

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)

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.;
 - (b) paragraph 5 is replaced by the following:
 5. The volume of allowances covered by Chapter III of Directive 2003/87/EC to be auctioned on the auction platform appointed pursuant to

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Article 26(1) or (2) shall be distributed evenly over the auctions held in a given year, except that volumes auctioned in August of each year shall be half of the volume auctioned in auctions held in other months of the year.

The volume of allowances covered by Chapter II of Directive 2003/87/EC to be auctioned on the auction platform appointed pursuant to Article 26(1) or (2) shall in principle be distributed evenly over the auctions held in a given year, except that volumes auctioned in August of each year shall be half of the volume auctioned in auctions held in other months of the year.;

- (4) Article 9 is replaced by the following:

Article 9

Circumstances preventing the conduct of auctions

Without prejudice to the application of the rules referred in Article 58 where appropriate, an auction platform may cancel an auction where the proper conduct of that auction is disrupted or is likely to be disrupted. Where one or more auctions are cancelled 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 consecutively.

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 consecutively.;

- (5) Article 11 is amended as follows:

- (a) paragraph 1 is replaced by the following:

1. The auction platforms appointed pursuant to Article 26(1) or (2) of this Regulation shall determine and publish the bidding windows, individual volumes, auction dates as well as the auctioned product, payment and delivery dates of the allowances covered by Chapter III of Directive 2003/87/EC to be auctioned in individual auctions each calendar year, by 30 September of the previous year, or as soon as practicable thereafter, having previously consulted the Commission and obtained its opinion thereon. The auction platforms concerned shall take the utmost account of the Commission's opinion.;

- (b) paragraph 4 is replaced by the following:

4. The calendar for individual auctions of allowances covered by Chapter III of Directive 2003/87/EC conducted by an auction platform other than the auction platforms appointed pursuant to Article 26(1) or (2) of this Regulation shall be determined and published pursuant to Article 32 of this Regulation.

Article 32 shall also apply with respect to the auctions conducted pursuant to the second subparagraph of Article 30(7) by the auction platform appointed pursuant to Article 26(1) or (2).;

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- (6) Article 12 is replaced by the following:

Article 12

**Annual volumes of auctioned allowances
covered by Chapter II of Directive 2003/87/EC**

- 1 The volume of allowances covered by Chapter II of Directive 2003/87/EC to be auctioned each year shall be 15 % of the expected volume of those allowances in circulation for that year. Where the auctioned volume in a given year is more or less than 15 % of the volume actually put in circulation for that year, the volume to be auctioned in the subsequent year shall correct for the difference. Any allowances that remain to be auctioned after the last year of a trading period shall be auctioned in the first four months of the subsequent year.

The volume of allowances to be auctioned in the final year of each trading period shall take account of allowances remaining in the special reserve referred to in Article 3f of Directive 2003/87/EC.

- 2 For each calendar year in a given trading period, each Member State's share of allowances to be auctioned covered by Chapter II of Directive 2003/87/EC shall be determined in accordance with Article 3d(3) of that Directive.;

- (7) Article 13 is amended as follows:

- (a) the first subparagraph of paragraph 2 is replaced by the following:

2. As from 2013, the auction platforms appointed pursuant to Article 26(1) or (2) of this Regulation shall in principle determine and publish the bidding windows, individual volumes, auction dates as well as the auctioned product, payment and delivery dates of the allowances covered by Chapter II of Directive 2003/87/EC to be auctioned in individual auctions for each calendar year by 30 September of the previous year, or as soon as practicable thereafter, having previously consulted the Commission and obtained its opinion thereon. The auction platforms concerned shall take the utmost account of the Commission's opinion.;

- (b) in paragraph 4, the following second subparagraph is added:

Article 32 shall also apply with respect to the auctions conducted pursuant to the second subparagraph of Article 30(7) by the auction platform appointed pursuant to Article 26(1) or (2).;

- (8) Article 16 is amended as follows:

- (a) the following paragraph 1a is inserted:

1a. 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.;

- (b) paragraph 3 is replaced by the following:

3. An auction platform may offer, and Member States may require an auction platform to offer, one or more alternative means of accessing

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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.;

- (9) in Article 18(1), point (a) is replaced by the following:
- (a) an operator or an aircraft operator having an operator holding account or an aircraft operator holding account, bidding on its own account, including any parent undertaking, subsidiary undertaking or affiliate undertaking forming part of the same group of undertakings as the operator or the aircraft operator.;
- (10) in Article 20, paragraph 2 is replaced by the following:
2. An application for admission to bid made under paragraph 1 shall be made by submitting a completed application form to the auction platform. The application form and its access through the internet shall be provided and maintained by the auction platform concerned.;
- (11) Article 22 is amended as follows:
- (a) paragraph 3 is replaced by the following:
3. For Member States not participating in the joint actions as provided in Article 26(1) and (2), the auctioneer shall be appointed by the appointing Member State so as to conclude and implement the necessary arrangements with the auction platforms appointed pursuant to Article 26(1) and (2), including any clearing system and settlement system connected to them, to enable the auctioneer to auction allowances on behalf of the appointing Member State on such auction platforms upon mutually agreed terms and conditions, pursuant to the second subparagraph of Article 30(7) and the first subparagraph of Article 30(8).;
- (b) paragraph 4 is replaced by the following:
4. Member States shall refrain from disclosing inside information to persons working for the auctioneer unless the person working or acting for the Member State makes such disclosure on a need-to-know basis in the normal course of the exercise of their employment, profession or duties and the Member State concerned is satisfied that the auctioneer has in place appropriate measures to prevent insider dealing, within the meaning of Article 3(28) or as prohibited by Article 38, by any person working for an auctioneer, additional to the measures foreseen in Article 42(1) and (2).;
- (12) in Article 24(1), the third subparagraph is replaced by the following:
- Where reasons of *force majeure* prevent the auction monitor from performing its tasks in respect of a given auction, in full or in part, the auction platform concerned may decide to conduct that auction provided that it takes appropriate measures to ensure adequate monitoring of the auction itself. The foregoing shall also apply until the moment that the first auction monitor appointed pursuant to paragraph 2 starts monitoring the auctions concerned as more particularly specified in the contract appointing it.;
- (13) in Article 25, paragraph 6 is replaced by the following.

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6. The auction monitor shall provide opinions pursuant to Articles 7(7), 8(3), 27(3) and 31(1) and as provided in Annex III. Opinions shall be delivered within a reasonable time.;
- (14) in Article 27, the following paragraph 3 is added:
3. Within three months from the date of its appointment, the auction platform shall submit its detailed exit strategy to the Commission, who will consult the auction monitor thereon. Within two months from the date of receipt of the auction monitor's opinion pursuant to Article 25(6), the auction platform shall review, and where appropriate amend, its exit strategy, taking the utmost account of that opinion.;
- (15) in Article 30(6), point (c) is replaced by the following:
- (c) the auctioned product and any information necessary for the Commission to assess whether the envisaged auction calendar is compatible with any prevailing or envisaged auction calendar of the auction platforms appointed pursuant to Article 26(1) or (2) as well as other auction calendars proposed by other Member States not participating in the joint action provided for in Article 26 but opting to appoint their own auction platforms;;
- (16) in Article 31, paragraph 1 is replaced by the following:
1. Any auction platform appointed pursuant to Article 30(1) shall carry out the same functions as the auction platform appointed pursuant to Article 26(1) as provided for in Article 27.
- However, an auction platform appointed pursuant to Article 30(1) shall be exempted from the provisions of Article 27(1)(c) and it shall submit the exit strategy referred to in Article 27(3) to the appointing Member State, who must consult the auction monitor thereon.;
- (17) in Article 32(4), the first subparagraph is replaced by the following:
4. The auction platforms appointed pursuant to Article 30(1) or (2) of this Regulation shall determine and publish the bidding windows, individual volumes, auction dates as well as the auctioned product, payment and delivery dates of the allowances, covered by Chapters II and III of Directive 2003/87/EC, to be auctioned in individual auctions each year, by 31 October of the previous year or as soon as practicable thereafter. The auction platforms concerned shall make their determination and publication only after the determination and publication pursuant to Articles 11(1) and 13(1) of this Regulation by the auction platforms appointed pursuant to Article 26(1) or (2) of this Regulation, unless such an auction platform has not yet been appointed. The auction platforms concerned shall make their determination and publication only after having consulted the Commission and obtained its opinion thereon. The auction platforms concerned shall take the utmost account of the Commission's opinion.;
- (18) in Article 33, the first subparagraph is replaced by the following:
- Upon delivery by the auction monitor of the annual consolidated report concerning the auctions conducted in 2014, the Commission shall review the arrangements provided for in this Regulation including the operation of all auction processes.;
- (19) in Article 35, paragraph 1 is replaced by the following:

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1. Auctions shall only be conducted on an auction platform authorised as a regulated market whose operator organises a market in allowances or allowances derivatives.;
- (20) in Article 44, paragraph 2 is replaced by the following:
2. An auction platform including the clearing system(s) or settlement system(s) connected to it shall transfer the payments made by the bidders or any successors in title arising from the auctioning of allowances covered by Chapters II and III of Directive 2003/87/EC to the auctioneers that auctioned the allowances in question, except for any amount for which it is asked to act as a payment agent in respect of the auction monitor.;
- (21) Annex III is amended in accordance with the text set out in the Annex to this Regulation.

Article 2

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 13 November 2013.

For the Commission

The President

José Manuel BARROSO

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Changes and effects yet to be applied to :

- Regulation revoked by [2023 c. 28 Sch. 1 Pt. 2](#)