

DRAFT DELEGATED ACT ON GREENHOUSE GAS SAVINGS FROM RFNBO - CEMBUREAU POSITION

CEMBUREAU, the European Cement Association (www.cembureau.eu), welcomes the opportunity to comment on the draft Delegated Act establishing a minimum threshold for greenhouse gas emissions savings of recycled carbon fuels and by specifying a methodology for assessing greenhouse gas emissions savings from renewable liquid and gaseous transport fuels of non-biological origin and from recycled carbon fuels.

CEMBUREAU is of the opinion that the proposed draft regulation reaches far beyond the competences of the Commission given by Articles 25 (2) and 28 (5) of RED II. The Commission proposes to set a limit to synthetic fuel production from industrial CO₂ and puts forward a classification of different carbon sources with a view to assess their sustainability. In the absence of an impact assessment, an open public consultation or any political discussion, these proposals are premature.

Introduction – CO₂ utilisation is an essential element the cement industry's transition to carbon neutrality

CEMBUREAU's 2050 [Carbon Neutrality Roadmap](#) sets out the technological and innovation pathways to achieve carbon neutrality by 2050 in the cement industry. These pathways span the full value chain and assess the CO₂ reduction potential in both the manufacturing part of the business (clinker and cement manufacturing) as in the production, use and end-of-life of the end product, concrete, which is a key enabling building material for tomorrow's sustainable built environment thanks to its durability, strength, recyclability and its carbonation potential.

With two thirds of its CO₂ emissions related to the manufacturing process (calcination of limestone), the cement industry strongly focuses on carbon capture as its key technology representing 42% of its CO₂ emission reduction efforts by 2050. A significant number of carbon capture and storage and use (CCUS) projects are currently under development by the cement industry (please see our [map of ongoing innovation projects](#)), showing clear EU industrial leadership.

Crucially, a large part of these projects consists in re-utilising the CO₂ which is captured in cement kilns. This is crucial given the geographic spread of the 200 cement kilns across Europe – whilst some installations are located next to potential CO₂ storage sites, a large number of them will have to rely on re-using CO₂ through Carbon Capture and Utilisation (CCU) in the short, medium and long term. Different types of CO₂ usages are being considered (for instance, mineralization or chemical products), but today, the use of CO₂ for the production of RFNBOs is the most promising and most widely-implemented CCU solution in the sector with potential to reduce >5 Gton CO₂/year (IEA, 2019)

The viability of the technology hinges on the way the CO₂ captured is recognized and accounted for under the regulatory framework. In this respect, the draft Delegated Act is of crucial importance to support the cement sector in its decarbonization efforts, and we would like to raise below our key concerns with some of the draft Act's provisions.

1. The draft Delegated Act threatens the viability of carbon capture investments by putting an arbitrary shelf-life on CO₂ captured from industrial installations

Recital 7 of the Draft Delegated Act states that “*capturing of emissions from non-sustainable sources should (...) only be considered as avoiding emissions until 2035.*” This is transposed in point 11 letter a of the annex that explicitly limits the re-utilisation of CO₂ from industrial capture to the end of 2035.

Such proposal is questionable given the limited alternatives to CO₂ from industrial capture. Volumes of biogenic CO₂ will be limited and technologies for Direct Air Capture of CO₂ will not be available shortly at affordable costs and will require massive quantities of renewable energy to be deployed. On the contrary, cement production will still be needed in large quantities at that horizon (concrete is the most commonly used material on earth after water) and will still face unavoidable process emissions that need to be captured, long after 2035.

In addition to the temporal limit, the Commission proposes a very generalized distinction between different CO₂ sources that eventually classifies CO₂ into sustainable and non-sustainable sources. However, this classification does not differentiate between avoidable and unavoidable industrial CO₂ and is therefore not a valid basis for a methodology with such far-reaching consequences for industrial decarbonisation.

If our reading of recital 7 and point 11 in the annex is correct, the Draft Delegated Act has significant impacts on ongoing carbon capture and use projects many of which risk to no longer be economically viable.

The Explanatory Memorandum to the Draft Delegated Act states that “*being of a technical nature, the proposal did not need to be supported by an impact assessment nor an open public consultation, which are usually required only for major initiatives.*” We express our serious doubts about the correctness of such statement given the potentially significant ramifications on existing investment projects, not only from an economic perspective but also in light of industry’s efforts to achieve the decarbonisation objectives.

In the same context, we argue that the Articles 25(2) and 28(5) of Directive (EU) 2018/2001, quoted as a legal basis for the Draft Delegated Act, provide insufficient ground for adopting measures that effectively limit the availability of synthetic fuels based on industrial carbon and that imply choices as to which CO₂ source to use for future decarbonisation. In our view, the Commission significantly goes beyond the powers laid down in Directive 2018/2001 which allow the Commission to adopt a methodology. The Commission chooses for an approach which is not technology-neutral and exceeds the implementing powers that have been provided to it in the basic act.

CEMBUREAU therefore suggests removing recital 7 from the draft Delegated Act.

2. The draft Delegated Act threatens carbon capture investments and the decarbonization of the sector through challengeable rules on CO₂ accounting

Recital 6 of the Draft Delegated Regulation and point 11 of its Annex consider that emissions from industrial processes that are captured and used for the production of recycled carbon fuels cannot be considered as avoided “*if not taken into account upstream through effective carbon pricing*” because the overall emissions are not reduced.

CEMBUREAU fully agrees that the CO₂ needs to be accounted for at one point in the value chain to avoid any risk of “double counting” or “under counting”. However, we do wish to underline that when CO₂ is captured from a cement kiln to be re-used in a synthetic fuel, there is no CO₂ that is released from the stack of the cement plant. On the contrary, the CO₂ is captured and transferred for further use without being “released into the atmosphere”.

In this respect, we regret to note that draft Delegated Act seems to be underpinned by the suggested change in language in Article 3(b) and recital 13 of the proposed ETS Directive (removal of the words “into the atmosphere” in the definition of emissions) which is legally challengeable. On the contrary, CEMBUREAU strongly believes that the CO₂ needs to be accounted as “avoided” at the point of capture and as released at the moment it is emitted into the atmosphere.

An emission in the atmosphere indeed occurs when the operator who acquired sustainable fuels, is burning such fuels. Ignoring this reality affects not only the viability of cement capturing projects but also impedes the cement industry’s efforts to achieve its CO₂ emission reduction targets.

In the proposed text, it is foreseen that, for such fuels to be considered sustainable, a 70% GHG emission reduction needs to be achieved. This requirement risks to enter into conflict with the request by CO₂ capturing operators for not having to surrender captured CO₂ which is subsequently transferred. We contend, however, that this conflict cannot be resolved by simply ignoring the fact that there is no “release into the atmosphere” at the capturing plant nor by considering that all emissions from industrial processes cannot be considered as avoided. The degree to which such avoidance occurs and is accounted for depends on the type of use and is dictated either by legislation (such as RED II) or by commercial negotiations between parties. A decision on the degree or percentage of avoidance is dissociated from the discussion as to whether CO₂ is released into the atmosphere.

CEMBUREAU therefore disagrees with the requirement that there should be an effective carbon pricing upstream. There is no doubt that CO₂ needs to be accounted for somewhere in the value chain but to put this at the point where there is no release into the atmosphere is legally challengeable. The text should require an effective carbon pricing but leave it up to the market participants as to where such pricing occurs.
