (86) and potentially confidential questions (4)

Question 1

As a general rule throughout the trading period, in your opinion, are early auctions necessary? [Y/N] _

If so, what should the profile of EUA auctions be?

- 5-10% in year n-2, 10-20% in year n-1, remainder in year n
- 10-20% in year n-2, 20-30% in year n-1, remainder in year n
- 20-30% in year n-2, 30-35% in year n-1, remainder in year n
- Other? Please specify:

We believe that early auctions are particularly crucial for compliance buyers in the EU ETS. This holds especially for the power sector which is the biggest emitter in the EU ETS. Electricity producers need to hedge their price exposures and thus early auctions are essential. Therefore, we strongly agree with the European Commission's view that early auctions allow compliance buyers to fulfil at least part of their hedging needs directly through the auctions. Without early auctions a (liquidity) premium on futures on the secondary market is likely which in turn would increase the overall compliance costs in the EU ETS. As a general request, we strongly urge to start auctions already in 2011 for phase 3 i.e. at least for years 2013 and 2014, while we would favour also n-3 auctions.

Thus, in our view, the profile of the EUA auctions should be in accordance with the hedging behaviour of the EU ETS operators in the power markets, where we see liquidity for up to 3-4 years. Therefore, the third profile proposed (20-30% in year n-2, 30-35% in year n-1, remainder in year n) is closest to this approach, while we would strongly recommend to also consider auctions in year n-3.

Question 2

Do you think there is a need to auction futures? [Y/N] Y

If so, why?

A: In line with the points raised in our answer to question 1, we see a strong need to auction futures. Being the largest emitters in the EU ETS, electricity producers need to use futures to hedge their price exposures. Thus they are essential products in the risk management framework of electricity companies. Also, as futures require less initial outlay of cash, they are therefore more attractive for compliance bidders.

Question 3

What share of allowances should be auctioned spot and what share should be auctioned as futures for each year?

	SPOT	FUTURES
• year n	: ___%	___%
• year n-1	: ___%	___%
• year n-2	: ___%	___%

Please provide evidence to support your case.

A:As stated in our answer to question 2, there is a strong need to auction futures and allow compliance bidders to directly fulfil their hedging needs via auctions. Futures should play the major role, especially in the early years. We therefore propose the following distribution between spot and futures to be auctioned:

Year n Spot 30% / Futures 70%

Year n-1 Spot 0% / Futures 100%

Year n-2 Spot 0% / Futures 100%

Year n-3 Spot 0% / Futures 100%

NB: The answer to this question will be published as part of the public consultation. Please do not submit confidential information as part of your answer to this question.

Question 4

Should the common maturity date used in futures auctions be in December (so the maturity date would be December in year n, both when auctioning in year n-2 as when auctioning in year n-1)? [Y/N] Y

If not, please suggest alternative maturity dates and provide evidence to support your view.

A:Yes, we agree that the common maturity date used in futures auctions should be in December.

This page contains two questions that will not be made public. These questions cannot be completed on this document

Request for potentially confidential information 1

Please send the answer to this question in paper and electronic format, marked on the envelope "Strictly Private and Confidential – Auctioning consultation", directly to the European Commission, DG ENV, Directorate C, Unit C2, to the attention of the Head of Unit, Office BU-5 2/1, 1049 Brussels, Belgium. It will be treated confidentially and will not be disclosed publicly.

For ETS operators: what share of your expected emissions covered by the EU ETS in a given year n do you hedge and how much in advance?

- year n : _____%
- year n-1 : _____%
- year n-2 : _____%
- earlier years (please specify) : _____%

Request for potentially confidential information 2

Please send the answer to this question in paper and electronic format, marked on the envelope "Strictly Private and Confidential – Auctioning consultation", directly to the European Commission, DG ENV, Directorate C, Unit C2, to the attention of the Head of Unit, Office BU-5 2/1, 1049 Brussels, Belgium. It will be treated confidentially and will not be disclosed publicly.

What share of the annual quantity of allowances you intend to purchase *via* auctions would you wish to buy spot or futures respectively?

- | | SPOT | FUTURES |
|------------|----------|---------|
| • year n | : _____% | _____% |
| • year n-1 | : _____% | _____% |
| • year n-2 | : _____% | _____% |

Please specify whether you are an:

- ETS operator; or
- Other participant.

Question 5

For spot auctions:

What should be the **optimum** frequency of auctions?

- Weekly?
- Fortnightly?
- Monthly?
- Quarterly?
- Other? Please specify: daily

What should be the **minimum** frequency of auctions?

- Weekly?
- Fortnightly?
- Monthly?
- Quarterly?
- Other? Please specify: _____

What should be the **maximum** frequency of auctions?

- Weekly?
- Fortnightly?
- Monthly?
- Quarterly?
- Other? Please specify: daily

Please provide arguments to support your case.

A:As stated in our answer to question 2, we see a stronger need to auction futures than spot products.

As a general point, we think that the frequency of auctions is not fully independent of the degree of coordination of auctions in the different Member States.

Given full coordination, a high frequency of auctions, i.e. daily auctions, would be the optimum frequency for electricity producers as this would be in accordance with their business processes.

In our view, weekly auctions would be the minimum frequency that allows electricity producers to fulfil part of their hedging needs directly through the auctions. A less frequent auction (monthly, quarterly) is incompatible with well established risk management procedures and should not be introduced.

Question 6

For spot auctions, what should be the:

- Optimum auction size? _____
- Minimum auction size? _____
- Maximum auction size? _____

If deemed appropriate, please indicate a range and/or distribution over different sizes.

Please provide arguments to support your case.

A: We do not think that there is a need to prescribe a specific auction size.

Question 7

For futures auctions:

What should be the **optimum** frequency of auctions?

- Weekly?
- Fortnightly?
- Monthly?
- Quarterly?
- Other? Please specify: daily

What should be the **minimum** frequency of auctions?

- Weekly?
- Fortnightly?
- Monthly?
- Quarterly?
- Other? Please specify: _____

What should be the **maximum** frequency of auctions?

- Weekly?
- Fortnightly?
- Monthly?
- Quarterly?
- Other? Please specify: daily

Please provide arguments to support your case.

A: As stated in our answer to question 2, we see a strong focus and need for the auctioning of futures.

In respect of frequency, the same holds true for futures auctions as already stated for spot auction under question 5.

Generally, we think that the frequency of auctions is not fully independent of the degree of coordination of auctions in the different Member States. Given full coordination, a high frequency of auctions (daily auctions) would be the optimum frequency for electricity producers as this would be in accordance with their business processes.

In our view, weekly auctions would be the minimum frequency that allows electricity producers to fulfil part of their hedging needs directly through the auctions. A less frequent auction (monthly, quarterly) is incompatible with well established risk management processes and should not be introduced.

Question 8

For futures auctions, what should be the:

- Optimum auction size? _____
- Minimum auction size? _____
- Maximum auction size? _____

If deemed appropriate, please indicate a range and/or distribution over different sizes.

Please provide evidence to support your case.

A: We do not think that there is a need to prescribe a specific auction size.

Question 9

Should volumes of spot allowances be auctioned evenly throughout the year? [Y/N] Y

If not, how should volumes be distributed? (more than one answer possible) Please specify:

- A larger proportion in the first 4 months of the year?
- A larger proportion in December?
- A smaller proportion in July and August?
- Other? Please specify: _____

Question 10

In case futures are auctioned, should the volumes for spot and futures auctions be spread over the year in the same manner? [Y/N] Y

If not, how should they differ? (more than one answer possible)

- No futures auctions less than six months before the maturity date.

- A larger proportion in December.
- A smaller proportion in July and August.
- Otherwise? Please specify how and comment: _____

Question 11

Does the Regulation need to have provisions to avoid holding auctions during a short period of time before the surrendering date (30 April each year)? [Y/N] N

If yes, how long should this period be:

One week 2 weeks 3 weeks 1 month

In case futures are auctioned, should there be similar provisions with respect to the period immediately prior to the maturity date? [Y/N] N

If yes, how long should this period be:

One week 2 weeks 3 weeks 1 month

Question 12

Which dates should be avoided? (more than one answer possible)

- Public holidays common in most Member States? _____
- Days where important relevant economic data is released? _____
- Days where emissions data are released? _____
- Other? Please specify: _____

Please specify the dates you have in mind in your answers.

Question 13

Is a harmonised 10-12 hrs CET auction slot desirable? [Y/N] Y

If not, what alternative(s) would you suggest?

A: Yes, the proposed harmonised auction slot seems to be appropriate, ensuring an easy access to the auctions.

Question 14

How long in advance should each element of the calendar be determined?

Annual volumes to be auctioned:

- 1 year in advance
- 2 years in advance
- 3 years in advance
- more years in advance

Distribution of annual volumes over spot and futures (if applicable):

- 1 year in advance
- 2 years in advance
- 3 years in advance
- more years in advance

Dates of individual auctions:

- 1 year in advance
- 2 years in advance
- 3 years in advance
- more years in advance

Volume and product type for individual auctions:

- 1 year in advance
- 2 years in advance
- 3 years in advance
- more years in advance

Each auctioneer carrying out auction process (if more than one):

- 1 year in advance
- 2 years in advance
- 3 years in advance
- more years in advance

Please provide arguments to support your case.

A: We believe that particularly the total annual volumes as well as the distribution of annual volumes over spot and futures are crucial to know well in advance (preferably throughout the entire period).

Question 15

What should be the volume of allowances to be auctioned in 2011 and 2012?

- in 2011: _____ % of the 2013 volume and _____ % of the 2014 volume
- in 2012: _____ % of the 2013 volume and _____ % of the 2014 volume

What percentage of these shares should be auctioned as futures?

- in 2011: _____ % of the 2013 share and _____ % of the 2014 share
- in 2012: _____ % of the 2013 share and _____ % of the 2014 share

Please provide evidence to support your case.

A: We believe that early auctions are particularly crucial for compliance buyers in the EU ETS. This holds especially for the power sector which is the biggest emitter in the EU ETS. Electricity producers need to hedge their price exposures.

Thus, in our view, the profile of the EUA auctions should be in accordance with the hedging behaviour of the EU ETS operators in the power markets, where we see liquidity for up to 3-4 years. Therefore, the third profile proposed in question 1 (20-30% in year n-2, 30-35% in year n-1, remainder in year n) is closest to this approach; however we would strongly recommend to also consider auctions in year n-3.

We are of the opinion that EUAs auctioned in 2011 and 2012 can only be future products.

Question 16

What should be the rule with respect to allowances not auctioned due to *force majeure*?

- They should automatically be added to the next auction on the calendar, irrespective of the auction process.
- They should be auctioned within one month, though leaving flexibility as to which auction(s) the EUAs should be added.
- They should be auctioned within three months, though leaving flexibility as to which auction(s) the EUAs should be added.
- Other? Please specify: First of all, we see a strong need that there is a very clear and accepted definition for force majeure in place; this also includes full transparency in case the actual case a force majeure occurs.

Generally, transactions on the secondary market are also based on expectations about auctioning volumes. A delay in the auctioning of allowances will therefore make market corrections necessary. To prevent price volatility due to force majeure, it is crucial in our view to bring the volumes into the market as soon as possible, ideally selling them directly into the market; the current procedure in Germany shows that this works very smoothly.

Question 17

Is 1,000 allowances the most appropriate lot size? [Y/N] Y

If not, why not?

A: Yes, 1,000 allowances is even for small installations an appropriate lot size. If needed smaller sizes are tradable at the secondary market.

Question 18

Is a single-round sealed-bid auction the most appropriate auction format for auctioning EU allowances? [Y/N] Y

If not, please comment on your alternative proposal?

A: First of all, we are of the opinion that the auction format should be simply, transparent and easily accessible. This is given with the single-round sealed-bid auction format. Single-round sealed-bid auctions of EU allowances possess significant advantages compared to other auctioning formats. Compared to multiple-round auctions transactions costs are significantly lower with a single-round sealed-bid auction because they are much easier, more understandable and more transparent. Moreover, single-round sealed-bid auctions are a well established auction format.

Multiple-round auctions would only be needed for more complex products; however the EU ETS Allowances are a rather simple product. A more complicated design, if at all,

will only lead to marginal improvements of the auctioning result but to significantly higher transaction costs for bidders.

Therefore, we strongly support a single-round sealed-bid auction as the most appropriate auction format for auctioning allowances. It corresponds with the objectives of simplicity, transparency and openness that are defined in the Emissions Trading Directive.

Question 19

What is the most appropriate pricing rule for the auctioning of EU allowances?

- Uniform-pricing.
- Discriminatory-pricing.
- Indifferent.

Please provide arguments to support your case.

A: A uniform-pricing rule guarantees an efficient price finding process with minimum transaction costs. Moreover, it corresponds with the objectives of simplicity, transparency and openness that are defined in the Emissions Trading Directive. In contrast, transaction costs of discriminatory-price auctions are very likely to be higher due to the higher information level that is required from bidders.

Question 20

Should the rules for solving ties in the Regulation be:

- random selection; or
- pro-rata re-scaling of bids?

Please comment on your choice.

A: We would prefer a pro-rata re-scaling of bids, as this is the fairest approach.

Question 21

Should a reserve price apply?

A: A reserve price is not needed because of the functioning secondary market. Experiences in different Member States clearly show that the uniform price of allowance auctions is close to the secondary market price. In contrast, a reserve price would add a level of uncertainty and bears the risk of interfering with market functioning.

Question 22

In case a reserve price would apply, should the methodology/formula for calculating it be kept secret? [Y/N] _

Please comment on your choice.

A:As stated in our answer to question 21, we do not support the introduction of a reserve price.

Question 23

Is a maximum bid-size per single entity desirable in a Uniform-price auction?

[Y/N] N

Is a maximum bid-size per single entity desirable in a discriminatory-price auction?

[Y/N] N

Please comment on your choice.

A:The determination of a maximum bid-size contradicts the business requirements of the installations under the EU ETS and affects the allocative efficiency of auctions. Emitters face permanently changing requirements in the international CO₂ markets. Therefore the quantities required also change in the variation of time; a maximum-bid size is not desirable.

Question 24

If so, what is the desirable bid-size limit (as a percentage of the volume of allowances auctioned per auction – only one choice is possible):

10%:

15%:

20%:

25%:

30%:

More than 30%: Please specify: _____

Please comment on your choice.

A:A maximum-bid size is not desirable. See also our answer to question 23.

Question 25

In case only one of the two following options would be chosen, to limit the risk of market manipulation or collusion, which one would be preferable?

- A discriminatory-price auction format?
- A maximum bid-size per single entity?

Please comment on your choice.

A: We do not see the need to introduce any of the a.m. measures as the liquid and well functioning secondary market will “act as a corrective”. In any case, we would assume that the auctioning platforms will have the same market supervision mechanisms in place such as the well established procedures at power exchanges.

Question 26

Are the following pre-registration requirements appropriate and adequate?

Identity:

- Natural or legal person;
- Name, address, whether publicly listed, whether licensed and supervised under the AML rules; membership of a professional association; membership of a chamber of commerce; VAT and/or tax number;
- Contact details of authorised representatives and proof of authorisation; and
- CITL-Registry account details.
- Anything else? Please specify: _____

Declarations with respect to the past 5 years on absence of:

- Indictment or conviction of serious crimes: check corporate officers, directors, principals, members or partners;
- Infringement of the rules of any regulated or unregulated market;
- Permits to conduct business being revoked or suspended;
- Infringement of procurement rules; and
- Infringement of disclosure of confidential information.
- Anything else? Please specify: _____

Declarations and submission of documentation relating to:

- Proof of identity;
- Type of business;
- Participation in EU ETS or not;
- EU ETS registered installations, if any;
- Bank account contact details;
- Intended auctioning activity;
- Whether bidding on own account or on behalf of another beneficial owner;
- Corporate and business affiliations;
- Creditworthiness;
- Collateral; and
- Whether it carries out transactions subject to VAT or transactions exempted from VAT.
- Anything else? Please specify:

We generally agree with the pre-registration requirements listed above. At the same time, we would like to point out that the requirements need to be appropriate and should not present barriers of entry. Against this background, we do not see the need to provide declarations and submission of documentation relating to “intended auctioning activity” as we consider these information as commercially sensitive data which is irrelevant for the pre-qualification procedure. Also, we do not see the benefit to provide information on “participation in EU ETS or not” and “EU ETS registered installations, if any”.

Question 27

Do you agree that the pre-registration requirements for admittance to EU auctions should be harmonised throughout the EU?

Yes No

Please comment on your choice.

A: We believe that in an European auction and trading market, the requirements need to be fully harmonised in order to enable a level-playing field. We strongly reject any possibility of regulatory arbitrage (e.g. less strict pre-registration requirements in some Member States than in others).

Question 28

Should the amount of information to be supplied in order to satisfy the pre-registration requirements for admittance to EU auctions depend on the:

- means of establishing the trading relationship;
- identity of bidder;
- whether auctioning spot or futures;
- size of bid;
- means of payment and delivery;
- anything else? Please specify: _____

If so, what should the differences be?

A: We believe that the objective of the supply of the respective information should depend on the means of establishing the trading relationship.

Question 29

Should the bidder pre-registration requirements under the Regulation apply in the same manner irrespective of whether or not the auctioneer is covered by the MiFID or AML rules? [Y/N] Y

A: Yes, we believe that the pre-registration should apply in the same manner whether or not the auctioneer is covered by MiFID or AML rules. At the same time, we like to highlight that the EUA auction regulation should not be the place to also incorporate provisions that are already covered in specific legislation (e.g. MiFID).

If not, why not?

A:

Please provide arguments to support your case.

Question 30

Do you agree that the auctioneer(s) should be allowed to rely on pre-registration checks carried out by reliable third parties including: [Y/N] Y

- Other auctioneers?
 Credit and/or financial institutions?
 Other? Please specify: _____

Please comment on your choice.

A: We agree that the auctioneer should be allowed to rely on pre-registration checks carried out other auctioneers and by credit and /or financial institutions.

Question 31

In order to facilitate bidder pre-registration in their home country, should the auctioneer(s) be allowed to provide for pre-registration by potential bidders in other (or all) Member States than the auctioneer's home country e.g. by outsourcing this to a reliable third party?

Yes No

Please comment on your choice:

A: Yes, we support this approach as it will make the procedure much easier (“one face to the customer approach”) and reduces the bureaucratic burden. Certainly, it has to be ensured that the service is outsourced to a reliable third party also ensuring confidentiality.

If so, should such entities be:

- Covered by the AML rules?
 Covered by MiFID?
 Covered by both?
 Other? Please specify: _____

Please comment on your choice:

A:

Question 32

Should the Regulation prohibit the multiplicity of pre-registration checks in the case of Member States auctioning jointly?

Yes No

Please comment on your choice.

A: Yes, we believe that the principle of cost-effectiveness should be applied and no multiplicity of pre-registration checks are needed.

Question 33

Do you agree that the *level* of collateral accepted in EUA auctions should be harmonised for all EU ETS auctions? [Y/N] Y

If so, how should they be harmonised?

A: Yes, we believe that the level of collateral accepted in EUA auctions should be harmonised (percentage of the total volume bid) for all EU ETS auctions.

If not, why not?

A:

Question 34

Do you agree that the *type* of collateral accepted in EUA auctions should be harmonised for all EU ETS auctions? [Y/N] Y

If so, how should they be harmonised?

A: Yes, we believe that the type of collateral accepted in EUA auctions should be harmonised for all EU ETS auctions.

If not, why not?

A:

Question 35

Do you agree that 100% collateral in electronic money transfer ought to be deposited up-front at a central counterparty or credit institution designated by the auctioneer to access spot auctions? [Y/N] Y

If not, why not?

A:

What alternative(s) would you suggest? Please provide arguments to support your case:

A:

Question 36

In case futures are auctioned, should a clearing house be involved to mitigate credit and market risks? [Y/N] Y

If so, should specific rules – other than those currently used in exchange clearing houses – apply to:

- the level of the initial margin;
- the level of variation margin calls;
- the daily frequency of variation margin call payments?

If you have answered yes, please justify and elaborate on the rules that should apply and the mechanisms to implement them:

A: Yes, we strongly support that a clearing house should be involved to mitigate credit and market risks in case futures are auctioned; this is common practise in the secondary market as well as the power trading market (e.g. European Commodity Clearing AG).

Question 37

What are the most preferable payment and delivery procedures that should be implemented for auctioning EUAs?

- Payment before delivery.
- Delivery versus payment.
- Both.

Please comment on your choice.

A: We recommend to orientate at the common business practise which is payment after delivery. In case that spot products are auctioned we think that the delivery of the EUAs should happen as close to the auction as possible.

Question 38

Irrespective of the payment procedure, should the Regulation fix a maximum delay of time for payment and delivery to take place? [Y/N] _

If yes; what should it be?

4 working days

5 working days

6 working days

7 working days

Other? Please specify:

We recommend to take the common practise in the secondary market into account; a maximum delay of 4 working days seems appropriate.

Question 39

Should the Regulation provide any specific provisions for the handling of payment and delivery incidents or failures? [Y/N] Y

If yes, what should they be?

A: Yes, these provisions should be very close to those applied in the secondary market and harmonised across all Member States.

Question 40

Should the Regulation provide for all matters that are central to the very creation, existence and termination or frustration of the transaction arising from the EUA auctions? [Y/N] Y

If not, why not?

A:

If so, are the matters enumerated below complete? [Y/N] Y

- The designation of the parties' to the trade.
- The characteristics of the auctioned product:
 - Nature: EUAs or EUAAs, trading period concerned.
 - Date of delivery: date at which winning bidders will receive the allowances on their registry account.
 - Date of payment: date at which payment will be required from winning bidders.

- Lot size: number of allowances associated with one unit of the auctioned good.
- Events of 'force majeure' and resulting consequences.
- Events of default by the auctioneer and/or the bidder and their consequences.
- Applicable remedies or penalties.
- The regime governing the judicial review of claims across the EU.

If not, what additional matters should be foreseen in the Regulation and why?

A: We recommend to take the rules that are in place for the secondary market as an orientation; this seems important in order to ensure harmonisation between the primary and secondary market.

Question 41

Should the Regulation provide for rules on jurisdiction and the mutual recognition and enforcement of judgments? [Y/N] Y

If so, should these be:

- specific to the Regulation;
- by reference to the Brussels I Regulation;
- by citing exceptions from the Brussels I Regulation;
- by citing additions to the Brussels I Regulation?

Please comment on your choice:

A:

If not, why not?

A:

Question 42

Which auction model is preferable?

- Direct bidding?
 Indirect bidding?
 Both?

Please comment on your choice.

A: Most importantly, there should be no obligatory bidding via intermediates. Rather, we strongly advocate for the possibility of a direct participation. Indirect bidding could be a feature that smaller bidders with small volumes may use; but is in general very unattractive for bigger emitters including electricity producers. A main reason for this is the naturally higher lead time between bidding and auctioning. Bids take the current secondary market price into account and have to be changed without any time delay. Therefore, we strongly advocate that the possibility for direct bidding must be ensured.

Question 43

If an indirect model is used, what share of the total volume of EU allowances could be auctioned through indirect bidding? _____

Please provide arguments to support your case.

A: We do not recommend to choose an indirect model only; rather, we strongly ask to allow direct access.

Question 44

If the primary participants model is used, what provisions would be desirable for mitigating disadvantages of restricting direct access (more than one answer is possible):

Allow direct access to largest emitters, even if they trade only on their own account?

If so, who should have direct access and what thresholds should apply?

Disallow primary participants trading on their own account?

Impose strict separation of own-account trading from trading on behalf of indirect bidders?

Other? Please specify:

For us, direct access is crucial for the attractiveness of auctions. Therefore, EnBW strongly supports the proposal to allow direct access to larger emitters, irrespective if they trade only on their own account. If a primary participants model is used, we see a strong need to separate own-account trading strictly from trading on behalf of indirect bidders.

Question 45

If the primary participants' model is used, what conflict of interest requirements should be imposed? (more than one answer possible)

Separation of client registration and trading on behalf of clients from all own account trading activities.

Separation of collateral management, payment and delivery on behalf of clients from all own account trading activities.

Separation of anything else, please specify:

We do not support the primary participants' model. There is a clear need to have direct access to the auctions, particularly for larger emitter (see also answer to question 44).

Question 46

What obligations should apply to primary participants acting in EU-wide auctions as:

- Intermediaries? A:
- Market makers? A:

We do not support the primary participants' model. There is a clear need to have direct access to the auctions.

Please provide arguments to support your case.

Question 47

Under what conditions should auctioning through exchanges be allowed (more than one answer possible):

- Only for futures auctions open to established members of the exchange?
- Also for spot auctions open to established members of the exchange?
- Only when the exchange-based auction is open to non-established members on a non-discriminatory cost-effective basis?
- Other? Please specify: _____

Please provide arguments to support your case.

A: We do not see a problem that auctioning could be done through exchanges. Rather, power exchanges do already provide an infrastructure that may be easily used also for EUA auctions (some power exchanges already do offer EUAs as trading products). Certainly, exchange-based auctions need to be also open to non established members on a non-discriminatory cost-effective basis.

Question 48

Should direct auctions be allowed through:

- 1) Third party service providers? [Y/N] _
- 2) Public authorities? [Y/N] _

Please comment on your selection:

A: Yes, subject that all requirements to run auctions are met. Again, direct access for bidders to the auctions needs to be ensured.

Question 49

Do the general rules for auctioning EUAs suffice for ensuring full, fair and equitable access to allowances to SMEs covered by the EU ETS and small emitters? [Y/N] Y

If not, why not?

A: Yes. Access to the EUA auctions need to be non-discriminatory in order to ensure that all potential bidders can participate including SMEs.

Question 50

Is allowing non-competitive bids necessary for ensuring access to allowances to SMEs covered by the EU ETS and small emitters in case of:

- discriminatory-price auctions? A: We do not believe that non-competitive bids are necessary, rather they would distort the market functioning.
- uniform-price auctions? A: We do not believe that non-competitive bids are necessary, rather they would distort the market functioning.

Question 51

If non-competitive bids are provided for in spot auctions, what maximum share of allowances could be allocated through this route?

- 5%
- 10%
- Other? Please specify: _____

Please comment on your choice.

A: We do not believe that non-competitive bids are necessary, rather they would distort the market functioning.

Question 52

What rule should apply for accessing non-competitive bids (more than one answer possible):

- Participants should only be allowed to use one of the two bidding routes?
- Non-competitive bids should be restricted to SMEs covered by the EU ETS and small emitters only?
- Other? Please specify: _____

Please comment on your choice.

A: We do not believe that non-competitive bids are necessary, rather they would distort the market functioning.

Question 53

What should be the maximum bid-size allowed for SMEs covered by the EU ETS and small emitters submitting non-competitive bids?

- 5 000 EUAs
- 10 000 EUAs
- 25 000 EUAs
- Over 25 000 EUAs, please specify exact size and give reasons for your answer:

We do not see a need to impose a maximum bid-size for SME as we strongly advocate an open and non-discriminatory auction model.

Question 54

Are there any other specific measures not mentioned in this consultation that may be necessary for ensuring full, fair and equitable access to allowances for SMEs covered by the EU ETS and small emitters? [Y/N] N

If so, please specify:

A: We do not see the need for further specific measures as long as there are simple, open and transparent procedures which will ensure full, fair and equitable access to allowances for SMEs covered by the EU ETS as well as small emitters.

Question 55

What should be the minimum period of time before the auction date for the release of the notice to auction?

2 weeks 1 month 2 months

Other Please specify: _____

Please comment on your proposal.

A:As a principle, we believe that the auction dates should be published as early as possible. Ideally, the full auction calendar should be available for the entire third period prior to the first auction taking place.

Question 56

What should be the minimum period of time before the auction date for the submission of the intention to bid?

1 week 2 weeks 1 month

Other Please specify: _____

Please comment on your proposal.

A:With a proper pre-registration system in place, we are not convinced that it is necessary to prescribe a minimum period of time to submit the intention to bid. In any case this could only be an indication but no obligation.

Question 57

Are there any specific provisions that need to be highlighted in:

- The notice to auction?
- The intention to bid?
- Both?

Please specify what they are.

A:We believe that transparency is key so all auction rules are publicly available as well as the possibly to request specific information on the auctions (“customer service”).

Question 58

What information should be disclosed after the auction:

- Clearing price (if allowances are awarded on a uniform-price basis or in the case of non-competitive bids being allowed)?
- Average price (if allowances are awarded on a discriminatory-price basis)?

- Any relevant information to solve tied bids?
- Total volume of EUAs auctioned?
- Total volume of bids submitted distinguishing between competitive and non-competitive bids (if applicable)?
- Total volume of allowances allocated?
- Anything else? Please specify:

We agree to the a.m. list of post-auction information to be disclosed. In addition, we believe that the number of successful bidders and the amount of unsold EUAs that are carried over to the following auction should also be disclosed.

In any case, all data should be anonymous and aggregated in order to ensure confidentiality of the information.

Question 59

What should be the maximum delay for the announcement of auction results?

5 minutes 15 minutes 30 minutes

1 hour

Other Please specify: _____

Please comment on your proposal.

A: We believe, that the auction results need to be disclosed as soon as possible after the auction closed, taking into account that there should be a reliability check of the data be feasible. Thus, we assume that the maximum delay will be somewhere between 5 minutes and 15 minutes; which is common in electricity auctions.

Question 60

Do you feel that any specific additional provisions should be adopted in the Regulation for the granting of fair and equal access to auction information? [Y/N] Y

If so, what may they be? _____

We fully support that it has to be ensured that fair and equal access to auction information has to be ensured. We suggest to use the information channels that are closest to the market.

Question 61

Should an auction monitor be appointed centrally to monitor all EU auctions?

[Y/N] Y

If not, why not?

A: Generally, we do not see a problem to appoint an auction monitor.

Question 62

Do you agree that the Regulation should contain general principles on [mark those that you agree with,]:

the designation and mandate of the auction monitor; and

cooperation between the auctioneer(s) and the auction monitor?

If not, why not?

A: Yes, we agree that the a.m. general principles should be included in the Regulation as it is important in a transparent process to have clear and distinct rules also regarding the potential roles of particularly the auction monitor.

Should these be supplemented by operational guidance, possibly through Commission guidelines? [Y/N] Y

If not, why not?

A: Yes, in case such supplement are seen as necessary.

Question 63

Is there a need for harmonised market abuse provisions in the Regulation to prevent insider dealing and market manipulation? [Y/N] N

If not, why not?

A: We strongly recommend to leave the a.m. issues out of the proposed auction regulation as these issues should be dealt within specific legislation. Currently, there is a process ongoing, lead by DG TREN, to establish a tailor-made energy-specific market integrity regime where issues of CO2 trading will also be addressed.

Please comment on your choice outlining the provisions you deem necessary and stating the reasons why.

A:

Question 64

Should the Regulation provide for harmonised enforcement measures to sanction [mark those that you agree with,]:

- Non-compliance with its provisions?
- Market abuse?

Please provide arguments to support your case.

A: There should be an harmonised approach for the non-compliance with the Regulation. However, as mentioned in our answer to question 63, issues of market abuse should be dealt within sector-specific regulation in order to avoid overlapping provisions

Question 65

Should the enforcement measures include [mark those that you agree with,]:

- The suspension of the auctioneer(s) and/or bidders from the EU-wide auctions?
If so, for how long should such suspension last? _____
- Financial penalties?
If so, at what level should such penalties be fixed? _____
- The power to address binding interim decisions to the auctioneer(s) and/or bidders to avert any urgent, imminent threat of breach of the Regulation with likely irreversible adverse consequences?
- Anything else? Please specify: _____

Please provide arguments to support your case.

A: Possible enforcement measures should be orientated at the procedures already in place e.g. at power exchanges.

Question 66

Should such enforcement measures apply at:

- EU level?
- National level?
- Both?

Please comment on your choice.

A: Any measure should apply at EU level in order to ensure an uniform and harmonised approach..

Question 67

Who should enforce compliance with the Regulation (more than one answer is possible):

- The auction monitor?
- The auctioneer?
- A competent authority at EU level?
- A competent authority at national level?
- Other? Please specify: _____

Please provide evidence to support your case.

A: We believe that a competent authority at EU level should enforce compliance with the Regulation; while the auctioneer / auction monitor should report any compliance issues to this authority.

Question 68

Which of the three approaches for an overall EU auction model do you prefer? Please rate the options below (1 being the most preferable, 3 being the least preferable)

- 3 Limited number of coordinated auction processes.
- 2 Full centralisation based on a single EU-wide auction process.
- 1 The hybrid approach where different auction processes are cleared through a centralised system.

Please give arguments to support your case.

A:

The question of an overall EU auction model must take into account three criteria:

- **Accessibility for bidders:** A high number of auction processes may prevent especially smaller bidders from participating in the auctions. This would generate a possibility for arbitrage that should be avoided. The number of auction processes should therefore be very limited. A full centralisation or the hybrid approach are therefore preferable.
- **Auction volumes:** With a centralised auction or the hybrid approach the harmonisation of auction volumes at different dates could be achieved.
- **Entrance requirements:** Both full centralisation and the hybrid approach fulfil the above mentioned conditions for accessibility and auction volumes. The major advantage of the hybrid approach lies probably in the fact that it allows easy decentralised access with a central clearing process.

Question 69

If a limited number of coordinated auction processes develops, what should be the maximum number?

- 2
 3
 5
 7
 more than 7, please specify: _____

Please give arguments to support your case.

A:As mentioned in our answer to question 68, we prefer the hybrid approach where different auction processes are cleared through a centralised system. If a limited number of coordinated auction processes develops, the maximum number of coordinated auction processes should be small in favour of preferably small changes in the auctioning volumes at different dates. In our opinion the maximum number of coordinated auction processes should be 3.

Question 70

Is there a need for a transitional phase in order to develop gradually the optimal auction infrastructure? [Y/N] N

If so, what kind of transitional arrangements would you recommend?

We do not think that there is the need for a transitional phase as it is of key importance to have the auction system properly in place right from the start. Of course, as experience is gained with the ongoing auctions, we support any measure to further optimise the system or adapt to relevant developments.

In case the auction infrastructure is not established in time the most important point is that the respective volumes are released quickly into the market by other means; here we would see the immediate selling into the market as the most simple approach.

Question 71

Should the Regulation impose the following requirements for the auctioneer(s) and auction processes? [mark those that apply,]:

Technical capabilities of auctioneers:

- capacity and experience to conduct auctions (or a specific part of the auction process) in an open, fair, transparent, cost-effective and non-discriminatory manner;
- appropriate investment in keeping the system up-to-date and in line with ongoing market and technological developments; and
- relevant professional licences, high ethical and quality control standards, compliance with financial and market integrity rules.

Integrity:

- guarantee confidentiality of bids, ability to manage market sensitive information in an appropriate manner;
- duly protected electronic systems and appropriate security procedures with regards to identification and data transmission;
- appropriate rules on avoiding and monitoring conflicts of interest; and
- full cooperation with the auction monitor.

Reliability:

- robust organisation and IT systems;
- adequate fallback measures in case of unexpected events;
- minimisation of the risk of cancelling an individual auction once announced;
- minimisation of the risk of failing functionalities (e.g. access to the bidding platform for certain potential bidders); and
- fallback system in case of IT problems on the bidder side.

Accessibility and user friendliness:

- fair, concise, comprehensible and easily accessible information on how to participate in auctions;
- short and simple pre-registration forms;
- clear and simple electronic tools;
- (option of) accessibility of platforms through a dedicated internet interface;
- ability of the auction platform to connect to and communicate with proprietary trading systems used by bidders;
- adequate and regular training (including mock auctions);
- detailed user guidance on how to participate in the auction; and
- ability to test identification and access to the auction.

Please elaborate if any of these requirements need not be included.

A: We agree with the a.m. requirements.

Please elaborate what additional requirements would be desirable.

A:

Question 72

What provisions on administrative fees should the Regulation include (more than one answer is possible)?

- General principles on proportionality, fairness and non-discrimination.
- Rules on fee structure.
- Rules on the amount of admissible fees.
- Other? Please specify: _____

Please provide arguments to support your case.

A: We believe that administrative fees should be recovered through the auction revenues.

Question 73

Should there be provisions for public disclosure of material steps when introducing new (or adapted) auction processes?

A: Yes.

Should new (or adapted) auction process be notified to and authorised by the Commission before inclusion in the auction calendar?

A: Yes.

Question 74

Which one of the following options is the most appropriate in case a Member State does not hold auctions (on time)?

- Auctions by an auctioneer authorised by the Commission.
- Automatic addition of the delayed quantities to those foreseen for the next two or three auctions.

What other option would you envisage? Please specify:

A: If Member States do not hold auctions (on time), the most important point is that the respective volumes are released quickly into the market by other means; thus we would see the immediate selling into the market as the most simple approach.

Question 75

Should a sanction apply to a Member State that does not auction allowances in line with its commitments? [Y/N] Y

If so, what form should that sanction take?

A: Such sanctions seem only necessary if there is no EU-wide central auctioning platform; i.e. Member States hold the auctions. So, for the case that Member States do not hold auctions in line with its commitments, the most important point is that the respective volumes are released quickly into the market; this could, for example, be done via direct selling into the market or by auctioning by a third party. It is also important, that in such a case, the market participants are informed about the sanction measures taken, particularly in respect to how and when the EUAs will be brought into the market in future.

Question 76

As a general rule throughout the trading period, in your opinion, are early auctions necessary? [Y/N] _

If so, what should the profile of EUAA auctions be:

- 5-10% in year n-2, 10-20% in year n-1, remainder in year n
- 10-20% in year n-2, 20-30% in year n-1, remainder in year n
- 20-30% in year n-2, 30-35% in year n-1, remainder in year n
- Other? Please specify: _____

Question 77

Do you think there is a need to auction EUAA futures? [Y/N] _

If so, why?

A:

This page contains two questions that will not be made public. These questions cannot be completed on this document

Request for potentially confidential information 3

Please send the answer to this question in paper and electronic format, marked on the envelope "Strictly Private and Confidential – Auctioning consultation", directly to the European Commission, DG ENV, Directorate C, Unit C2, to the attention of the Head of Unit, Office BU-5 2/1, 1049 Brussels, Belgium. It will be treated confidentially and will not be disclosed publicly.

For aircraft operators covered by the EU ETS:

Have you determined a corporate hedging strategy for carbon needs?

Yes [] No []

If so, what share of your expected emissions covered by the EU ETS in a given year n do you (intend to) hedge and how much in advance?

- year n : _____%
- year n-1 : _____%
- year n-2 : _____%

Request for potentially confidential information 4

Please send the answer to this question in paper and electronic format, marked on the envelope "Strictly Private and Confidential – Auctioning consultation", directly to the European Commission, DG ENV, Directorate C, Unit C2, to the attention of the Head of Unit, Office BU-5 2/1, 1049 Brussels, Belgium. It will be treated confidentially and will not be disclosed publicly.

What share of the annual quantity of allowances you intend to purchase *via* auctions would you wish to buy spot or futures respectively?

- | | | SPOT | | FUTURES |
|---|----------|------|--------|---------|
| • | year n | : | _____% | _____% |
| • | year n-1 | : | _____% | _____% |
| • | year n-2 | : | _____% | _____% |

Question 78

What should be the optimal frequency and size of EUAA auctions:

- 2 auctions per year of around 15 million EUAAs?
- 3 auctions per year of around 10 million EUAAs?
- More than 3 auctions per year? Please specify: _____

Please comment on your choice.

A:

Question 79

What would be your preferred timing for EUAA auctions:

- Equally spread throughout the year?
- November – March?
- Other? Please specify: _____

Question 80

Should any of the EUAA auction design elements be different compared to EUA auctions (see section 3)? [Y/N] _

If so, please specify and comment on your choice.

A:

Question 81

Do you agree there is no need for a maximum bid-size? [Y/N] _

If not, why not?

A:

Question 82

Is there any information regarding aircraft operators made available as part of the regulatory process to the competent authorities that could facilitate the KYC checks performed by the auctioneer(s)? [Y/N] _

If so, please describe what information is concerned and whether it should be referred to in the Regulation or any operational guidance published by the Commission.

A:

Question 83

In your opinion, is there a specific need to allow for non-competitive bids in EUAA auctions?

A:

Would this be the case even when applying a uniform clearing price format?

A:

Please provide arguments to support your case.

Question 84

Do you agree that there is no need for any specific provisions for EUAA auctions as regards [mark those that you agree with,]:

- Involvement of primary participants, exchanges or third party service providers?
- Guarantees and financial assurance?
- Payment and delivery?
- Information disclosure?
- Auction monitoring?
- Preventing anti-competitive behaviour and/or market manipulation?
- Enforcement?

If not, please describe in detail what rules would be needed and why.

A:

Question 85

Taking into account the smaller volume of EUAA allowances to be auctioned compared to EUAs, which of the three approaches for an overall EUAA auctioning model do you prefer? Please rate the options below (1 being the most preferable, 3 being the least preferable)

- Limited number of coordinated auction processes.
- Full centralisation based on a single EU-wide auction process.
- Hybrid approach where different auction processes are cleared through a centralised system.

Does your choice differ from the approach preferred for EUAs? [Y/N] _

Please provide arguments to support your case.

A:

Question 86

Do you agree that there is no need for any specific provisions for EUAA auctions as regards. [mark those that you agree with,]:

- Requirements for the auctioneer(s) and auction processes?
- Administrative fees?
- Rules to ensure appropriate and timely preparation of the auctions?

If not, please describe in detail what rules would be needed and why.

A: