

**VAN BAEL & BELLIS**



**The European Commission  
provides clarifications on the  
EU CBAM reporting obligations  
during the transitional period**

**| 16 June 2023**

## INTRODUCTION

On 13 June 2023, the European Commission published a [draft Implementing Regulation](#) laying down the rules for the reporting obligations that will apply during the EU CBAM transitional period from 1 October 2023 until 31 December 2025 (*the draft Implementing Regulation*). The reporting obligations will apply to all goods covered by the EU CBAM, namely cement, electricity, fertilisers, iron and steel, aluminium and chemicals. The draft Implementing Regulation provides important clarifications in preparation for the transitional period.

The draft Implementing Regulation is based on Article 35 of the [Regulation \(EU\) 2023/965](#) of the European Parliament and of the Council of 10 May 2023 establishing a carbon border adjustment mechanism (*the EU CBAM Regulation*), which requires importers to report, through a quarterly CBAM report, the direct and indirect emissions embedded in the imported goods covered by Annex I of the EU CBAM Regulation, and any carbon price effectively paid abroad for those emissions, during the transitional period.

## CBAM REPORTS

During the transitional period, reporting declarants will be required to submit a CBAM report no later than one month after the end of each quarter. The **first CBAM report** will be due by 31 January 2024 (for imports in Q4 2023). The **last CBAM report** will be due by 31 January 2026 (for imports in Q4 2025).

## REPORTING DECLARANT

### Importer who lodges a customs declaration

The importer who lodges a customs declaration for release for free circulation of goods in its own name and on its own behalf.

### Importer who declares the importation of goods

The importer, holding an authorisation to lodge a customs declaration referred to in Article 182(1) of [Regulation No 952/2013](#) (the Union Customs Code), who declares the importation of goods

### Indirect customs representative

The indirect customs representative that lodges a customs declaration, when the importer is established outside the EU or where the indirect customs representative has agreed to carry out the reporting obligations.

After submitting a CBAM report, reporting declarants may **modify or correct** the CBAM report, except those that are pending dispute, under the following circumstances:

#### General Rule

2 months after the end of the relevant reporting quarter.

#### Derogation

The first two CBAM reports may be modified until the submission deadline for the third CBAM report (i.e. 31 July 2024).

#### Authority Approval

In case the CBAM report is incorrect or incomplete and upon request of the reporting declarant, one month after the approval of the request by the competent authority or the European Commission.

The mandatory and optional content of the CBAM report is set out in Annex I of the draft Implementing Regulation. The CBAM reports must be submitted through the CBAM Transitional Registry, an electronic database, to be established by the European Commission.

## RIGHTS AND OBLIGATIONS OF REPORTING DECLARANTS

### Reporting obligations

Reporting declarants will be required to provide in their CBAM reports the following information:

#### Imported Goods

The quantity (in MW/h for electricity and in tonnes for other goods) and type of imported goods (CN code)

#### Embedded emissions

The country of origin, installation data, production routes as set out in Annex II of the draft implementing regulation, the descriptive parameters affecting embedded emissions, the identification number of the mill (for steel goods), and direct emissions of the goods (in accordance with Annex III of the draft Implementing Regulation).

#### Indirect emissions

Electricity consumption, the indication of whether the declarant reports actual emissions or default values, the corresponding emissions factor, and the amount of specific indirect emissions (in accordance with Annex III of the draft Implementing Regulation).

Reporting declarants may request the **producer of the goods** to use an electronic template provided by the Commission to supply information necessary for submitting CBAM reports (see Annex IV of the draft Implementing Regulation).

### Calculation of embedded emissions

Reporting declarants shall calculate the level of embedded emissions using one of the following methods based on the choice of monitoring approach:

#### Method 1 (calculation-based approach):

Determining emissions from source streams based on activity data obtained through measurement systems and additional parameters from laboratory analyses or standard values.

#### Method 2 (measurement-based approach):

Determining emissions from emission sources through continuous measurement of the concentration of the relevant greenhouse gas in the flue gas and of the flue-gas flow.

Regardless of the monitoring approach, the determination of the embedded emissions of goods will require the identification of the relevant production processes for each goods category and monitoring the direct and indirect emissions of these production processes. The system boundaries of the applicable production processes and specific requirements for each goods category are laid down in Annex II of the draft Implementing Regulation.

The following **temporary derogations** from the use of the above methods will be available:

#### Until 31 December 2024

If the operator is subject to a monitoring, reporting and verification system associated to a mandatory pricing scheme, an emission reduction project, or a compulsory emission monitoring scheme, the two following methods will be allowed, provided they lead to similar coverage and accuracy compared to the first two methods:

- a. methods used under monitoring, reporting and verification systems (MRV); or
- b. other methods, with any of the following applicable monitoring rules: (1) a carbon pricing scheme; (2) an emission monitoring scheme or (3) a compulsory emission monitoring scheme.

#### Until 31 July 2024

For imports of goods for which the reporting declarant does not have all the necessary information:

Any other method (indicating the methodology followed).

#### Limited use of default values

In the case of complex goods, reporting declarants may use the default values for input materials or subprocesses, contributing to less than 20% of the total emissions of the good.

#### Reporting on carbon price

Concerning goods subject to a carbon price in the country of origin, reporting declarants will be required to include in the CBAM report, among others, the following information: the form of carbon price; the country of origin; any rebate or other form of compensation available in the country that would have resulted in a reduction of that carbon price; an indication of the provision of a legal act providing for the carbon price, rebate, or other forms of relevant compensation, including a copy of the provision; type of product indicated by CN code; quantity of embedded emissions covered by the carbon price; quantity of embedded emissions covered by any rebate or other form of compensation, including free allocations, if applicable; and the monetary amount.

#### ASSESSMENT OF CBAM REPORTS

The European Commission may check CBAM reports to determine whether reporting declarants have complied with their obligations. If the European Commission considers that a CBAM report is incomplete or incorrect, it will communicate the indicative assessment to the competent authority in the Member State where the reporting declarant is established. The competent authorities will review and assess the CBAM reports according to the information provided by the European Commission. The competent authorities may initiate correction procedures regarding incomplete or incorrect CBAM reports, as well as regarding the failure to submit a CBAM report.

## **PENALTIES**

During the transitional period, the penalties for non-compliance with the reporting obligations will range between EUR 10 and EUR 50 for each tonne of unreported embedded emissions. The competent authorities will determine the exact amount of the penalty based on the factors listed in the draft Implementing Regulation, such as the extent of unreported information, unreported quantities of goods and emissions, intentional or negligent behaviour, level of cooperation, and duration of the failure to report.

## **CBAM TRANSITIONAL REGISTRY**

To ensure the efficient implementation of the reporting obligations, the draft Implementing Regulation envisages the establishment and the details of the operation of a CBAM Transitional Registry, which is the system that the reporting declarants will use to submit their CBAM reports. The CBAM Transitional Registry will be accessible to reporting declarants, via a Trader Portal, and to the European Commission, the competent authorities, and customs authorities, via a CBAM Competent Authorities Portal. The CBAM Transitional Registry will be the basis for establishing the CBAM Registry foreseen in the CBAM Regulation.

## **NEXT STEPS**

The draft Implementing Regulation is now open for stakeholder feedback, through the European Commission's website, until **11 July 2023**. It will enter into force on the day following its publication in the Official Journal of the European Union and will be binding and directly applicable in all EU Member States.

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