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## **POSITION OF THE LIME INDUSTRY ON THE CONSULTATION OF THE EUROPEAN COMMISSION IMPLEMENTING ACT ON FREE ALLOCATION ADJUSTMENTS DUE TO ACTIVITY LEVEL CHANGES**

The European Lime sector (represented by EuLA, the European Lime Association) welcomes the EC public consultation for an implementing act on Activity Level Changes (ALC) and supports allocation changes starting in 2021 based on the average activity level data for the years 2020 and 2019; as the best way to align as close as possible the number of free allowances with the actual level of production. However, EuLA would like to raise the following concerns/ points for consideration to determine the best way to dispose of a cost competitive mechanism to reach GHG reductions at EU level:

1. **Full linear approach** as the most straightforward and simplest option to apply at both operation and administrative level. The proposal of the 5% goes against article Art.10 (a)20. of the ETS Directive which determines the principle of an adaptation of the level of allowances as soon as the 15% threshold compared to the HAL is reached. Even if the Art.10 (a) 21. introduces the possibility of an implementing act to define further arrangements for the adjustments this provision does not authorise different arrangements for further adjustments. The **“5%” draft rule has no legal basis**. In addition, the full linear approach not only will make the system more dynamic (free allocation adjustments should proportionately follow changes in activity levels) but also will reduce the complexity of the IT system needed for the real calculation of activity level changes. A full linear approach is the only way to ensure that there is not over or under allocation of free allowances.

For highly carbon intensive sectors, such as lime production that have a high proportion of process emissions, a small change in activity level can result in a large increase in emissions. Under the current proposal, an increase in activity level change from 15.1% to 19.9% would not receive a change in allocation because it is within the 15-20% band. However, on a plant with an activity level of 1 million tonnes per year, a 4.8% change equates to 48,000 tonnes, which for high calcium lime results in emissions of roughly 43,000 tonnes of CO<sub>2</sub>. At the current allowance price of €25 per tonne this is €1,080,000 that wouldn't be received in allocation. Equally if activity level reduced from 19.9% to 15.1% it would be €1,080,000 of over allocation. Across all sectors in EU ETS, this equates to considerable sums. The only way to avoid this is to use a linear approach.

2. **Annual reports** on the activity level of each sub-installation in the preceding calendar year **starting in 2021, for both new entrants and incumbents**. This will ensure the minimum different treatment between both in terms of timing of allocation.
3. **No quantitative minimum threshold shall be established to determine whether the level of free allocation shall be adjusted**; in order to respect Article 20 of the ETS Directive which sets that “the level of free allocations given to installations whose operations have increased or decreased, as assessed on the basis of a rolling average of two years, by more than 15 % compared to the level initially used to determine the free allocation for the relevant period referred to in Article 11(1) shall, as appropriate, be adjusted”.



4. **Aligning the deadline for reporting verified activity level data with the deadline for submitting the verified emissions report** (March 31<sup>st</sup>), would reduce administrative burden. Based on the verified activity level data, adjustments can be made to the amount of allowances to be surrendered by installations by April 30<sup>th</sup>. It would also be convenient to set in Article 3 of the draft implementing act, the 28<sup>th</sup> February as the earliest day that national competent authorities can request the reporting verified activity level data. This shall avoid 1) lack of alignment with the verified annual emission report; and 2) different treatment to installations within the EU by different national competent authorities.
5. **In line with setting a correct alignment of the emissions-activity level report, the time-lag between measuring activity levels and receiving an updated allocation following an activity level change should be as short as possible**, to prevent competitive distortions. Moreover, Article 5(1) of the draft regulation states that *“the adjustment shall apply as of the year following the two calendar years used to determining the average activity level”*.
6. While the ALC draft appears to ensure **equal treatment between new entrants and new sub-installations** at incumbent sites (Article 5(5) of the draft ALC regulation states; *“For new sub-installations in incumbent installations and for new entrants, for the first two calendar years of operation the free allocation of emission allowances shall not be adjusted and shall be based on the activity level of each of the two years respectively”*), **not all investments at incumbent sites will necessarily result in a new sub-installation**. For example, a new kiln at a current site producing high calcium lime is a huge investment (worth millions) and has the potential to double the activity level but it will be part of the current product benchmark sub-installation. In this case the ALC rules apply and unlike new entrants or new sub-installations at incumbent sites, it won't receive allocation from the start of normal operation. This discrepancy is a huge issue when considering a new kiln investments costing €millions. The lack of allocation from the start of normal operation of the kiln at an incumbent site, because it is not a new sub-installation, could prevent investment in the latest most energy and carbon efficient technology at existing sites. Such a large investment at an incumbent site must be treated in the same way as at a new entrant site and EuLA suggest that it is labelled as a new sub-installation to get around these issues.
7. As regarding article 5 (4) of the ALC draft, *“if the activity level of a sub-installation is reported as zero, the free allocation of this sub-installation shall be set to zero in the following year”*. In order to respect the ETS Directive, we ask for a clarification considering that even if the activity level is zero in any of the two years of the rolling average, **the average two years are still considered as the main triggering a potential allocation change**. For example, if an installation increases activity level by 30% in the first year of the average and has zero activity level in the second year, it shall be entitled to receive free allocation as long as the 15% increase 'threshold average' is achieved.
8. The same article is creating de facto an extension of the article Art.(a) 19 of the ETS Directive which provides for the principle of no free allocation, only to installations that has ceased operations. Current Art.5 (4) wording has **no legal basis for applying the principle of no free allocation to installations that despite no emission during a year are not fulfilling the condition of a cessation of operation**. Moreover, this provision constitutes an exception of the principle of the adaptation of allocation based on the rolling average of the two preceding years.