Commission Regulation (EU) No 1143/2013 of 13 November 2013 amending Regulation (EU) No 1031/2010 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 scheme for greenhouse gas emission allowances trading within the Community in particular to list an auction platform to be appointed by Germany (Text with EEA relevance)

COMMISSION REGULATION (EU) No 1143/2013

of 13 November 2013

amending Regulation (EU) No 1031/2010 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 scheme for greenhouse gas emission allowances trading within the Community in particular to list an auction platform to be appointed by Germany

(Text with EEA relevance)

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 scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC[(1)], and in particular Articles 3d(3) and 10(4) thereof,

Whereas:

(1) Member States not participating in the joint action as provided in Article 26(1) and (2) of 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 scheme for greenhouse gas emission allowances trading within the Community[(2)] may appoint own auction platforms for the auctioning of their share of the volume of allowances covered by Chapters II and III of Directive 2003/87/EC. Pursuant to the third paragraph of Article 30(5) of Regulation (EU) No 1031/2010, the appointment of such auction platforms is subject to listing of the auction platform concerned in Annex III to that Regulation.

(2) In accordance with Article 30(4) of Regulation (EU) No 1031/2010, Germany informed the Commission of its decision not to participate in the joint action as provided in Article 26(1) and (2) of that Regulation, and to appoint its own auction platform.

(3) On 15 March 2013, Germany notified the Commission of its intention to appoint European Energy Exchange AG (‘EEX’) as an auction platform referred to in Article 30(1) of Regulation (EU) No 1031/2010.

(4) On 20 March 2013, Germany presented the notification to the Climate Change Committee established under Article 9 of Decision No 280/2004/EC of the European Parliament and of the Council of 11 February 2004 concerning a mechanism for monitoring Community greenhouse gas emissions and for implementing the Kyoto Protocol[3].

(5) In order to ensure that the proposed appointment of EEX as an auction platform referred to in Article 30(1) of Regulation (EU) No 1031/2010 is compatible with the requirements of that Regulation and is in conformity with the objectives set out in Article 10(4) of Directive 2003/87/EC, it is necessary to impose a number of conditions and obligations on EEX.

(6) In accordance with Article 35(3)(b) of Regulation (EU) No 1031/2010, an appointed auction platform is required to provide full, fair and equitable access to bid in the auctions for small and medium enterprises (SMEs) and access to bid in the auctions for small emitters. To ensure this, EEX should provide such SMEs and small emitters with transparent, comprehensive and up-to-date information, on access possibilities to auctions conducted by EEX for Germany including all necessary practical guidance on how to make the most of such possibilities. Such information should be publicly available on EEX's webpage. In addition, EEX should report to the auction monitor to be appointed as provided for in Article 24(2) of Regulation (EU) No 1031/2010 on the coverage obtained, including on the level of geographic coverage obtained, and take the utmost account of the auction monitor's recommendations in this regard so as to ensure fulfilment of its obligations under Article 35(3)(a) and (b) of that Regulation.

(7) In accordance with Article 35(3)(e) of Regulation (EU) No 1031/2010, when appointing an auction platform, Member States must take into account the extent to which a candidate auction platform is able to avoid distortions of competition in the internal market including the carbon market. In particular, an auction platform should not be able to use the contract appointing it to leverage the competitiveness of its other activities, notably the secondary market it organises. An auction platform should provide candidate bidders the option to be admitted to bid in the auctions without being required to become an exchange member or a participant in the secondary market organised by itself or of any other trading place operated by it or by any third party.

(8) In accordance with Article 35(3)(h) of Regulation (EU) No 1031/2010, when appointing an auction platform, Member States have to take into account the extent to which adequate measures are provided to require an auction platform to hand over all tangible and intangible assets necessary for the conduct of the auctions by an auction platform's successor. Such measures should be laid down in a clear and timely manner in an exit strategy that should be reviewed by the auction monitor. Not only EEX as appointed by Germany, but all auction platforms should develop such an exit strategy and take utmost account of the auction monitor's opinion thereon.

(9) In light of the experience gained, the provisions of Regulation (EU) No 1031/2010 concerning the procurement procedures for appointing auction platforms and the auction monitor, and the holding of auctions should be amended.

(10) Since the allowances must be delivered within five days from the auction, and since these allowances themselves are tradable, the auctioned product does not need to be tradable.

(11) On occasion, an auction platform is required to consult the auction monitor. Replying to such consultations entail a responsibility and liability for the auction monitor. In order to mitigate such responsibility and liability, in particular in urgency cases, the consulting auction platform should be allowed to proceed with the intended measure already before obtaining an opinion from the auction monitor. The obligation on the auction platform to take the utmost account of the auction monitor's opinion, where delivered, should remain.

(12) The determination of auction calendars should also be reviewed. First, it is neither practicable nor necessary to determine the auction calendars as early as February and March of the preceding year. Second, volumes to be auctioned in August should be half of the volumes auctioned in other months, which may be achieved by holding fewer auctions as well as by auctioning smaller volumes. Third, Article 3d of Directive 2003/87/EC determines the volumes and Member State's share of the aviation allowances to be auctioned and the provision in Regulation (EU) No 1031/2010 on the annual volume of aviation allowances to be auctioned should take account of uncertainties of some of the underlying factors determining those volumes and shares. In addition, given the uncertainty on the outcome of international negotiations, some greater flexibility for spreading the volume of aviation allowances to be auctioned over a given calendar year is justified. Fourth, in case of consecutive cancellations, the allowances should be spread over a greater number than the next four scheduled auctions. Finally, provisions should be added as regards the auction calendar for auctions by the common auction platform for a Member State which has decided not to join the joint action, but which has to make use of the common auction platform pending the appointment of an own auction platform. These provisions should mirror the provision for the auction calendars to be determined by auction platforms appointed by such Member States.

(13) Admission to the auctions shall not be dependent on becoming a member of or a participant in the secondary market organised by the auction platform or any other trading place operated by the auction platform or by any third party. This requirement should apply to any auction platform, and not only to the auction platforms appointed by Member States not participating in the joint action for procuring common auction platforms.

(14) An auction platform may offer one or more alternative means of accessing its auctions, where the main means of access are inaccessible for whatever reason, provided that such alternative means of access are secure and reliable and their use does not lead to any discrimination between bidders. For the avoidance of doubt, it should be clarified that Member States may require an auction platform to offer such alternative means.

(15) The implementation of a prohibition on Member States disclosing inside information to persons working for an auctioneer may be impracticable or negatively impact the efficiency of the work of the appointed auctioneer or persons working for the auctioneer.

Changes to legislation: *There are currently no known outstanding effects for the Commission Regulation (EU) No 1143/2013. (See end of Document for details)*

Auctioneers only have a limited role in the conduct of auctions and a range of measures exist to mitigate risks of insider dealing, including measures that address situations where the auctioneer or persons working for the auctioneer would have access to inside information. In this context, a complete prohibition is disproportionate. Nevertheless, Member States should be responsible to ensure that an appointed auctioneer has appropriate measures to prevent insider dealing in place before they disclose such inside information.

(16) The notification by a Member State that does not participate in the joint action of procuring common auction platforms of the auction platform it intends to appoint cannot contain the full auction calendar, but should contain the relevant information for coordinating auction calendars at a later stage.

(17) The review of Regulation (EU) No 1031/2010 should benefit from the auction monitor's report on the auction conducted in 2014, which can be expected to be delivered in the beginning of the subsequent year.

(18) Regulation (EU) No 1031/2010 provides that an auction platform must be a regulated market. In order to benefit from relevant experience and expertise, and mitigate the risks in the execution of the auctions, it is appropriate to clarify that this should be a regulated market, whose operator organises a market in allowances or allowances derivatives.

(19) As the auction monitor may be paid from the auction revenues, it may be desirable for an auction platform to act as a payment agent for the costs of the auction monitor.

(20) A restricted procurement procedure for the appointment of the auction monitor has not resulted in a contract as no candidates submitted a request to participate in this joint procurement. A new procedure will have to address complex issues, e.g. concerning the choice of the tender procedure, the form of the contract and the precise description of the tasks, which take time to resolve. The absence of an auction monitor does not, however, entail a risk for the conduct of the auctions to the extent that they should be stopped pending the appointment of the monitor.

(21) An auction platform may allow the submission of an electronic application for admission to bid but it should also be allowed to require such submission by means of paper documents.

(22) In case the auction platform appointed by a Member State not participating in the joint action for the procurement of common auction platforms is not able to hold the auctions, the Member State concerned should turn to the common auction platform for the auctioning of its share in the volume of allowances to be auctioned. It should be clarified that the arrangements between the common auction platform and auctioneers appointed by those Member States need to be in place before any such auctioning on a common auction platform, but not earlier.

(23) All auction platforms should determine an exit strategy and consult the auction monitor thereon. This obligation should not apply exclusively to auction platforms appointed by Member States not participating in the joint action to appoint common auction platforms.

(24) The measures provided for in this Regulation are in accordance with the opinion of the Climate Change Committee.

(25) The contract between Germany and EEX in its capacity of the transitional opt-out auction platform expires in December 2013. In order to ensure predictable and timely continuation of the auctions by EEX, this Regulation should enter into force as a matter of urgency.

(26) Regulation (EU) No 1031/2010 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EU) No 1031/2010 is amended as follows:

(1) in Article 4, paragraph 1 is replaced by the following:

1. Allowances shall be offered for sale on an auction platform by means of standardised electronic contracts ("the auctioned product").;

(2) in Article 7, paragraphs 7 and 8 are replaced by the following:

7. Before an auction is started, the auction platform shall determine the methodology for the application of paragraph 6, after consulting the auction monitor, if appointed, and notifying the competent national authorities referred to in Article 56.

In between two bidding windows on the same auction platform, the auction platform concerned may modify the methodology. It shall notify the auction monitor, if appointed, and the competent national authorities referred to in Article 56 without delay.

The auction platform concerned shall take the utmost account of the auction monitor's opinion, where provided.

8 Where one or more auctions are cancelled pursuant to paragraph 5 or 6 consecutively, the combined volume of allowances of those auctions shall be distributed evenly over the following auctions scheduled on the same auction platform.

In the case of allowances covered by Chapter III of Directive 2003/87/EC the number of auctions over which the combined volume to be auctioned must be distributed shall equal four times the number of auctions that were cancelled.

In the case of allowances covered by Chapter II of Directive 2003/87/EC the number of auctions over which the combined volume to be auctioned must be distributed shall equal two times the number of auctions that were cancelled.;

(3) Article 8 is amended as follows:

(a) paragraph 3 is replaced by the following:

3. In exceptional circumstances, any auction platform may, after consulting the auction monitor, if appointed, change the times of any bidding window, by giving notice to all persons likely to be affected. The auction platform concerned shall take the utmost account of the auction monitor's opinion, where delivered.;