



Kalk

vielseitig faszinierend wertvoll

Statement

of BUNDESVERBAND DER DEUTSCHEN KALKINDUSTRIE e. V.

Implementing Regulation (EU) 2018/2066 as regards updating the monitoring and reporting of greenhouse gas emissions pursuant to Directive 2003/87/EC of the European Parliament and of the Council

Berlin, July 2024

BVK welcomes the possibility to comment on the Commission's proposal for the implementing regulation on MRR. As a highly effected industry in the middle of the transformation process we urge the Commission for changes and clarification before adopting the implementing regulation.

Adjustment of Art. 49(6) and correspondingly Art. 49a(1) subparagraph 2

A climate neutral production in the lime, cement and waste incineration sector is only possible with the combination of biogenic fuels in combination with capture and storage or utilisation with permanent CO₂ sequestration (CCS/CCU). No feasible alternatives to capturing the unavoidable process emissions are known to mitigate climate effects caused by CO₂.

Today, all fossil CO₂ emissions are subject to the EU ETS. If CCS or CCU with permanent storage of CO₂ is now implemented at precisely this level of fossil CO₂ generation, climate neutrality should also be regulatorily achievable in the EU ETS. With the proposal of the Commission on MRR this is not the case. In contrary, **the proposal hinders any attempt of a climate neutral production within the EU ETS regulation framework.** In detail, the new Art. 49(6) in relation to Art. 49(1) prevent climate neutrality from being effectively achieved in the EU ETS in such cases by imposing a new additional requirement for the proportional attribution of zero-rated carbon and thereby an obligation to produce "negative CO₂ emissions".

From the BVK's point of view, it is not understandable that on the one hand negative emissions from the capture of biogenic emissions are prohibited by regulation. On the other hand, however, the new wording "proportional to the fraction of carbon" in Art. 49(6) creates an indirect obligation to de facto generate negative emissions for climate-neutral production. We therefore propose that Art. 49(6) be amended as follows:

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| <p>New requirements for proportional accounting with far reaching consequences are proposed by a new Art. 49(6):</p> | <p>BVK proposes to adjust the new Art. 49(6) as follows:</p> |
| <p><i>6. In the case of the transfer of CO₂ to a capture installation resulting from materials or fuels containing a fraction of zero-rated carbon, the transferring installation shall only subtract from its reported emissions in accordance with the first paragraph of this Article the quantity of CO₂ proportional to the fraction of carbon that does not originate from zero-rated carbon.</i></p> | <p><i>6. In the case of the transfer of CO₂ to a capture installation resulting from materials or fuels containing a fraction of zero-rated carbon, the transferring installation shall only subtract from its reported emissions in accordance with the first paragraph of this Article the quantity of CO₂ proportional to the fraction of carbon that does not originate from zero-rated carbon.</i></p> |
| <p>New requirements for proportional accounting with far reaching consequences are proposed by a new Art. 49a(1), subparagraph 2:</p> | <p>BVK proposes to adjust the new Art. 49a(1), subparagraph 2 as follows:</p> |
| <p><i>1. [...] In the case of CO₂ resulting from materials or fuels containing a fraction of zero-rated carbon, the operator shall only subtract from the emissions of the installation the share of the CO₂ permanently chemically bound in a product listed in the Delegated Regulation adopted pursuant to Article 12(3b) of Directive 2003/87/EC, proportional to the fraction of carbon that does not originate from zero-rated carbon.</i></p> | <p><i>1. [...] In the case of CO₂ resulting from materials or fuels containing a fraction of zero-rated carbon, the operator shall only subtract from the emissions of the installation the share of the CO₂ permanently chemically bound in a product listed in the Delegated Regulation adopted pursuant to Article 12(3b) of Directive 2003/87/EC; proportional to the fraction of carbon that does not originate from zero-rated carbon.</i></p> |

We request the deletion of this section for the following reasons:

- 1) Technically and chemically, there is no difference between carbon that is non-zero and carbon that is zero-rated. To reflect this fact, the MRR should ensure that the capture of CO₂ in the order of magnitude of the total amount of fossil CO₂ produced (in absolute terms) in the EU ETS system enables carbon neutrality to be effectively achieved at the installation level.
- 2) Theoretical 100% capture is physically and technically impossible. Although very high CO₂ capture rates of around 95% can be achieved in industrial processes, this is associated with enormous additional energy consumption. In the case of a CO₂ capture rate of less than 100%, but equal to the fossil emissions, it must be possible to fully account for the zero emissions in the remaining emissions. An additional proportionality requirement under the new draft of Art. 49 para. 6, on the other hand, would ultimately mean that climate neutrality cannot be achieved at the respective installation level even if zero-rated carbon sources are used. This also applies if CO₂ capture with permanent storage or utilisation takes place to the full extent of the entire fossil-generated CO₂ quantities.
- 3) The draft of Art. 49(6) of the MRR thus indirectly extends the scope of the Emissions Trading Directive, which relates to the pricing of fossil CO₂ emissions. The

described proportionality of accounting would de facto create new obligations for the additional pro rata recording of zero-rated CO₂ quantities. The operator is forced to capture additional zero-rated CO₂ sources, which negates their original zero-rating. Proportionality refuses to recognise the efforts to reduce emissions. It also leads to additional costs arising from the use of unclassified CO₂ sources.

- 4) The recognition of negative emissions from the capture and permanent storage of biogenic carbon and the possibility of accounting for the remaining fossil CO₂ emissions at installation level due to incomplete capture (less than 100 %) is currently not regulated. The role and recognition of negative emissions is to be dealt with in other legal acts in the foreseeable future. Therefore, with an additional proportionality requirement, it is not immediately clear that consistent accounting will be achieved at installation level in the EU ETS.
- 5) A reference to later regulations for captured biogenic CO₂ quantities and possible later compensation options cannot compensate for the resulting legal uncertainty regarding the effective implementation of climate neutrality at installation level. On the contrary, the current draft of Art. 49(6) creates additional uncertainties for strategic investment decisions and practical implementation in the context of balancing at installation level. The Commission is thus creating an additional obstacle to investment in CCS/CCU technologies. Legal certainty and the right incentives are essential, especially for investments in industrial plants for climate-neutral production despite unavoidable CO₂ emissions, because in some cases projects are already being implemented, e.g. in the first projects of the EU Innovation Fund.

As mentioned above, climate neutrality in some industrial processes such as cement, lime and waste incineration can only be achieved through the combination of reduction measures using CCS/CCU and the use of zero carbon such as sustainable biomass. The BVK therefore believes that additional proportionality requirements in the new Art. 49(6) must not be allowed to prevent the actual achievement of the climate neutrality target by capturing the entire amount of fossil CO₂. **The actual quantities of CO₂ captured (in absolute terms) must be recognised at plant level, as must the CO₂ reduction effect of zero-carbon fuels.**

We also urge the Commission to open pave a way recognizing negative emissions with the accounting process of EU ETS installations or an equivalent alternative way very soon. Otherwise a climate neutral production cannot be accomplished by industries with unavoidable process emissions such as the lime industry.

More clarity in the definition of emissions

From the BVK's perspective, the terms 'emission' and 'release' lose legal certainty and clarity as a result of the amendment to the MRR.

In the Schaefer Kalk judgement of the ECJ, the court explicitly pointed out the objectives of the EU ETS: 'According to its fifth recital, Directive 2003/87, by establishing a scheme for greenhouse gas emission allowance trading, is intended to contribute to the fulfilment of the commitments of the Union and its Member States under the Kyoto Protocol to the United Nations Framework Convention on Climate Change, adopted by Council Decision 2002/358/EC of 25. (OJ 2002 L 130, p. 1) on behalf of the European Union, which provides for the reduction of such emissions to the atmosphere to a level that prevents dangerous anthropogenic interference with the climate system and whose ultimate objective is to protect the environment.'

Furthermore, the court stated: *‘The economic rationale of greenhouse gas emission allowances, as follows from Article 1 of Directive 2003/87, is that the reduction of greenhouse gas emissions necessary to achieve a predetermined environmental outcome should be achieved at the lowest possible cost.’*

The climate protection effect is at the centre of the EU ETS in combination with the most economical fulfilment of this objective. Any amendment to the legal framework should take this logic into account and should be scrutinised accordingly.

The planned amendments to the MRR essentially follow the amended new definition of emissions in the ETS Directive (Art. 3 (b)). Previously, emissions were clearly defined as ‘the release of greenhouse gas emissions into the atmosphere’. The new ETS Directive defines ‘emissions’ in the sense of ‘release’. However, the ETS Directive and the draft MRR do not clearly define the new term ‘release’ from materials or installations, which leads to legal uncertainty and ambiguity.

In line with the ECJ judgement and the objectives of the EU ETS, the new regulation should not lead to a reduction in economic efficiency with the same climate protection benefit and thus prevent climate protection projects.

About the lime industry

The lime industry supplies the indispensable and versatile raw material lime, which is at the beginning of many value chains. Lime is used in building and road construction, environmental protection, the production of iron and steel, the chemical industry, glass and plastics, numerous hygiene products, paper, food and beverages.

The Federation of the German Lime Industry

Around 50 companies with almost 100 locations are represented in the Bundesverband der Deutschen Kalkindustrie e. V. (BVK). Together, they produce around 6 million tonnes of lime per year with around 3,100 employees and generate a total turnover of around 700 million euros. (as of 2021)

The BVK is committed to representing the lime industry in Germany vis-à-vis politicians and authorities and is a registered lobbyist (492140618689-61) in the EU transparency register.

Further information: <https://www.kalk.de/>