

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 (Text with EEA relevance)

CHAPTER XVI

TRANSPARENCY AND CONFIDENTIALITY

Article 62

Protection of confidential information

- 1 The following shall constitute confidential information:
 - a the contents of a bid;
 - b the contents of any instructions to bid even when no bid is submitted;
 - c information which discloses, or from which can be deduced, the identity of the bidder in question and either of the following:
 - (i) the number of allowances which a bidder wishes to acquire in an auction;
 - (ii) the price which a bidder is willing to pay for those allowances;
 - d information about, or derived from, one or more bids or instructions to bid which either separately or collectively would be likely to:
 - (i) give an indication as to the demand for allowances prior to any auction;
 - (ii) give an indication as to the auction clearing price prior to any auction;
 - e information provided by persons in the framework of the establishment or maintenance of the relationship with bidders or in the framework of the monitoring of that relationship pursuant to Articles 19, 20, 21 and 54;
 - f the auction monitor reports and opinions made pursuant to Article 25(1) to (6) except for the parts contained in any non-confidential versions of the auction monitor's reports published by the Commission pursuant to Article 60(2);
 - g business secrets provided by persons participating in a competitive procurement process to appoint an auction platform or the auction monitor;
 - h information on the algorithm used for the random selection of tied bids, referred to in Article 7(2);
 - i information on the methodology to define what constitutes an auction clearing price significantly under the prevailing secondary market price before and during an auction, referred to in Article 7(6).
- 2 Confidential information shall not be disclosed by any person who obtained that information, whether directly or indirectly, other than in accordance with paragraph 3.
- 3 Paragraph 2 shall not prevent the disclosure of confidential information which:
 - a has already lawfully been made available to the public;

Status: Point in time view as at 12/11/2010. This version of this provision has been superseded.

Changes to legislation: There are outstanding changes not yet made to Commission Regulation (EU) No 1031/2010. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details)

- b is made public with the written consent of a bidder, person admitted to bid, or person applying for admission to bid;
- c is required to be disclosed or to be publicly available by an obligation under Union law;
- d is made public pursuant to a court order;
- e is made public for the purposes of any criminal, administrative, or judicial investigations or proceedings carried out in the Union;
- f is disclosed by an auction platform to the auction monitor for the purpose of enabling or assisting the auction monitor to carry out its functions or to fulfil its obligations in relation to the auctions;
- g is aggregated or redacted prior to its disclosure, so that it is unlikely that information relating to the following is discernable:
 - (i) individual bids or instructions to bid;
 - (ii) individual auctions;
 - (iii) individual bidders, prospective bidders or persons applying for admission to bid;
 - (iv) individual applications for admission to bid;
 - (v) individual relationships with bidders;
- h is referred to in paragraph 1(f) provided that it is disclosed to the public in a non-discriminatory and orderly fashion by the competent national authorities of Member States for information covered by Article 25(2)(c) and by the Commission for other information covered by Article 25(2);
- i is referred to in paragraph 1(g) provided that it is disclosed to persons working for Member States or the Commission involved in the competitive procurement process referred to in paragraph 1(g), who are themselves bound by an obligation of professional secrecy under their terms of employment;
- j is made public after the end of a period of 30 months starting from either of the following dates, subject to any subsisting professional secrecy obligations under Union law:
 - (i) the date of the opening of the bidding window of the auction in which the confidential information is first disclosed with respect to confidential information in paragraph 1(a) to (d);
 - (ii) the date of the termination of the relationship with a bidder with respect to confidential information in paragraph 1(e);
 - (iii) the date of the auction monitor's report or opinion with respect to confidential information in paragraph 1(f);
 - (iv) the date of submission of the information in the competitive procurement process with respect to confidential information in paragraph 1(g).

4 The measures required to ensure that confidential information is not wrongfully disclosed and the consequences of any such wrongful disclosure by an auction platform or the auction monitor, including any persons contracted to work for them, shall be set out in the contracts appointing them.

5 Confidential information obtained by an auction platform or the auction monitor, including any persons contracted to work for them, shall be used solely for the purpose of the performance of their obligations or the exercise of their functions with respect to the auctions.

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6 Paragraphs 1 to 5 shall not preclude the exchange of confidential information between an auction platform and the auction monitor, nor between any one of them and:

- a the competent national authorities supervising an auction platform;
- b the competent national authorities responsible for investigating and prosecuting money laundering, terrorist financing, criminal activity or market abuse;
- c the Commission.

Confidential information exchanged under this paragraph shall not be disclosed to other persons than those referred to in points (a), (b) and (c) contrary to paragraph 2.

7 Any person who works, or has worked for, an auction platform or the auction monitor involved in the auctions, shall be bound by the obligation of professional secrecy and shall ensure that confidential information is protected pursuant to this Article.

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