

COMMODITY EXCHANGE BRATISLAVA

Comments for a revised version of draft parts 1-3 of the Tender Specifications for procuring a transitional common auction platform

February 2nd, Bratislava

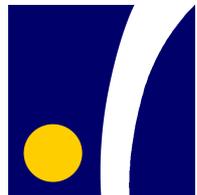
1) Financial regulation:

As we see it, there was no public discussion about placing carbon credits under MiFID regulation.

It needs to be clearly stated, how and when the MiFID will apply and also discuss the consequences.

If this is step from the EC to prevent thefts with VAT, this is mistake.

- VAT frauders who has stolen billions eur on VAT does not have problem with establishing the company under MiFID regulation
- The costs for SMEs will increase
 - o They will have to use the services of the financial intermediaries
 - o They will not be able to trade between each other
 - If yes, the whole thing is not productive, because the frauders will continue doing their job
 - o Only few financial intermediaries will stay, and they will charge larger trading fees than it is in the present.
 - For example, if some institution under MiFID regulation wants to serve their services in Slovakia, they must have by law office in Slovakia, employ at least 5 persons and have other administrative costs.
 - If foreign brokerage company would serve these services without these costs, technically it may happen but the law will be not obeyed. So if MiFID would apply this way, the new way for frauders will be opened. The EC or national politics will fight this and final result will be much higher costs for all emitters.
- For who is this direction dedicated?
 - o Emitters – will have larger transition costs
 - o EC
 - Positive: the financial supervision will have oversight over more companies and market
 - Negative: Risk in doing new types of frauds.
 - Negative: Small amount of financial companies who are doing real trade will have higher chance in influencing the market.
 - o Old VAT Frauders – If they have billions eur on the account, they can establish financial companies and profit from carbon market more.
 - o New VAT Frauders – It does not really solves the issue of VAT, because the VAT will still apply in the countries where VAT for carbon is not 0%



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- Current financial intermediaries – for them it is option to get the monopoly/oligopoly over the market. It is probably the group with a lot of money that is lobbying the most for this change.
- Environment – If the final impact on costs will be to the emitters, they will have lower finance capabilities to reduce emissions.
- Solution with VAT fraud:
 - The only real way how to solve it is to decrease VAT to zero percent. This can be obtained by EC Regulation or EC Directive or discussion in the EU Parliament to move this into national laws.

2) Proposal to remove from the draft:

The contractor must also have videoconferencing services available in a secure room, although this should not necessarily be at its premises.

Providing **secure** room for videoconferencing should not be required for the contractor in the selection criteria.

3) Proposal to change draft:

The contractor shall provide secure and reliable access by means of dedicated connections **and** through the internet.

We propose to change AND to OR. Requirement to have dedicated data line to the servers should not be inevitable to participate in the tender. The pricing to make dedicated line is strongly dependant on connection between 2 points. It is however important that servers will be connected to the internet very fast on non-discriminatory basis.

4) Proposal for removal:

The auctioned allowance must be tradable on the secondary market organised by the contractor prior to its delivery

When auction will finish, and the contracts are possible to sell, it is possible that speculators will be participating in the auction in larger scale. If speculators who does not have money to cover the contract will participate in the auction, and will expect price to go up, but the real price will go down, there is high risk that contract will fail, and that auctioneer will not receive the money at the end of the delivery time (T+2 or T+5).

If this rule would not apply, the bidders could be only emitters/financials who has enough money prepared when they place a bid. Therefore very small amount if any will fail.

Safety on the market should be high priority for EC, and therefore this rule should not be applied.



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tradability will be assessed positively under the award criteria

Tradability should not be assessed positively under the award criteria.

shall only be delivered allowances if the entire sum due is paid to the auctioneer

Also this statement supports that the contracts will fail if the entire sum due is not paid. This will likely to happen if the speculators will participate in the auctions.

5) Proposal for removal/addition:

Liquidity refers to the volume of trading and in particular to the speed by which a given volume of auctioned products can be sold without causing a significant fall in the auctioned product's price. Liquidity is therefore important for cost efficiency of the auction platform and its secondary market and for the attractiveness for bidders on the auction platform and members and participants on its secondary market.

Liquidity of the common auction platform is ensured by the amount of emissions auctioned there - one billion allowances. SPOT market will die, because there will be no one or very few who will be willing to offer allowances and whole liquidity will take place on the auctions. If secondary market will be still liquid enough, it will be most probably some financials or banks who might be interested in moving price of allowances as they wish.

Liquidity on secondary market is therefore **not** important.

We recommend adding column:

“Liquidity should not be assessed under the award criteria.”

We also put in place discussion if the secondary market with carbon credits should have higher weight, than the auction liquidity, because the expected real volume (volume on behalf of emitters) on the secondary market will be much lower.

6) Proposal for change/addition:

Auctioneers may request transfer of the auction proceeds inter alia to a nominated bank account held by a national central bank. Article 44(3) applies as regards the currency of the payment to auctioneers. The arrangements between the auctioneers and the clearing system or settlement system to be concluded and implemented pursuant to Article 22(2) of the Auctioning Regulation shall give effect to this provision.

With which exchange rate will be calculated exchange rates differences?



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For example: Czech auctioneer will request to send the payments to his national bank in CZK. The current rate in the settling bank will be: 24,00 CZK/EUR buy, 25,00 CZK/EUR middle, 26,00 CZK/EUR sell.

Is the settling bank allowed to send the EUR in CZK in exchange rate 24 CZK/EUR?

7) Proposal for change/addition:

the provision of adequate measures requiring an auction platform to hand over all tangible and intangible assets necessary for the conduct of the auctions by an auction platform's successor

All material, information and any intellectual, industrial or other property rights created by virtue of performing task 1 becomes the property of the Union

What should be handed to the successor?

Should be also handed also software, finance, or other tangible or intangible assets? If contractor develops software for the reporting, should be this in the property of the EU?

8) Proposal for change/addition:

any opinions provided by the Commission under [the Auctioning Regulation];

It would be good, if there would be upper limit for any opinions. If this limit is reached, the contractor should have option to request additional funds from the Commission.

Not stating the upper limit, it makes difficulties to state the costs for it and therefore state the price.

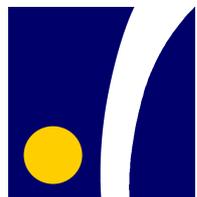
9) Proposal for change:

EC should be doing tender for the definite platform. If the contractor will win, and will not provide good services, the EC should have statement to accept other in line from the tender.

To make tender for the definite platform when the first platform will be successful in delivering good services is not good.

In the current state, we seek that some exchange want to take the whole liquidity by winning this tender, and later when the definitive platform will be selected will increase the prices.

To select transition platform is good for Britain, Germany and Poland, if they will be not satisfied with their platform comparing to the common auction platform.



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10) Proposal for change/addition:

The contractor will prepare, attend, and actively participate in any meetings the Commission may wish to convoke on the performance of task 2 of the contract

There is no upper limit. Commission can convoke meeting any day any time and contractor must be ready for it? We propose that there would be some limit or there would be statement that the meeting must be announced at least 2 weeks before.

We also propose addition for participation in videoconference call.

11) Proposal for addition:

It may however charge no other fees to the persons admitted to bid and the bidders than those contained in its financial proposal for task 1 submitted as part of its tender in accordance with section 2.4.2.1 of these tender specifications.

We propose to add there, that the contractor can ask members/bidders also other fees not related to the auctioning. For example if the contractor will organize the conferences or courses.

12) Proposal for change:

Differentiation of fixed fees to persons admitted to bid or differentiation of variable fees to bidders is not allowed except where expressly provided for in this section.

Tenderers may offer different variable fees for

- the first [...] million of allowances auctioned (including both general allowances and aviation

allowances);

- the second [...] million of allowances auctioned;

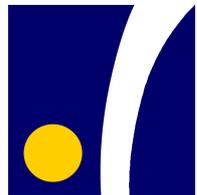
- any further allowances auctioned.

We propose not to difference exchange members on the basis how many millions allowances they trade.

To reduce SMEs costs, we recommend evaluating this by the table of membership types. Membership type should be upon the clients to choose from.

For example:

Name	Entry cost	Annual cost	Trading fee
Free member	100 €	0 €	5 cents/credit
Low liquid	5000 €	5000 €	2 cents/credit
High liquid	5000 €	10000 €	1 cent/credit



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13) Proposal for removal:

Article 51(1) of the Auctioning Regulation stipulates that "the structure and level of fees as well as any related conditions applied by any auction platform and the clearing system(s) and settlement system(s) shall be no less favourable than comparable standard fees and conditions applied on the secondary market". The contractor will comply with this principle throughout the duration of the contract. Compliance with this rule will be assessed by comparing the level of each type of fees under task 1 of the contract with a corresponding standard fee charged in the secondary market organised by the contractor (the "benchmark fee"). The level of the corresponding fees proposed for task 1 of the contract shall always be equal or lower than the level of the benchmark fee.

Relationship between fees or structure of the fees on the secondary market and fees at the primary market should not be connected. It is matter of competition in the tender, how large fees will be at the primary market.

We propose to remove this paragraph.

14) Proposal for addition

or in the event the Commission rejects the delivered services, the Commission reserves the right to deduct 5%

There is no upper limit. By this statement Commission can reject anything.

We propose to add that if the commission will reject services it must give reasonable arguments and should supply also recommendations for correction.

15) Proposal for removal

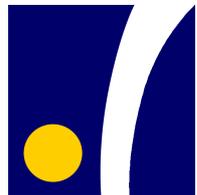
This financial identification form must be filled in and signed by an authorised representative of the tenderer **and its banker**. Each tenderer (including any nominated subcontractor or

We propose to remove and its banker.

16) Request for change

the tenderer had on average in the financial years for which annual accounts were submitted in the time of submitting proposal an amount of shareholder's equity (share capital + reserves) of minimum **1 million EUR**, and a current (liquidity) ratio (current assets / trade and other debts) of minimum 2.0

We propose to change 1 million EUR to 500 000 EUR.



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17) Proposal for removal:

the operator of the clearing system or settlement system had itself, without relying for this purpose on the capacity of other entities, on average in the financial years for which annual accounts were submitted, a current (liquidity) ratio (current assets / trade and other debts) of minimum 2.0.

Clearing company can never have liquidity ratio 2.

Any clearing company or bank must have by the definition lower than 2.
 $(N + a) / (N + c)$ will never be higher than 2 if a and c will be low numbers.

Meaning of this paragraph as it is written is, that the clearing company must be performing also other activity on the market, which in against the principles of secure settlement system.

We propose this condition for the clearing system remove.

Ing. Ludovit Scholtz
Secretary General
Commodity Exchange Bratislava
+421 907 723 428
secretary@kbb.sk
Skype: ludkosk
Yahoo: ludovit.scholtz