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# **The EU Carbon Border Adjustment Mechanism (“CBAM”) after the trilogue**

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In December 2022, the European Parliament and the Council of the European Union (“the Council”) reached an agreement on the EU CBAM Regulation (“the compromise text”).<sup>1</sup> The compromise text still has to be formally approved by both the European Parliament and the Council and then be published in the Official Journal of the European Union before it enters into force. This client alert provides a summary of the key elements of the CBAM according to the compromise text.

## IMPLEMENTATION

During a **transitional period** between **1 October 2023** and **31 December 2025**, the CBAM will apply as a reporting obligation only.

The **full implementation** of the CBAM, entailing the obligation to purchase CBAM certificates and thereby pay for the GHG emissions embedded in the imported CBAM goods will begin on **1 January 2026**.

## PRODUCT SCOPE

The CBAM will apply to the following groups of products: (1) **cement**, (2) **electricity**, (3) **fertilisers**, (4) **iron and steel**, (5) **aluminium**, and (6) **hydrogen** as well as some **precursors** (e.g. agglomerated iron ores and concentrates (excl. roasted iron pyrites), ferro-manganese, ferro-chromium, ferro-nickel, and kaolin and other kaolinic clays, calcined) and some **downstream products** (e.g. screws and bolts of iron and steel) (“CBAM goods”). The list of relevant CN codes is provided in Annex I to the compromise text.

The product scope of the CBAM will be extended in the future with the aim of covering all EU ETS sectors,<sup>2</sup> as appropriate, by 2030.

## EMISSIONS SCOPE

The CBAM will cover both **direct emissions**, i.e. emissions from the production processes of imported CBAM goods (incl. emissions from the production of heating and cooling consumed during the production processes), and **indirect emissions**, i.e. emissions from the production of electricity, which is consumed during the production processes of imported CBAM goods. For iron and steel, aluminium and hydrogen initially only direct emissions will be taken into account (see Annex IA). In turn, for **cement** and **fertilisers** both **direct and indirect** emissions will be taken into account.

## EXEMPTIONS

The CBAM will not apply to imports from countries which are covered by the EU ETS (i.e. EEA countries) and countries with a domestic ETS fully linked with the EU ETS (i.e. Switzerland).

The CBAM will also not apply to low value shipments, i.e. consignment of CBAM goods with intrinsic value of max. 150 EUR and goods to be moved or used in the context of military activities.

<sup>1</sup> Council of the European Union, Regulation of the European Parliament and of the Council establishing a carbon border adjustment mechanism (CBAM) – Compromise text, 16060/22, 14 December 2022, available [here](#).

<sup>2</sup> Such as glass, ceramics, pulp, paper, cardboard, acids and bulk organic chemicals.

## MAIN OBLIGATIONS

### During the transitional period (from 1 October 2023 until 31 December 2025)

During the transitional period, the CBAM will apply as a reporting obligation. Importers of CBAM goods (or their indirect customs representatives) will be required to submit to the European Commission ("Commission") **a quarterly CBAM report**. The CBAM report must specify (i) the total quantity of each type of CBAM goods imported during that quarter, (ii) the actual total embedded emissions and the total embedded indirect emissions in those goods, and (iii) the carbon price due in the country of origin for the embedded emissions (adjusting for any relevant rebates and other form of compensation). The data included in the CBAM reports **will not need to be verified** and **no CBAM certificates** will need to be purchased.

The first CBAM report, covering imports during October-December 2023, will need to be filed in January 2024.

A failure to submit or correct a CBAM report will result in penalties, following a correction procedure by the competent authority of the Member State where the importer is established.

In preparation for the full implementation of the CBAM, starting from **1 January 2025**, importers or indirect customs representatives<sup>3</sup> will need to **apply for the status of authorised CBAM declarant**. The status of authorised CBAM declarant will be granted by the competent authority in the Member State where the applicant is established and will be recognised by all Member States.

### As of 1 January 2026

From 1 January 2026, only authorised CBAM declarants will be able to import CBAM goods into the European Union.

Authorised CBAM declarants will be required:

- To submit, through the EU-wide CBAM registry, a **yearly CBAM declaration** (by 31 May each year) specifying (i) the total quantity of each type of CBAM goods imported during the previous calendar year, (ii) the total embedded emissions in those goods, (iii) the total number of CBAM certificates to be surrendered, corresponding to the total embedded emissions, after the adjustment to reflect the free emission allowances allocated under the EU ETS, and (iv) a copy of the verification report of the embedded emissions issued by the accredited verifier. Where a carbon price has been effectively paid in the country of origin, authorised CBAM declarants will be able to claim, in their CBAM declaration, a reduction in the number of CBAM certificates to be surrendered, taking into account any relevant rebates or other form of compensation applied in relation to the carbon price paid in the country of origin.<sup>4</sup>
- To ensure that the total embedded emissions declared in the CBAM declaration are verified by an **accredited verifier**. The status of accredited verifier will be granted to verifiers accredited under the EU ETS as well as to verifiers accredited by national accreditation bodies of the Member States specifically for the purpose of the CBAM.
- To **purchase CBAM certificates**, through a common central platform, from the competent authority of the Member State where they are established. The price of CBAM certificates will correspond to the weekly average price of the auctioned EU ETS allowances. The authorised CBAM declarants will also need to ensure that the number of CBAM certificates on their account in the CBAM registry at the end of each quarter corresponds to at least 80% of the embedded emissions in all CBAM goods they have imported since the beginning of the calendar year.
- To **surrender CBAM certificates**, through the CBAM registry, (by 31 May each year) corresponding to the embedded emissions declared for the previous calendar year in the yearly CBAM declaration, as verified by an accredited verifier.

<sup>3</sup> Importers that are not established in the EU must rely on indirect customs representatives acting as their authorised CBAM declarant.

<sup>4</sup> The Commission is empowered to adopt implementing acts regarding the conversion of the carbon price paid in the country of origin to reductions in the number of CBAM certificates to be surrendered, and the evidence that will need to be submitted by the authorized CBAM declarants claiming the reduction.

## METHODOLOGY FOR CALCULATING EMBEDDED GHG EMISSIONS

Embedded emissions must normally be determined based on the **actual emissions** in accordance with the methods set out in Annex III.

Where actual emissions cannot be adequately determined, as well as in the case of indirect emissions, the embedded emissions will be determined by reference to **default values**. Such default values will normally be set at the average emission intensity of each exporting country and for each CBAM good, increased by a mark-up. In the absence of reliable data, the default values will be based on the average emission intensity of a certain percentage (yet to be determined) of worst performing EU ETS installations for a given type of goods.

## CIRCUMVENTION

Circumvention is defined as a change in the pattern of trade in goods, which stems from a practice, process or work, for which there is insufficient due cause or economic justification other than avoiding, wholly or partly, any of the CBAM obligations. Circumvention includes (i) slightly modifying the goods to make them fall under CN codes which are not within the scope of the CBAM, except where the modification alters their essential characteristics, and (ii) artificially splitting shipments into low value consignments.

The Commission must monitor the situation in the EU market to identify any practices of circumvention and can initiate an investigation either on its own initiative or based on reasoned and evidence-based notifications from Member States, interested parties, environmental organisations or NGOs. To counteract circumvention, the Commission may extend the product scope of the CBAM to slightly modified products by means of delegated acts.

## RELATIONSHIP WITH THE REVISED EU ETS

The CBAM is set to replace the mechanism of free emission allowances under the EU ETS. In practice, the phase-out of the free emission allowances under the revised EU ETS and the corresponding phase-in of the CBAM will take place over a nine-year period between 2026 and 2034. Reductions to the free emission allowances will be implemented at a slower rate at the beginning of the nine-year period and an accelerated rate at the end of the period, in line with the following schedule: 2026 – 2.5%, 2027 – 5%, 2028 – 10%, 2029 – 22.5%, 2030 – 48.5%, 2031 – 61%, 2032 – 73.5%, 2033 – 86%, 2034: 100%.<sup>5</sup> During this period, the CBAM will apply only to the proportion of embedded emissions that, as a result of the phase-out, will no longer benefit from free allowances under the EU ETS.

The phase-out of the free allowances for the CBAM sectors will be kept under review by the Commission, starting from 2028 and every two years thereafter. The Commission will be assessing the impact of the phase-out schedule on the risk of carbon leakage and the need to adopt additional measures.

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<sup>5</sup> See, European Parliament, News, Climate change: Deal on a more ambitious Emissions Trading System (ETS), 18 December 2022, available [here](#); Council of the European Union, Press release, “Fit for 55”: Council and Parliament reach provisional deal on EU emissions trading system and the Social Climate Fund, 18 December 2022, available [here](#).

## GOVERNANCE

A mixed governance model with centralised and decentralised elements is set up under the CBAM. The table below outlines the key tasks assigned to the Commission and the competent authorities of the Member States.

Commission	Competent authorities of the Member State where the authorised CBAM declarant is established
Set up and administer the CBAM registry, i.e. an electronic database where authorised CBAM declarants will (i) be registered; (ii) hold their CBAM accounts; and (iii) submit their yearly CBAM declarations.	Grant and revoke the status of authorised CBAM declarant.
Assign and administer the CBAM accounts of authorised CBAM declarants in the CBAM registry (incl. the cancellation of unused CBAM certificates).	-
Register and deregister, upon request, operators of third country installations in a dedicated section of the CBAM registry.	-
Oversee the review of CBAM declarations.	Review CBAM declarations.
Where a CBAM declaration has not been submitted or is incorrect, provide the competent authorities of the Member States with a non-binding preliminary calculation of the number of CBAM certificates due.	Determine the number of CBAM certificates due, taking into account the information submitted by the Commission.
Manage a common central platform for the sale and re-purchase of CBAM certificates by Member States to authorised declarants; calculate the price of CBAM certificates and publish average prices.	Sell and re-purchase CBAM certificates to and from authorised CBAM declarants (to be recorded in the CBAM accounts).
Inform the Member States where the number of CBAM certificates on a CBAM account at the end of each quarter does not meet the threshold of 80% of the embedded emissions in all CBAM goods imported by the relevant authorised CBAM declarant.	Notify authorised CBAM declarants of the need to ensure a sufficient amount of CBAM certificates in their CBAM account; register notifications and related response in the CBAM registry.
Carry out risk-based controls on the transactions recorded in the CBAM registry to identify irregularities.	Investigate potential irregularities in light of the information received from the Commission.
Investigate and remedy practices of circumvention.	Impose penalties for violations of the CBAM Regulation.

In addition to performing its own tasks, the Commission will also assist the competent authorities of the Member States and coordinate their activities by issuing guidance on best practices and promoting the exchange of information and cooperation among Member States.

## FUTURE CHANGES TO THE CBAM

The CBAM will be subject to regular review by the Commission and may evolve in the future. The key changes may relate in particular to the following features:

- Extended product scope (e.g. possibly covering organic chemicals and polymers, other precursor materials, products further down the value chain of the CBAM goods and other goods covered by the EU ETS);
- Extended emissions scope (e.g. possibly covering embedded indirect emissions for imports of iron and steel, aluminium and hydrogen, embedded emissions in the transport of CBAM goods and transportation services);
- Export rebates – the Commission will assess the effectiveness of the CBAM in addressing the carbon leakage risk for goods produced in the EU for export to third countries which do not apply the EU ETS or a similar carbon pricing mechanism and may present a legislative proposal to address that issue in a WTO-compliant manner.

The first report on the CBAM will be presented by the Commission before the end of the transitional period, i.e. in the course of 2025.

## NEXT STEPS & HOW TO PREPARE

The European Parliament and the Council have to officially adopt the CBAM Regulation. The vote of the European Parliament is expected in Q1 or in early Q2 of 2023.

The Commission also still has to prepare the relevant implementing/delegated acts, including with respect to the methodology for calculating the GHG emissions embedded in the CBAM goods. The Commission is assisted by an informal expert group.<sup>6</sup>

In order to prepare for the application of the CBAM, foreign **exporters** as well as foreign and EU **importers** of the CBAM goods should consider:

- Implementing an internal monitoring system, collecting emissions data and scheduling verifications;
- Appointing indirect customs representative in the EU;
- Monitoring domestic carbon costs;
- Registering foreign installations in the future EU CBAM registry.

In addition, **third countries** with a domestic ETS or other carbon pricing mechanisms may wish to consider engaging with the EU institutions regarding the recognition of such measures in the context of the CBAM as well as the establishment of the country-specific default values.

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<sup>6</sup> For more information about the informal expert group please see [here](#).

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