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### ***the draft implementing regulation on further arrangements for the adjustment to free allocation of emission due to activity level changes***

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The VIK welcomes the opportunity to provide feedback on the draft implementing regulation of the European Commission laying down rules for the application of Directive 2003/87/EC of the European Parliament and of the Council as regards further arrangements for the adjustments to free allocation of emission allowances due to activity level changes.

#### **The need for a more dynamic approach**

The VIK believes that the rules for the adjustment to free allocation of emission allowances due to activity level changes should be as dynamic as possible, in order to reflect the actual economic situation of a company that is participating in the EU emission trading system. Thus, whilst we welcome the dynamic approach in general, we believe that it is important to alter the proposed provisions of the draft implementing regulation to some extent to increase the dynamism and to better reflect activity level changes:

- A quantitative minimum threshold should not be established.
- The allocation should be adjusted proportionally to the actual change. An increase/decrease of activity by 1% should lead to an adjustment of 1% of allocation.
- Once the threshold of activity level adjustment has been reached according to article 5(1) during an allocation period, an adjustment of free allocation due to activity level changes should be possible in both directions. In case of a decrease of the activity level that results in a decrease below the original threshold of 15%, the dynamic system should allow for an adjustment of free allocation according to the interval defined in article 5(2) and should not be put back to the level of the HAL.

We propose to amend article 5 accordingly:

## Article 5

### Adjustments to free allocation due to activity level changes

1. Where the average activity level of a sub-installation, determined in accordance with Article 4, has increased or decreased by more than 15% compared to the historical activity level initially used to determine the free allocation, the free allocation of allowances to that installation shall be adjusted. That adjustment shall apply as of the year following the two calendar years used for determining the average activity level, ~~and provided that the adjustment is at least 100 emission allowances.~~ That adjustment shall be made by increasing or decreasing the free allocation for the relevant sub-installation by the exact percentage change in the average activity level.
2. When an adjustment according to paragraph 1 has been made, during an allocation period, further adjustments **by increasing or decreasing the free allocation for the relevant sub-installation by the exact percentage change in the average activity level** can only take place if the change of the average activity level, compared to the historical activity level of that sub-installation, exceeds the nearest 5% interval, beyond ~~the interval~~ **the 15% change**, which caused the previous adjustment of free allocation to that installation, ~~by increasing or decreasing the free allocation for the relevant sub-installation by the exact percentage change in the average activity level.~~
- ~~3. If the increase or decrease of the average activity level of a sub-installation no longer exceeds 15% compared to the historical activity level initially used to determine the free allocation, the free allocation of allowances to that sub-installation shall be equal to the initial allocation determined by Article 16 or 18 of Delegation Regulation 2019/331, as of the year following the two calendar years used for determining the average activity level.~~

### Avoid penalisation for energy efficiency

It is positive that the principle of no penalisation is recognised in art 6 however we are concerned with the requirement of a 15% improvement. This is a restrictive and additional threshold, that erodes the measure for efficiency due to an additional and high threshold. A lot of effort have already been made by the industry on energy efficiency improvement therefore 15% energy improvement is very high especially for one project/investment. Energy efficiency plans typically contain several projects spread over 4 to 5 years. The impact of this additional improvement threshold is also different in case of a first adjustment (that requires the activity threshold of 15% compared to the HAL) or in case of an installation that already had an activity level change. And what with a combined effect?

Also in the above mentioned cases, penalization of energy efficiency should be avoided as to encourage such investments.

The VIK proposes the following amendments to article 4 and article 6:

#### Article 4

#### Average activity levels

1. **Without prejudice to article 6**, the competent authority shall determine the average activity level of each sub-installation based on the activity level reports for the relevant two-year period, unless the data for that installation has not been verified as satisfactory.

#### Article 6

#### Other changes in the operation of the installation

1. Where an operator demonstrates, based on the data submitted in the activity level report and any additional data requested by the competent authority, that the ~~decrease change~~ of the activity level of a sub-installation for which the amount of free allocation has been determined based on a heat or fuel benchmark is not **or partially** related to a change of production levels of the sub-installation, but due **or partially due** to the increased energy efficiency of that sub-installation in accordance with paragraph 3 of this Article, ~~compared to the one based on the baseline data report, by more than 15%, no adjustment of the activity level free allocation~~ shall be **made corrected in line with the determined energy efficiency**

**improvement according to paragraph 3 by multiplying with the quotient according to the baseline data report and dividing by the quotient after the change.**

2. Where an operator fails to demonstrate, upon request, based on the data submitted in the activity level report and any additional data requested by the competent authority, that the **increase change** of the activity level of a sub-installation for which the amount of free allocation has been determined based on a heat or fuel benchmark is related **or partially related** to a change of production levels of the sub-installation and not due to the decrease **or partial decrease** of the energy efficiency of that sub-installation in accordance with paragraph 3 of this Article, ~~compared to the one based on the baseline data report, by more than 45%~~, the competent authority may ~~reject adjustment of free allocation correct~~ **activity level in line with the determined energy efficiency decrease according to paragraph 3 of this article by multiplying with the quotient according to the baseline data report and dividing by the quotient after the change.**