

Le Cercle de l'Industrie's position on the consultation by the Commission about the technical aspects of EU Emission Allowances Auctions

2- What and when to auction?

2.1 What to auction and how early?

Question 2: Do you think there is a need to auction futures? If so, why so?

This question relies upon the feasibility by Member States to auction futures. According to the specific characteristics of the electricity sector, there is a need to auction futures to launch the secondary market well in advance.

Question 5: For spot auctions:

What should be the optimum frequency of auctions?

Weekly

What should be the minimum frequency of auctions?

Monthly

What should be the maximum frequency of auctions?

Weekly

3. Auction design

3.3 Reserve price

Question 21: Should a reserve price apply?

No, if there is a good design of the auction system (high frequency and regularity of quantities sold), there is no need of a reserve price. In fact, imposing a reserve price constitute an intervention on the price formation and could have implications on the pricing process of the secondary market. Any intervention would reduce predictability and distort investment signals.

4- How will the auction(s) be implemented

4.4 Transaction rules under the Regulation

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? If not, why not?

If so, are the matters enumerated below complete?

- *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?

Yes by reference to the secondary market rules already in place.

Question 41 *Should the Regulation provide for rules on jurisdiction and the mutual recognition and enforcement of judgments?*

Yes, in accordance with the Brussels I Regulation.

4.8 Auction monitoring and reporting

Question 61 *Should an auction monitor be appointed centrally to monitor all EU auctions?*

Yes, it is absolutely necessary to avoid market abuse behaviour.

Question 62 *Do you agree that the Regulation should contain general principles on :*

- *the designation and mandate of the auction monitor; and*
- *cooperation between the auctioneer(s) and the auction monitor?*

Should these be supplemented by operational guidance, possibly through Commission guidelines?

Yes, it is necessary that the Regulation should contain specific commitments.

4.9 Preventing anti-competitive behaviour and/or market abuse

Question 63 *Is there a need for harmonised market abuse provisions in the Regulation to prevent insider dealing and market manipulation? If not, why not? Please comment on your choice outlining the provisions you deem necessary and stating the reasons why.*

Yes, it is necessary to harmonise market abuse provisions at the European level to avoid distortions.

4.10 Enforcement of the provisions of the Regulation

Question 64 *Should the Regulation provide for harmonised enforcement measures to sanction?*

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

Please provide arguments to support your case.

Yes. Any rules which apply should be enforced to be effective and coherent with the provisions of the Waxman – Markey bill which set out financial penalties. Consequently, suspension measures and financial penalties should be fixed, in a unique European definition.

Question 65 *Should the enforcement measures include?*

- *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.*

The answers to this question depend on the market abuse regime that will be in place (see above 63 and 64).

Question 66 *Should such enforcement measures apply at:*

- *EU level?*
- *National level?*
- *Both?*

Please comment on your choice.

The enforcement of the measures must apply at EU level in order to comply with the principle of non-discrimination.

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 competent authority at EU level is absolutely a necessity in order to comply the principle of non-discrimination and avoid speculative behaviour.

5. Who auctions? Auction processes and auctioneer(s)

5.1 Overall model for EU ETS auctioning system

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)

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

Please give arguments to support your case.

Industrials are in favour of a centralised system in order to avoid market abuse (see answer 67).

Question 69 If a limited number of coordinated auction processes develop, what should be the maximum number?

- 2
- 3
- 5
- 7
- more than 7, please specify.

Please give arguments to support your case.

See answer 68.

Question 70 Is there a need for a transitional phase in order to develop gradually the optimal auction infrastructure? If so, what kind of transitional arrangements would you recommend?

No. Industrials need predictability.

5.2 Key requirements for the auctioneer(s) and auction processes

Question 71 Should the Regulation impose the following requirements for the auctioneer(s) and auction processes?

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.

Yes, the list should be completed by two items:

- *auctioneers (Members States) should not be able to purchase in the auction ;*
- *credit rating for auctioneers should be high so as to cover delivery risk.*

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