Commission Regulation (EU) No 1210/2011 of 23 November 2011 amending Regulation (EU) No 1031/2010 in particular to determine the volume of greenhouse gas emission allowances to be auctioned prior to 2013 (Text with EEA relevance)

COMMISSION REGULATION (EU) No 1210/2011

of 23 November 2011

amending Regulation (EU) No 1031/2010 in particular to determine the volume of greenhouse gas emission allowances to be auctioned prior to 2013

(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) 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)] provides for determining the volumes of any allowances to be auctioned in 2011 and 2012 as soon as practicable following its adoption. The volumes so determined are to be listed in an Annex to that Regulation. The foremost objective in specifying the volume is to ensure a smooth transition from the second to the third trading period of the Union Emissions Trading Scheme that underpins the proper functioning of the secondary market.

(2) When determining the volumes to be auctioned in 2011 and 2012, due account should be taken of factors determining demand for and supply of allowances, notably hedging needs for compliance in the early years of the third trading period in particular from the power sector; the volume of allowances valid for the second trading period not needed for compliance in the said trading period and which is held largely by the industrial sectors; the share of those allowances that has been and is likely to be sold on the market in the second trading period; the volume of certified emission reductions and emission reduction units stemming from emission reduction projects under the Clean Development Mechanism or under Joint Implementation provisions available for hedging or for surrendering by operators covered by the Union Emissions Trading Scheme; and the monetisation of allowances from the new entrant reserve for the third trading period for support of demonstration projects of carbon capture and sequestration and innovative renewable energy technologies (NER300) pursuant to Commission

Changes to legislation: *There are currently no known outstanding effects for the Commission Regulation (EU) No 1210/2011. (See end of Document for details)*

Decision 2010/670/EU of 3 November 2010 laying down criteria and measures for the financing of commercial demonstration projects that aim at the environmentally safe capture and geological storage of CO_2 as well as demonstration projects of innovative renewable energy technologies under the scheme for greenhouse gas emission allowance trading within the Community established by Directive 2003/87/EC of the European Parliament and of the Council[3]. Although all these factors are subject to different degrees of uncertainty, it is important to determine the volume to be auctioned in 2012 in a timely manner.

(3) The assessment based on those factors concludes that no allowances valid for the third trading period should be auctioned in 2011.

(4) The auction calendars for the auctioning of allowances in 2012 should be determined such as to limit the impact of the auctions on the functioning of the secondary market, whilst ensuring that auctions are large enough to attract sufficient participation. There should be a smooth transition from the auctioning on transitional auction platforms to the auctioning on later auction platforms. Moreover, adjustment of a published auction calendar could be justified in certain additional precisely specified situations.

(5) Since delivery of the allowances to be auctioned can be expected to be enabled in time, there is no need for transitionally auctioning forwards and futures. The procurement of a transitional auction platform remains, however, desirable in order to mitigate risk inherent to the procurement of the auction platform to which the Regulation will apply in full. Given the importance of the full application of the Regulation, transitional auction platforms should conduct auctions no longer than necessary. The appointment of a transitional auction platform should be facilitated by imposing fewer requirements on the conduct of its auctions, as was already foreseen for the auctioning of forwards and futures. In this way, the services to be procured can remain more aligned to services already existing in the market. In addition, the application of the national measures transposing Title III of Directive 2004/39/EC of the European Parliament and of the Council[4] to the auctions conducted by a transitional auction platform is not indispensable. Similarly, it would be disproportionate to require the authorisation of the transitional auction platform to be updated in accordance with the requirements of the Auctioning Regulation. However, in order to ensure effective market oversight, the provisions in the present Regulation relating to the prohibition of market abuse should apply to auctions conducted on a transitional auction platform from the moment the Member State concerned has implemented the relevant provisions in national law. This encourages a level playing field between candidate auction platforms without making the start of the auctions dependent on such implementation. This applies to the transitional auction platform to be procured by means of a joint procurement procedure, as well as to transitional auction platforms to be appointed by Member States that do not join the joint action and appoint their own auction platform.

(6) It is not necessary to distribute the share of the costs of the auction monitor attributable to services procured by the Commission over the number of auction platforms.

(7) For efficient and adequate preparation and conduct of the joint procurement procedure to appoint a common auction platform, it is desirable to have timely clarity on

participation by Member States in that joint action. Therefore, in certain situations, it should be possible that a Member State that starts making use of the common auction platform at a later stage bears costs attributable to services provided by an auction platform not borne by Member States participating in the joint action from the start.

(8) The appointment of the auctioneers and the auction monitor is of crucial importance for the proper conduct of the auctions and it would generally not be possible to conduct auctions without the conclusion and entry into force of the arrangements between the auctioneers and the auction monitor on the one side and the auction platforms on the other. These arrangements should be properly implemented, but the non-implementation, or a dispute on the implementation, should not in all situations lead to withholding allowances from the auctions.

(9) The auction monitor is to be appointed following a joint procurement procedure between the Commission and the Member States. Although it is foreseen that all Member States participate in this joint action from the outset, it is appropriate to provide rules in case a Member State joins only at a later stage. Moreover, Member States that have decided to appoint an auction platform of their own should be able to join the joint action for the sole purpose of making use of a common auction platform in the absence of listing of the auction platform of their own, without prejudice to their observer status in that joint action.

(10) The risk of insider trading by withdrawing a bid should be mitigated. Where such behaviour is not covered by Directive 2003/6/EC of the European Parliament and of the Council[(5)], the relevant provisions in the Auctioning Regulation should apply.

(11) A limited number of technical clarifications and corrections to the Auctioning Regulation should be provided for in this Amendment.

(12) Regulation (EU) No 1031/2010 should therefore be amended accordingly.

(13) In order to ensure predictable and timely auctions, this Regulation should enter into force as a matter of urgency.

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

HAS ADOPTED THIS REGULATION:

Article 1

Amendments to Regulation (EU) No 1031/2010

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

(1) point (f) of Article 3(43) is replaced by the following:

> (f) the same as in point 20(b) of Article 4(1) of Directive 2004/39/EC for the purposes of Article 28(4) and (5), Article 35(4), (5) and (6) and Article 42(1) of this Regulation;;

(2) Article 4 is amended as follows:

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(a) paragraph 2 is replaced by the following:

2. Each Member State shall auction allowances in the form of either two-day spot or five-day futures.;

(b) paragraph 3 is deleted;

(3) the second and third subparagraphs of Article 6(1) are replaced by the following:

One lot auctioned by an auction platform appointed pursuant to Article 26(1) or Article 30(1) shall be 500 allowances.

One lot auctioned by an auction platform appointed pursuant to Article 26(2) or Article 30(2) shall be 500 or 1 000 allowances.;

(4) the first subparagraph of Article 8(4) is replaced by the following:

4. As from the sixth auction or earlier, the auction platform appointed pursuant to Article 26(1) or (2) shall conduct auctions of allowances covered by Chapter III of Directive 2003/87/EC at least on a weekly basis and auctions of allowances covered by Chapter II of Directive 2003/87/EC at least on a two-monthly basis, except that during 2012, the said auction platforms shall conduct auctions of allowances covered by Chapter III of that Directive on a monthly basis at least.;

(5) Article 10(1) is replaced by the following:

1. For each Member State, Annex I to this Regulation sets out the volume of any allowances covered by Chapter III of Directive 2003/87/EC to be auctioned in 2012.;

(6) the first subparagraph of Article 10(3) is replaced by the following:

3. The volume of allowances covered by Chapter III of Directive 2003/87/EC to be auctioned each calendar year as from 2013 shall be based on Annex I and on the Commission's determination and publication pursuant to Article 10(1) of that Directive of the estimated amount of allowances to be auctioned or on the most recent amendment of the Commission's original estimate as published by 31 January of the preceding year, taking into account to the extent possible any transitional free allocations deducted or to be deducted from the quantity of allowances that a given Member State would otherwise auction pursuant to Article 10(2) of Directive 2003/87/EC as provided for in Article 10c(2) of that Directive.;

(7) Article 11(2) is replaced by the following:

2. The auction platforms appointed pursuant to Article 26(1) or (2) of this Regulation shall make their determinations and publications as provided in paragraph 1 of this Article in accordance with Annex I and the Commission's determination and publication of the estimated amount of allowances to be auctioned or the most recent amendment of the Commission's original estimate, including any adjustment, referred to in Article 10(3).;

(8) the following indent points are added to Article 14(1):

(j) any withholding of allowances from the auctions pursuant to Article 22(5) or the second subparagraph of Article 24(1);

(k) the necessity for an auction platform to avoid conducting an auction in breach of this Regulation or Directive 2003/87/EC.;

(9) Article 16(2) and (3) is replaced by the following:

2. An auction platform appointed pursuant to Article 26(1) or 30(1) shall ensure that its auctions can be accessed remotely by means of an electronic interface accessible securely and reliably through the Internet.

In addition, an auction platform appointed pursuant to Article 26(1) or 30(1) shall offer bidders the option of accessing its auctions through dedicated connections to the electronic interface.

3 An auction platform appointed pursuant to Article 26(1) or 30(1) may offer one or more alternative means of accessing its auctions, should the main means of access be 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.;

(10) Article 17 is replaced by the following:

Article 17

Training and helpline

An auction platform appointed pursuant to Article 26(1) or 30(1) shall offer a practical web-based training module on the auction process it is conducting, including guidance on how to complete and submit any forms and a simulation of how to bid in an auction. It shall also make available a helpline service accessible by telephone, facsimile and electronic mail at least during the working hours of each trading day.;

(11) Article 18(3) is replaced by the following:

3. Persons referred to in paragraph 1(b) or (c) shall be eligible to apply for admission to bid directly in the auctions on behalf of their clients when bidding for auctioned products that are not financial instruments provided that a Member State in which they are established has enacted legislation enabling the relevant competent national authority in that Member State to authorise them to bid on behalf of their clients.;

(12) Article 19(1) and (2) is replaced by the following:

1. When an auction platform organises a secondary market, members or participants of the secondary market organised by an auction platform appointed pursuant to Article 26(1) or 30(1) that are eligible persons pursuant to Article 18(1) or (2) shall be admitted to bid directly in the auctions conducted by that auction platform without any further admission requirements, provided that all of the following conditions are fulfilled:

a the requirements for admission of the member or participant to trade allowances through the secondary market organised by the auction platform appointed pursuant to Article 26(1) or 30(1) are no less stringent than those listed under paragraph 2 of this Article;