

EU Emissions trading Scheme – Consultation on design and organization of emissions allowance auction

Comments by the Spanish Climate Change Office of the Ministry of Environment, Rural and Marine Affairs

Introduction

We appreciate the document and questionnaire put forward by the Commission to carry out this public consultation on auctioning. We believe that the report is comprehensive, clear, and raises most significant issues. However, we feel that sometimes too specific and detailed points are addressed for the stage of the process in which we are.

By this note we submit our initial views in order to feed the consultation. In interpreting this note it must be understood that our comments don't represent the Spanish Government position. This position must be coordinated among several departments. Also, it is important to consider that different issues are at times interrelated. Definitive answers to certain questions may depend on the form other issues finally take. Therefore, our position will be set in accordance with the evolution of negotiations of the regulation in the climate change committee.

General comments

- Having in mind that there is limited experience with regards to auctioning, some flexibility is required in the early stages of implementation. In addition, the subsidiarity principle must also be applied here. At the same time, it is necessary to set up a model with a significant degree of harmonization. For all these reasons, a limited number of well coordinated auction processes instead of full-centralization based on a single EU-wide auction process are needed.
- Given the relevance of auctioning in the future EUETS and the limited experience acquired so far, the regulation must foresee a mid-term review of the EU auctioning system. Such mid-term review could be carried out by 2015.

Specific comments

Answers to directly related questions are grouped.

- Early auctions and auction of futures (Q1, Q2):

Early auctions may involve significant uncertainties and risks. There will be little time to make the necessary arrangements and adapt/develop platforms in line with a regulation that will be available only by mid-2010. In addition, there are uncertainties on how the market would react to injecting still in phase II a significant amount of phase III allowances. Any risk of price sinking must be avoided.

On the other hand, it is true that some operators might need early auctions to hedge their positions, and that the directive, in a recital, calls for auctions already in 2011.

For all the reasons mentioned above, the amount of allowances to be auctioned in early auctions, if any, should be determined with care and strictly limited to cover hedging needs of the power sector, taking into account the effect of volume to be banked from phase II and unexhausted quotas to use CER/ERU. We suggest that the Commission makes an assessment of hedging needs at EU level taking into account the information managed by DG TREN.

On auctioning futures, early auctions necessarily involve them. If it is finally decided that early auctions are needed; futures will be auctioned, at least at that early stage. We don't have a position yet on the necessity of having auctions of futures during phase III.

- Frequency and size of auctions; lot size (Q5-Q8, Q17):

All these issues are directly interconnected. Auctions should not be too small, or extremely frequent. An appropriate range would be 40-80 million per auction. According to the Commission estimates on available volume this would correspond to fortnightly-monthly frequency, which we also consider appropriate.

Regarding lot size, the amount proposed in the document, 1000 allowances, is right.

- Calendar issues (Q12, Q14):

We believe that summer (from mid-July to end of August) and Christmas breaks are periods where auctions should be avoided. Besides, high volatility prices periods deserve special attention. Regarding how long in advance the elements of the calendar should be determined, a balance between certainty and flexibility must be found. We consider than 1-2 years may be right.

- Auction format and pricing rule (Q18, Q19):

A single-round seal-bid auction, with uniform-pricing, is an appropriate auction format. Given that there is a secondary market functioning since 2005, we don't see the need for complex alternatives to help price discovery.

- Reserve price (Q21, Q22):

The reserve price should be regarded as a protection tool against the risk of unexpected events and collusion more than a market intervention. In normal conditions the reserve price will have no effect but in case of collusion and/or unexpected events, it could be very useful to have a reserve price in place. The methodology/formula for calculating the reserve price should be kept secret in order to avoid it become a focal point for bidding strategies.

- Pre-registration requirements (Q26, Q27, Q32):

Pre-registration requirements should be harmonized as far as practicable, in order to minimize administrative costs for participants. We believe that the establishment of common and robust know-your-customer (KYC) checks is needed to guarantee stability, integrity and credibility of the system.

Accordingly, in case several MS were jointly auctioning, it would be desirable that mutual recognition of pre-registration checks were applied in order to avoid undue administrative costs. Actually, procedures for mutual recognition at EU-level should also be considered for all cases, whether or not several MS are acting jointly.

- Level and type of collateral accepted in EUA auctions (Q33, Q34):

We believe that the guiding principle here should also be harmonization as far as possible, but taking into consideration the necessity to respect national law.

- Provisions on payment and delivery incidents (Q39-Q41):

We believe that the guiding principle here should also be harmonization as far as possible, but taking into consideration the necessity to respect national law.

- Access of SME and small emitters (Q49, Q50, Q52):

Article 10.4 of the directive states that auctions shall be designed to ensure access to SMEs and small emitters. This principle must be implemented in the regulation. At this moment, we don't have enough experience to know whether general rules for auctioning or the secondary market suffice for ensuring full, fair and equitable access to allowances to SMEs and small emitters in phase III. A specific mechanism for these operators could be considered, such as non-competitive bids, even if they introduce further complexity in design. The final level of free allocation for these operators should be taken into account before making a decision on whether or not such mechanisms are needed.

If non-competitive auctions are finally implemented, they should be restricted to SMEs and small emitters. Use of non-competitive bids by others might jeopardize access of SME and small emitters. In order to restrict participation in non-competitive bids, the Commission Recommendation 2003/361/EC regarding the SME definition and the broadly used threshold of 25 000 t CO₂e per year for small emitters could be applied.

- Publication of information (Q55, Q58, Q61, Q62):

The notice to auction should be released at least one month before the auction.

Regarding the information to be disclosed after the auction, a comprehensive approach should be followed. In principle, we don't see any reason to restrict access to information mentioned in Q58.

With regards to appointment of a central monitor, as a general rule we don't want to duplicate structures and reporting obligations if it is not strictly necessary. In addition, conflicts with national law must be avoided. We feel that necessity of a central monitor will depend on what exactly their functions are, and whether or not the same goals can be achieved by other simpler means.

In case a central monitor was finally appointed, the regulation should include general principles on its designation and mandate, and on cooperation with auctioneers.

- Market abuse and enforcement provisions (Q63, Q66, Q67):

Regarding market abuse rules, the guiding principle here should also be harmonization as far as possible, but taking into consideration the necessity to respect national law.

Compliance with the regulation should be enforced by competent authorities at national level where enforcement measures apply at national level. If enforcement measures are applied also at EU-wide level, then procedures with participation of all MS and the Commission may be considered.

- EU auction model (Q68, Q70):

As indicated in general comments, having in mind that there is limited experience with regards to auctioning, some flexibility is required in the early stages of implementation. In addition, the subsidiarity principle must also be applied here. At the same time, it is necessary to set up a model with a significant degree of harmonization. For all these reasons, a limited number of well coordinated auction processes instead of full-centralization based on a single EU-wide auction process is needed.

Regarding the need for a transitional phase, there is no time now for it. However, given the relevance of auctioning in the future EUETS and the limited experience acquired so far, the regulation must foresee a mid-term review of the EU auctioning system. Such mid-term review could be carried out by 2015.

Administrative fees (Q72):

With regards to administrative fees, the regulation should only include general principles on proportionality, fairness and non-discrimination.

- Provisions to address failures of MS obligations (Q74, Q75):

If an auction is not hold on time, the most appropriate option would be to auction that volume by the same MS, or group of MS, later either in a specific auction arranged for that purpose or added to the next planed auction.

Regarding sanctions to MS that don't auction allowances in line with its commitments, no specific procedures are needed. General procedures set up in the Treaty suffice.

- Auction of aviation allowances (Q76-Q78, Q80, Q85):

In the case of aviation, given the volume of emissions, free allocation and the possibility to use all type of allowances, we don't see a need for early auctions.

Aviation auctions should be equally spread through the year. In determining the volume, inconsistencies with procedures for general auctions must be avoided as far as possible. Thus, if a MS organizes auctions for "regular" allowances on its own, it is not justified to require that MS to act jointly with other MS just for aviation.

As a general rule, provisions for auctions of EUAA must be the same as for auctions of EUA. An exception is non-competitive bids. While we have certain doubts on whether non-competitive auctions are needed for EUA, in the case of aviation we clearly see no need for them.