

**Ordinance on the Auctioning of Emission Allowances  
in accordance with the Allocation Act 2012  
(Emissions Trading Auctioning Ordinance 2012 – EHVV 2012)**

– unofficial translation –

*The Ordinance on the Auctioning of Emission Allowances in accordance with the Allocation Act 2012 (Emissions Trading Auctioning Ordinance 2012 – EHVV 2012) has been translated as a service to the non-German speaking participants in emissions trading and others which are interested. Please note that this is an unofficial translation. Only the German version (Federal Law Gazette 2009 chapter I, page 2048ff.) is binding. The Federal Ministry for Environment, Nature Conservation and Nuclear Safety reserves the right not to be responsible for the topicality, correctness, completeness or quality of the information provided.*

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Pursuant to section 21 subsection (2) of the Allocation Act 2012 of 7 August 2007 (Federal Law Gazette I p.1788), the German Government decrees with the consent of the Bundestag:

*Section 1*

**Scope of application**

This Ordinance provides for the auctioning of allowances as defined in section 3 subsection (4) of the Greenhouse Gas Emissions Trading Act as from 1 January 2010.

*Section 2*

**Auction quantity, auction dates**

(1) The following total quantity of allowances per year will be auctioned by means of transactions for immediate settlement (spot trading) and transactions for future delivery (futures trading):

1. 40 million allowances in accordance with section 19, first sentence, of the Allocation Act 2012, plus

2. the quantity of allowances necessary to cover costs pursuant to section 5 subsection (3), first sentence, of the Allocation Act 2012.

(2) Concerning the auctioning of the total quantity pursuant to subsection (1) above, an auction of 870,000 allowances will be held once a week from the beginning of the year until the total quantity has been auctioned. Concerning the apportionment of the auction quantity pursuant to sentence 1, on the weekly auction dates in the months from January to October, 570,000 allowances will be offered as futures contracts for delivery in December of the current year; the remainder of allowances will be offered as spot contracts. Should the residual auction quantity fall below the quantity stated in sentence 1, the remaining quantity will be offered on the following auction date.

(3) In the event that the trading system should be unavailable on one of the scheduled auction dates due to a technical fault, or that the total bid quantity falls short of the quantity of allowances to be auctioned, the auction shall not take place on the planned auction date. A replacement auction for the cancelled auction shall be rescheduled within the following 15 trading days. The competent authority shall ensure that the rescheduled date pursuant to sentence 2 is made known in accordance with normal stock-exchange practice.

(4) For the definition of the necessary quantity of allowances pursuant to subsection (1) no. 2, the reference figure shall be the net proceeds from the auction of a certain number of allowances as required to recover those costs of the German Emissions Trading Authority at the Federal Environment Agency which are not otherwise covered by fee revenue for the budget year in question; these costs derive from the Federal Budget Plan, Budget Plan of the Federal Ministry for Environment, Nature Conservation and Nuclear Safety, Part (*Kapitel*) 1605 “*Umweltbundesamt*” (Federal Environment Agency), Section (*Titelgruppe*) 03 “*Deutsche Emissionshandelsstelle*” (German Emissions Trading Authority). Surpluses and shortfalls shall be appropriated towards future cost-recovery targets. The cost-recovery target according to sentence 1 will be covered by even shares of the net proceeds of auctions in the months from January to October of each year.

### *Section 3*

#### **Auction procedure**

(1) The different categories of auctions pursuant to section 2 subsection (2), second sentence, shall be conducted separately as a component of normal exchange trading in a state-supervised market venue which has an existing market for spot trading and futures trading in allowances (operative exchange).

(2) The parties entitled to participate as bidders in spot-contract or futures auctions shall be all participants authorised to participate in the respective type of trading in allowances at the operative exchange. The vendor of the allowances to be auctioned shall be the competent authority.

(3) The minimum bid quantity at an auction shall be 500 allowances in spot trading and 1,000 allowances otherwise. Higher bid quantities must equal an integral multiple of the minimum bid quantity. The bid price must be stated in euros to two decimal places.

(4) The auction shall be conducted by the uniform-price method with a single round of bidding per auction. All bidders can view only their own submitted bids (closed order book).

(5) At the stated deadline, the submitted bids shall be ranked in bid price order and by time of receipt in the event of tied bid prices. Starting from the highest-priced bid, the quantities of allowances from each bid shall be added to a running total. The price of the bid at which the running total of bid quantities reaches or exceeds the offered quantity of allowances shall be the auction price. All bids which were included in the calculation of the running total shall be satisfied at the auction price. The residual quantity of allowances shall be awarded to the last successful bid.

#### *Section 4*

#### **Settlement**

- (1) The settlement of successful bids in both the spot and futures auction shall be subject to the same conditions that apply to settlement of the corresponding type of allowance trading at the operative exchange.
- (2) The operative exchange may not demand higher fees or payments from participants for placing and amending bids and for determining the successful bids than it does for normal allowance trades of the corresponding type. The same shall apply to the administration of delivery transactions for successful bids (clearing) by the operative exchange or an affiliated institution.

#### *Section 5*

#### **Reporting obligations, surveillance**

- (1) The operative exchange shall inform the competent authority after every auction date about the auction price, the distribution of bids in anonymised form, and key indicators pertaining to the auction, particularly the total number of bidders, the number of successful bidders, the ratio of the total bid quantity to the auction quantity and the range of bid prices. The competent authority shall ensure that the auction price is made known without delay and in accordance with normal stock-exchange practice.
- (2) The operative exchange shall be obliged to monitor bidder behaviour continuously. Where there are signs of bidder behaviour aimed at distortion of the auction price, the operative exchange shall take the necessary countermeasures; subsequently the auction price shall be determined in accordance with section 3 subsection (5). The operative exchange shall inform the supervisory authority responsible under stock-exchange law and the competent authority about the measures taken. The supervisory provisions that apply to the trading venue in question shall remain unaffected.
- (3) In the event of a notification pursuant to subsection (2), second sentence, the competent authority can restrict the total bid quantity per bidder to 100,000 allowances per auction in spot trading or futures trading, or impose other countermeasures in line with normal practice in allowance auctioning. The supervisory provisions governing the trading venue in question shall remain unaffected. The competent authority shall ensure that any measures pursuant to sentence 1 are made known in accordance with normal stock-exchange practice.

(4) The competent authority shall publish the quantity of allowances auctioned pursuant to section 2 subsection (1) no. 2 by 5 November of the given year.

*Section 6*

**Auctions on behalf of other Member States**

The operative exchange can conduct auctions of allowances on behalf of other Member States of the European Union. With the competent authority's consent, where the auction terms and conditions are in accord, it shall be possible to combine the auction quantities for auctioning on one date.

*Section 7*

**Competent authority**

The competent authority under the terms of this Ordinance shall be the Federal Environment Agency.

*Section 8*

**Entry into force**

This Ordinance shall enter into force on the day following promulgation.

unofficial translation

## **Legislative intent of the Ordinance on the Auctioning of Emission Allowances in accordance with the Allocation Act 2012 (Emissions Trading Auctioning Ordinance 2012 – EHVV 2012)**

### **On Section 1 Scope of application**

This paragraph provides for the Ordinance to apply to auctioning of allowances from 1 January 2010.

### **On Section 2 Auction quantity, auction dates**

Subsection (1) stipulates the total quantity of EU-ETS emission allowances allocated for auctioning pursuant to sections 19 and 5 of the German Allocation Act 2008 – 2012 (“Zuteilungsgesetz 2012” – ZuG 2012) and the types of allowances to be auctioned. The quantity of 40 million allowances per year is already stipulated in section 19 ZuG 2012; the quantity pursuant to section 5 ZuG 2012 (recovery of system costs) is not stipulated in advance but depends on the auction price achieved. The quantities of allowances to be sold pursuant to section 5 subsection (3) ZuG 2012 and section 19, first sentence, ZuG 2012 will be sold under a uniform auction procedure. On each auction date, however, two separate auctions will be conducted for the two types of emissions trading contracts to be auctioned. The two types are contracts for short-term settlement (spot trading) and contracts for delivery on a future date (futures trading). Thus the auctions reflect the fundamental structure of the market for emission allowances, which consists of both spot trading and futures trading.

Subsection (2), first sentence, stipulates the frequency of auctioning and provides that it will take place weekly, and that 870,000 allowances will be offered in each week. Sentence 2 stipulates the apportionment of the two types of emission allowances on each auction date. Contracts for short-term settlement are understood to mean allowances that must be delivered and paid for within 48 hours of purchase. Emission allowance futures are understood to mean allowances with a scheduled settlement date in December of the current year. 570,000 allowances will be offered for futures trading on every auction date in the months January through October. The remaining quantity will be offered for spot trading. This means that on auction dates from January through October, an additional auction of 300,000 allowances for short-term settlement will be conducted, and at auctions held later in the year, 870,000 allowances will be offered for short-term settlement only. The apportionment between futures and spot trading is aimed at a roughly even distribution between both market segments with a slight preponderance in favour of futures trading, which is particularly liquid. From November, only spot auctions will take place because trading in futures that mature in December of the same year decreases from the second half of November. Sentence 3 provides that as soon as a residual quantity of fewer than 870,000 allowances remains, this entire residual quantity will be offered as the final auction of the year. Depending on the final price achieved for the allowances sold to recover system costs, a total of between 47 and 50 auction dates per year can be expected in the years 2010 to 2012.

Subsection (3), first sentence, provides that the auction shall not be held on the scheduled auction date if the trading system is unavailable because of a technical fault or if the total number of bids received fall short of the quantity to be auctioned. Examples of a technical fault are the non-availability of a functioning trading platform or the failure of an internet connection on the scheduled auction date. Sentence 2 stipulates that a rescheduled auction in place of the cancelled auction shall be held within 15 trading days. This makes it possible either to set an additional date or to set the replacement date to coincide with one of the next two dates. Sentence 3 obliges the competent authority to ensure that the replacement date is made known in accordance with normal stock-exchange practice.

Subsection (4), first sentence, concretises the funds necessary for the recovery of system costs; these costs are based on the budget estimate by the DEHSt in the Federal Budget Plan after deducting the administration-fee revenue generated by enforcing the Greenhouse Gas Emissions Trading Act (“Treibhausgas-Emissionshandelsgesetz” – TEHG) and the Project Mechanisms Act (“Projekt-Mechanismen-Gesetz” – ProMechG). The net proceeds are the auction revenues remaining after deduction of turnover tax. Sentence 2 ensures that any surpluses or shortfalls are appropriated towards the subsequent year’s cost-recovery target. Sentence 3 provides for the overall cost-recovery target to be covered proportionately by a share of the proceeds of the first ten months’ auctions. For each month from January through October, this equates to 10 percent of the total cost-recovery target. A comparison of the monthly 10 per cent share of the total cost-recovery target with the auction price achieved in that month yields the quantity of emission allowances auctioned that month pursuant to section 5 subsection (3) ZuG 2012. The remainder of the monthly auction quantity shall be appropriated towards the auctioning of the annual quantity of 40 million emission allowances according to section 19 ZuG 2012. Thus, for auction dates as from November, the total number of allowances remaining to be auctioned that year finally becomes definitive.

### **On Section 3 Auction procedure**

Based on the positive experience to date with the sale of allowances on the stock exchange, the auction shall be conducted at an existing emissions trading exchange.

Subsection (1) provides that in principle all trading venues providing spot and futures trading of greenhouse gas emission allowances and subject to state supervision can be considered for the role of operative exchange for the auctioning of emissions spot and futures contracts. The legal basis for awarding the contract to conduct the auction is section 21 subsection (3), first sentence, ZuG 2012, according to which the contract shall be awarded by the Federal Environment Ministry (BMU) in consultation with the Federal Ministry of Finance (BMF).

Participation in the auction must be non-discriminatory. In respect of bidders (purchasers), subsection (2), first sentence, provides that no restrictions on participation shall be imposed beyond the standard conditions for participating in trading at the given exchange. Hence, all trading participants authorised to trade on the operative exchange (companies, institutions and private individuals) may participate as bidders. Broad access to the auction is, in itself, an important safeguard against possible behaviour aimed at market manipulation. Sentence 2 provides that the vendor (seller) of the allowances shall be the competent authority.

Subsection (3), sentences 1 and 2, stipulate that bids in a spot auction must be for at least 500 allowances and in a futures auction for at least 1000 allowances or a multiple of these figures. It is useful to define a minimum bid quantity in order to keep the overall number of individual bids to be processed to a calculable amount; this is also important for offerers' calculations in the tendering process. In addition, such a minimum bid quantity is in line with the terms and conditions of trading at existing emissions trading exchanges. Sentence 3 provides that bidders must specify a price on all bids. This ensures that the bidders declare their willingness to pay and that an auction price is established in every case.

Subsection (4), first sentence, stipulates the single-round, uniform-price method as the auctioning procedure; i.e. all successful bidders pay the same price. This method is simple and transparent and minimises opportunities for strategic behaviour. Since it has been the normal practice in auctions of emission allowances held by other Member States, it should also be used in Germany for the sake of harmonisation.

Sentence 2 provides that auctions will be conducted with a closed order book, meaning that bidders can only see their own submitted bids. This is normal auction practice; since participants' bids reflect their willingness to pay, they generally constitute sensitive business secrets which must be protected so that, during the auction, companies do indeed bid the amount they are willing to pay.

Subsection (5) specifies how the auction price shall be determined and that this shall take place separately for the spot and futures auctions. All bids are ranked in order of price, beginning with the highest; in the event of bids with identical bid prices, the bid placed earlier will be considered first. Starting from the highest offer, the quantity of allowances bid for are added to a running total until the quantity to be auctioned has been reached. The price at which the running total reaches or exceeds the quantity of allowances offered at the given auction determines the auction price.

Example:

870,000 allowances are offered for auction. The following bids are received:

100,000 allowances at EUR 32.00

220,000 allowances at EUR 30.50

100,000 allowances at EUR 29.00; bid submitted at 10.30 a.m.

80,000 allowances at EUR 29.00; bid submitted at 12.00 noon

137,000 allowances at EUR 27.90

172,000 allowances at EUR 26.80

140,000 allowances at EUR 26.10; bid submitted at 10.00 a.m.

110,000 allowances at EUR 26.10; bid submitted at 11.30 a.m.

165,000 allowances at EUR 25.40

120,000 allowances at EUR 24.30

144,000 allowances at EUR 24.00

etc.

In the example, the auction volume of 870,000 allowances is reached at the bid price of EUR 26.10.

This price is therefore the auction price at which all bidders who submitted bids at an equal or higher price receive allowances. The bidders who bid between EUR 32.00 and EUR 26.80 receive the total quantity they requested. Since two bidders bid the same price of EUR 26.10, the bidder whose bid was submitted earlier receives the entire residual quantity, this being 61,000 allowances.

#### **On Section 4 Settlement**

Subsection (1) stipulates that rules applied to the administration of delivery transactions for successful bids (payment, transfer of allowances) shall be the same rules that apply at the operative exchange to the settlement of other emission allowance trades. The intention of establishing this link with the exchange's routine clearing practice is to utilise the entire security structure of stock-exchange trading (financial securities, supervision of trading) and to build confidence in this new market instrument.

Subsection (2), first sentence, stipulates that the operative exchange may not charge the vendor or the bidders fees or charges for auction participation which are higher than the fees or charges for spot or futures trading of allowances in the secondary market.

Sentence 2 likewise provides that the fees charged by the operative exchange or an affiliated institution (e.g. a clearing bank) for the administration of auction settlement must not be higher than the fees for similar services in the secondary market in emission allowances.

#### **On Section 5 Reporting obligations, surveillance**

Subsection (1), first sentence, provides for the operative exchange's reporting obligations towards the competent authority; in addition to notification of the auction price of each auction conducted and the distribution of bids in anonymised form, these extend to additional statistical parameters on the auction conducted. The recording of such parameters is also normal practice in auctions held in other countries. It is incumbent upon the competent authority to ensure timely publication of the auction price in accordance with normal stock-exchange practice.

Subsection (2) obliges the operative exchange to continuously monitor bidder behaviour and, where there are signs of abusive bidder behaviour intended to manipulate the auction price in the bidder's favour, to implement countermeasures and to inform the competent authority and the stock-exchange supervisory authority. This includes, in particular, a short-term extension of the call phase if the potential auction price deviates drastically from normal market volatility. In addition, powers of intervention exist under supervision law. For instance, in the event of violations, supervision law provides for sanctions such as exclusion from trading. Other Member States of the European Union also have regulations to prevent market abuse.

Subsection (3) contains provisions on the security measures for the eventuality that the operative exchange has detected signs of abusive bidder behaviour. After receiving notification of this, the competent authority can define supplementary security measures against abusive bidder behaviour. One such measure, according to subsection (3), second sentence, is the setting of a maximum bid volume per

bidder. In addition, measures can be fixed that are applied specifically for emission allowance auctions to combat attempted abuse. Another appropriate instrument may be a price corridor with dynamic price thresholds. The competent authority shall stipulate the stated measures in the frame of the contract according to section 21 subsection (3) of the Allocation Act 2012. The stock-exchange supervision regulations shall remain unaffected, so as to preclude competing supervisory responsibilities between the competent authority and the body responsible for stock-market supervision.

Subsection (4) stipulates that the competent authority shall publish the quantity of allowances auctioned pursuant to section 2 subsection (1) no. 2 to cover costs pursuant to section 5 subsection (3), first sentence, ZuG 2012 on 5 November of each year.

#### **On Section 6 Auctions on behalf of other Member States**

Section 6 facilitates the use by other Member States of the stock exchange commissioned by Germany. The background to this is that only some of the Member States are auctioning allowances in the 2008-2012 trading period, and there are some Member States which only have low quantities to auction. Also, in regard to auctions in EU Member States from 2013, it does not make sense to create a large number of different auction platforms for auction volumes which are, in some cases, quite low. Hence, Germany with its comparatively high auction quantities should offer its auction platform for use by other Member States, for the sake of European harmonisation among other considerations. Where the terms and conditions of auctions are in accord, auctions can also be held jointly on the same date; this shall require the consent of the competent authority.

#### **On Section 7 Competent authority**

Section 7 designates the Federal Environment Agency as the competent authority for the Auctioning Ordinance. The German Emissions Trading Authority (DEHSt) at the Federal Environment Agency is already the competent authority for emissions trading and, as the administrator of the German registry, is automatically involved in auctioning. As yet, however, the DEHSt has not gained authorisation on an emissions trading exchange.

#### **On Section 8 Entry into force**

Section 8 governs the entry into force of the Ordinance.