



Council of the
European Union

041118/EU XXVI. GP
Eingelangt am 06/11/18

Brussels, 6 November 2018
(OR. en)

13855/18

CLIMA 198
ENV 715
ENER 358
TRANS 501
IND 319
COMPET 733
MI 792
ECOFIN 1009
DELECT 145

COVER NOTE

From: Secretary-General of the European Commission,
signed by Mr Jordi AYET PUIGARNAU, Director

date of receipt: 30 October 2018

To: Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of
the European Union

No. Cion doc.: C(2018) 7019 final

Subject: COMMISSION DELEGATED REGULATION (EU) .../... of 30.10.2018
amending Regulation (EU) No 1031/2010 as regards the auctioning of 50
million unallocated allowances from the market stability reserve for the
innovation fund and to list an auction platform to be appointed by Germany

Delegations will find attached document C(2018) 7019 final.

Encl.: C(2018) 7019 final



Brussels, 30.10.2018
C(2018) 7019 final

COMMISSION DELEGATED REGULATION (EU) .../...

of 30.10.2018

amending Regulation (EU) No 1031/2010 as regards the auctioning of 50 million unallocated allowances from the market stability reserve for the innovation fund and to list an auction platform to be appointed by Germany

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

Encouraging innovation in low-carbon technologies is of key importance to achieving the goals of the Paris Agreement. The recently revised rules¹ of the EU ETS, enshrined in Directive 2003/87/EC of the European Parliament and of the Council² are among the key legislative tools paving the way for the EU to meet its Paris Agreement commitments. In particular, Article 10a(8) of Directive 2003/87/EC establishes a fund which will provide the opportunity to support innovation in low-carbon technologies and processes in sectors covered by the EU ETS, including environmentally safe carbon capture and utilisation (“CCU”), environmentally safe capture and geological storage (“CCS”) of CO₂, products substituting carbon intensive ones, as well as innovative renewable energy and energy storage technologies (the 'innovation fund').

Article 10a(8) of Directive 2003/87/EC empowers the European Commission ('the Commission') to adopt delegated acts to supplement this Directive concerning rules on the operation of the innovation fund, including the selection procedure and criteria. A draft delegated act on the operation of the innovation fund is currently being prepared by the Commission with the support of a dedicated expert group created for this purpose. This delegated act is planned to enter into force in the course of 2019.

While reviewing Directive 2003/87/EC the co-legislators agreed that the innovation fund should start in a timely manner, i.e. before 2021. To this end, in addition to the 400 million allowances for the innovation fund from the period 2021 to 2030, the second subparagraph of Article 10a(8) of that Directive makes available 50 million unallocated allowances from the market stability reserve and any remaining revenues from the phase 3 so-called NER-300 Programme for innovation support.

While the remaining funds of phase 3 NER-300 Programme are available as revenues from 300 million allowances monetised by the European Investment Bank (EIB) in 2011-2014, the 50 million allowances from the market stability reserve still need to be monetised.

The monetisation process of these allowances should have the least possible impact on the carbon market in terms of distribution of the volumes of allowances to be sold on the market throughout a given period and the market infrastructure to be used. At the same time, it should be carried out such that the proceeds are available in a timely manner before 2021 for the projects to be supported by the innovation fund. Therefore, the monetisation of the 50 million unallocated allowances from the market stability reserve needs to be decided ahead of the monetisation arrangements of the main volume of 400 million allowances for the innovation fund which do not need to be operational before 2021. In this context, the most cost effective and efficient way to monetise in a timely manner is to auction those allowances for the innovation fund under the existing rules and modalities for the auctions taking place on the

¹ Directive (EU) 2018/410 of the European Parliament and of the Council of 14 March 2018 amending Directive 2003/87/EC to enhance cost-effective emission reductions and low-carbon investments, and Decision (EU) 2015/1814, OJ L 76, 19.3.2018, p. 3.

² 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, OJ L 275, 25.10.2003, p. 32.

Common Auction Platform (CAP) set out in Commission Regulation (EU) No 1031/2010³. Such an approach would limit the changes to the existing legal framework and any additional costs. The revised Directive 2003/87/EC already prescribes this monetisation channel for the allowances of the modernisation fund.

In order to meet the political commitment to start the innovation fund early, the monetisation of the volume of 50 million unallocated allowances via auctions on the CAP is to be enabled by an amendment to Regulation (EU) No 1031/2010 by means of a Commission Delegated Regulation.

This amendment also lists the third opt-out auction platform for Germany by means of an amendment to Annex III of the Regulation (EU) No 1031/2010. Pursuant to Article 30 of Regulation (EU) No 1031/2010, any Member State not participating in the joint action for the procurement of the CAP shall select its own auction platform, and notify it to the Commission for the listing of the auction platform in Annex III of the Regulation. To this end, on 12 April 2018 Germany notified the Commission its intention to reappoint the European Energy Exchange AG (EEX) as its third opt-out auction platform. The last German auction under their contract with the current German auction platform is due to take place on 9 November 2018. After that date, the newly appointed German platform may only start auctioning once the listing in Annex III of Regulation (EU) No 1031/2010 has entered into force. As a result, the listing of the third opt-out auction platform for Germany will enable the German auctions to resume smoothly on the earliest possible date, ensuring the stable supply of allowances to the market.

In addition, this amendment introduces minor technical corrections regarding the post-auction transparency rule stipulated in Article 61 of Regulation (EU) No 1031/2010. These corrections are essential to mitigate the risk of market abuse and at the same time reflect the current market practice.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

A public consultation⁴ was carried out by the Commission in the period December 2015 - March 2016 with regard to the review of Regulation (EU) No 1031/2010. The results of the consultation indicated that the overall architecture of the auctioning process in EU emission allowances as applicable under Directive 2003/87/EC, including the opt-out platforms, is seen as working very well.

In addition, experts from the Member States, within the framework of the Commission Expert Group on Climate Change Policy (CEGP), were consulted on the proposed amendment to Regulation (EU) No 1031/2010 in particular at two meetings on 8 June 2018 and on 12 July 2018. These experts expressed their general support for using the existing auctioning infrastructure for the early monetisation of 50 million allowances for the start of the innovation fund in 2020. Some considerations were raised with regard to the practical arrangements of this monetisation process. The Commission took those comments into account while preparing the legal text of the amendment to Regulation (EU) No 1031/2010.

³ 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, OJ L 302, 18.11.2010, p. 1.

⁴ [Consultation on the functioning of the Auctioning Regulation pursuant to the scheme for greenhouse gas emission allowances trading within the Community \(EU ETS\).](#)

The draft delegated regulation was published on the Better Regulation portal for four week feedback period from 12 September until 10 October 2018. Feedback was received from 1 organisation which, however, did not require any change to the draft act.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

3.1. Listing of the new German opt-out platform

On 12 April 2018, Germany notified the Commission its intention to appoint European Energy Exchange AG as its third opt-out auction platform in accordance with Article 30(1) of Regulation (EU) No 1031/2010 for a period of maximum 5 years. Accordingly, Annex III of Regulation (EU) No 1031/2010 is amended to list the term, conditions and obligations for the third German opt-out auction platform.

3.2. Early monetisation of 50 million allowances for the innovation fund

The early monetisation of the 50 million allowances for the innovation fund will be implemented by auctioning of those allowances on the CAP in accordance with Regulation (EU) No 1031/2010. The current auctioning process via the CAP implies that the Member States signatories to the Joint Procurement Agreement (JPA) for the CAP are auctioning their volume of allowances at the CAP via their auctioneers. The annual volume of 50 million allowances to be auctioned for the innovation fund will be in principle evenly distributed over the auctions of the CAP in 2020. This would be in compliance with the principle of even distribution indicated in Article 8(5) of Regulation (EU) No 1031/2010.

By virtue of an amendment to Article 10 of Regulation (EU) No 1031/2010, the volume of the 50 million allowances for the innovation fund will be added to the volumes of allowances to be auctioned in 2020 at the CAP for the Member States that as at 1 January 2018 were signatories to the JPA of the CAP ('participating Member States'). The volume of allowances dedicated to the innovation fund will be divided among the 25 participating Member States, such that each of them will auction an equal volume of 2 million allowances for the innovation fund in 2020.

The receipt and disbursement of the auction proceeds dedicated to the innovation fund are to be established in view of achieving efficiency and flexibility while minimising related administrative burden, in particular for the participating Member States. Following a new Article 23(2) of Regulation (EU) No 1031/2010, the auctioneers of the participating Member States will auction the allowances for the innovation fund. They will receive the proceeds of these auctioned allowances on their auctioneer's bank account nominated for this purpose. Article 23(2) of Regulation (EU) No 1031/2010 explicitly establishes a legal obligation on each participating Member State, represented by the auctioneer, to ensure the transfer of these auction proceeds to an account notified to its auctioneer by the European Commission for the purposes of the innovation fund, at the latest 15 days following the end of the month within which the auction proceeds were generated. The respective auctioneers may deduct prior to disbursement any fees substantiated as additional to the costs of auctioning their Member State's allowances on the CAP, that directly result from the holding and disbursement of the auction proceeds for the innovation fund. To ensure transparency and the cost efficiency of the monetisation, participating Member States should previously inform the Commission and all Member States of any additional fees they intend to deduct, including a description of the reason for these fees.

The auction proceeds to be generated by a given auctioneer for its Member State and for the innovation fund will be made traceable and distinguishable via the publication of the auction calendars pursuant to Article 11 of Regulation (EU) No 1031/2010 and the entry of the auction tables in the EU Transaction Log pursuant to Article 62 of Commission Regulation (EU) No 389/2013⁵. This will be ensured by an amendment to the relevant Annex to Regulation (EU) No 389/2013 containing the format of the auction table. Following that amendment, the auction table will identify the volume of allowances to be auctioned by the respective auctioneer for its Member State and separately for the innovation fund.

3.3. Clarification on post-auction transparency

Article 61(3) of Regulation (EU) No 1031/2010 is amended to align the text with the market practice and to mitigate the risk of market abuse. It implies that the auction platform may decide to publish only the volume of allowances auctioned and the auction clearing price at the same time as it notifies the successful bidders their individual results. Thus, the remaining auction results referenced in Article 61(2) of that Regulation may be published separately. In any case, all auction results shall be published no later than 15 minutes after the closure of the bidding window as per Article 61(1) of that Regulation.

⁵ Commission Regulation (EU) No 389/2013 of 2 May 2013 establishing a Union Registry pursuant to Directive 2003/87/EC of the European Parliament and of the Council, Decisions No 280/2004/EC and No 406/2009/EC of the European Parliament and of the Council and repealing Commission Regulations (EU) No 920/2010 and No 1193/2011, OJ L 122, 3.5.2013, p. 1–59.

COMMISSION DELEGATED REGULATION (EU) .../...

of 30.10.2018

amending Regulation (EU) No 1031/2010 as regards the auctioning of 50 million unallocated allowances from the market stability reserve for the innovation fund and 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 system for greenhouse gas emission allowance trading within the Union and amending Council Directive 96/61/EC⁶, and in particular Articles 3d(3), 10(4) and 10a(8) thereof,

Whereas:

- (1) Directive 2003/87/EC establishes a fund to provide financial support to innovation in low-carbon technologies within the territory of the Union by making 400 million allowances available from the total volume of allowances for the period 2021 to 2030 as part of the EU Emission Trading System ('innovation fund'). In addition, 50 million unallocated allowances from the market stability reserve should supplement any remaining revenues from the 300 million allowances available in the period from 2013 to 2020 under Commission Decision 2010/670/EU⁷, and should be used in a timely manner for the innovation fund before 2021.
- (2) In order to ensure that the innovation fund is in a position to provide support before 2021, it is necessary to monetise the 50 million allowances for the innovation fund by means of auctions in accordance with the rules and modalities for auctions on the Common Auction Platform, which are established by Commission Regulation (EU) No 1031/2010⁸.

⁶ OJ L 275, 25.10.2003, p. 32.

⁷ Commission 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 CO₂ as well as demonstration projects of innovative renewable energy technologies under the system for greenhouse gas emission allowance trading within the Union established by Directive 2003/87/EC of the European Parliament and of the Council (OJ L 290, 6.11.2010, p. 39).

⁸ 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

- (3) With the aim to reduce the administrative burden on Member States and to improve overall efficiency, the volume of 50 million allowances for the innovation fund should be added to the volumes of allowances to be auctioned at the Common Auction Platform in 2020 by the Member States that as at 1 January 2018 were participating in the joint action pursuant to Article 26 of Commission Regulation (EU) No 1031/2010.
- (4) The participating Member States should auction their share of the 50 million allowances for the innovation fund through their auctioneers. In order to receive the respective innovation fund proceeds, each auctioneer should designate, by 1 October 2019, an auctioneer's nominated bank account for the receipt of these auction proceeds. The auctioneers may designate their existing auctioneer's nominated bank account for the auction proceeds due to their Member State, a separate auctioneer's nominated bank account dedicated for the auction proceeds of the innovation fund, or the auctioneer's nominated bank account of another auctioneer of a Member State that will auction allowances for the innovation fund.
- (5) The auctioneers appointed to conduct the auctioning of the 50 million allowances for the innovation fund should ensure that the auction proceeds for the innovation fund are disbursed in the account notified to them by the Commission for the purposes of that fund, at the latest 15 days following the end of the month within which the auction proceeds were generated.
- (6) Any additional fees resulting from the holding of these auction proceeds in the auctioneer's nominated bank account and from their disbursement may be deducted by the auctioneer from the auction proceeds prior to their disbursement. Before the first deduction and before any change to such fees, the respective auctioneer's Member State should notify to the Commission and all other Member States the amount and the purpose of the additional fees its auctioneer intends to deduct.
- (7) Article 61 of Regulation (EU) No 1031/2010 currently provides for the simultaneous announcement by the auction platform of the detailed results of each auction and the notification to the successful bidders of the individual results. However, the level of detail of the auction results to be announced does not allow for their publication simultaneously with the notification of the individual results to the successful bidders. In order to align this provision with market practice and to safeguard against market abuse, the auction platform may publish, prior to the announcement of the remaining auction result details, the volume of allowances auctioned and the auction clearing price, so that these are published simultaneously as the platform notifies the individual results of the auction to the successful bidders. The remaining auction results should be announced no later than 15 minutes after the closure of the bidding window.
- (8) Regulation (EU) No 1031/2010 allows Member States not participating in the joint action as provided in paragraphs 1 and 2 of Article 26 of that Regulation to appoint their own auction platform for the auctioning of their share of the volume of allowances covered by Chapters II and III of Directive 2003/87/EC. The appointment of such auction platforms is subject to listing of the auction platform concerned in Annex III, in accordance with the third subparagraph of Article 30(5) of Regulation (EU) No 1031/2010.

the European Parliament and of the Council establishing a scheme for greenhouse gas emission allowances trading within the Community (OJ L 302, 18.11.2010, p. 1).

- (9) 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 paragraphs 1 and 2 of Article 26 of that Regulation, and to appoint its own auction platform.
- (10) On 12 April 2018, Germany notified the Commission its intention to appoint European Energy Exchange AG as an auction platform referred to in Article 30(1) of Regulation (EU) No 1031/2010 for a maximum period of five years from the entry into force of this Regulation. The term of appointment, the legal basis for the appointment and the applicable conditions and obligations for European Energy Exchange AG as the auction platform for Germany for that period should be listed in the Annex III to Regulation (EU) No 1031/2010.
- (11) Regulation (EU) No 1031/2010 should therefore be amended accordingly.
- (12) In order to ensure predictable and timely auctions by the auction platform to be appointed by Germany, this Regulation should enter into force as a matter of urgency.

HAS ADOPTED THIS REGULATION:

Article 1

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

- (1) In Article 10, the following paragraph 5 is added:

'5. The volume of allowances covered by Chapter III of Directive 2003/87/EC to be auctioned in 2020 shall also include the volume of 50 million unallocated allowances from the market stability reserve referred to in the second subparagraph of Article 10a(8) of that Directive. Those allowances shall be divided in equal amounts between the Member States participating in the joint action pursuant to Article 26(1) of this Regulation as at 1 January 2018 and shall be added to the volume of allowances to be auctioned for each of them. The volume of 50 million allowances shall in principle be distributed evenly over the auctions held in 2020.'

- (2) Article 23 is replaced by the following:

'Article 23

The auctioneer's functions

1. The auctioneer shall carry out the following functions:

- (a) auction the volume of allowances to be auctioned by each Member State appointing it;
- (b) receive the auction proceeds due to each Member State appointing it;
- (c) disburse the auction proceeds due to each Member State appointing it.

2. The auctioneer of each Member State auctioning allowances pursuant to Article 10(5) shall receive the auction proceeds from those allowances on an auctioneer's nominated bank account designated by it no later than 1 October 2019 for the receipt of payments due under Article 10(5). The auctioneer shall ensure that these auction

proceeds are disbursed to the account notified to it by the Commission for the purposes of Article 10a(8) of Directive 2003/87/EC, at the latest 15 days following the end of the month within which the auction proceeds were generated. The auctioneer may deduct prior to disbursement any additional fees for their holding and disbursement, subject to the prior notification of the amount and the reason for these fees by its Member State to the Commission and all other Member States.

(3) Paragraph 2 of Article 61 is replaced by the following:

2. Pursuant to paragraph 1 the auction platform shall announce at least the following results of each auction:

- (a) the volume of the allowances auctioned;
- (b) the auction clearing price in euros;
- (c) the total volume of bids submitted;
- (d) the total number of bidders and the number of successful bidders;
- (e) in case of cancellation of an auction, the auctions to which the volume of allowances will be carried over;
- (f) the total revenue earned from the auction;
- (g) the distribution of the revenue between the Member States, in the case of auction platforms appointed pursuant to Article 26(1) or (2).

(4) Paragraph 3 of Article 61 is replaced by the following:

3. At the same time as the auction platform announces the results of each auction pursuant to points (a) and (b) of paragraph 2, the auction platform shall notify each successful bidder bidding through its systems:

- (a) the total number of allowances to be allocated to that bidder;
- (b) which of its tied bids, if any, were randomly selected;
- (c) the payment due either in euros or in the currency of a Member State not member of the euro-zone, chosen by the bidder provided that the clearing system or settlement system is capable of handling the national currency in question;
- (d) the date by which the payment due must be paid in cleared funds into the auctioneer's nominated bank account.;

(5) Annex III is amended in accordance with 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, 30.10.2018

For the Commission
The President
Jean-Claude JUNCKER