

## CMIA RESPONSE TO EC CONSULTATION ON AUCTIONING

### I. CMIA'S GUIDING PRINCIPLES FOR AUCTIONS

The majority of the questions in the Consultation are posed in an open ended manner and ask for reasons and further explanation. In order to provide CMIA's positions on the individual questions coherently, as well as to retain 'an eye on the bigger picture' in the more technical areas of the consultation, CMIA wishes to emphasize the following guiding principles which underpin CMIA's submission:

(1) Implementation procedures should bring out and enhance the benefits of auctioning to all stakeholders - government, EU ETS participants, liquidity and service providers alike.

(2) Auctioning procedures should be harmonised as much as is reasonable in order to improve understanding and predictability for market participants and decrease transaction costs. However, the realities of the auction as a sales process and expected diversity of market participants as regards governing law, commercial practices and contractual terms for such sales should be respected.

(3) If particular scenarios for implementation are chosen instead of leaving flexibility for solutions to the market, this needs to be well founded on grounds of:

- non-discrimination,
- transparency,
- necessity,
- proportionality,
- clarity, and
- efficiency.

(4) To allow stability, flexibility and to respect diversity in language and commercial practice, it is understandable that different procedures should be used to auction allowances, in particular as regards spot allowances. However, auctions should be co-ordinated or joint to avoid clashes or competition between the auctions.

(5) Methods for auctioning should take into account existing market infrastructure (e.g. commodity exchange) and experience (e.g. gas and electricity capacity release programmes) especially where forward or futures contracts are the object of the auction.

(6) Allocation should not compete with trading on the secondary market. Ways for enabling both market participants and government to join volumes at auctions in particular in the areas of forwards and futures should be explored. Some member states or their auctioneers are capable of having a dominant market position. It must be safeguarded that this is not abused by member states in the interest of revenue creation.

(7) Auction procedures should be simple, clear and efficient in design. Auctions in both time and quantity must be regular and foreseeable. Early auctions encourage appropriate hedging for the ultimate benefit of Community customers.

(8) The classification of the allowances sale following auction as a private law contract, quasi contractual obligation, administrative contract or administrative acts must be clear to market participants ex ante. In most EU jurisdictions, conducting allocation and sales under private law would appear preferable in terms of clarity, predictability and enforcement for market participants. The difference between national laws and legal systems needs to be respected. Where governments are direct counterparties, they must act in a private commercial function.

(9) A reserve price may be beneficial for market stability, but must not lead a general floor price or price regulation ambitions. The effects of not meeting the floor price must be clear to market participants. It needs to reflect market prices realistically and must be robust to resist political pressures for revenue creation.

(10) Financial services and banking regulations may have to be adapted sufficiently to capture the special nature of allowance allocation. However, where the existing regimes provide sufficient clarity and appropriately incentivising and enforceable obligations, separate competing regimes should not be introduced under the Regulation as this may lead to uncertainty from de facto competing regimes. Were existing regulations are replaced or specifically amended for allowance allocations, this must be clearly delineated.

(11) Auction design, e.g. in respect of credit support requirements, lots to be sold etc. must enable non-discriminatory access to allowances and facilitate liquidity. Market participants should be able to chose direct or indirect participation.

(12) Restrictions on non-emitters or particular types of emitters in respect of participating in auctioned allocations should be limited, and in any case be necessary, proportionate and non-discriminatory.

(13) Due regard should be given to robust and flexible solutions and the complementary benefits of both spot and future auctions and the benefits of intermediaries, in particular in a primary participant model in spot auctions, in aggregating demand and creating liquidity and market access through additional marketing activities on behalf the auctioneer.

(14) A differentiation in the approach to the auctioning of EUAs for stationary installations and EUAAs for aircraft operators should only be made where the smaller amount of allowances required by the latter, different fuel hedging and emission verification procedures warrant such different treatment in the interest of market liquidity, cost-efficiency and accessibility.

These principles align with the requirements for auctions set out in the Directive. Should you wish to discuss CMIA's submission, please contact the chair of the EU ETS Working Group - Andreas Gunst - under E: [andreas.gunst@dlapiper.com](mailto:andreas.gunst@dlapiper.com), T: 0044 207 153 7359 or M: 0044 773 829 6998.

**II. RESPONSES TO QUESTIONNAIRE**

No.	QUESTION	CMIA RESPONSE
1.	<p>As a general rule throughout the trading period, in your opinion, are early auctions necessary? If so, what should the profile of EUA auctions be?</p> <ul style="list-style-type: none"> <li>• 5-10% in year n-2, 10-20% in year n-1, remainder in year n</li> <li>• 10-20% in year n-2, 20-30% in year n-1, remainder in year n</li> <li>• 20-30% in year n-2, 30-35% in year n-1, remainder in year n</li> </ul> <p>Other? Please specify.</p>	<p>Early auctions are desirable. They increase the time span for allocation and spread volumes. This leads to greater predictability and fair and non-discriminatory access to allowances. Early auctions also help prevent a significant shortage of allowances and resulting illiquidity in the market, because there is no ex ante allocation of allowance as in the current phase and tradable volumes will be smaller.</p> <p>Early auction volumes should be evenly split across the relevant years (-2, -1, n) and between spot and futures (see below question 3).</p> <p>We don't share the Commission's concerns about risks of early auctions as long as a balanced approach between auctioning spot and futures and across the years is taken.</p> <p>However, we do recognise a potential issue of 'oversupply' on current predictions that Phase 2 could be long by as much as 1.5 bn allowances and EU credits. This would be equivalent of 1½ years of total auctioned amounts if banked into Phase 3 and under these circumstances it may be appropriate in the interest of price stability to provide means of curtailing the volumes destined for early auctioning of Phase 3 as long these amounts keep the Phase 3 market sufficiently liquid.</p> <p>Equally, we would like to note that, if member states are allowed to apply a reserve price (which on the further conditions set out below we advocate), any price depression through 'oversupply' will be muted as we expect governments to act in an economically rational behaviour and retain volumes from earlier auctions through the reserve price mechanism, if a Phase 2 overhang would create significant price depression for Phase 3 allowances auctioned early.</p>
2.	<p>Do you think there is a need to auction futures? If so, why so?</p>	<p>We believe that auctioning futures provides an important additional market access element to spot auctions.</p> <p>Taking the example of early auctions for instance, spot auctions perform an important market access function as they are perceived easy to implement, less constrained by existing accounting rules and financial service regulations, and easier to access for smaller participants. However, in the case of early auctions they have the draw back of requiring full payment upon (early) delivery, thereby incurring cost of carry to early buyers which to small participants can be prohibitive. In addition, internal risk and credit approvals for holding a</p>

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		<p>security that is not redeemable/usable for 1 or even 2 years may be difficult to overcome.</p> <p>Early auctions for future delivery on the other hand would not require payments other than margining and it is expected that internal credit and risk approvals are likely to be more benign to an exchange traded contract/positions, which members also perceive easier to shorten.</p> <p>Generally, we believe that the majority participant by emissions and numbers are currently involved in some form of electricity, gas and emissions trading via exchanges. Smaller participants are likely to use irrespective of an auction or futures structure a financial intermediary for their procurement. We therefore do not see an increased risk of limited participation and market manipulation or collusion.</p> <p>Moreover, CMIA believes in non-discrimination and competitiveness between primary and secondary sales. This is best achieved through the offering of futures on the same terms and on the same exchanges secondary sales are conducted. In fact, due to the splitting and novation of contracts into open positions with the clearing house, buyers would not know whether they buy 'primary' or 'secondary'. This would in particular dilute any effects of market manipulation or collusion.</p> <p>Experience with auctions in the UK would suggest that even in the case of spot auctions, a government is unlikely to take credit risk but would expect for financial intermediaries to take that risk, and does not desire to administer bidding for a large number of direct bidders. As this emulates key elements of a clearing structure on an exchange including margining, we do not share the Commission's concern about greater financial or administrative burden.</p> <p>In fact, experience with all the existing auctioning structures suggest that credit requirements for participants on exchanges via clearing members or at spot auctions via primary market participants do not deviate greatly, although we see potential for spot auctions to require less credit support due to the shorter term of credit exposure for government or primary market participants.</p> <p>For reasons of flexibility, different maturity dates as in other commodity markets may also be desirable, in particular as regards spot market liquidity.</p>
3.	<p>What share of allowances should be auctioned spot and what share should be auctioned as futures for each year?</p> <p style="text-align: center;">SPOT                  FUTURES</p>	<p>Both early auctioning and spot market liquidity are key elements of Phase 3 allocation of allowances.</p> <p>In the years n-2 and n-1, there will be some need for both scheme participants and member</p>

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	<ul style="list-style-type: none"> <li>• year n : __20__%   __20__ %</li> <li>• year n-1 : __15__%   __15__ %</li> <li>• year n-2 : __15__%   __15__ %</li> </ul> <p>Please provide evidence to support your case.</p> <p>NB: The answer to this question will be published as part of the public consultation. Please do not submit confidential information as part of your answer to this question.</p>	<p>states to have allowance electronically available and for trades to settled by transferring allowances before the actual compliance year. Equally, a number of the early trades will be driven by hedging requirements for forward power transactions based on expected emissions and would benefit from access to early auctioned futures.</p> <p>In the compliance year as scheme participants generate emissions it is important that there is a liquid spot market to enable them to hedge appropriate for actual emissions incurred and to build up with a view to finalising their compliance portfolio via settled transactions. Whilst we would welcome an even split between futures and spot transactions in the compliance year, we recognise that it may be important for a majority of the allowances be offered on a spot rather than futures basis.</p> <p>The allocation of the overall amount should be a relatively even split with some back loading as shown in the figures provided.</p>
4.	<p>Should the common maturity date used in futures auctions be in December (so the maturity date would be December in year n, both when auctioning in year n-2 as when auctioning in year n-1)? If not, please suggest alternative maturity dates and provide evidence to support your view.</p>	<p>For reasons of flexibility, different maturity dates as in other commodity markets may also be desirable, in particular as regards spot market liquidity.</p> <p>Alternative delivery dates could be 1 June and 1 September.</p>
<b>Request for potentially confidential information 1</b>	<p>Please send the answer to this question in paper and electronic format, marked on the envelope "Strictly Private and Confidential – Auctioning consultation", directly to the European Commission, DG ENV, Directorate C, Unit C2, to the attention of the Head of Unit, Office BU-5 2/1, 1049 Brussels, Belgium. It will be treated confidentially and will not be disclosed publicly.</p> <p>For ETS operators: what share of your expected emissions covered by the EU ETS in a given year n do you hedge and how much in advance?</p> <ul style="list-style-type: none"> <li>• year n : _____%</li> <li>• year n-1 : _____%</li> <li>• year n-2 : _____%</li> </ul>	<p>To the extent relevant, CMIA members have provided this information in separate individual communications.</p>

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	<ul style="list-style-type: none"> <li>• earlier years (please specify) : _____%</li> </ul>	
<b>Request for potentially confidential information 2</b>	<p>Please send the answer to this question in paper and electronic format, marked on the envelope "Strictly Private and Confidential – Auctioning consultation", directly to the European Commission, DG ENV, Directorate C, Unit C2, to the attention of the Head of Unit, Office BU-5</p> <p>2/1, 1049 Brussels, Belgium. It will be treated confidentially and will not be disclosed publicly.</p> <p>What share of the annual quantity of allowances you intend to purchase via auctions would you wish to buy spot or futures respectively?</p> <p>SPOT FUTURES</p> <ul style="list-style-type: none"> <li>• year n : _____%   _____ %</li> <li>• year n-1 : _____%   _____ %</li> <li>• year n-2 : _____%   _____ %</li> </ul>	<p>To the extent relevant, CMIA members have provided this information in separate individual communications.</p>
5.	<p>For spot auctions:</p> <p>What should be the optimum frequency of auctions?</p> <ul style="list-style-type: none"> <li>• Weekly?</li> <li>• Fortnightly?</li> <li>• Monthly?</li> <li>• Quarterly?</li> </ul>	<p>Ideally, this should not be an 'either - or' decision but frequency should cover both short term and mid-term frequencies. The choice of any one frequency will not pay sufficient respect to the variety of participants needs and hedging strategies and could be discriminatory.</p> <p>Longer frequencies will mean that more allowances are allocated and prices around these allocations probably be depressed. Longer periods will suit less active hedgers, but it bears a greater price volatility around the date of allocation.</p> <p>Shorter frequencies mean fewer allowances at any one allocation and probably less price depression or volatility, but will favour participants with regulator and active hedging.</p> <p>Consequently, a weekly, even daily, allocation of smaller amounts coupled with monthly or quarterly auctions of a larger amount could suit the majority of participants.</p>

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	<ul style="list-style-type: none"> <li>• Other?</li> </ul> <p>What should be the minimum frequency of auctions?</p> <ul style="list-style-type: none"> <li>• Weekly?</li> <li>• Fortnightly?</li> <li>• Monthly?</li> <li>• Quarterly?</li> <li>• Other?</li> </ul> <p>What should be the maximum frequency of auctions?</p> <ul style="list-style-type: none"> <li>• Weekly?</li> <li>• Fortnightly?</li> <li>• Monthly?</li> <li>• Quarterly?</li> <li>• Other?</li> </ul> <p>Please provide arguments to support your case.</p>	<p>However, the demand distribution should also be considered in the amounts made available at both short term and mid-term auctions.</p> <p>Finally, we would like to stress that our comments above are made on the assumption of a regionally integrated and coordinated auctioning calendar.</p>
6.	<p>For spot auctions, what should be the:</p> <ul style="list-style-type: none"> <li>• Optimum auction size?</li> <li>• Minimum auction size?</li> <li>• Maximum auction size?</li> </ul> <p>If deemed appropriate, please indicate a range and/or</p>	<p>1000 units should be the minimum size. On the basis of our comments to a balanced approach to market access as set out per above, a maximum size is not required nor is an optimum size relevant in our view.</p>

No.	QUESTION	CMIA RESPONSE
	<p>distribution over different sizes.</p> <p>Please provide arguments to support your case.</p>	
7.	<p>For futures auctions:</p> <p>What should be the optimum frequency of auctions?</p> <ul style="list-style-type: none"> <li>• Weekly?</li> <li>• Fortnightly?</li> <li>• Monthly?</li> <li>• Quarterly?</li> <li>• Other?</li> </ul> <p>What should be the minimum frequency of auctions?</p> <ul style="list-style-type: none"> <li>• Weekly?</li> <li>• Fortnightly?</li> <li>• Monthly?</li> <li>• Quarterly?</li> <li>• Other?</li> </ul> <p>What should be the maximum frequency of auctions?</p> <ul style="list-style-type: none"> <li>• Weekly?</li> <li>• Fortnightly?</li> </ul>	<p>CMIA believes in non-discrimination between the primary and secondary market. Auctions for futures should be integrated and combined with secondary sales on existing exchange infrastructure. Realistically, the majority of buyers hedging with futures will have a more active hedging strategy and so weekly or even daily allocation would appear preferable for the same reasons provided in the previous section on spot transactions.</p>

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	<ul style="list-style-type: none"> <li>• Monthly?</li> <li>• Quarterly?</li> <li>• Other?</li> </ul> <p>Please provide arguments to support your case.</p>	
8.	<p>For futures auctions, what should be the:</p> <ul style="list-style-type: none"> <li>• Optimum auction size?</li> <li>• Minimum auction size?</li> <li>• Maximum auction size?</li> </ul> <p>If deemed appropriate, please indicate a range and/or distribution over different sizes.</p> <p>Please provide evidence to support your case.</p>	<p>1000 units. On the basis of our comments to a balanced approach to market access as set out per above, a maximum size is not required nor is an optimum size relevant in our view.</p>
9.	<p>Should volumes of spot allowances be auctioned evenly throughout the year? If not, how should volumes be distributed? (more than one answer possible) Please specify:</p> <ul style="list-style-type: none"> <li>• A larger proportion in the first 4 months of the year?</li> <li>• A larger proportion in December?</li> <li>• A smaller proportion in July and August?</li> <li>• Other? Please specify.</li> </ul>	<p>Please see our comments under no 7. This would suggest an even distribution throughout the compliance year with potentially some larger volumes for monthly or quarterly auctions as the most desirable distribution.</p>
10.	<p>In case futures are auctioned, should the volumes for spot and futures auctions be spread over the year in the same manner? If not, how should they differ? (more than one</p>	<p>See our previous answer on the desirability of auctions.</p>

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	<p>answer possible)</p> <ul style="list-style-type: none"> <li>• No futures auctions less than six months before the maturity date.</li> <li>• A larger proportion in December.</li> <li>• A smaller proportion in July and August.</li> <li>• Otherwise? Please specify how and comment.</li> </ul>	<p>The greatest rationale for early allocations would appear to be in years n-1 and n-2.</p>
11.	<p>Does the Regulation need to have provisions to avoid holding auctions during a short period of time before the surrendering date (30 April each year)?</p> <p>If yes, how long should this period be:</p> <p>One week <input type="checkbox"/> 2 weeks <input checked="" type="checkbox"/> 3 weeks <input type="checkbox"/> 1 month <input type="checkbox"/></p> <p>In case futures are auctioned, should there be similar provisions with respect to the period immediately prior to the maturity date?</p> <p>If yes, how long should this period be:</p> <p>One week <input type="checkbox"/> 2 weeks <input checked="" type="checkbox"/> 3 weeks <input type="checkbox"/> 1 month <input type="checkbox"/></p>	<p>Considering:</p> <ul style="list-style-type: none"> <li>- our previous comments on even distribution of auctions,</li> <li>- the principles of subsidiarity and flexibility, and</li> <li>- economic interests of member states,</li> </ul> <p>it should not be necessary to prescribe this.</p> <p>If it was, a period of at least 2 weeks would appear to be required.</p>
12.	<p>Which dates should be avoided? (more than one answer possible)</p> <ul style="list-style-type: none"> <li>• Public holidays common in most Member States?</li> <li>• Days where important relevant economic data is released?</li> <li>• Days where emissions data are released?</li> <li>• Other?</li> </ul>	<p>It is desirable to avoid public holidays.</p> <p>From experience in other markets, avoiding dates where important economic and emissions data is released is in the interest of a firm an predictable auction calendar is desirable but largely not practicable.</p>

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	Please specify the dates you have in mind in your answers.	
13.	Is a harmonised 10-12 hrs CET auction slot desirable? If not, what alternative(s) would you suggest?	A 10-12 hrs CET auction slot appears most practicable.
14.	<p>How long in advance should each element of the calendar be determined?</p> <p>Annual volumes to be auctioned:</p> <ul style="list-style-type: none"> <li>• 1 year in advance</li> <li>• 2 years in advance</li> <li>• 3 years in advance</li> <li>• more years in advance</li> </ul> <p>Distribution of annual volumes over spot and futures (if applicable):</p> <ul style="list-style-type: none"> <li>• 1 year in advance</li> <li>• 2 years in advance</li> <li>• 3 years in advance</li> <li>• more years in advance</li> </ul> <p>Dates of individual auctions:</p> <ul style="list-style-type: none"> <li>• 1 year in advance</li> <li>• 2 years in advance</li> <li>• 3 years in advance</li> </ul>	<p>Having regard to our previous comments on early auctions:</p> <ul style="list-style-type: none"> <li>- a minimum of 1 year in advance (of the relevant auction) is desirable for determination of dates and the auctioneer; and</li> <li>- a minimum of 2 years in advance for the determination of volumes is desirable.</li> </ul>

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	<ul style="list-style-type: none"> <li>• more years in advance</li> </ul> <p>Volume and product type for individual auctions:</p> <ul style="list-style-type: none"> <li>• 1 year in advance</li> <li>• 2 years in advance</li> <li>• 3 years in advance</li> <li>• more years in advance</li> </ul> <p>Each auctioneer carrying out auction process (if more than one):</p> <ul style="list-style-type: none"> <li>• 1 year in advance</li> <li>• 2 years in advance</li> <li>• 3 years in advance</li> <li>• more years in advance</li> </ul> <p>Please provide arguments to support your case.</p>	
15.	<p>What should be the volume of allowances to be auctioned in 2011 and 2012:</p> <ul style="list-style-type: none"> <li>• in 2011: 30 % of the 2013 volume and 30 % of the 2014 volume</li> <li>• in 2012: 30 % of the 2013 volume and 30 % of the 2014 volume</li> </ul> <p>What percentage of these shares should be auctioned as futures?</p> <ul style="list-style-type: none"> <li>• in 2011: 100 % of the 2013 share and 100 % of the</li> </ul>	<p>In line with our previous comments on early auctions and equal distribution, this should be 30% in each scenario and equally distributed between auctions and futures.</p>

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	<p>2014 share</p> <ul style="list-style-type: none"> <li>• in 2012: _100__% of the 2013 share and _100__% of the 2014 share</li> </ul> <p>Please provide evidence to support your case.</p>	
16.	<p>What should be the rule with respect to allowances not auctioned due to force majeure?</p> <ul style="list-style-type: none"> <li>• They should automatically be added to the next auction on the calendar, irrespective of the auction process.</li> <li>• They should be auctioned within one month, though leaving flexibility as to which auction(s) the EUAs should be added.</li> <li>• They should be auctioned within three months, though leaving flexibility as to which auction(s) the EUAs should be added.</li> <li>• Other? Please specify.</li> </ul>	<p>In principle this should be as soon as practicable after the force majeure event ceased to subsist.</p> <p>Whether applying this principle justifies it to be added to the next scheduled auction or whether a replacement auction needs to be held depends on:</p> <ul style="list-style-type: none"> <li>- the frequency of the auction,</li> <li>- the proximity to the end of the compliance year,</li> <li>- depending on the restriction of auctions before the end of the compliance year, whether it is a future or a spot transaction.</li> </ul> <p>We advocated frequent auctions. In this case, adding it to the next scheduled auction is most practicable.</p> <p>If it was the last auction before the end of the compliance year, a replacement auction should be held as soon as possible. This may also require finding another auctioneer.</p>
17.	<p>Is 1,000 allowances the most appropriate lot size? If not, why not?</p>	<p>We believe 1000 allowances is an appropriate minimum lot size.</p>
18.	<p>Is a single-round sealed-bid auction the most appropriate auction format for auctioning EU allowances?</p> <p>If not, please comment on your alternative proposal?</p>	<p>For spot auctions, a single sealed bid auction is the most appropriate format. However, in the case of futures we would prefer greater integration into (then) existing auction or bid matching procedures on the relevant exchange to avoid distortion with the secondary market</p>
19.	<p>What is the most appropriate pricing rule for the auctioning of EU allowances?</p> <ul style="list-style-type: none"> <li>• Uniform-pricing.</li> </ul>	<p>It would appear that uniform pricing is the most appropriate pricing rule in light of the auction principles set by the Directive and the Commission for this consultation, which we support.</p>

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	<ul style="list-style-type: none"> <li>• Discriminatory-pricing.</li> <li>• Indifferent.</li> </ul> <p>Please provide arguments to support your case.</p>	
20.	<p>Should the rules for solving ties in the Regulation be:</p> <ul style="list-style-type: none"> <li>• random selection; or</li> <li>• pro-rata re-scaling of bids?</li> </ul> <p>Please comment on your choice.</p>	<p>In principle, a pro-rata scaling of bids is the most objective and predictable allocation mechanism. It does, however, disadvantage smaller players as their pro-rata ration could be smaller and larger bidders could have a possibility to influence the outcome through bidding greater volumes.</p> <p>Perhaps a mechanism where bidders are allocated the average bid size (unless they bid less than the average, in which case this smaller number would apply) appears to be another objective, predictable and more robust mechanism to solve ties.</p>
21.	<p>Should a reserve price apply?</p>	<p>This most certainly depends on the amount.</p> <p>In principle, a reserve price may be a suitable tool to establish a solid floor and provide long-term predictability of the carbon price.</p> <p>However, in some instances some member states and/or auctioneers appointed by them will be in a dominant position as regards the allocation of allowances. An abuse of that position through setting a high allowance price must be avoided.</p> <p>Given the novelty of this procedure and the special characteristics of allowances and the allowance market, EC competition law will not be a sufficiently practicable redress in this instance. The regulation should set appropriate limits and rules, and perhaps a methodology, that would restrict the abuse of dominance in this case.</p>
22.	<p>In case a reserve price would apply, should the methodology/formula for calculating it be kept secret? Please comment on your choice.</p>	<p>Having regard to our previous comments on the desirability of a reserve price and also on the purpose of a reserve price, the methodology should be accessible.</p>
23.	<p>Is a maximum bid-size per single entity desirable in a Uniform-price auction?</p> <p>Is a maximum bid-size per single entity desirable in a discriminatory price auction?</p>	<p>This depends somewhat on the solution to ties.</p> <p>In principle we are against imposing maximum bid sizes as they can be arbitrary and are not required if the auctioning design is correct. We appreciate, however, the concern that due to the size of their compliance portfolio and their respective bidding volumes certain participants'</p>

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	Please comment on your choice.	<p>bidding may have a greater bearing on the allocation of volume or the price.</p> <p>Only if bids are rescaled on a pro-rata basis do we see a justification for maximum bid sizes.</p>
24.	<p>If so, what is the desirable bid-size limit (as a percentage of the volume of allowances auctioned per auction – only one choice is possible):</p> <p>10%: [ ] 15%: [ ] 20%: [ X ]</p> <p>25%: [ ] 30%: [ ] More than 30%: [ ] Please specify.</p> <p>Please comment on your choice.</p>	<p>This depends on the frequency of the auctions and the distribution between spots and futures, and, to some extent, also the country.</p> <p>Having regard to our comments on these issues we believe that in the case of a pro rata rescaling a bid size limit of 20% should be sufficient.</p>
25.	<p>In case only one of the two following options would be chosen, to limit the risk of market manipulation or collusion, which one would be preferable?</p> <ul style="list-style-type: none"> <li>• A discriminatory-price auction format?</li> <li>• A maximum bid-size per single entity?</li> </ul> <p>Please comment on your choice.</p>	<p>We don't share the Commission's views of an 'either or' decision in this case. Both mechanism address different scenarios and different collusion issues and are only required in limited circumstances.</p> <p>Our preference would be on an appropriate maximum bid size per entity. But we would like to stipulate that we see neither as necessary.</p>
26.	<p>Are the following pre-registration requirements appropriate and adequate?</p> <p>Identity:</p> <ul style="list-style-type: none"> <li>• Natural or legal person;</li> <li>• Name, address, whether publicly listed, whether licensed and supervised under the AML rules; membership of a professional association; membership of a chamber of commerce; VAT and/or tax number;</li> <li>• Contact details of authorised representatives and proof of authorisation; and</li> </ul>	<p>Necessity and adequacy of these requirements depend on:</p> <ul style="list-style-type: none"> <li>- the necessity of the information to existing regulations, including MIFID and AML on required information to avoid or detect certain offences or undesired commercial behaviour.</li> <li>- the effect if the relevant information is not or can not be supplied or the criteria can not be met.</li> </ul> <p>The identity requirements appear acceptable.</p> <p>The declarations on offences are largely not practicable, in particular in relation to procurement rules and confidential information. The necessity and relevance of this information is also highly questionable. In any case it should only relate to proven infringements, i.e. convictions.</p>

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	<ul style="list-style-type: none"> <li>• CITL-Registry account details.</li> <li>• Anything else? Please specify.</li> </ul> <p>Declarations with respect to the past 5 years on absence of:</p> <ul style="list-style-type: none"> <li>• Indictment or conviction of serious crimes: check corporate officers, directors, principals, members or partners;</li> <li>• Infringement of the rules of any regulated or unregulated market;</li> <li>• Permits to conduct business being revoked or suspended;</li> <li>• Infringement of procurement rules; and</li> <li>• Infringement of disclosure of confidential information.</li> <li>• Anything else? Please specify.</li> </ul> <p>Declarations and submission of documentation relating to:</p> <ul style="list-style-type: none"> <li>• Proof of identity;</li> <li>• Type of business;</li> <li>• Participation in EU ETS or not;</li> <li>• EU ETS registered installations, if any;</li> <li>• Bank account contact details;</li> <li>• Intended auctioning activity;</li> <li>• Whether bidding on own account or on behalf of another beneficial owner;</li> </ul>	<p>The catalogue of declarations on verity of documentation is too wide. Again, the relevance of this information for the trading activity is questionable. For example, it is not the role of the applicant to make declarations on creditworthiness or collateral. It would be for the auctioneer to establish this based on submitted information in an appropriate manner.</p>

No.	QUESTION	CMIA RESPONSE
	<ul style="list-style-type: none"> <li>• Corporate and business affiliations;</li> <li>• Creditworthiness;</li> <li>• Collateral; and</li> <li>• Whether it carries out transactions subject to VAT or transactions exempted from VAT.</li> <li>• Anything else? Please specify.</li> </ul>	
27.	<p>Do you agree that the pre-registration requirements for admittance to EU auctions should be harmonised throughout the EU?</p> <p>Yes [<input checked="" type="checkbox"/>] No [<input type="checkbox"/>]</p> <p>Please comment on your choice.</p>	A clear yes in the interest of business efficacy and non-discrimination.
28.	<p>Should the amount of information to be supplied in order to satisfy the pre-registration requirements for admittance to EU auctions depend on the:</p> <ul style="list-style-type: none"> <li>• means of establishing the trading relationship;</li> <li>• identity of bidder;</li> <li>• whether auctioning spot or futures;</li> <li>• size of bid;</li> <li>• means of payment and delivery;</li> <li>• anything else? Please specify.</li> </ul> <p>If so, what should the differences be?</p>	<p>Because of the difference in the existing regulation of spot and futures transactions, the amount of information to be submitted will differ in this regard.</p> <p>We believe this question is posed in the wrong way. Within the respective categories of spot or futures transactions, there should be no discrimination between the type (not amount!) participants should provide.</p>

No.	QUESTION	CMIA RESPONSE
29.	<p>Should the bidder pre-registration requirements under the Regulation apply in the same manner irrespective of whether or not the auctioneer is covered by the MiFID or AML rules?</p> <p>If not, why not?</p> <p>Please provide arguments to support your case.</p>	<p>A uniform treatment would appear to be desirable, but it must dovetail with existing rule or in case of conflict provide that the rules in the Regulation will prevail to achieve sufficient clarity for market participants.</p>
30.	<p>Do you agree that the auctioneer(s) should be allowed to rely on pre-registration checks carried out by reliable third parties including:</p> <ul style="list-style-type: none"> <li>• Other auctioneers?</li> <li>• Credit and/or financial institutions?</li> <li>• Other? Please specify.</li> </ul> <p>Please comment on your choice.</p>	<p>Yes. In addition to the mentioned categories, information from regulated professions like accountants or lawyers should (and on practical grounds must) also be admissible.</p>
31.	<p>In order to facilitate bidder pre-registration in their home country, should the auctioneer(s) be allowed to provide for pre-registration by potential bidders in other (or all) Member States than the auctioneer's home country e.g. by outsourcing this to a reliable third party?</p> <p>Yes <input checked="" type="checkbox"/> No <input type="checkbox"/></p> <p>Please comment on your choice.</p> <p>If so, should such entities be:</p> <ul style="list-style-type: none"> <li>• Covered by the AML rules?</li> <li>• Covered by MiFID?</li> <li>• Covered by both?</li> </ul>	<p>We would welcome such a step. We believe, however, that a specific regulatory regime for that third party will have to be created, which would incorporate the relevant AML and MiFID rules. Given diversity in the group of potentially eligible third parties for, current coverage by the existing AML or MiFID rules would not appear to create a sufficiently level playing field.</p>

No.	QUESTION	CMIA RESPONSE
	<ul style="list-style-type: none"> <li>• Other? Please specify.</li> </ul> Please comment on your choice.	
32.	Should the Regulation prohibit the multiplicity of pre-registration checks in the case of Member States auctioning jointly?  Yes [ ] No [ ]  Please comment on your choice.	A clear yes as otherwise multiplicity of checks would violate the principles of efficacy, necessity, and proportionality set for the auctioning process by the Directive and the Commission for the process.
33.	Do you agree that the level of collateral accepted in EUA auctions should be harmonised for all EU ETS auctions? If so, how should they be harmonised?  If not, why not?	We would encourage an objective and predictable setting of collateral obligations across different auctions. We do, however, see differences in collateral requirements also as a function and reflection of the relative economic strength of market participants in the relevant regional market. A harmonised level across all member states could disadvantage access from compliance buyers from economically weaker member states.
34.	Do you agree that 100% collateral in electronic money transfer ought to be deposited up-front at a central counterparty or credit institution designated by the auctioneer to access spot auctions?  If not, why not?  What alternative(s) would you suggest? Please provide arguments to support your case.	This depends on the type of collateral, gate closure for posting before the auction, the release of the collateral and whether interest payments will be made if cash collateral is held for significant periods.
35.	In case futures are auctioned, should a clearing house be involved to mitigate credit and market risks?  If so, should specific rules – other than those currently used in exchange clearing houses – apply to: <ul style="list-style-type: none"> <li>• the level of the initial margin;</li> <li>• the level of variation margin calls;</li> </ul>	The concept of a future necessitates that a clearing house is involved in the transaction as central counter-party. In this function and process it will also, via its clearing members, mitigate the respective credit and market risks.  The level and frequency of margining currently required on commodity exchanges is a function on the respective clearing house's and its clearing member's ability to take the delivery default and non payment risks in question.  As long as there is no dominance in a particular exchange or particular futures contracts over other exchanges or OTC trading, the margin level will reflect an appropriate valuation of the

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	<ul style="list-style-type: none"> <li>• the daily frequency of variation margin call payments?</li> </ul> <p>If you have answered yes, please justify and elaborate on the rules that should apply and the mechanisms to implement them.</p>	<p>market of these risks. Consequently, in this instance we do not see the necessity to prescribe the level or frequency of margining through specific rules.</p> <p>This assessment does, however, change if by virtue of the harmonisation and centralisation prescribed in the Regulation such dominance is created.</p>
36.	<p>What are the most preferable payment and delivery procedures that should be implemented for auctioning EUAs?</p> <ul style="list-style-type: none"> <li>• Payment before delivery.</li> <li>• Delivery versus payment.</li> <li>• Both.</li> </ul> <p>Please comment on your choice.</p>	<p>Delivery versus payment appears most appropriate.</p> <p>There are no payment risks to the respective government of a magnitude that would warrant payment before delivery, in particular if a primary participant model is used.</p>
37.	<p>Irrespective of the payment procedure, should the Regulation fix a maximum delay of time for payment and delivery to take place? If yes;</p> <p>what should it be?</p> <ul style="list-style-type: none"> <li>• 4 working days [ ]</li> <li>• 5 working days [ ]</li> <li>• 6 working days [ ]</li> <li>• 7 working days [ ]</li> <li>• Other, please specify.</li> </ul>	<p>In line with practice, this should be business days rather than working days. 5 Business Days would appear sufficient also by smaller participants provided this is counted from the date notice of non-payment is received.</p>
38.	<p>Should the Regulation provide any specific provisions for the handling of payment and delivery incidents or failures?</p>	<p>Current OTC and exchange practice is largely that :</p> <p>- in the case of payment default, interest is charged from the date of default, and</p>

No.	QUESTION	CMIA RESPONSE
	<p>If yes, what should they be?</p>	<p>- in the case of delivery default, a payment is made reflecting cover purchase costs.</p> <p>Differences arise in respect of:</p> <ul style="list-style-type: none"> <li>- what evidence on the cover purchase costs are admissible,</li> <li>- whether actual cover purchases need to be made, and</li> <li>- whether EEP or EEP equivalent should be included in the cover purchase costs.</li> </ul> <p>Having regard to the role of auctions as primary allocation of allowances, we would expect that cover costs would encompass EEP or EEP equivalent and that no cover purchases need to be made, but appropriately evidenced.</p>
39.	<p>Should the Regulation provide for all matters that are central to the very creation, existence and termination or frustration of the transaction arising from the EUA auctions? If not, why not?</p> <p>If so, are the matters enumerated below complete?</p> <ul style="list-style-type: none"> <li>• The designation of the parties' to the trade.</li> <li>• The characteristics of the auctioned product: <ul style="list-style-type: none"> <li>o Nature: EUAs or EUAAs, trading period concerned.</li> <li>o Date of delivery: date at which winning bidders will receive the allowances on their registry account.</li> <li>o Date of payment: date at which payment will be required from winning bidders.</li> <li>o Lot size: number of allowances associated with one unit of the auctioned good.</li> </ul> </li> <li>• Events of 'force majeure' and resulting consequences.</li> </ul>	<p>Whilst we would encourage harmonised conditions where practicable, the Regulation needs to operate and dovetail with the respective national laws, otherwise this could create more confusions than clarity. It should also consider experience from similarly natured auctioning of rights created by regulation and owned by member states, e.g. in the area of UMTS licenses.</p> <p>In the majority of member states, the current EUA allocation is an administrative act and the rights and obligations governing such allocations arise from administrative law first and foremost.</p> <p>Whilst there are commercial elements to the sale and auctioning of allowances, it is expected that in a number of the allocation scenarios discussed in this consultation, the legal relationship between the bidders and the auctioneer acting on behalf of the respective government is still of administrative law nature. This must be respected when formulating force majeure events, events of default, related liabilities remedies and limitations and well as the route to judicial review non-allocation.</p> <p>If the terms of the auction and sale are governed by private law, this regime must be ring-fenced against sovereign acts and respective immunity. The contractual terms of the sale following the price, volume and counterparty determination through auction must dovetail with national dispositive law on contracts.</p>

No.	QUESTION	CMIA RESPONSE
	<ul style="list-style-type: none"> <li>• Events of default by the auctioneer and/or the bidder and their consequences.</li> <li>• Applicable remedies or penalties.</li> <li>• The regime governing the judicial review of claims across the EU.</li> </ul> <p>If not, what additional matters should be foreseen in the Regulation and why?</p>	
40.	<p>Should the Regulation provide for rules on jurisdiction and the mutual recognition and enforcement of judgments?</p> <p>If so, should these be:</p> <ul style="list-style-type: none"> <li>• specific to the Regulation;</li> <li>• by reference to the Brussels I Regulation;</li> <li>• by citing exceptions from the Brussels I Regulation;</li> <li>• by citing additions to the Brussels I Regulation?</li> </ul> <p>Please comment on your choice.</p> <p>If not, why not?</p>	Please see our previous comments.
41.	<p>Which auction model is preferable?</p> <ul style="list-style-type: none"> <li>• Direct bidding?</li> <li>• Indirect bidding?</li> <li>• Both?</li> </ul> <p>Please comment on your choice.</p>	<p>Participants should have the option to either directly bid or use an intermediary for the auction. For futures, a direct bidding would appear to be more appropriate. For spot auctions, an indirect bidding model like the UK primary participant model may in principle be most appropriate.</p> <p>As stated previously, for efficiency reasons SME participants or less frequent hedgers are likely to chose to bid via an intermediary but they should be given the flexibility to do this directly if their hedging strategy evolves.</p> <p>Governments would appear to prefer mandatory indirect bidding in spot auctions, because it</p>

No.	QUESTION	CMIA RESPONSE
		<p>reduces the counterparties and, arguably credit risks. This is less relevant in a futures auction because, if settled via a cleared exchange, the central counterparty/clearing house would assume this risks similarly to the primary participant model for spot auctions.</p> <p>We see a clear benefit of reducing the number of clearing houses for futures offered as this would minimise credit requirements across the different auctions and benefit liquidity.</p> <p>It is also worth stating that indirect bidding in the case of spot auctions has the benefit of the primary bidders performing marketing functions which the auctioneer will not be able to do in equal measure and efficiency. This will increase market access and in turn liquidity, which is why we would see a benefit of using a primary participant model in spot auctions.</p>
42.	<p>If an indirect model is used, what share of the total volume of EU allowances could be auctioned through indirect bidding?</p> <p>Please provide arguments to support your case.</p>	<p>We prefer optionally between direct (futures) and indirect bidding (spot) for all participants.</p>
43.	<p>If the primary participants model is used, what provisions would be desirable for mitigating disadvantages of restricting direct access (more than one answer is possible):</p> <ul style="list-style-type: none"> <li>• Allow direct access to largest emitters, even if they trade only on their own account?</li> </ul> <p>If so, who should have direct access and what thresholds should apply?</p> <ul style="list-style-type: none"> <li>• Disallow primary participants trading on their own account?</li> <li>• Impose strict separation of own-account trading from trading on behalf of indirect bidders?</li> <li>• Other? Please specify.</li> </ul>	<p>We believe that individual economic efficiency considerations should decide the use of direct and indirect bidding for all market participants.</p> <p>Applying thresholds for participation could be desirable to ensure sufficient economic incentivisation for primary market participants, but could be discriminatory which is not justifiable because of the variety of proposed safeguards from short payment cycles, collateral and clearing.</p> <p>We generally see no benefit or necessity in prescribing mandatory solutions which can be decided upon flexibly by the market. There is also the risk that such prescription could amount to a discriminate transfer of state resources in the sense of Art. 87 state aid.</p> <p>It should, however, be ensured that the pricing conditions for market access allow primary participants to fulfil their marketing and credit support function effectively, which needs to be reflected in the fee and, to the extent non-discrimination and proportionality require larger market participants to bid directly, the impact this has on the compensation of the primary participant's compensation needs to be considered.</p>
44.	<p>If the primary participants' model is used, what conflict of interest requirements should be imposed? (more than one answer possible)</p>	<p>Primary market participants should safeguard against conflicts of interest. However any prescribed practice must not be in contradiction with their actual role as aggregators and principal counterparties and well as their beneficial marketing function and its effect on market liquidity.</p>

No.	QUESTION	CMIA RESPONSE
	<ul style="list-style-type: none"> <li>• Separation of client registration and trading on behalf of clients from all own account trading activities.</li> <li>• Separation of collateral management, payment and delivery on behalf of clients from all own account trading activities.</li> <li>• Separation of anything else, please specify.</li> </ul>	<p>Legally, all indirect bids via primary participants are bids of the primary participant only and are therefore the own trading activities of the primary participant. A separation of trading 'on behalf of clients' from own account trading is thus only possible if there is no bidding by the primary participant other than in relation to underlying indirect client bids. Following this through, primary participants could, for their own account, then only bid via another primary participant. This is not desirable nor practicable.</p> <p>Equally, a separation of collateral management, payment etc is only desirable if it does not lead to higher costs for market participants compared to where this is aggregated. In particular, in relation to the collateral management, we would think that this is rather unlikely.</p> <p>Further, the issue is again moot as regards the auctioning of futures if well integrated into the existing futures contracts and clearing systems.</p>
45.	<p>What obligations should apply to primary participants acting in EUwide auctions as:</p> <ul style="list-style-type: none"> <li>• Intermediaries?</li> <li>• Market makers?</li> </ul> <p>Please provide arguments to support your case.</p>	<p>We believe that the current regulatory scheme, with the potential amendments to financial services regulation discussed above in this consultation response, is providing a sufficient regime.</p> <p>The obligations vis-à-vis market participants should be contractual and benefit from the flexibility this allows for setting terms, provided there is a sufficiently large number of intermediaries and market makers available to allow primary participants to chose.</p> <p>It may be necessary to prescribe more generally the contractual relationship between the primary participant and the respective government to avoid conflict of interests and effectively double agency.</p>
46.	<p>Under what conditions should auctioning through exchanges be allowed (more than one answer possible):</p> <ul style="list-style-type: none"> <li>• Only for futures auctions open to established members of the exchange?</li> <li>• Also for spot auctions open to established members of the exchange?</li> <li>• Only when the exchange-based auction is open to non-established members on a non-discriminatory cost-effective basis?</li> </ul>	<p>Currently exchanges offer both future and spot contracts. This flexibility should be maintained. We are very much in favour of enabling exchanges to provide both services, should governments chose utilise the existing benefits of the established clearing structure of the exchange.</p> <p>Becoming an exchange participant is relatively straightforward on most of these existing exchanges. It would not appear to be necessary to therefore provide a separate regime for non-established members, in particular having regard to the collateral, payment and regulatory requirements raised in this consultation.</p>

No.	QUESTION	CMIA RESPONSE
	<ul style="list-style-type: none"> <li>• Other? Please specify.</li> </ul> <p>Please provide arguments to support your case.</p>	
47.	<p>Should direct auctions through:</p> <ul style="list-style-type: none"> <li>• third party service providers; or</li> <li>• public authorities</li> </ul> <p>be allowed?</p> <p>If not, why not?</p>	<p>In the confines of the above described model, yes. But it would appear that this option contradicts elements of the direct (futures) indirect (spot) model.</p>
48.	<p>Do the general rules for auctioning EUAs suffice for ensuring full, fair and equitable access to allowances to SMEs covered by the EU ETS and small emitters? If not, why not?</p>	<p>Our members do not comprise SMEs (we note that the term SME is perhaps not the most suited in these circumstances, we really talk about small emitters/installations here). However, we would expect that as long as sufficient optionality and flexibility is offered for these participants to bid directly or via an intermediary, full and fair access will be granted. It is impossible to make the process fully equitable as smaller participants will always have a higher per unit transaction cost, but most SME's would to benefit from the recompense mechanisms under the carbon leakage arrangements for Phase 3.</p>
49.	<p>Is allowing non-competitive bids necessary for ensuring access to allowances to SMEs covered by the EU ETS and small emitters in case of:</p> <ul style="list-style-type: none"> <li>• discriminatory-price auctions?</li> <li>• uniform-price auctions?</li> </ul>	<p>Our members do not comprise SMEs. We believe that the disadvantages from SME's can be best addressed by market solutions that intermediaries can offer. Non-competitive bids may help to achieve an allocation, however, this does not affect the pricing and price competition issue between SMEs in the respective auction.</p>
50.	<p>If non-competitive bids are provided for in spot auctions, what maximum share of allowances could be allocated through this route?</p> <ul style="list-style-type: none"> <li>• 5% [ ]</li> <li>• 10% [ ]</li> </ul>	<p>Our members do not comprise SMEs. We believe that this should reflect an appropriate percentage (80%) of SMEs requirement. Also, this needs to be set at a European level rather than a national level.</p>

No.	QUESTION	CMIA RESPONSE
	<ul style="list-style-type: none"> <li>• Other? Please specify.</li> </ul> <p>Please comment on your choice.</p>	
51.	<p>What rule should apply for accessing non-competitive bids (more than one answer possible):</p> <ul style="list-style-type: none"> <li>• Participants should only be allowed to use one of the two bidding routes?</li> <li>• Non-competitive bids should be restricted to SMEs covered by the EU ETS and small emitters only?</li> <li>• Other? Please specify.</li> </ul> <p>Please comment on your choice.</p>	<p>Our members do not comprise SMEs. We believe that the disadvantages from SMEs can be best addressed by market solutions that intermediaries can offer.</p>
52.	<p>What should be the maximum bid-size allowed for SMEs covered by the EU ETS and small emitters submitting non-competitive bids?</p> <ul style="list-style-type: none"> <li>• 5 000 EUAs</li> <li>• 10 000 EUAs</li> <li>• 25 000 EUAs</li> <li>• Over 25 000 EUAs, please specify exact size and give reasons for your answer.</li> </ul>	<p>Our members do not comprise SMEs. We would like to note that we do not see a necessity for pre-scribing such maximum bid sizes. It could also result in discrimination. Bid sizes will be naturally regulated through the collateral requirements.</p>
53.	<p>Are there any other specific measures not mentioned in this consultation that may be necessary for ensuring full, fair and equitable access to allowances for SMEs covered by the EU ETS and small emitters?</p> <p>If so, please specify.</p>	<p>Our members do not comprise SMEs.</p>

No.	QUESTION	CMIA RESPONSE
54.	<p>What should be the minimum period of time before the auction date for the release of the notice to auction?</p> <p>2 weeks <input type="checkbox"/> 1 month <input type="checkbox"/> 2 months <input checked="" type="checkbox"/></p> <p>Other <input type="checkbox"/> Please specify.</p> <p>Please comment on your proposal.</p>	<p>2 months. Times should be notified as far ahead as reasonably practicable. We note, however, that this is as much a function of a clear and well-designed auctioning table discussed earlier in this consultation.</p>
55.	<p>What should be the minimum period of time before the auction date for the submission of the intention to bid?</p> <p>1 week <input checked="" type="checkbox"/> 2 weeks <input type="checkbox"/> 1 month <input type="checkbox"/></p> <p>Other <input type="checkbox"/> Please specify.</p> <p>Please comment on your proposal.</p>	<p>1 week. For submissions of intention to be meaningful, in particular to the auctioneer, buyers must have flexibility to decided this as close to the date as reasonably practicable.</p>
56.	<p>Are there any specific provisions that need to be highlighted in:</p> <ul style="list-style-type: none"> <li>• The notice to auction?</li> <li>• The intention to bid?</li> <li>• Both?</li> </ul> <p>Please specify what they are.</p>	<p>The notice of the auction should contain all relevant information about time, volume, conditions, etc of the auction.</p>
57.	<p>What information should be disclosed after the auction:</p> <ul style="list-style-type: none"> <li>• Clearing price (if allowances are awarded on a uniform-price basis or in the case of non-competitive bids being allowed)?</li> <li>• Average price (if allowances are awarded on a discriminatory price basis)?</li> </ul>	<p>We agree with this catalogue, albeit we note that some of this information, e.g. information on resolution of tied bids, would evidently have been made available to the participants before the auctions.</p>

No.	QUESTION	CMIA RESPONSE
	<ul style="list-style-type: none"> <li>• Any relevant information to solve tied bids?</li> <li>• Total volume of EUAs auctioned?</li> <li>• Total volume of bids submitted distinguishing between competitive and non-competitive bids (if applicable)?</li> <li>• Total volume of allowances allocated?</li> <li>• Anything else? Please specify.</li> </ul>	
58.	<p>What should be the maximum delay for the announcement of auction results?</p> <p>5 minutes <input type="checkbox"/> 15 minutes <input checked="" type="checkbox"/> 30 minutes <input type="checkbox"/> 1 hour <input type="checkbox"/></p> <p>Other <input type="checkbox"/> Please specify.</p> <p>Please comment on your proposal.</p>	<p>This should be as soon as reasonably possible, and a time up to 15 minutes after the auction appears reasonable.</p>
59.	<p>Do you feel that any specific additional provisions should be adopted in the Regulation for the granting of fair and equal access to auction information?</p> <p>If so, what may they be?</p>	<p>We have indicated in the responses to previous questions where we considered additional information, terms and procedures to be beneficial for market access.</p>
60.	<p>Should an auction monitor be appointed centrally to monitor all EU auctions?</p> <p>If not, why not?</p>	<p>We welcome in principle a control function like an auction monitor.</p> <p>It is, however, important that the clarity of its role and function is established. Presumably, the function is primarily designed to benefit participants and the auction monitor would be in a position to provide the necessary intelligence to them should they seek to investigate or challenge certain outcomes or behaviours from an auction. It needs to be considered that the desirability of its role is ultimately a function of its powers.</p> <p>It also needs to be made clear how this function is interacting with other governmental control</p>

No.	QUESTION	CMIA RESPONSE
		functions. It should be independent from them.
61.	<p>Do you agree that the Regulation should contain general principles on:</p> <ul style="list-style-type: none"> <li>• the designation and mandate of the auction monitor; and</li> <li>• cooperation between the auctioneer(s) and the auction monitor?</li> </ul> <p>If not, why not?</p> <p>Should these be supplemented by operational guidance, possibly through Commission guidelines? If not, why not?</p>	Please see our previous comment.
62.	<p>Is there a need for harmonised market abuse provisions in the Regulation to prevent insider dealing and market manipulation? If not, why not?</p> <p>Please comment on your choice outlining the provisions you deem necessary and stating the reasons why.</p>	This suggest that the existing market abuse regulations on European and national level are insufficient. This is not our view and we do not see the necessity for an additional layer of regulation. In any case, the Regulation would have to provide for a clear delineation to existing regimes on market abuse.
63.	<p>Should the Regulation provide for harmonised enforcement measures to sanction:</p> <ul style="list-style-type: none"> <li>• Non-compliance with its provisions?</li> <li>• Market abuse?</li> </ul> <p>Please provide arguments to support your case.</p>	<p>It would appear that the Regulation addresses a variety of stakeholders (e.g. governments, auctioneer*, compliance buyers, liquidity providers, clearing members, clearing houses, regulated professions) with a variety of rights and obligations brought about by the regulation, some of which have an administrative, contractual or quasi-contractual nature.</p> <p>A harmonised enforcement regime is desirable, but the variety of relationships suggest that providing this in an effective and joined-up manner on the relative limited information we have on auctioning structures that member state will be rather challenging and perhaps at this point not practicable.</p> <p>On market abuse, please refer to our comments above. We do not see the necessity for such regulation.</p>
64.	<p>Should the enforcement measures include:</p> <ul style="list-style-type: none"> <li>• The suspension of the auctioneer(s) and/or bidders from</li> </ul>	Suspension (and the threat thereof) is a very considerable limitation of stakeholders' rights. Its application would have to be well measured. It must not result in forcing parties into specific performance, where dispositive law would not require specific performance but

No.	QUESTION	CMIA RESPONSE
	<p>the EU-wide auctions?</p> <p>If so, for how long should such suspension last?</p> <ul style="list-style-type: none"> <li>• Financial penalties?</li> </ul> <p>If so, at what level should such penalties be fixed?</p> <ul style="list-style-type: none"> <li>• The power to address binding interim decisions to the auctioneer(s) and/or bidders to avert any urgent, imminent threat of breach of the Regulation with likely irreversible adverse consequences?</li> <li>• Anything else? Please specify.</li> </ul> <p>Please provide arguments to support your case.</p>	<p>monetary damages only.</p> <p>Financial penalties may be appropriate, depending also on who these penalties accrue to. To be proportionate, these need to be fixed or fixable in accordance with the severity of the breach. It should, however, be noted that a number of obligations created by the Regulation would appear to be quasi-contractual, and the general law of contract will limit an application of penalties in this respect.</p> <p>Injunctive relief may also be appropriate, but much will depend on the ability of the entity entitled to issue such decision to be available for such procedures and to enforce or get enforcement of its decision.</p>
65.	<p>Should such enforcement measures apply at:</p> <ul style="list-style-type: none"> <li>• EU level?</li> <li>• National level?</li> <li>• Both?</li> </ul> <p>Please comment on your choice.</p>	<p>It would appear that in the majority of cases, these need to be integrated into and interact with the applicable national law, in particular, where the obligations lead to contractual or quasi contractual commitments. Where they are of administrative nature, it will be easier to enforce such measure on a EU level in the interest of harmonisation.</p> <p>In each case, the solution that is the clearest and most effective has to be chosen.</p>
66.	<p>Who should enforce compliance with the Regulation (more than one answer is possible):</p> <ul style="list-style-type: none"> <li>• The auction monitor?</li> <li>• The auctioneer?</li> <li>• A competent authority at EU level?</li> <li>• A competent authority at national level?</li> </ul>	<p>Please refer to our previous comments. Effectiveness of the enforcement is key in the selection of the possibilities. It would appear that in the majority of circumstances and scenarios this would utilise a competent authority at national level and the auction monitor as a competent independent authority to oversee compliance in certain areas.</p>

No.	QUESTION	CMIA RESPONSE
	<ul style="list-style-type: none"> <li>• Other? Please specify</li> </ul> <p>Please provide evidence to support your case.</p>	
67.	<p>Which of the three approaches for an overall EU auction model do you prefer? Please rate the options below (1 being the most preferable, 3 being the least preferable)</p> <ul style="list-style-type: none"> <li>• Limited number of coordinated auction processes. <input type="checkbox"/></li> <li>• Full centralisation based on a single EU-wide auction process. <input type="checkbox"/></li> <li>• The hybrid approach where different auction processes are cleared through a centralised system. <input type="checkbox"/></li> </ul> <p>Please give arguments to support your case.</p>	<p>We do not see this as an "either-or" decision.</p> <p>We believe that the hybrid approach with centralised clearing for futures is most appropriate. For spot auctions, central clearing is not required and so there may or should be greater flexibility to accommodate legal and trading/hedging differences.</p> <p>Auctions should be coordinated, most likely on a regional level.</p> <p>We do however believe in flexibility, robustness and respect for the legal and trading differences in respect of the allocation, which can not be achieved through a single EU wide auctioning process by one provider.</p>
68.	<p>If a limited number of coordinated auction processes develops, what should be the maximum number?</p> <ul style="list-style-type: none"> <li>• 2</li> <li>• 3</li> <li>• 5</li> <li>• 7</li> <li>• more than 7, please specify.</li> </ul> <p>Please give arguments to support your case.</p>	<p>This should be at a regionally appropriate level, reflecting the cross-border scope and nature of most of the liquidity providers and compliance buyers business. There is thus no single numerical answer to this, however, we would view this as at the upper end of the numbers provided.</p>
69.	<p>Is there a need for a transitional phase in order to develop gradually the optimal auction infrastructure? If so, what kind of transitional arrangements would you recommend?</p>	<p>An auction is technically nothing else than a sale with a specific mechanism to determine price, volume or participant. Subject to an implementation on the model we suggested above, a transitional phase is not required.</p>

No.	QUESTION	CMIA RESPONSE
70.	<p>Should the Regulation impose the following requirements for the auctioneer(s) and auction processes?</p> <p>Technical capabilities of auctioneers:</p> <ul style="list-style-type: none"> <li>• capacity and experience to conduct auctions (or a specific part of the auction process) in an open, fair, transparent, cost-effective and non-discriminatory manner;</li> <li>• appropriate investment in keeping the system up-to-date and in line with ongoing market and technological developments; and</li> <li>• relevant professional licences, high ethical and quality control standards, compliance with financial and market integrity rules.</li> </ul> <p>Integrity:</p> <ul style="list-style-type: none"> <li>• guarantee confidentiality of bids, ability to manage market sensitive information in an appropriate manner;</li> <li>• duly protected electronic systems and appropriate security procedures with regards to identification and data transmission;</li> <li>• appropriate rules on avoiding and monitoring conflicts of interest; and</li> <li>• full cooperation with the auction monitor.</li> </ul> <p>Reliability:</p> <ul style="list-style-type: none"> <li>• robust organisation and IT systems;</li> <li>• adequate fallback measures in case of unexpected events;</li> </ul>	<p>We agree in principle with the majority of these requirements as preconditions to successful auctioning.</p> <p>However, it should not be forgotten that member states will appoint the auctioneers and a number of these requirements should be requirements on member states to select the auctioneer accordingly.</p> <p>It would not help the reliability of the process if stakeholders could validly claim that in these areas the auctioneer is breaching the regulation, but that such breach has been consented to by the member state, thereby potentially justifying such breach. Here the member state needs to take the responsibility and should not divert it to the auctioneer.</p> <p>The suitability of this catalogue also depends on the effectiveness of enforcement and the respective sanctions.</p>

No.	QUESTION	CMIA RESPONSE
	<ul style="list-style-type: none"> <li>• minimisation of the risk of cancelling an individual auction once announced;</li> <li>• minimisation of the risk of failing functionalities (e.g. access to the bidding platform for certain potential bidders); and</li> <li>• fallback system in case of IT problems on the bidder side.</li> </ul> <p>Accessibility and user friendliness:</p> <ul style="list-style-type: none"> <li>• fair, concise, comprehensible and easily accessible information on how to participate in auctions;</li> <li>• short and simple pre-registration forms;</li> <li>• clear and simple electronic tools;</li> <li>• (option of) accessibility of platforms through a dedicated internet interface;</li> <li>• ability of the auction platform to connect to and communicate with proprietary trading systems used by bidders;</li> <li>• adequate and regular training (including mock auctions);</li> <li>• detailed user guidance on how to participate in the auction; and</li> <li>• ability to test identification and access to the auction.</li> </ul> <p>Please elaborate if any of these requirements need not be included.</p> <p>Please elaborate what additional requirements would be desirable.</p>	

No.	QUESTION	CMIA RESPONSE
71.	<p>What provisions on administrative fees should the Regulation include (more than one answer is possible)?</p> <ul style="list-style-type: none"> <li>• General principles on proportionality, fairness and non-discrimination.</li> <li>• Rules on fee structure.</li> <li>• Rules on the amount of admissible fees.</li> <li>• Other, please specify.</li> </ul> <p>Please provide arguments to support your case.</p>	<p>It should contain only general principles and an exclusion of clearly non-admissible fees, though it should be noted that national law and financial services regulation as well as EU and national competition law will regulate unfair pricing.</p> <p>It is currently impossible to foresee the number of auctioneers and the respective dominance and ability to set appropriate fees, nor to suggest appropriate guidance on the admissible expenses.</p> <p>There should be no free regulation unless there is clear dominance of particular auctioneers.</p>
72.	<p>Should there be provisions for public disclosure of material steps when introducing new (or adapted) auction processes?</p> <p>Should new (or adapted) auction processes be notified to and authorised by the Commission before inclusion in the auction calendar?</p>	<p>This may be appropriate for spot auctions. In the case of futures, changes to the trade terms on an exchange will go through some form of an external approval and notification process already and this may already be sufficient. There could, however, be an obligation on the relevant competent authority to make sure this process is followed in a similar and predictable manner across the participating exchanges.</p>
73.	<p>Which one of the following options is the most appropriate in case a Member State does not hold auctions (on time)?</p> <ul style="list-style-type: none"> <li>• Auctions by an auctioneer authorised by the Commission.</li> <li>• Automatic addition of the delayed quantities to those foreseen for the next two or three auctions.</li> </ul> <p>What other option would you envisage? Please specify.</p>	<p>This depends on the time lines but in line with our subsequent comments on sanctions we would prefer another auctioneer to be authorised and hold an ad-hoc auction or include the volume into the next auction the calendar.</p>
74.	<p>Should a sanction apply to a Member State that does not auction allowances in line with its commitments? If so, what form should that sanction take?</p>	<p>An appropriate sanction regime is necessary, as contractual obligations will only kick-in if there was no allocation following auction. There will be no suitable remedies if member states do not hold auctions in the first place.</p> <p>The sanction needs to be proportionate, but it seems that an intentional withholding of allowances to be auctioned from auctions should:</p>

No.	QUESTION	CMIA RESPONSE
		<p>- result into the un-auctioned amount to be auctioned by another member states or a suitable private sector entity;</p> <p>- allow for these entities to take cost and for member states to forfeit some of the revenue to fund technology enhancement (CCS, etc);</p> <p>- allow for an appropriate compensation amount to be issued to all entities that posted a letter of intent to bid to cover reasonable average costs in participating in the auction (it cannot compensate for cover costs as the outcome of the auction would have been uncertain);</p> <p>- in aggravated cases, result in an additional financial penalty or the loss of the right to auction future in the Phase.</p> <p>This would also require that in such a case, the competent authority will be in a position to cease allowances.</p>
75.	<p>As a general rule throughout the trading period, in your opinion, are early auctions necessary? If so, what should the profile of EUAA auctions be:</p> <ul style="list-style-type: none"> <li>• 5-10% in year n-2, 10-20% in year n-1, remainder in year n</li> <li>• 10-20% in year n-2, 20-30% in year n-1, remainder in year n</li> <li>• 20-30% in year n-2, 30-35% in year n-1, remainder in year n</li> </ul> <p>Other? Please specify.</p>	<p>It is our view that in principle, the answers above given in respect of allowances for stationary installations hold true also in the context of EUAA auctions, in particular as regards an equal split between spot and futures auctions and early auctions.</p> <p>However, the current difficulties in assessing emissions from aircraft operators, the associated current complexities regard the attribution of allowances as well as the difference in the hedging behaviour of aircraft operators for fuel purchases would indicate that there will be a greater reliance on spot auctions and a greater back loading of purchases.</p> <p>Thus, 5-10% in year n-2, 10-20% in year n-1, and the remainder auctioned in year n is likely to have the greatest support from liquidity providers and compliance buyers in area of aircraft emissions.</p>
76.	Do you think there is a need to auction EUAA futures? If so, why?	Yes, albeit perhaps to a lesser extent given the relative size and hedging differences. See our previous answer.
<b>Request for potentially confid</b>	Please send the answer to this question in paper and electronic format, marked on the envelope "Strictly Private and Confidential – Auctioning consultation", directly to the European Commission, DG ENV, Directorate C, Unit C2, to the attention of the Head of Unit, Office BU-5	Our membership does not consist of aircraft operators.

No.	QUESTION	CMIA RESPONSE
<p><b>Confidential information 3</b></p>	<p>2/1, 1049 Brussels, Belgium. It will be treated confidentially and will not be disclosed publicly.</p> <p>For aircraft operators covered by the EU ETS:</p> <p>Have you determined a corporate hedging strategy for carbon needs?</p> <p>Yes [ ] No [ ]</p> <p>If so, what share of your expected emissions covered by the EU ETS in a given year n do you (intend to) hedge and how much in advance?</p> <ul style="list-style-type: none"> <li>• year n : _____%</li> <li>• year n-1 : _____%</li> <li>• year n-2 : _____%</li> </ul>	
<p><b>Request for potentially confidential information 4</b></p>	<p>Please send the answer to this question in paper and electronic format, marked on the envelope "Strictly Private and Confidential – Auctioning consultation", directly to the European Commission, DG ENV, Directorate C, Unit C2, to the attention of the Head of Unit, Office BU-52/1, 1049 Brussels, Belgium. It will be treated confidentially and will not be disclosed publicly.</p> <p>What share of the annual quantity of allowances you intend to purchase via auctions would you wish to buy spot or futures respectively?</p> <p>SPOT FUTURES</p>	<p>Our membership does not consist of aircraft operators.</p>

No.	QUESTION	CMIA RESPONSE
	<ul style="list-style-type: none"> <li>• year n : _____%   _____ %</li> <li>• year n-1 : _____%   _____ %</li> <li>• year n-2 : _____%   _____ %</li> </ul>	
77.	<p>What should be the optimal frequency and size of EUAA auctions:</p> <ul style="list-style-type: none"> <li>• 2 auctions per year of around 15 million EUAAs?</li> <li>• 3 auctions per year of around 10 million EUAAs?</li> <li>• More than 3 auctions per year? Please specify.</li> </ul> <p>Please comment on your choice.</p>	<p>An even distribution of 3 or ideally more auctions is most likely to provide the required liquidity, keeping in mind that the market will be inherently less liquid than the EUA market.</p>
78.	<p>What would be your preferred timing for EUAA auctions:</p> <ul style="list-style-type: none"> <li>• Equally spread throughout the year?</li> <li>• November – March?</li> <li>• Other? Please specify.</li> </ul>	<p>An equal spread throughout the year is most likely to satisfy accessibility and market liquidity.</p>
79.	<p>Should any of the EUAA auction design elements be different compared to EUA auctions (see section 3)?</p> <p>If so, please specify and comment on your choice.</p>	<p>It is our view that in principle, the answers above given in respect of allowances for stationary installations hold true also in the context of EUAA auctions, in particular as regards and equal split between spot and futures auctions and early auctions.</p> <p>There will be less liquidity in the market for EUAAs and the hedging requirements and strategies of aircraft operators are different to stationary installations. This might naturally favour a spot auction and probably also a indirect auction mode more.</p>
80.	<p>Do you agree there is no need for a maximum bid-size? If not, why not.</p>	<p>If futures are provided, it should be not less than 1000 allowances.</p>
81.	<p>Is there any information regarding aircraft operators made available as part of the regulatory process to the competent</p>	<p>Our membership does not consist of aircraft operators and we feel unable to comment on this</p>

No.	QUESTION	CMIA RESPONSE
	<p>authorities that could facilitate the KYC checks performed by the auctioneer(s)?</p> <p>If so, please describe what information is concerned and whether it should be referred to in the Regulation or any operational guidance published by the Commission.</p>	particular question.
82.	<p>In your opinion, is there a specific need to allow for non-competitive bids in EUAA auctions? Would this be the case even when applying a uniform clearing price format?</p> <p>Please provide arguments to support your case.</p>	No, but our membership does not consist of aircraft operators and we are limited in our ability to respond to this question from a respective compliance buyer's perspective.
83.	<p>Do you agree that there is no need for any specific provisions for EUAA auctions as regards:</p> <ul style="list-style-type: none"> <li>• Involvement of primary participants, exchanges or third party service providers?</li> <li>• Guarantees and financial assurance?</li> <li>• Payment and delivery?</li> <li>• Information disclosure?</li> <li>• Auction monitoring?</li> <li>• Preventing anti-competitive behaviour and/or market manipulation?</li> <li>• Enforcement?</li> </ul> <p>If not, please describe in detail what rules would be needed and why.</p>	There is no need for additional conditions other than the ones discussed above for stationary installations.
84.	<p>Taking into account the smaller volume of EUAA allowances to be auctioned compared to EUAs, which of the three approaches for an overall EUAA auctioning model do you prefer? Please rate the options below (1 being the most</p>	We would prefer a harmonised approach with a number of regionally coordinated auctions and a potential centralisation of clearing for EUAAs auctioned as futures, which is similar to our answer above advocated for EUA auctions.

No.	QUESTION	CMIA RESPONSE
	<p>preferable, 3 being the least preferable)</p> <ul style="list-style-type: none"> <li>• Limited number of coordinated auction processes. [ ]</li> <li>• Full centralisation based on a single EU-wide auction process. [ ]</li> <li>• Hybrid approach where different auction processes are cleared through a centralised system. [ ]</li> </ul> <p>Does your choice differ from the approach preferred for EUAs?</p> <p>Please provide arguments to support your case.</p>	
85.	<p>Do you agree that there is no need for any specific provisions for EUAA auctions as regards:</p> <ul style="list-style-type: none"> <li>• Requirements for the auctioneer(s) and auction processes?</li> <li>• Administrative fees?</li> <li>• Rules to ensure appropriate and timely preparation of the auctions?</li> </ul> <p>If not, please describe in detail what rules would be needed and why.</p>	There should be no additional requirements necessary.