

EU ETS – UPDATE OF FREE ALLOCATION RULES

CEMBUREAU response to the draft Delegated Regulation

January 2024

CEMBUREAU is the association of the European cement industry. Our [Carbon Neutrality roadmap](#) lays out the industry decarbonisation pathways until 2050. The sector is currently deploying significant investments to meet these objectives covering both traditional decarbonisation levers (e.g. co-processing, thermal efficiency, clinker substitutes) and breakthrough technologies such as carbon capture. Please see CEMBUREAU's [map of innovation projects](#) for more information,

When it comes to the Commission's consultation on the update of free allocation rules, launched on 5th December 2023, CEMBUREAU wishes to provide the following comments:

The rationale behind reviewing the clinker/cement benchmark is unclear and creates legal uncertainty.

In the draft Delegated Act, the European Commission suggests reviewing the grey and white clinker benchmarks, notably by adding the notion of "alternative hydraulic binders" in the benchmark definition.

In CEMBUREAU's views, the proposed changes create several challenges in terms of:

- **Rationale:** CEMBUREAU fails to see the purpose and added value of changing the clinker benchmark which fulfils its role and drives the ongoing investments. By putting a carbon cost on clinker, the EU ETS strongly encourages the efficient use of clinker in cement and the reduction of the clinker to cement ratio. Given the current carbon prices, this incentive is already considerable and will further rise with the tightening of the ETS and the implementation of the Carbon Border Adjustment Mechanism (CBAM).
- **Legal certainty:** the European Commission does not define what 'alternative hydraulic binders' are. This creates significant uncertainty, at a time the sector needs certainty to support ongoing long term investments.
- **Technology neutrality:** as expressed above, there are multiple levers to decarbonise cement production (e.g. phasing out fossil fuels through co-processing, clinker substitution, alternative raw materials, carbon capture, thermal efficiency, etc.). By adding 'alternative hydraulic binders' to the benchmark definition, the proposed change would put the focus on the clinker to cement ratio reduction or alternative cement chemistries without considering other decarbonization technology options.

Energy improvement measures (Article 22 (a))

It would be useful if the Commission could clarify whether the compliance with ISO 50000 would qualify as an energy audit within the meaning of Article 8 of Directive 2012/27/EU to which Article

22(a) of the Draft FAR Regulation makes reference. It is further important to take into account the interplay between decarbonisation and increased energy demand resulting from it when assessing the energy efficiency improvement.

Clarity is needed on the date by which climate neutrality plans need to be submitted. According to Article 10(a), paragraph 1, fifth subparagraph, EU ETS, the CNPs need to be established by 1 May 2024. A failure to do so triggers a reduction of free allowances by 20%. Article 22(b), paragraph 1 (a) of the Draft FAR refers to 30 May 2024 as the submission date for the CNPs or the date of submission of the application for free allocation which can be one month earlier or later than 30th May.

Historical Activity Level calculation

We urge the Commission to amend the provisions on historical activity level in order to avoid that unrepresentative production volumes due to covid and/or energy crisis are taken into account in the free allocation calculation, for instance by allowing operators to exclude two years from the baseline period 2019-2023.

Climate-neutrality plans should not be published

In article 22e, the European Commission suggests that competent authorities shall publish the climate-neutrality plan, with a possibility not to disclose elements which would be 'commercially sensitive'.

CEMBUREAU is strongly opposed to the publication of climate neutrality plans. The identification of plants with their 'place' on the benchmark curve is confidential information the disclosure of which could give rise to competition law concerns. Furthermore, given the significance of carbon costs in the cement sector, such climate neutrality plans will by definition be composed entirely of commercially sensitive information.
