

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 X

MARKET ABUSE REGIME APPLICABLE TO AUCTIONED PRODUCTS

Article 36

Market abuse regime applicable to financial instruments within the meaning of Article 1(3) of Directive 2003/6/EC

1 For the purposes of this Regulation, where two-day spot or five-days futures are financial instruments within the meaning of Article 1(3) of Directive 2003/6/EC, that Directive shall apply to the auctioning of those auctioned products. [^{F1}The foregoing shall be without prejudice to the application of Articles 38 to 40 of this Regulation to the use of inside information to withdraw a bid.]

2 Where two-day spot or five-days futures are not financial instruments within the meaning of Article 1(3) of Directive 2003/6/EC, the provisions of Articles 37 to 43 of this Regulation shall apply.

Textual Amendments

- F1** Inserted by [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 \(Text with EEA relevance\)](#).

Article 37

Definitions for market abuse regime applicable to auctioned products other than financial instruments within the meaning of Article 1(3) of Directive 2003/6/EC

For the purposes of Articles 38 to 43 which apply to auctioned products other than financial instruments within the meaning of Article 1(3) of Directive 2003/6/EC, the following definitions shall apply:

- (a) ‘inside information’ means information of a precise nature which has not been made public, relating, directly or indirectly, to one or more of the auctioned products, and which, if it were public, would be likely to have a significant effect on the prices at which bids would be made.

For persons charged with the execution of bids, inside information also means information conveyed by a client and related to the client’s pending bids, which is of a precise nature, which related directly or indirectly to one or more auctioned products

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and which, if it were made public, would be likely to have a significant effect on the prices at which bids would be made;

(b) ‘market manipulation’ means:

- (i) bids, or transactions or orders on the secondary market:
- which give, or are likely to give, false or misleading signals as to the demand for or price of the auctioned products, or
 - which secure, by a person, or persons acting in collaboration, an auction clearing price for the auctioned products at an abnormal or artificial level,

unless the person who made the bid or, on the secondary market, the transaction or the order, establishes that its reasons for so doing are legitimate;

- (ii) bids which employ fictitious devices or any other form of deception or contrivance;
- (iii) dissemination of information through the media, including the Internet, or by any other means, which gives, or is likely to give, false or misleading signals as to the auctioned products, including the dissemination of rumours and false or misleading news, where the person who made the dissemination knew, or ought to have known, that the information was false or misleading. In respect of journalists when they act in their professional capacity such dissemination of information is to be assessed, taking into account the rules governing their profession, unless those persons derive, directly or indirectly, an advantage or profits from the dissemination of the information in question.

In particular, the following instances are derived from the core definition given in point (b) of the first paragraph:

- conduct by a person, or persons acting in collaboration, to secure a dominant position over the demand for an auctioned product which has the effect of fixing, directly or indirectly, auction clearing prices or creating other unfair trading conditions,
- the buying or selling on the secondary market of allowances or related derivatives prior to the auction with the effect of fixing the auction clearing price for the auctioned products at an abnormal or artificial level or misleading bidders bidding in the auctions,
- taking advantage of occasional or regular access to the traditional or electronic media by voicing an opinion about an auctioned product while having previously made a bid in relation to that product and profiting subsequently from the impact of the opinions voiced on the other bid prices offered for that product, without having simultaneously disclosed that conflict of interest to the public in a proper and effective way.

Article 38

Prohibition of insider dealing

1 No person referred to in the second subparagraph who possesses inside information shall use that information by submitting, modifying or withdrawing a bid, for its own account or for the account of a third party, either directly or indirectly, for an auctioned product to which that information relates.

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The first subparagraph shall apply to any person who possesses inside information:

- a by virtue of its membership of the administrative, management or supervisory bodies of the auction platform, the auctioneer or the auction monitor; or
- b by virtue of its holding in the capital of the auction platform, the auctioneer or the auction monitor; or
- c by virtue of its having access to the information through the exercise of his employment, profession or duties; or
- d by virtue of its criminal activities.

2 Where the person referred to in paragraph 1 is a legal person, the prohibition laid down in that paragraph shall also apply to the natural persons who take part in the decision to submit, modify or withdraw the bid for the account of the legal person concerned.

3 This Article shall not apply to the submission, modification or withdrawal of a bid for an auctioned product made in the discharge of an obligation that has become due where that obligation results from an agreement concluded before the person concerned possessed inside information.

Article 39

Other prohibited uses of inside information

No person who is subject to the prohibition laid down in Article 38 shall:

- (a) disclose inside information to any other person unless such disclosure is made in the normal course of the exercise of its employment, profession or duties;
- (b) recommend or induce another person, on the basis of inside information, to submit, modify or withdraw the bid for auction products to which that information relates.

Article 40

Other persons covered by the prohibition of inside dealing

Articles 38 and 39 shall also apply to any person, other than the persons referred to in those Articles, who possesses inside information while that person knows, or ought to have known, that it is inside information.

Article 41

Prohibition of market manipulation

No person shall engage in market manipulation.

Article 42

Specific requirements to mitigate the risk of market abuse

1 The auction platform, the auctioneer and the auction monitor shall each draw up a list of those persons working for them, under a contract of employment or otherwise, who have access to inside information. The auction platform shall regularly update its list and transmit

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it to the competent national authority of the Member State in which it is established whenever so requested. The auctioneer and the auction monitor shall each regularly update their list and transmit it to the competent national authority of the Member State where the auction platform is established and the Member State of establishment of the auctioneer or the auction monitor, as provided for in the contract(s) appointing them, whenever the competent national authority concerned so request.

2 Persons discharging managerial responsibilities within the auction platform, the auctioneer, or the auction monitor and, where applicable, persons closely associated with them, shall, at least, notify to the competent national authority referred to in paragraph 1, the existence of bids submitted, modified or withdrawn on their own account relating to the auctioned products, or to derivatives or other financial instruments linked to them.

3 Persons who produce or disseminate research concerning auctioned products and persons who produce or disseminate other information recommending or suggesting investment strategy, intended for distribution channels or for the public, shall take reasonable care to ensure that such information is fairly presented and disclose their interests or indicate conflicts of interest concerning auctioned products.

4 The auction platform shall adopt structural provisions aimed at preventing and detecting market manipulation practices.

5 Any person referred to in Article 59(1) who reasonably suspects that a transaction might constitute insider dealing or market manipulation shall notify the competent national authority of the Member State of its establishment without delay.

Article 43

Supervision and enforcement

1 The competent national authorities referred to in Article 11 of Directive 2003/6/EC shall maintain effective market oversight and take the necessary measures to ensure that the provisions of Articles 37 to 42 of this Regulation are complied with.

2 The competent national authorities referred to in paragraph 1 of this Article shall have the powers provided for in the national measures transposing Article 12 of Directive 2003/6/EC.

3 Member States shall ensure that the national measures transposing Articles 14 and 15 of Directive 2003/6/EC apply in relation to the persons responsible for failure to comply with Articles 37 to 42 of this Regulation in relation to auctions carried out in their territory or abroad.

4 For the purposes of application of Articles 37 to 42 of this Regulation and paragraph 1, 2 and 3 of this Article, national measures transposing Article 16 of Directive 2003/6/EC shall apply to cooperation between competent national authorities referred to in paragraph 1 of this Article.

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