

Position Paper of the Alliance of Energy Intensive Industries

Treatment of New Entrants: No auctioning for growth but equal treatment of new entrants and incumbents

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The European Commission considers to propose¹ a severely restricted access to the New Entrants' Reserve (NER) within the EU ETS scheme post 2012 by:

- applying a high threshold for access to the NER: *"20% capacity increase/decrease, leading to at least 50 kton [CO₂-equivalent emissions] OR 20% more/less emissions"*;²
- restricting the allocation of allowances from the NER to installations explicitly mentioned in Annex I of the EU ETS Directive.

Whereas growth of efficiently manufacturing businesses in the EU should be supported, such rules would significantly disadvantage and discourage growing companies and productions. Such clear signal on a no-growth policy would weaken the position of the Community in the international negotiations and is not in line with the Commission Communication 'Europe 2020'. The Alliance of Energy Intensive Industries demands fair access to the NER with equal treatment between incumbents and new entrants and without undue discrimination of activities not explicitly mentioned in Annex I. Fair and equal treatment of operators does not impact negatively on the environmental objectives of the Directive which are safeguarded by the cap.

Therefore we propose the following rules:

1. New manufacturing plants (existing and new activities in EU ETS) will have full access to the NER. With regard to expansions, we suggest - with reference to recital 16 of the EU ETS Directive – a threshold of 10% or an increase of emissions by 10,000 ton CO₂-equivalents calculated on the basis of the applicable benchmark (product benchmark or the relevant fallback approach).
 - a. The 10% expansion or 10,000 ton CO₂-equivalents should be applied at the level of the individual manufacturing plant. In this way competitive distortions are avoided between plants falling under different permitting practices (i.e. one permit per plant or per site or for part of a site).
 - b. As the proposal would lead to an unequal treatment if the threshold is just missed, access to the NER shall also be granted if the threshold is met after two or more consecutive expansions in the same manufacturing plant. Examples are two consecutive expansions of 5% or 5,000 ton CO₂-equivalents.
 - c. If the allocation to incumbents is based on a historical reference, access to the NER in phase 3 must also be granted for production expansions within the existing production capacity when one of the above named thresholds is met relative to the historical reference. If the allocation were based on rolling average production, specific rules for new entrants would not be necessary, resulting in less distortions and less administrative burden.
2. Access to the NER should be equal for installations manufacturing products explicitly mentioned in Annex I of the EU ETS Directive and for directly associated activities manufacturing other products which have a technical connection with activities under Annex I on a site falling under the EU ETS Directive. An example for the latter is an industrial activity that buys heat from a boiler or CHP which falls under the ETS Directive.
3. Contrary to some interpretations and in line with the treatment of incumbents, the linear factor of 1.74%/year shall not be applied to the individual allocation of new entrants but to the total cap. As a consequence, the uniform cross-sectoral correction factor must apply to the allocation of individual new entrants when it is applied to incumbent installations.

¹ s. presentation by DG Climate Action at the ECCP meeting on 20 May 2010:

http://ec.europa.eu/environment/climat/emission/benchmarking_en.htm

² The decrease refers to lowering the allocation related to the rules for closure and partially ceased production.

4. The NER must be refilled if depleted at the expense of the auction volumes of the Member States (at an equal percentage per MS) or in another way to ensure a predictable business environment and equal treatment with incumbents and earlier expansions.
5. To ensure equal treatment, capacity increases before 30 June 2011 must have access to the NER. No threshold should be applied in these cases as this was not known at the time of investment. Extensions should not be punished if the capacity was not fully utilised before 30 June 2011.
6. We trust the EC will propose clear and fair rules regarding the access to the NER which avoid discrimination against any new entrants. Regarding the calculation of the level of free allocation to new entrants, the proposal needs to include a methodology for installations in sectors newly included in the ETS in phase 3 under the fallback approach.

Argumentation

To 1: Equal treatment enabling efficient production growth

Production growth can come from new entrants or from a better capacity utilisation of existing manufacturing plants. The latter is also important to enable a company to move production from one manufacturing plant or site to a more efficient plant or site. Both cases should be treated equally. It would be inconsistent – and clearly in conflict with equal treatment – if certain production growth of industry would be subject to full auctioning while the general principle is free allocation (100% for industries exposed to the risk of carbon leakage) on the basis of benchmarks.

To 2: Equal treatment for activities not explicitly listed in Annex I of the EU ETS Directive

“‘installation’ means a stationary technical unit where one or more activities listed in Annex I are carried out and any other directly associated activities which have a technical connection with the activities carried out on that site and which could have an effect on emissions and pollution;” (Art. 3e)

This definition of an installation means that activities such as the production of polymers, rubbers, base chemicals, pharmaceuticals, sugar, potatoes, starch, and many other products of these and other sectors – which are not explicitly mentioned in Annex I of the EU ETS Directive – are part of the EU ETS if the connected boiler and/or CHP on that site fall under the EU ETS Directive. For e.g. polymers and sugar product benchmarks were seriously considered, which underlines this claim. If disregarded for expansions, this would be unequal treatment because an existing activity will get a free allocation.

It is important to realise that an expansion of such industrial activity (just as a product benchmark activity) can – and often will – take place within the existing capacity of the boiler or CHP, especially since spare capacity will increase with efficiency gains, which are the very aim of the EU ETS. Therefore, if an industrial production also for such products not listed in Annex I increases by 10% or by 10,000 ton CO₂-equivalents, allowances from the NER must be granted regardless whether the boiler or CHP capacity has been increased.

Acknowledging the above mentioned activities as part of the EU ETS is sufficient to ensure equal treatment without the need to change permitting practices in the Member States.

To 3: Equal treatment of new entrants and incumbents – the linear factor for new entrants

The principle of equal treatment between new entrants and incumbents is at the heart of the EU ETS Directive and is repeatedly emphasised by the Commission, e.g. in its Questions and Answers paper: *“... The allocations from this [new entrants’] reserve should mirror the allocations to corresponding existing installations”*.³ The EU Commission Legal Service confirmed equal treatment between incumbents and new entrants and concluded that the linear factor of 1.74%/year shall not be applied to incumbents. Therefore, the linear factor shall not be applied to the allocation of new entrants either.

To 4: Equal treatment of earlier and later new entrants – refilling the NER

This equal treatment is practice in most important Member States during phase 1 & 2 of the EU ETS.

³ Memo 08/796, 17 December 2008, page 13.

Europe's energy-intensive industries have an aggregated turnover of more than 1000 billion Euros per year and provide direct employment to over 3 million people. Manufacturing is closely interlinked with Europe's entire economic fabric, downstream processing, R&D and innovation.

	<p>CEFIC – European Chemical Industry Council</p>
	<p>CEMBUREAU - The European Cement Association</p>
	<p>CEPI aisbl - The Confederation of European Paper Industries</p>
	<p>Cerame-Unie – Liaison Office of the European Ceramic Industry</p>
	<p>CPIV - The European Glass Federation</p>
	<p>Association of European Ferro-Alloy Producers</p>
	<p>EUROFER – European Confederation of Iron and Steel Industries</p>
	<p>EuLA – The European Lime Association</p>
	<p>EUROMETAUX - European Association of Non-Ferrous Metals Industries</p>
	<p>EUROPIA, the European Petroleum Industry Association</p>
	<p>European Expanded Clay Association</p>
	<p>International Federation of Industrial Energy Consumers - Europe</p>
	<p>IMA-Europe – Industrial Minerals Association</p>