



Brussels, 12.11.2020
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COMMISSION DECISION

of 12.11.2020

to amend Annex III of the Joint Procurement Agreement to procure Common Auction Platforms for the purposes of auctioning allowances for the Modernisation Fund and the Innovation Fund on the common auction platform

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THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a system for greenhouse gas emission allowance trading within the Union and amending Council Directive 96/61/EC¹, and in particular Article 10(4) thereof,

Having regard to Commission Regulation (EU) No 1031/2010 of 12 November 2010 on the timing, administration and other aspects of auctioning of greenhouse gas emission allowances pursuant to Directive 2003/87/EC of the European Parliament and of the Council establishing a system for greenhouse gas emission allowances trading within the Union², and in particular Article 26(1),

Having regard to the Joint Procurement Agreement to procure common auction platforms³, and in particular the third subparagraph of Article 48 thereof,

Whereas:

- (1) The Commission and the Member States, participating in the Joint Procurement Agreement are to carry out a joint procurement procedure to appoint a common auction platform, in accordance with Article 26(1) of Regulation (EU) 1031/2010. The non-participating Member States in the Joint Procurement Agreement have informed the Commission of their decision not to participate in the joint action provided for in Article 26(1) of the Auctioning Regulation, in accordance with Article 30(4) of that Regulation.
- (2) Pursuant to Article 4(2)(a) the Joint Procurement Agreement, the Commission is authorised by the participating states in that Agreement to act on their behalf and to conduct the joint procurement procedure including the award and signature of the resulting contract. Integral parts of this contract are the escrow agreement and the custody agreement necessary in accordance with, inter alia, Article 46 of Regulation (EU) 1031/2010.
- (3) The Modernisation Fund is established by Article 10d of Directive 2003/87/EC to facilitate the modernisation of energy systems and improvement of energy efficiency in lower income Member States (beneficiary Member States⁴) during the period 2021-2030. The detailed rules on its operation are set out in Commission Implementing

¹ OJ L 275 25.10.2003, p. 32.

² OJ L 302, 18.11.2010, p. 1.

³ Communication to the Commission: Approval of the Joint Procurement Agreement to procure Common Auction Platforms and the Joint Procurement Agreement to procure a Single Auction Monitor pursuant to Commission Regulation 1031/2010, SEC(2011)1338, 09.11.2011.

⁴ Bulgaria, Czechia, Estonia, Croatia, Latvia, Lithuania, Hungary, Poland, Romania, Slovakia.

Regulation (EU) 2020/1001⁵. In accordance with Article 10d(3) of the ETS Directive, the Modernisation Fund operates under the responsibility of the beneficiary Member States.

- (4) The Innovation Fund is established by Article 10a(8) of the ETS Directive to support innovative low-carbon technologies in the period 2021-2030. The detailed rules on its operation are set out in Commission Delegated Regulation (EU) 2019/856⁶.
- (5) The allowances for the Modernisation Fund and the Innovation Fund are to be auctioned on the common auction platform, in accordance with Article 10d(3) of Directive 2003/87/EC (ETS) and Article 20(1) of Delegated Regulation (EU) 2019/856. In order for the rules on escrow and custody to be made applicable to the common auction platform also with respect to the auctioning of allowances for the Modernisation Fund and for the Innovation Fund, the escrow agreement and custody agreement should take effect as regards the allowances to be auctioned for these two funds.
- (6) With the exception of Poland, all beneficiary Member States of the Modernisation Fund, are participating states in the Joint Procurement Agreement. Pursuant to Article 4(2)(a) of that Agreement they have authorised the Commission to sign the escrow and custody agreements on their behalf. For the purposes of the auctioning of allowances for the Modernisation Fund, Poland should be able to become an observer to the Joint Procurement Agreement, and therefore be able to sign Annex III of that Agreement. When Poland becomes an observer, Poland will be bound by the provisions of Article 4 of that Agreement on the authority given by the participating states to the Commission. As observer, Poland will be also bound by the provisions on non-contractual liability as per Article 45 in conjunction with Article 38 of the Joint Procurement Agreement. Currently, Annex III does not contain any specific provisions related to the allowances to be auctioned for the Modernisation Fund. Therefore, it needs to be amended accordingly.
- (7) In accordance with Article 19(3) of Regulation 2019/856, the revenue of the Innovation Fund constitutes external assigned revenue within the meaning of Regulation 2018/1046⁷. The Commission will therefore sign the escrow and the custody agreement on its own behalf for the Innovation Fund allowances. However, it is appropriate to provide the option to all non-participating Member States in the Joint Procurement Agreement to become observers in relation of the auctioning of Innovation Fund allowances. The status of observer would result in acquiring access to the information on the auctioning of the Innovation Fund allowances under Article 34 of the Joint Procurement Agreement, as well as applicability of provisions on non-contractual liability as per Article 45 in conjunction with Article 38 of that Agreement. Currently, Annex III does not contain any specific provisions related to the allowances

⁵ Commission Implementing Regulation (EU) 2020/1001 of 9 July 2020 laying down detailed rules for the application of Directive 2003/87/EC of the European Parliament and of the Council as regards the operation of the Modernisation Fund supporting investments to modernise the energy systems and to improve energy efficiency of certain Member States, OJ L 221, 10.7.2020, p. 107.

⁶ Commission Delegated Regulation (EU) 2019/856 of 26 February 2019 supplementing Directive 2003/87/EC of the European Parliament and of the Council with regard to the operation of the Innovation Fund, OJ L 140, 28.5.2019, p. 6.

⁷ Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012, OJ L 193, 30.7.2018, p. 1–222.

to be auctioned for the Innovation Fund. Therefore, it is appropriate to amend Annex III of the Joint Procurement Agreement in a way similar to that for the Modernisation Fund.

- (8) Pursuant to the third subparagraph of Article 48 of the JPA, the Commission may propose an amendment to the Annexes for the Joint Procurement Agreement, which will enter into force upon an approval of the Joint Procurement Steering Committee established pursuant to that Agreement.

HAS DECIDED AS FOLLOWS:

Sole Article

Annex III of the Joint Procurement Agreement to procure common auction platforms shall be amended as follows:

A bullet point is inserted between the second and the third bullet points as follows:

- [Name of non-participating Member State]'s agreement to be bound by the provisions of Title V of the above-mentioned Joint Procurement Agreement for the purposes of auctioning the allowances [for the Modernisation Fund, established pursuant to Article 10d of Directive 2003/87/EC] [and] [for the Innovation Fund, established pursuant to Article 10a(8) of Directive 2003/87/EC]; and’.

Done at Brussels, 12.11.2020

For the Commission
Frans TIMMERMANS
Executive Vice-President