

## I. General Comments

1. **Most of the infrastructure for auctioning already exists.** The Carbon Market has evolved and matures further – most of this infrastructure suits also for auctioning allowances. Therefore, we should make use of existing institutions as far as possible instead of creating a new/parallel infrastructure. This is cost efficient and leads to a consistent regulatory framework. Before creating any additional structures we should consider whether they are really needed and how far existing structures could be modified. Moreover, customer checks are already carried out by market institutions (e.g. exchanges, intermediaries). Extra and additional checks only produce costs without leading to additional safety.
2. **Professional service providers (also for SME) are already available.** There are highly professional intermediaries active in the carbon market – as well as in the financial and other markets. In the coming years they will develop more differentiated and adequate services for the demand side. Costs for these services will be reduced by competition. Concerning access of SME and small emitters we do not agree that special rules would be necessary. Buyers of small amounts might prefer to buy via a professional service provider (bank or other financial institution, broker or consultant) – as this is common standard for example in financial services. The experience with the sale of EUA in Germany indicates that the system of intermediate bids serves its purpose, and there is a tendency of small compliance buyers to use the intermediate way. Summarising, the cost-benefit analysis might not support the need for implementing special rules, such as for instance non-competitive bids, to ensure cost-efficient direct access for small bidders.
3. **Gaps in regulation have to be addressed for the whole market.** Many of the issues identified in the consultation paper as to be regulated in the auctioning regulation (e.g. money laundering, market manipulation, etc.) are not specific for the auctioning process but for the secondary market as well (and maybe even more relevant there). If there are any regulatory gaps in the secondary market (e.g. concerning spot certificates), they cannot be healed by addressing these issues in the auctioning regulation. Also, addressing the issue selectively only in the auctioning regulation will not overcome the risk of manipulation, since manipulative behaviour could very easily focus on the secondary market instead of the auctioning process. In any case, auctioning prices would be affected.
4. **Market manipulation/market abuse can occur in all markets.** The problem of market manipulation is a wider one – if manipulation will take place at a large scale, this also concerns other markets (e.g. energy, electricity) – and adequate measures for monitoring and prevention have to cover these related markets as well. As the Commission is currently revising the rules for the electricity and gas markets, maybe, carbon markets could be integrated into that revision, in order to create a uniform and comprehensive regime for the future. Furthermore, creating new or additional regulation for auctioning leads to inconsistent legal rules which would create new gaps and incomplete oversight responsibilities.
5. **Harmonisation is needed but only to a limited extent.** Coordination and harmonisation of certain issues concerning the auctioning process is needed to allow for a smooth functioning of auctioning in the Single European Market. These issues include the coordination of the auction calendar, a joint platform to ensure information and transparency as well as harmonised rules for non-discriminatory and open access.
6. **Auctioning body:** For reasons of subsidiarity, Germany does not support a European-wide single auctioning body. We believe that it is for each Member State to decide on the body which is to be charged with running the auction and how the costs of the auction are covered. Auctioning should be based on EU-wide harmonised principles in order to avoid market distortion among member states and avoid unnecessary costs.

Existing carbon exchanges are well-suited to staging auctions. Different Member States should be allowed to share an auctioning body.

**II. German proposal:**

1. Auctioning should build on existing infrastructures, coordination is necessary, but only for certain issues; joint approaches of MS should be allowed.
2. Details for Phase II: Germany will in 2010 introduce auctioning of allowances as an own product at an existing carbon exchange (to be selected by open tender). This allows to make full use of the existing infrastructure for oversight, monitoring, clearing, auction platform, customer checks, collaterals, code of conduct and sanctions. If necessary, additional requirements (e.g. on reporting) will be included in the contract with the exchange. This concept of using existing infrastructure instead of inventing a new framework generally also holds for Phase III.

The risk of a fragmentation of the EU may be avoided. First of all, it is not realistic that there will be auctioning at 27 different platforms. The new regulation will make sure that MS will work together, for instance, by contracting the same exchange. The regulation should fix the framework for joint auctions at already existing secondary market institutions. More centralisation does not seem to be necessary, as the secondary market currently also copes with more than one platform. Existing professional intermediaries, routines and information channels will provide for a uniform price (between different auctions as well as between auctions and secondary market). Since auctions are only one click away from the secondary market, any abuse or manipulation can be best prevented by high participation, high frequency, the control by supervisory authorities and other control mechanisms already existing for secondary market institutions.

3. Generally, emissions trading is built on the concept of efficiency and market approach. This should also apply for the choice of instruments for the future EU auctioning procedures. Using existing platforms, procedures, supervisory structures and existing EU instruments, deserves consideration before creating supplementary platforms.

**III. Further remark:**

By taking an exchange based approach many of the questions in the consultation paper could be dropped. This paper is deemed to contribute to the general discussion taking place in all Member States. Germany will give more detailed answers to the remaining questions raised in the consultation paper at a later stage.