



Brussels, 14.7.2021  
COM(2021) 564 final

2021/0214 (COD)

Proposal for a  
**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**  
**establishing a carbon border adjustment mechanism**

(Text with EEA relevance)

{SEC(2021) 564 final} - {SWD(2021) 643 final} - {SWD(2021) 644 final} -  
{SWD(2021) 647 final}

## EXPLANATORY MEMORANDUM

### 1. CONTEXT OF THE PROPOSAL

#### • Reasons for and objectives of the proposal

The world is facing a profound climate crisis and the challenges of climate change require a global response. Strong international cooperation will strengthen the joint climate action needed by all the Parties of the Paris Agreement to meet the goal of holding the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels<sup>1</sup>.

The European Union's international leadership must go hand in hand with bold domestic action. To meet the objective of a climate-neutral EU by 2050 in line with the Paris Agreement, the Union needs to increase its ambition for the coming decade and update its climate and energy policy framework. This process is already projected to start under the existing EU legislation. Furthermore, as announced in the European Green Deal<sup>2</sup>, the Commission has proposed a new EU target for 2030 of reducing greenhouse gas ('GHG') emissions by at least 55 per cent compared to levels in 1990<sup>3</sup>, based on a comprehensive impact assessment<sup>4</sup>. This objective has been endorsed by the European Council<sup>5</sup> and communicated to the United Nations Framework Convention on Climate Change making it internationally binding<sup>6</sup>. The European Climate Law, as agreed with the co-legislators, sets the new 2030 target while making the EU's climate neutrality objective legally binding<sup>7</sup>.

To deliver on these GHG emissions reductions in line with the European Climate Law, the Commission proposes to revise where necessary all relevant policy instruments by July 2021 in a 'Fit for 55 Package', which covers in particular the review of sectoral legislation in the fields of climate, energy, transport, and taxation<sup>8</sup>. A carbon border adjustment mechanism ('CBAM'), announced in the European Green Deal, is part of that package and will serve as an essential element of the EU toolbox to meet the objective of a climate-neutral EU by 2050 in line with the Paris Agreement by addressing risks of carbon leakage as a result of the increased Union climate ambition. The European Parliament adopted in March 2021 a resolution advocating for the introduction of a WTO-compatible carbon border adjustment mechanism<sup>9</sup>.

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<sup>1</sup> Article 2(1)(a) of the Paris Agreement.

<sup>2</sup> Communication from the Commission of 11 December 2019 on The European Green Deal (COM(2019) 640 final, p. 4).

<sup>3</sup> The Commission put forward the proposal COM(2020) 563 final, amending the initial Commission proposal on the European climate law to include a revised EU emission reduction target of at least 55 % by 2030. On 10-11 December 2020, the European Council in its conclusions endorsed this increased EU target.

<sup>4</sup> Communication from the Commission of 17 September 2020 on Stepping up Europe's 2030 climate ambition. (COM(2020) 562 final: Part 1/2).

<sup>5</sup> Conclusions of the European Council of 11 December 2020. (EUCO 22/20 CO EUR 17 CONCL 8).

<sup>6</sup> German Presidency of the Council of the EU (2020). The update of the nationally determined contribution of the European Union and its Member States.

<sup>7</sup> Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulation (EU) 2018/1999 ('European Climate Law') (OJ L 243, 9.7.2021, p. 1).

<sup>8</sup> Commission Work Programme 2021. (COM(2020) 690 final). Annex I outlines all the instruments under the package.

<sup>9</sup> European Parliament resolution of 10 March 2021 'Towards a WTO-compatible EU carbon border adjustment mechanism'.

The Commission also announced in its EU Action Plan: Towards Zero Pollution for Air, Water and Soil<sup>10</sup> the promotion of relevant instruments and incentives to better implement the polluter pays principle<sup>11</sup> and thus complete the phasing out of ‘pollution for free’ with a view to maximising synergies between decarbonisation and the zero pollution ambition.

The Commission announced its intention to propose a CBAM in the European Green Deal. As indicated in the Communication ‘Should differences in levels of ambition worldwide persist, as the EU increases its climate ambition, the Commission will propose a carbon border adjustment mechanism, for selected sectors, to reduce the risk of carbon leakage. This would ensure that the price of imports reflect more accurately their carbon content. This measure will be designed to comply with World Trade Organization rules and other international obligations of the EU<sup>12</sup>’.

This mechanism is an alternative to the measures that address the risk of carbon leakage in the EU’s Emissions Trading System<sup>13</sup> (‘EU ETS’) and is meant to avoid that the emissions reduction efforts of the Union are offset by increasing emissions outside the Union through relocation of production or increased imports of less carbon-intensive products. Without such a mechanism, carbon leakage could result in an overall increase in global emissions.

The Paris Agreement commits the international community to a continuous increase in the ambition of climate action to limit global average temperature rise in order to significantly reduce the risks and impacts of climate change. Each Party must prepare its own nationally determined contribution (‘NDC’) towards this global goal, reflecting its ‘highest possible ambition’ as well as its ‘common but differentiated responsibilities and respective capabilities, in the light of different national circumstances<sup>14</sup>’.

As long as significant numbers of the EU’s international partners have policy approaches that do not result in the same level of climate ambition as the Union, and differences in the price applied to GHG emissions remain, there is a risk of carbon leakage. Carbon leakage occurs if, for reasons of differing ambitions related to climate policies, businesses in certain industry sectors or subsectors were to transfer production to other countries with less stringent emission constraints or imports from these countries would replace equivalent but less GHG emissions intensive products due to the difference in climate policy. That would risk undermining the effectiveness of the EU’s emission mitigation policies, and could also lead to an increase in their total emissions globally, thus jeopardising the reduction of GHG emissions that is urgently needed if the world is to keep the global average temperature to well below 2°C above pre-industrial levels.

Currently, the risk of carbon leakage is being addressed in the Union under the EU ETS. This is the world's first international GHG emissions trading system and has been in place since 2005. For the sectors covered by this system and most at risk of carbon leakage, this risk is currently managed through the granting of free allowances and compensations for the increase in electricity costs under state aid rules. However, free allocation under the EU ETS weakens the price signal that the system provides for the installations receiving it compared to full

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<sup>10</sup> Communication from the Commission of 12 May 2021 on Pathway to a Healthy Planet for All (COM(2021) 400 final).

<sup>11</sup> Article 191(2) of the Treaty on the Functioning of the European Union.

<sup>12</sup> Commission Communication. (2019). The European Green Deal (COM(2019) 640 final), p. 4.

<sup>13</sup> Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a system for greenhouse gas emission allowance trading within the Union and amending Council Directive 96/61/EC (OJ L 275, 25.10.2003, p. 32).

<sup>14</sup> Article 4(3) of the Paris Agreement.

auctioning. It thus affects the incentives for investment into further abatement of GHG emissions.

At the same time, as the Union increases its climate ambitions, the divergence with third countries' level of climate action is expected to widen, with an increased risk of carbon leakage for the EU. This would stem from the EU's increasingly ambitious GHG emissions reduction targets that should reduce the overall number of ETS allowances. As a consequence, the carbon price signal from the EU ETS is strengthened, incentivising Union producers to reduce their emissions, but widening the difference with countries without carbon pricing mechanisms. Moreover, overall free allocation will also decline over time, in line with the reduction of the emission cap.

Considering the problems described above, this proposal addresses the problem of reducing GHG emissions in the Union, while at the same avoiding that these emissions reduction efforts are offset globally by emissions increase outside the Union. In this context, a CBAM is proposed with the overarching objective of addressing the risk of carbon leakage in order to fight climate change by reducing GHG emissions in the Union and globally.

- **Consistency with existing policy provisions in the policy area**

In the context of the 'Fit for 55 Package' the CBAM is not a self-standing measure. It is a climate policy measure aiming at preserving the integrity of the EU's climate ambition towards the ultimate goal of climate neutrality. The role of the CBAM is to address the risk of carbon leakage and reinforce the EU ETS. There is thus a strong relation between the EU ETS and the CBAM.

As part of the 'Fit for 55 Package' the EU ETS is also proposed for revision<sup>15</sup>. This involves the extension of the EU ETS to maritime transport, as well as the introduction of emissions trading to the buildings and road transport sectors. Most notably, the higher climate ambition of the proposed amendments of the EU ETS appears in a more stringent cap on emissions, meaning that the overall number of allowances available will decline. A more stringent cap implies a stronger carbon price signal. The EU objective of climate neutrality and the decision to raise the climate ambition for 2030 also lead to a broader reconsideration of existing measures against the risk of carbon leakage. In particular, while free allocation of allowances effectively prevents carbon leakage risks, it weakens the carbon price signal for the Union industry compared to full auctioning.

As indicated by the European Green Deal, the CBAM would ensure that the price of imports reflects more accurately their carbon content. This measure has been designed to comply with World Trade Organization ('WTO') rules and other international obligations of the Union. Furthermore, President von der Leyen has underlined that 'carbon must have its price – because nature cannot pay the price anymore. The Carbon Border Adjustment Mechanism should also motivate foreign producers and EU importers to reduce their carbon emissions'<sup>16</sup>.

To this end active outreach to third countries would be important with regard to the understanding of and compliance with CBAM requirements. Moreover, the EU will engage with third countries whose trade to the EU is affected by this Regulation to explore possibilities for dialogue and cooperation with regard to the implementation of specific elements of the Mechanism. It should also explore possibilities for concluding agreements to take into account their carbon pricing mechanism.

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<sup>15</sup> [OP please insert the number of the proposed EU ETS revision when available]

<sup>16</sup> State of the Union Address by President von der Leyen at the European Parliament Plenary on 16 September 2020. [https://ec.europa.eu/commission/presscorner/detail/en/SPEECH\\_20\\_1655](https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_20_1655)

The existing mechanisms to address the risk of carbon leakage are free allocation of EU ETS allowances and in some cases financial measures to compensate for indirect emission costs from increases in electricity prices due to the EU ETS (indirect emission costs). A CBAM is an alternative to those measures and would therefore have to replace them over time. However, to allow producers, importers and traders to adjust to the new regime, the reduction of free allocation should be implemented gradually while the CBAM is phased-in, in order to ensure that they are not cumulative.

- **Consistency with other Union policies**

The Union is extremely active in international fora to strengthen environmental global rules and to accompany trade partners and less developed countries on a path to decarbonise. CBAM will complement the international environmental action of the Union and favour decarbonisation in third countries.

Since 1992, the Union has worked to develop joint solutions and drive forward global action to tackle climate change. More specifically, action at EU level should aim to provide for cost effective delivery of long-term climate objectives, while ensuring fairness and environmental integrity. The establishment of a robust governance of the EU 2050 climate-neutrality objective will help to ensure that the Union remains on track to achieve this target.

The Commission also announced the promotion of relevant instruments and incentives to better implement the polluter pays principle<sup>17</sup> and thus complete the phasing out of ‘pollution for free’ in the EU Action Plan: Towards Zero Pollution for Air, Water and Soil<sup>18</sup> with a view to maximising synergies between decarbonisation and the zero pollution ambition.

## **2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY**

- **Legal basis**

Articles 191 to 193 of the Treaty on the Functioning of the European Union (‘TFEU’) confirm and specify EU competencies in the area of climate change. The legal basis for this proposal is Article 192(1) of TFEU. In accordance with Articles 191 and 192(1) of TFEU, the Union shall contribute to the pursuit, inter alia, of the following objectives: preserving, protecting and improving the quality of the environment, promoting measures at international level to deal with regional or worldwide environmental problems, and in particular combating climate change.

- **Subsidiarity (for non-exclusive competence)**

Climate change is by its very nature a trans-boundary challenge that cannot be solved by national or local action alone. Coordinated EU action can effectively supplement and reinforce national and local action and enhances climate action. Coordination of climate action is necessary at Union level and, where possible, at global level, and EU action is justified on grounds of subsidiarity.

The introduction of an EU-wide CBAM will create a common and uniform framework to ensure an equivalence between the carbon pricing policy applied in the EU’s internal market and the carbon pricing policy applied on imports. Its aim is purely environmental and has a cross-border dimension, so it cannot be tackled independently by Member States. Due to its environmental nature and in order to avoid trade diversion, the CBAM should be more

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<sup>17</sup> Article 191(2) of the Treaty on the Functioning of the European Union.

<sup>18</sup> Commission Communication. (2021). Pathway to a Healthy Planet for All. (COM(2021), 400 final).

efficient applied at Union level in a uniform way, mirroring EU ETS and designed in a compatible way with WTO rules.

Moreover, should the CBAM not be applied in a uniform way, it would incentivise behaviours resulting in trade diversion and forum shopping, as third country exporters would import goods through EU jurisdictions applying the CBAM in the most lenient way.

This is not in contrast with deferring implementation and enforcement to competent national authorities, however this should be limited to implementation and enforcement.

- **Proportionality**

The proposal seeks to address the challenge of reducing GHG emissions in the Union while at the same time avoiding that these emissions reduction efforts are offset by emissions increase outside the Union. The policy choices therefore are clearly dictated by the aim to achieve the objectives of the CBAM, namely to address the risk of carbon leakage in order to fight climate change by reducing GHG emissions in the Union and globally.

The proposed product coverage of the CBAM is framed by the sectors and emissions covered by the EU ETS, the sector coverage of which is in turn based on various quantitative and qualitative criteria linked to the environmental objectives of the EU ETS, and the CBAM scope should be laid down by a reference to certain goods by way of their classification in the Combined nomenclature<sup>19</sup>. This serves the motivation for the measure, namely to ensure that risks of carbon leakage for certain energy intensive sectors are mitigated. The CBAM, builds on the climate logic of the EU ETS starting with sectors where emissions are the highest in absolute numbers and therefore where it would matter most.

The carbon content of products is an essential element of the CBAM as it indicates the GHG emissions (in carbon dioxide equivalent, 'CO<sub>2</sub>e') released during their production abroad. This is used to ensure that imported products are treated no less favourably than domestic products produced in EU ETS installations. As installations covered by the EU ETS are subject to a carbon price assessed on their actual emissions, imported products in the scope of the CBAM should also be assessed based on their actual GHG emissions. However, in order to allow businesses to adjust to such an approach it is proposed to start with a transitional period without financial adjustment.

As regards the administration of the measure empowering national competent authorities would maximise the effectiveness of the implementation and enforcement by taking into account national experiences in managing the EU ETS. A set-up with national competent climate authorities playing a key role mirrors to a large extent the set-up successfully used for almost a decade in the EU ETS.

- **Choice of the instrument**

The objectives of the present proposal can best be pursued through a Regulation. This will ensure direct applicability of a number of provisions concerning goods imported in the Customs Union. Moreover, this Regulation requires uniform and consistent application and enforcement throughout the Union in order to pursue the objectives of Articles 32 and 207 of TFEU.

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<sup>19</sup> Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 256, 7.9.1987, p. 1).

Differing exposures to the risk of carbon leakage would provide limited justification for action at national level. Carbon emissions are not localised and like the EU ETS, the CBAM can achieve greater efficiency when uniformly applied on a broader scale.

For this reason, the objectives of the present proposal can best be pursued through a Regulation. This will ensure direct applicability of its provisions.

Besides, conferring certain tasks related to implementation and enforcement to authorities in charge of climate and customs in Member States would address technical and methodological constraints and increase effectiveness.

### **3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS**

#### **• Stakeholder consultations**

For the preparation of this proposal, the Commission designed and implemented a stakeholder's consultation strategy, which encompassed both public and targeted consultations.

An inception impact assessment was published for feedback on 4 March 2020. A consultation took place until 1 April 2020<sup>20</sup> with the aim to collect feedback on the initial considerations of the project. In total 219 responses were submitted during this consultation period broken down into approximately 150 responses by trade federations, business associations and individual businesses, 20 NGOs, 20 citizens and the remaining from think tanks, academic/research institutions, trade unions and public authorities. The majority of responses came from the EU, with 24 from third countries.

Overall, the majority of replies expressed support for the CBAM, with the remaining being roughly divided equally between limited and no support. The vast majority of responses expressed cautiousness in the design of the measure requesting to consider all options possible. Among others, key areas emphasized were the impact on value chains and reliance on imports of raw materials, avoidance of excessive effects on final consumers, links to EU ETS and free allowances, distributional impact in affected sectors and across countries, especially developing economies and interaction with existing trade defence measures on raw materials.

In line with the Commission's Better Regulations Guidelines an open public consultation<sup>21</sup> was also carried out between 22 July and 28 October 2020. The consultation aimed to gather opinions from citizens and organisations on the justifications, objectives, potential design and scope as well as impacts of the initiative. Respondents were also allowed to upload position papers. A total of 615 respondents participated in the public consultation. Of these, 6 responses were duplicates, leading to 609 valid contributions.

With respect to the problem of carbon leakage, most respondents state that carbon leakage is a real issue and that the CBAM can address carbon leakage, foster consumption of low-carbon products in the EU, and stimulate the deployment of low-carbon technologies and ambitious

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<sup>20</sup> <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12228-EU-Green-Deal-carbon-border-adjustment-mechanism- en>

<sup>21</sup> <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12228-EU-Green-Deal-carbon-border-adjustment-mechanism- en>

climate policies in third countries. On the effectiveness of current measures in the context of the EU ETS and state aid rules to limit carbon leakage, and on the ability of other regulatory measures to reduce GHG emissions companies, business associations and public authorities have a positive belief whereas citizens and other stakeholders are more critical. Respondents suggest that the CBAM should focus on products from activities already included in the EU ETS (especially those with the highest risk of carbon leakage) and account for entire value chains.

In addition to the above, the Commission services engaged in extensive bilateral consultations with public authorities within the EU and third countries, business associations, individual companies and NGOs. At the same time targeted consultations were undertaken by an external contractor who conducted a total of 25 in-depth interviews with senior managers and associations from the basic materials sectors, manufacturers, NGOs and policymakers. There were two rounds of interviews. First, 17 informal interviews were conducted at an early stage and served to identify relevant points of concern and open questions for further research. In a second step, eight additional interviews were conducted in order to test whether the judgements and concerns from the informal interviews were shared among a wider group of stakeholders. 17 stakeholders came from industry, 5 from NGOs and 3 from Member State institutions.

The results of the public and targeted consultations allowed the Commission to collect a significant number of views and opinions on the initiative. Both public and targeted consultations showed agreement on the necessity of a CBAM to address the risk of carbon leakage and help the Union to achieve its increased climate ambitions. The feedback received throughout these consultations has been used to inform the choice of the design elements and the preferred policy options. Result of the stakeholder consultation is summarised in the relevant annex to the impact assessment.

- **Collection and use of expertise**

The preparatory steps for the proposal rest on an array of studies and expert advice, analysing the potential design and scope of the CBAM as well as its environmental, social and economic impacts.

In particular, a study on the optimal design of the mechanism and its sectoral coverage was conducted with the support of external expertise to the Commission. The study reviewed the logic of intervention, assessed a range of alternative options and their feasibility, provided technical advice on technical design elements and provided support on the selection of sectors to be covered by the mechanism. Elements of this study are presented in the impact assessment<sup>22</sup>, while the full study is also published by the Commission<sup>23</sup>.

In addition to the qualitative study of the CBAM, a dedicated quantitative assessment of impacts was also conducted with support from the Joint Research Centre of the Commission and from external expertise, the first focusing on the CBAM's impacts on material products and the later focusing on the CBAM's impacts on electricity. These quantitative assessments provided insight into the environment, economic and social impacts of the initiative and are made publicly available as part of the impact assessment.

Finally, the analysis rests on additional literature review, studies and research papers submitted by academics in the open public consultation and other independent studies.

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<sup>22</sup> [OP please insert the link to the impact assessment after publication]

<sup>23</sup> [OP please insert the link to the study after its publication]

- **Impact assessment**

The Regulatory Scrutiny Board issued a positive opinion with reservations on the impact assessment, including suggestions for improvement<sup>24</sup>. The Impact Assessment report was further revised along these lines, in particular, an effort was made to ensure that it is self-standing with regards to the problem of carbon leakage, while strengthening its coherence with the proposal for the revision of the EU ETS, as well as providing better clarity on the key impacts and institutional choices and presenting in greater detail the views of different stakeholder groups.

The problem addressed by the CBAM is how to reduce GHG emissions in the EU, while at the same time avoiding that these emissions reduction efforts are offset by emissions increasing outside the Union (carbon leakage). To reflect this dynamic framework, the basis against which the impact assessment was built reflected the fact that the CBAM is put forward against the new agreed EU target of reducing net GHG emissions by at least 55 per cent (relative to 1990).

Six different options were assessed against this dynamic framework, all of which were designed to take account of WTO requirements and of the EU's international commitments such as free trade agreements concluded by the EU or the Energy Community Treaty.

The first option for a CBAM is an import carbon tax, paid by the importer when products enter the EU. The tax would be collected by customs at the border based on a tax reflecting the price of carbon in the Union combined with a default carbon intensity of the products. Importers would have the opportunity to claim a reduction of the CBAM based on their individual carbon footprint and any carbon price paid in the country of production.

The second option involves the application on imports of a system that replicates the EU ETS regime applicable to domestic production. This option entails – similar to the system of allowances under the EU ETS – the surrendering of certificates ('CBAM certificates') by importers based on embedded emission intensity of the products they import into the Union, and purchased at a price corresponding to that of the EU ETS allowances at any given point in time. These certificates will not be linked to the EU ETS system of allowances but will mirror the price of these allowances to ensure a coherent approach to the pricing under the EU ETS. National climate authorities will administer the sale of the CBAM certificates and importers will submit declarations of verified embedded emissions in the imported products to these authorities tasked with managing the CBAM and surrender a number of CBAM certificates corresponding to the declared emissions. Such declaration and surrendering will occur – similar to that under the EU ETS – at a yearly reconciliation exercise taking place in the year following the year of importation and based on yearly trade import volumes. The carbon emission intensity of products would be based on default values; however, importers would be given the opportunity, at the moment of the yearly reconciliation exercise, to claim a reduction of the CBAM on the basis of their individual emission performance. They would also be entitled to claim a reduction of the CBAM for any carbon price paid in the country of production (which is not rebated or in other way compensated upon export).

Option 3 operates in the same way as option 2, however the carbon price of imports is based on actual emissions from third country producers rather than on a default value based on EU

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<sup>24</sup> [OP please insert the links to the summary sheet and the positive opinion of the RSB after their publication.]

producers' averages. Under this option, the importer will have to report the actual emissions embedded in the product and surrender a corresponding number of CBAM certificates.

Option 4 would apply in the same way as option 3. It consists of surrendering CBAM certificates on imported products. However, this option considers also a 10 years phasing in period starting in 2026 during which the free allocations of allowances under the EU ETS would be gradually phased out by 10 percentage points each year and the CBAM would be phased in. During this phasing in period, the CBAM would be reduced proportionally to the amount of free allowances distributed in a given sector.

Option 5 is a variant of Option 3 with a scope extended further down in the value chain. Carbon-intensive materials that are part of semi-finished and finished products would be covered along the value chain. For imports, the CBAM would again be based on the actual emissions from third country producers.

Option 6 consists of an excise duty on carbon-intensive materials covering consumption in the Union of both domestic and imported products, besides the continuation of the EU ETS including the free allocation of allowances covering production in the EU.

With respect to the effectiveness of the CBAM against its overarching objective of addressing the risk of carbon leakage in order to fight climate change by reducing GHG emissions in the Union and globally, the impact assessment showed that all the policy options achieve positive impact. In that respect, all CBAM options were found to achieve a stronger reduction of emissions in the CBAM sectors in the Union, relative to the case of higher ambition and free allocation. With regards to incentivising third country producers to move towards cleaner production processes, all policy options bring about positive results. On that criteria, the options allowing for the possibility to demonstrate actual emissions are particularly effective, with options 3, 4 and 5 also showing strong positive results. All options were found to be coherent with the EU ETS.

On providing protection against carbon leakage, option 4 followed by 3 and 5 bring about a stronger positive impact, while options 1, 2 and 6 would be less effective. All policy options are designed in a way that respects the EU's international commitments.

The CBAM will apply on imports of goods at the price of carbon determined by the EU ETS system through the system of auctions. Importers would either be charged on the basis of a default value or based on the actual emissions embedded in the imports. The possibility to demonstrate that the carbon efficiency of their product is better than the default value, would increase the complexity of the system, but this also provides emission reduction incentives for the share of materials that is exported to the EU.

Overall the impact of the CBAM on employment is limited. Changes in employment are largely driven by the presence (or not) of free allocation. Retaining free allocation results in a slight increase in employment in the CBAM sectors. The complete removal of free allocation in the absence of a CBAM leads to the highest employment losses. The application of the CBAM on material industrial products is likely to have limited impact on consumer prices because the measure is targeted at products upstream in the value chain and affects goods for final consumption only indirectly.

Compliance costs are assumed to arise for importers located in the Union that would be subject to the CBAM obligations. This could be done either based on a default value or by providing verified information about actual emissions. While the monitoring of these actual

emissions would take place outside the Union, the responsibility – and thus costs – of providing the verification regarding this monitoring to authorities lies with the importers. For options 1, 2, 3, 4 and 5, when emissions are declared at default value, monitoring of the emissions from the production process is not necessary and therefore also limited costs are incurred. However, if importers decide to claim to use the actual emissions from the production process, the monitoring creates additional costs for the business. Under option 6, default values have to be determined both for materials and manufactured goods. Administrative effort is relatively low for producers of materials in the EU, which means producers do not have to demonstrate the carbon intensity of their production.

Electricity generation is addressed separately to material products. Applying a CBAM to the electricity sector requires taking into account its uniqueness that distinguishes it from basic materials, including the methods for its transportation, through constrained, monopoly networks, and the broad set of technologies employed for its production.

In line with approaches applied to the material products, a reference value for emissions embedded in imported electricity needs to be established in the context of determining the corresponding CBAM obligation. Two alternative options are employed to determine the reference value for embedded emissions for electricity namely (a) average GHG emission intensity of the EU electricity mix and (b) average GHG emission factor of the EU electricity mix. As with other options, however, importers would still have the possibility to prove that their installation level emissions are lower than the above reference values.

On the basis of the above, the impact assessment concluded that option 4 provides clear benefits relative to all other options considered. It is therefore suggested to introduce a CBAM on selected products in the form of CBAM certificates based on actual emissions. It is also suggested to introduce CBAM progressively against a correspondent reduction of allowances allocated for free in the corresponding EU ETS installations. This policy option ensures a high level of effectiveness for the CBAM.

A system based on actual emissions on imported goods ensures a fair and equal treatment of all imports and a close correlation to the EU ETS. The CBAM system will, however, need to be complemented by a possibility to base calculations on a set of default values to be used in situations when sufficient emission data will not be available. Moreover, during an initial transitional phase, where importers may not be able to produce yet the data required by system on actual emissions, a default value could also apply. This option will need to be designed to fully respect the EU's international commitments, in particular WTO rules, and therefore it will be necessary to ensure that if a default value applies, importers are in all cases given the opportunity to demonstrate that they perform better than such value based on their actual emissions. Moreover, with regard to the phase in of the CBAM and the corresponding phase out of the free allowances, it will need to be ensured that at no point in time over this period, imports are afforded less favourable treatment than domestic EU production.

Further, the introduction of CBAM certificates based on actual emissions would protect against the risk of carbon leakage while incentivising third country producers to move towards cleaner production processes, with the support of Official Development Assistance when applicable.

As regards electricity the preferred option is to apply the CBAM based on the carbon emission factor including the possibility for importers to demonstrate lower emissions. Both options contribute to mitigating the risks of carbon leakage by discouraging in the mid-term

the build-up of carbon-intensive power generation sources in the vicinity of EU borders which might replace EU-based generators exposed to increasing carbon costs. However, the option based on the carbon emission factor displays superior effectiveness in preventing carbon leakage while keeping administrative costs low.

The choice of policy option 4 for material products and the carbon emission factor for electricity would introduce a proportionate mechanism to address climate change by reducing GHG emissions in the Union and avoiding that these emissions are replaced by emissions outside the Union. In addition, the gradual phase out of free allocation under the EU ETS in the sectors concerned, combined with the gradual phase in of CBAM, would ensure a prudent and predictable transition for businesses and authorities.

- **Regulatory fitness and simplification**

The impact assessment indicates that a CBAM would result in relatively higher compliance costs for SMEs compared to large enterprises. The exact degree of difference between the two groups could not be quantified based on the currently available data.

The fact that a CBAM is initially introduced on imports of a few basic materials and basic material products results in large businesses being the main impacted ones. Therefore, the practical impact of import related measures would have little practical impact on SMEs, even though that impact would be relatively higher than for large businesses if compared on the amount imported. For that reason the impact assessment did not carry out a SME test, neither did it perform a separate SME consultation, although the views of, and implications for, SMEs have been assessed as part of the Commission's Online Public Consultation,

For these reasons also, no special measures for SMEs are foreseen in this Regulation.

- **Fundamental rights**

The proposal respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union<sup>25</sup>. In particular, it contributes to the objective of a high level of environmental protection in accordance with the principle of sustainable development as laid down in Article 37 of the Charter.

#### **4. BUDGETARY IMPLICATIONS**

Most revenues generated by CBAM will go to the EU budget<sup>26</sup>. In the special European Council of 17-21 July 2020<sup>27</sup>, EU leaders agreed on the recovery instrument NextGenerationEU. The instrument will provide the EU with necessary means to address the challenges posed by the COVID-19 pandemic and, therein, support investment in the green and digital transitions. In order to finance it, the Commission will be able to borrow up to EUR 750 billion on financial markets. In that context, the European Parliament, the Council and the Commission agreed that 'the Institutions will work towards introducing sufficient new own resources with a view to covering an amount corresponding to the expected expenditure related to the repayment' of NextGenerationEU<sup>28</sup>. The Commission committed to put forward

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<sup>25</sup> OJ C 326, 26.10.2012, p. 391.

<sup>26</sup> Council Decision (EU, Euratom) 2020/2053 of 14 December 2020 on the system of own resources of the European Union and repealing Decision 2014/335/EU, Euratom (OJ L 424, 15.12.2020, p. 1).

<sup>27</sup> See [European Council conclusions, 17-21 July 2020](#).

<sup>28</sup> Interinstitutional Agreement of 16 December 2020 between the European Parliament, the Council of the European Union and the European Commission on budgetary discipline, on cooperation in budgetary

proposals on new own resources, which would include the CBAM in the first semester of 2021.

## 5. OTHER ELEMENTS

### • **Implementation plans and monitoring, evaluation and reporting arrangements**

Within the framework of the overall package of environmental measures adopted and applied by the EU, which illustrate the EU's continued pursuit of a higher level of environmental ambition than many of our trading partners, it is considered appropriate to begin moving from a system in which carbon leakage is addressed by free allowances to a system in which carbon leakage with respect to imports is addressed by a carbon border adjustment mechanism as soon as this is reasonably possible, taking into account the technical and economic feasibility, including administrative constraints and the legitimate expectations of all economic operators, in an even-handed manner.

Concurrently balancing these multiple objectives pleads in favour of the gradual introduction of a carbon border adjustment mechanism, as soon as is reasonably possible, so that during an initial and relatively short pilot phase without any financial adjustment, operators can adjust themselves to the new system, including its additional administrative requirements, and the authorities can obtain experience with respect to the operation of the new system.

Once that pilot phase is complete, the process of transitioning from free allowances to a carbon border adjustment mechanism will accelerate in earnest and in a manner that ensures no discrimination between domestic and imported goods, or between imported goods from different countries, in full compliance with the EU's international obligations and rights.

The Commission will ensure that arrangements are in place to monitor and evaluate the functioning of the CBAM, including its enforcement against fraudulent practices, and evaluate it against the main policy objectives. Given that the CBAM is one of the policy proposals under the 'Fit for 55 Package', monitoring and evaluation could be carried out in alignment with the other policies of the package.

Before the end of the transitional period, the Commission will report to the European Parliament and the Council on the application of the Regulation and, if appropriate, will make a legislative proposal to extend the CBAM to other goods than those listed in Annex I and possibly also to other emissions, and introduce other possible changes to improve its functioning. For that, it is necessary to firstly monitor the effect of the CBAM.

### • **Detailed explanation of the specific provisions of the proposal**

Chapter I sets out general provisions, including the subject matter, the scope of the proposal (Articles 1 and 2) and the definitions of the key terms (Article 3). Annex I defines in detail the scope of the proposal, listing the goods and the GHG emissions relating to each of those goods. Annex II indicates the countries and territories of origin excluded from the application of the measure.

Chapter II contains provisions on obligations and rights of declarants of goods. More specifically, it contains provisions on the conditions to apply for an authorisation to import

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matters and on sound financial management, as well as on new own resources, including a roadmap towards the introduction of new own resources (OJ L 433I , 22.12.2020, p. 28).

CBAM goods (Articles 4 and 5), the obligation of an authorised declarant to submit an annual CBAM declaration by 31 May of each year and the content of that declaration (Article 6), the principles for the calculation of the emissions embedded in goods imported to the EU during the previous calendar year (Article 7, as further outlined in Annex III) and the process of verifying these emissions by accredited verifiers (Article 8, complemented by reporting requirements and verification principles in Annexes IV and V). It also sets out the principles for taking into account a carbon price paid in third countries (Article 9). Last, under Article 10, an operator of an installation in a third country has the possibility to request to the Commission to be included in a central database. Once registered, the operator may opt to disclose information about the embedded emissions verified to an authorised declarant. The authorised declarant can use that disclosed information to fulfil the obligation to declare verified information on embedded emissions when importing the goods produced in the installation registered in the central database to the Union.

Under Chapter III, there are the general provisions on the administrative set up of the competent national authorities, the role of the Commission – also as a central administrator - and the disclosure of information (Articles 11, 12, 13 and 15). The chapter also contains provisions on the main characteristics of the national registries and its accounts (Articles 14 and 16) and decisions of the authorities regarding the authorisation to import (Article 17), the accreditation of verifiers (Article 18) and the review of CBAM declarations (Article 19).

Chapter IV contains provisions regarding the CBAM certificates. Articles 20 to 24 establish detailed rules on the life cycle of the CBAM certificates, from their sale to the control of their surrender or, if any, re-purchase, and their final cancellation. Article 20 concerns in detail the sale of certificates by the competent authorities. Article 21 is about the calculation of the price of the certificates, done by the Commission, on a weekly basis. Article 22 lays down the procedures to ensure that each authorised declarant fulfils its obligation to surrender certificates in the national registry. Article 23 establishes the right of an authorised declarant to ask the competent authority to re-purchase a limited number of CBAM certificates remaining on its account after surrender. Finally, Article 24 specifies that, by 30 June of each year, the competent authority is required to cancel the certificates remaining in the account of each declarant after surrender and re-purchase, if any.

Chapter V deals with how customs authorities should deal with the procedures for the administration of goods at the border (Article 25). Under Chapter VI, penalties for non-compliance are set in Article 26 and a special provision on circumvention is provided in case there are changes in the pattern of trade (Article 27).

Chapter VII contains provisions regarding the exercise of the delegation to the Commission to adopt delegated acts (Article 28) and the examination procedure for implementing acts (Article 29). The power to adopt delegated acts is referred to in Articles 2, 18 and 27. Articles 2, 5 to 9, 21, 25, 31, 33 and 35 contain provisions on implementing powers.

Chapter VIII contains provisions in Article 30 on the evaluation of the Regulation and its review.

Chapter IX (Article 31) deals with the reduction of the CBAM obligation to reflect the transitional allocation of EU ETS allowances for free in installations producing, in the Union, the same kinds of goods which are covered by the proposal.

Chapter X contains specific provisions to be applied during an initial transitional period. In those provisions, a CBAM with no financial adjustment aiming at collecting data and raising awareness of declarants will apply in the first years. That transitional period will have a duration of three years, from 1 January 2023 to 31 December 2025, as established in Article 32. Declarants will report on a quarterly basis the embedded emissions corresponding to their imports of the previous quarter, detailing direct and indirect emissions and reporting any carbon price paid abroad. Customs authorities will inform declarants of their CBAM obligations and exchange information with competent authorities.

Last, Chapter XI indicates the entry into force of the proposal, with some of the provisions applying only during the transitional period and others starting to be applied in 2026 (Article 36).

Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**establishing a carbon border adjustment mechanism**

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,  
 Having regard to the Treaty on the Functioning of the European Union, and in particular Article 192(1) thereof,  
 Having regard to the proposal from the European Commission,  
 After transmission of the draft legislative act to the national parliaments,  
 Having regard to the opinion of the European Economic and Social Committee<sup>1</sup>,  
 Having regard to the opinion of the Committee of the Regions<sup>2</sup>,  
 Acting in accordance with the ordinary legislative procedure,  
 Whereas:

- (1) The Commission has, in its communication on the European Green Deal<sup>3</sup>, set out a new growth strategy that aims to transform the Union into a fair and prosperous society, with a modern, resource-efficient and competitive economy, where there are no net emissions (emissions after deduction of removals) of greenhouse gases ('GHG emissions') in 2050 and where economic growth is decoupled from resource use. The European Green Deal also aims to protect, conserve and enhance the EU's natural capital, and protect the health and well-being of citizens from environment-related risks and impacts. At the same time, that transformation must be just and inclusive, leaving no one behind. The Commission also announced in its EU Action Plan: Towards Zero Pollution for Air, Water and Soil<sup>4</sup> the promotion of relevant instruments and incentives to better implement the polluter pays principle as set out in Article 191(2) of the Treaty on the Functioning of the European Union ('TFEU') and thus complete the phasing out of 'pollution for free' with a view to maximising synergies between decarbonisation and the zero pollution ambition.
- (2) The Paris Agreement<sup>5</sup>, adopted in December 2015 under the United Nations Framework Convention on Climate Change ('UNFCCC') entered into force in November 2016. The Parties to the Paris Agreement, in its Article 2, have agreed to

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<sup>1</sup> OJ C, , p. . [OP please insert the number of the opinion]

<sup>2</sup> OJ C, , p. . [OP please insert the number of the opinion]

<sup>3</sup> Communication from the Commission of 11 December 2019 on the European Green Deal (COM(2019) 640 final).

<sup>4</sup> Communication from the Commission of 12 May 2021 on Pathway to a Healthy Planet for All (COM(2021) 400).

<sup>5</sup> OJ L 282, 19.10.2016, p.4.

hold the increase in the global average temperature well below 2°C above pre-industrial levels and to pursue efforts to limit the temperature increase to 1.5°C above pre-industrial levels.

- (3) Tackling climate and other environmental-related challenges and reaching the objectives of the Paris Agreement are at the core of the European Green Deal. The value of the European Green Deal has only grown in light of the very severe effects of the COVID-19 pandemic on the health and economic well-being of the Union's citizens.
- (4) The Union is committed to reducing its economy-wide GHG emissions by at least 55 per cent by 2030 below 1990 levels, as set out in the submission to the UNFCCC on behalf of the European Union and its Member States on the update of the nationally determined contribution of the European Union and its Member States<sup>6</sup>.
- (5) Regulation (EU) 2021/1119 of the European Parliament and of the Council<sup>7</sup> has enshrined in legislation the target of economy-wide climate neutrality by 2050. That Regulation also establishes a binding Union reduction commitment of GHG emissions of at least 55 per cent below 1990 levels by 2030.
- (6) The Special Report of the Intergovernmental Panel on Climate Change (IPCC) on the impacts of global temperature increases of 1.5°C above pre-industrial levels and related global GHG emission pathways<sup>8</sup> provides a strong scientific basis for tackling climate change and illustrates the need to step up climate action. That report confirms that in order to reduce the likelihood of extreme weather events, GHG emissions need to be urgently reduced, and that climate change needs to be limited to a global temperature increase of 1.5°C.
- (7) The Union has been pursuing an ambitious policy on climate action and has put in place a regulatory framework to achieve its 2030 GHG emissions reduction target. The legislation implementing that target consists, inter alia, of Directive 2003/87/EC of the European Parliament and of the Council<sup>9</sup>, which establishes a system for GHG emission allowance trading within the Union ('EU ETS') and delivers harmonised pricing of GHG emissions at Union level for energy-intensive sectors and subsectors, Regulation (EU) 2018/842 of the European Parliament and of the Council<sup>10</sup>, which introduces national targets for reduction of GHG emissions by 2030,

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<sup>6</sup> [Council](#) of the European Union ST/14222/1/20/REV1.

<sup>7</sup> Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulation (EU) 2018/1999 ('European Climate Law') (OJ L 243, 9.7.2021, p. 1).

<sup>8</sup> IPCC, 2018: Global Warming of 1.5°C. An IPCC Special Report on the impacts of global warming of 1.5°C above pre-industrial levels and related global greenhouse gas emission pathways, in the context of strengthening the global response to the threat of climate change, sustainable development, and efforts to eradicate poverty [Masson-Delmotte, V., P. Zhai, H.-O. Pörtner, D. Roberts, J. Skea, P.R. Shukla, A. Pirani, W. Moufouma-Okia, C. Péan, R. Pidcock, S. Connors, J.B.R. Matthews, Y. Chen, X. Zhou, M.I. Gomis, E. Lonnoy, T. Maycock, M. Tignor, and T. Waterfield (eds.)].

<sup>9</sup> Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a system for greenhouse gas emission allowance trading within the Union and amending Council Directive 96/61/EC (OJ L 275, 25.10.2003, p. 32).

<sup>10</sup> Regulation (EU) 2018/842 of the European Parliament and of the Council of 30 May 2018 on binding annual greenhouse gas emission reductions by Member States from 2021 to 2030 contributing to climate action to meet commitments under the Paris Agreement and amending Regulation (EU) No 525/2013 (OJ L 156, 19.6.2018, p. 26).

and Regulation (EU) 2018/841 of the European Parliament and of the Council<sup>11</sup>, which requires Member States to compensate GHG emissions from land use with removals of emissions from the atmosphere.

- (8) As long as a significant number of the Union's international partners have policy approaches that do not result in the same level of climate ambition, there is a risk of carbon leakage. Carbon leakage occurs if, for reasons of costs related to climate policies, businesses in certain industry sectors or subsectors were to transfer production to other countries or imports from those countries would replace equivalent but less GHG emissions intensive products. That could lead to an increase in their total emissions globally, thus jeopardising the reduction of GHG emissions that is urgently needed if the world is to keep the global average temperature to well below 2 °C above pre-industrial levels.
- (9) The initiative for a carbon border adjustment mechanism ('CBAM') is a part of the 'Fit for 55 Package'. That mechanism is to serve as an essential element of the EU toolbox to meet the objective of a climate-neutral Union by 2050 in line with the Paris Agreement by addressing risks of carbon leakage resulting from the increased Union climate ambition.
- (10) Existing mechanisms to address the risk of carbon leakage in sectors or sub-sectors at risk of carbon leakage are the transitional free allocation of EU ETS allowances and financial measures to compensate for indirect emission costs incurred from GHG emission costs passed on in electricity prices respectively laid down in Articles 10a(6) and 10b of Directive 2003/87/EC. However, free allocation under the EU ETS weakens the price signal that the system provides for the installations receiving it compared to full auctioning and thus affects the incentives for investment into further abatement of emissions.
- (11) The CBAM seeks to replace these existing mechanisms by addressing the risk of carbon leakage in a different way, namely by ensuring equivalent carbon pricing for imports and domestic products. To ensure a gradual transition from the current system of free allowances to the CBAM, the CBAM should be progressively phased in while free allowances in sectors covered by the CBAM are phased out. The combined and transitional application of EU ETS allowances allocated free of charge and of the CBAM should in no case result in more favourable treatment for Union goods compared to goods imported into the customs territory of the Union.
- (12) While the objective of the CBAM is to prevent the risk of carbon leakage, this Regulation would also encourage the use of more GHG emissions-efficient technologies by producers from third countries, so that less emissions per unit of output are generated.
- (13) As an instrument to prevent carbon leakage and reduce GHG emissions the CBAM should ensure that imported products are subject to a regulatory system that applies carbon costs equivalent to the ones that otherwise would have been borne under the EU ETS. The CBAM is a climate measure which should prevent the risk of carbon leakage and support the Union's increased ambition on climate mitigation, while ensuring WTO compatibility.

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<sup>11</sup> Regulation (EU) 2018/841 of the European Parliament and of the Council of 30 May 2018 on the inclusion of greenhouse gas emissions and removals from land use, land use change and forestry in the 2030 climate and energy framework, and amending Regulation (EU) No 525/2013 and Decision No 529/2013/EU (OJ L 156, 19.6.2018, p. 1).

- (14) This Regulation should apply to goods imported into the customs territory of the Union from third countries, except where their production has already been subject to the EU ETS, whereby it applies to third countries or territories, or to a carbon pricing system fully linked with the EU ETS.
- (15) In order to exclude from the CBAM third countries or territories fully integrated into, or linked, to the EU ETS in the event of future agreements, the power to adopt acts in accordance with Article 290 of TFEU should be delegated to the Commission in respect of amending the list of countries in Annex II. Conversely, those third countries or territories should be excluded from the list in Annex II and be subject to CBAM whereby they do not effectively charge the ETS price on goods exported to the Union.
- (16) This Regulation should apply to the continental shelf and to the exclusive economic zone declared by Member States pursuant to the United Nations Convention on the Law of the Sea<sup>12</sup>, with a view to preventing the risk of carbon leakage in offshore installations.
- (17) The GHG emissions to be regulated by the CBAM should correspond to those GHG emissions covered by Annex I to the EU ETS in Directive 2003/87/EC, namely carbon dioxide ('CO<sub>2</sub>') as well as, where relevant, nitrous oxide ('N<sub>2</sub>O') and perfluorocarbons ('PFCs'). The CBAM should initially apply to direct emissions of those GHG from the production of goods up to the time of import into the customs territory of the Union, and after the end of a transition period and upon further assessment, as well to indirect emissions, mirroring the scope of the EU ETS.
- (18) The EU ETS and the CBAM have a common objective of pricing GHG emissions embedded in the same sectors and goods through the use of specific allowances or certificates. Both systems have a regulatory nature and are justified by the need to curb GHG emissions, in line with the environmental objective set out in Union.
- (19) However, while the EU ETS sets an absolute cap on the GHG emissions from the activities under its scope and allows tradability of allowances (so called 'cap and trade system'), the CBAM should not establish quantitative limits to import, so as to ensure that trade flows are not restricted. Moreover, while the EU ETS applies to installations based in the Union, the CBAM should be applied to certain goods imported into the customs territory of the Union.
- (20) The CBAM system has some specific features compared with the EU ETS, including on the calculation of the price of CBAM certificates, on the possibilities to trade certificates and on their validity over time. These are due to the need to preserve the effectiveness of the CBAM as a measure preventing carbon leakage over time and to ensure that the management of the system is not excessively burdensome in terms of obligations imposed on the operators and of resources for the administration, while at the same time preserving an equivalent level of flexibility available to operators under the EU ETS.
- (21) In order to preserve its effectiveness as a carbon leakage measure, the CBAM needs to reflect closely the EU ETS price. While on the EU ETS market the price of allowances is determined through auctions, the price of CBAM certificates should reasonably reflect the price of such auctions through averages calculated on a weekly basis. Such weekly average prices reflect closely the price fluctuations of the EU ETS and allow a reasonable margin for importers to take advantage of the price changes of the EU ETS

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<sup>12</sup> Convention on the Law of the Sea, Montego Bay, 10 December 1982.

while at the same ensuring that the system remains manageable for the administrative authorities.

- (22) Under the EU ETS, the total number of allowances issued (the ‘cap’) determines the supply of emission allowances and provides certainty about the maximum emissions of GHG. The carbon price is determined by the balance of this supply against the demand of the market. Scarcity is necessary for there to be a price incentive. As it is not possible to impose a cap on the number of CBAM certificates available to importers, if importers had the possibility to carry forward and trade CBAM certificates, this could result in situations where the price for CBAM certificates would no longer reflect the evolution of the price in the EU ETS. That would weaken the incentive for decarbonisation between domestic and imported goods, favouring carbon leakage and impairing the overarching climate objective of the CBAM. It could also result in different prices for operators of different countries. Therefore, the limits to the possibilities to trade CBAM certificates and to carry them forward is justified by the need to avoid undermining the effectiveness and climate objective of the CBAM and to ensure even handed treatment to operators from different countries. However, in order to preserve the possibility for importers to optimise their costs, this Regulation should foresee a system where authorities can re-purchase a certain amount of excess certificates from the importers. Such amount is set at a level which allows a reasonable margin for importers to leverage their costs over the period of validity of the certificates whilst preserving the overall price transmission effect, ensuring that the environmental objective of the measure is preserved.
- (23) Given that the CBAM applies to imports of goods into the customs territory of the Union rather than to installations, certain adaptations and simplifications would also need to apply in the CBAM regime. One of those simplifications should consist in a declarative system where importers should report the total verified GHG emissions embedded in goods imported in a given calendar year. A different timing compared to the compliance cycle of the EU ETS should also be applied to avoid any potential bottleneck resulting from obligations for accredited verifiers under this Regulation and the EU ETS.
- (24) In terms of sanctions, Member States should apply penalties to infringements of this Regulation and ensure that they are implemented. The amount of those penalties should be identical to penalties currently applied within the Union in case of infringement of EU ETS according to Article 16(3) and (4) of Directive [2003/87/EC](#).
- (25) While the EU ETS applies to certain production processes and activities, the CBAM should target the corresponding imports of goods. That requires clearly identifying imported goods by way of their classification in the Combined nomenclature<sup>13</sup> (‘CN’) and linking them to embedded GHG emissions.
- (26) The product coverage of the CBAM should reflect the activities covered by the EU ETS as that scheme is based on quantitative and qualitative criteria linked to the environmental objective of Directive [2003/87/EC](#) and is the most comprehensive GHG emissions regulatory system in the Union.

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<sup>13</sup> Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 256, 7.9.1987, p. 1).

- (27) Setting a product scope for the CBAM reflecting the activities covered by the EU ETS would also contribute to ensuring that imported products are granted a treatment that is not less favourable than that accorded to like products of domestic origin.
- (28) Whilst the ultimate objective of the CBAM is a broad product coverage, it would be prudent to start with a selected number of sectors with relatively homogeneous products where there is a risk of carbon leakage. Union sectors deemed at risk of carbon leakage are listed in Commission Delegated Decision 2019/708<sup>14</sup>.
- (29) The goods under this Regulation should be selected after a careful analysis of their relevance in terms of cumulated GHG emissions and risk of carbon leakage in the corresponding EU ETS sectors while limiting complexity and administrative burden. In particular, the actual selection should take into account basic materials and basic products covered by the EU ETS with the objective of ensuring that imports of energy intensive products into the Union are on equal footing with EU products in terms of EU ETS carbon pricing, and to mitigate risks of carbon leakage. Other relevant criteria to narrow the selection should be: firstly, relevance of sectors in terms of emissions, namely whether the sector is one of the largest aggregate emitters of GHG emissions; secondly, sector's exposure to significant risk of carbon leakage, as defined pursuant to Directive 2003/87/EC; thirdly, the need to balance broad coverage in terms of GHG emissions while limiting complexity and administrative effort.
- (30) The use of the first criterion allows listing the following industrial sector in terms of cumulated emissions: iron and steel, refineries, cement, organic basic chemicals, and fertilisers.
- (31) However, certain sectors listed in Commission Delegated Decision (EU) 2019/708 should not at this stage be addressed in this Regulation, due to their particular characteristics.
- (32) In particular, organic chemicals are not included in the scope of this Regulation due to technical limitations that do not allow to clearly define the embedded emissions of imported goods. For these goods the applicable benchmark under the EU ETS is a basic parameter, which does not allow for an unambiguous allocation of emissions embedded in individual imported goods. A more targeted allocation to organic chemicals will require more data and analysis.
- (33) Similar technical constraints apply to refinery products, for which it is not possible to unambiguously assign GHG emissions to individual output products. At the same time, the relevant benchmark in the EU ETS does not directly relate to specific products, such as gasoline, diesel or kerosene, but to all refinery output.
- (34) However, aluminium products should be included in the CBAM as they are highly exposed to carbon leakage. Moreover, in several industrial applications they are in direct competition with steel products because of characteristics closely resembling those of steel products. Inclusion of aluminium is also relevant as the scope of the CBAM may be extended to cover also indirect emissions in the future.
- (35) Similarly, tubes and pipe fittings should be included in the scope of the CBAM despite their low level of embedded emissions, as their exclusion would increase the

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<sup>14</sup> Commission Delegated Decision (EU) 2019/708 of 15 February 2019 supplementing Directive 2003/87/EC of the European Parliament and of the Council concerning the determination of sectors and subsectors deemed at risk of carbon leakage for the period 2021 to 2030 (OJ L 120, 8.5.2019, p. 2).

likelihood of circumventing the enclosure of steel products in the CBAM by modifying the pattern of trade towards downstream products.

- (36) Conversely, this Regulation should not apply to certain products whose production does not entail meaningful emissions like ferrous scrap (under CN code 7204), ferro-alloys (CN code 7202) and certain fertilisers (under CN code 3105 60 00).
- (37) Import of electricity should be included in the scope of this Regulation, as this sector is responsible for 30 per cent of the total GHG emissions in the Union. The enhanced Union climate ambition would increase the gap in carbon costs between electricity production in the Union and abroad. That increase combined with the progress in connecting the Union electricity grid to that of its neighbours would increase the risk of carbon leakage due to increased imports of electricity, a significant part of which is produced by coal-fired power plants.
- (38) As importers of goods covered by this Regulation should not have to fulfil their CBAM obligations under this Regulation at the time of importation, specific administrative measures should be applied to ensure that the obligations are fulfilled at a later stage. Therefore, importers should only be entitled to import CBAM goods after they have been granted an authorisation by competent authorities responsible for the application of this Regulation.
- (39) The CBAM should be based on a declarative system where an authorised declarant, who may represent more than one importer, submits annually a declaration of the embedded emissions in the goods imported to the customs territory of the Union and surrenders a number of CBAM certificates corresponding to those declared emissions.
- (40) An authorised declarant should be allowed to claim a reduction in the number of CBAM certificates to be surrendered corresponding to the carbon price already paid for those emissions in other jurisdictions.
- (41) The embedded declared emissions should be verified by a person accredited by a national accreditation body appointed in accordance with Article 4(1) of Regulation No 765/2008 of the European Parliament and of the Council<sup>15</sup> or pursuant to Commission Implementing Regulation (EU) 2018/2067<sup>16</sup>.
- (42) The system should allow operators of production installations in third countries to register in a central database and to make their verified embedded GHG emissions from production of goods available to authorised declarants. An operator should be able to choose not to have its name, address and contact details in the central database made accessible to the public.
- (43) CBAM certificates differ from EU ETS allowances for which daily auctioning is an essential feature. The need to set a clear price for CBAM certificates makes a daily publication excessively burdensome and confusing for operators, as daily prices risk becoming obsolete upon publication. Thus, the publication of CBAM prices on a weekly basis would accurately reflect the pricing trend of EU ETS allowances and pursue the same climate objective. The calculation of the price of CBAM certificates

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<sup>15</sup> Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93 (OJ L 218, 13.8.2008, p. 30).

<sup>16</sup> Commission Implementing Regulation (EU) 2018/2067 of 19 December 2018 on the verification of data and on the accreditation of verifiers pursuant to Directive 2003/87/EC of the European Parliament and of the Council (OJ L 334, 31.12.2018, p. 94).

should therefore be set on the basis of a longer timeframe (on a weekly basis) than in the timeframe established by the EU ETS (on a daily basis). The Commission should be tasked to calculate and publish that average price.

- (44) In order to give the authorised declarants flexibility in complying with their CBAM obligations and allow them to benefit from fluctuations in the price of EU ETS allowances, the CBAM certificates should be valid for a period of two years from the date of purchase. The authorised declarant should be allowed to re-sell to the national authority a portion of the certificates bought in excess. The authorised declarant should build up during the year the amount of certificates required at the time of surrendering, with thresholds set at the end of each quarter.
- (45) The physical characteristics of electricity as a product, in particular the impossibility to follow the actual flow of electrons, justifies a slightly different design for the CBAM. Default values should be used as a standard approach and it should be possible for authorised declarants to claim the calculation of their CBAM obligations based on actual emissions. Electricity trade is different from trade in other goods, notably because it is traded via interconnected electricity grids, using power exchanges and specific forms of trading. Market coupling is a densely regulated form of electricity trade which allows to aggregate bids and offers across the Union.
- (46) To avoid risks of circumvention and improve the traceability of actual CO<sub>2</sub> emissions from import of electricity and its use in goods, the calculation of actual emissions should only be permitted through a number of strict conditions. In particular, it should be necessary to demonstrate a firm nomination of the allocated interconnection capacity and that there is a direct contractual relation between the purchaser and the producer of the renewable electricity, or between the purchaser and the producer of electricity having lower than default value emissions. .
- (47) Contracting Parties to the Treaty establishing the Energy Community<sup>17</sup> or Parties to Association Agreements including Deep and Comprehensive Free Trade Areas are committed to decarbonisation processes that should eventually result in the adoption of carbon pricing mechanisms similar or equivalent to the EU ETS or in their participation in the EU ETS.
- (48) Integration of third countries into the Union electricity market is an important drive for those countries to accelerate their transition to energy systems with high shares of renewable energies. Market coupling for electricity, as set out in Commission Regulation (EU) 2015/1222<sup>18</sup>, enables third countries to better integrate electricity from renewable energies into the electricity market, to exchange such electricity in an efficient manner within a wider area, balancing supply and demand with the larger Union market, and reduce the carbon intensity of their electricity generation. Integration of third countries into the Union electricity market also contributes to the security of electricity supplies in those countries and in the neighbouring Member States.
- (49) Once third countries will be closely integrated into the Union electricity market via market coupling, technical solutions should be found to ensure the application of the CBAM to electricity exported from such countries into the customs territory of the

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<sup>17</sup> Council Decision 2006/500/EC of 29 May 2006 on the conclusion by the European Community of the Energy Community Treaty (OJ L 198, 20.7.2006, p. 15).

<sup>18</sup> Commission Regulation (EU) 2015/1222 of 24 July 2015 establishing a guideline on capacity allocation and congestion management (OJ L 197, 25.7.2015, p. 24).

Union. If technical solutions cannot be found, third countries that are market coupled should benefit from a time limited exemption from the CBAM until at the latest 2030 with regard solely to the export of electricity, provided that certain conditions are satisfied. However, those third countries should develop a roadmap and commit to implement a carbon pricing mechanism providing for an equivalent price as the EU ETS, and should commit to achieving carbon neutrality by 2050 [as well as?] to align with Union legislation in the areas of environment, climate, competition and energy. That exemption should be withdrawn at any time if there are reasons to believe that the country in question does not fulfil its commitments or it has not adopted by 2030 an ETS equivalent to the EU ETS.

- (50) A transitional period should apply during the period 2023 until 2025. A CBAM without financial adjustment should apply, with the objective to facilitate a smooth roll out of the mechanism hence reducing the risk of disruptive impacts on trade. Declarants should have to report on a quarterly basis the actual embedded emissions in goods imported during the transitional period, detailing direct and indirect emissions as well as any carbon price paid abroad.
- (51) To facilitate and ensure a proper functioning of the CBAM, the Commission should provide support to the competent authorities responsible for the application of this Regulation in carrying out their obligations.
- (52) The Commission should evaluate the application of this Regulation before the end of the transitional period and report to the European Parliament and the Council. The report of the Commission should in particular focus on possibilities to enhance climate actions towards the objective of a climate neutral Union by 2050. The Commission should, as part of that evaluation, initiate collection of information necessary to possibly extend the scope to indirect emissions, as well as to other goods and services at risk of carbon leakage, and to develop methods of calculating embedded emissions based on the environmental footprint methods<sup>19</sup>.
- (53) In light of the above, a dialogue with third countries should continue and there should be space for cooperation and solutions that could inform the specific choices that will be made on the details of the design of the measure during the implementation, in particular during the transitional period.
- (54) The Commission should strive to engage in an even handed manner and in line with the international obligations of the EU, with the third countries whose trade to the EU is affected by this Regulation, to explore possibilities for dialogue and cooperation with regard to the implementation of specific elements of the Mechanism set out this Regulation and related implementing acts. It should also explore possibilities for concluding agreements to take into account their carbon pricing mechanism.
- (55) As the CBAM aims to encourage cleaner production processes, the EU stands ready to work with low and middle-income countries towards the de-carbonisation of their manufacturing industries. Moreover, the Union should support less developed countries with the necessary technical assistance in order to facilitate their adaptation to the new obligations established by this regulation.

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<sup>19</sup> Commission Recommendation 2013/179/EU of 9 April 2013 on the use of common methods to measure and communicate the life cycle environmental performance of products and organisations (OJ L 124, 4.5.2013, p. 1).

- (56) The provisions of this Regulation are without prejudice to Regulation (EU) 2016/679 of the European Parliament and of the Council<sup>20</sup> and 2018/1725 of the European Parliament and of the Council<sup>21</sup>.
- (57) In the interest of efficiency, the provisions of Council Regulation (EC) No 515/97<sup>22</sup> should apply.
- (58) In order to remedy circumvention of the provisions of this Regulation, the power to adopt acts in accordance with Article 290 of TFEU should be delegated to the Commission in respect of supplementing the list of goods in Annex I.
- (59) It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016<sup>23</sup>. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.
- (60) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council<sup>24</sup>.
- (61) The financial interests of the Union should be protected through proportionate measures throughout the expenditure cycle, including the prevention, detection and investigation of irregularities, the recovery of funds lost, wrongly paid or incorrectly used and, where appropriate, administrative and financial penalties.

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<sup>20</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

<sup>21</sup> Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

<sup>22</sup> Council Regulation (EC) No 515/97 of 13 March 1997 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters (OJ L 82, 22.3.1997, p. 1).

<sup>23</sup> Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making (OJ L 123, 12.5.2016, p. 1).

<sup>24</sup> Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

HAVE ADOPTED THIS REGULATION:

## **Chapter I**

### **Subject matter, scope and definitions**

#### *Article 1* *Subject matter*

1. This Regulation establishes a carbon border adjustment mechanism (the ‘CBAM’) for addressing greenhouse gas emissions embedded in the goods referred to in Annex I, upon their importation into the customs territory of the Union, in order to prevent the risk of carbon leakage.
2. The CBAM complements the system established for greenhouse gas emission allowance trading within the Union by Directive 2003/87/EC by applying an equivalent set of rules to imports into the customs territory of the Union of goods referred to in Article 2.
3. The mechanism will progressively become an alternative to the mechanisms established under Directive 2003/87/EC to prevent the risk of carbon leakage, notably the allocation of allowances free of charge in accordance with Article 10a of that Directive.

#### *Article 2* *Scope*

1. This Regulation applies to goods as listed in Annex I, originating in a third country, when those goods, or processed products from those goods as resulting from the inward processing procedure referred to in Article 256 of Regulation (EU) No 952/2013 of the European Parliament and of the Council<sup>25</sup>, are imported into the customs territory of the Union.
2. This Regulation applies to the goods referred to in paragraph 1 where those goods are brought to the continental shelf or the exclusive economic zone of a Member State.
3. By way of derogation from paragraphs 1 and 2, this Regulation does not apply to goods originating in countries and territories listed in Annex II, Section A.
4. Imported goods shall be considered as originating in third countries in accordance with non-preferential rules of origin as defined in Article 59 of Regulation (EU) No 952/2013.
5. Countries and territories shall be listed in Annex II, Section A, subject to the cumulative fulfilment of the following conditions: :
  - (a) the EU ETS established pursuant to Directive 2003/87/EC applies to that country or territory or an agreement has been concluded between that third country or territory and the Union fully linking the EU ETS and the third country or territory emission trading system;

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<sup>25</sup> Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (OJ L 269, 10.10.2013, p. 1).

- (b) the price paid in the country where the goods are originating in is effectively charged on those goods without any rebate beyond those also applied in the EU ETS.
- 6. The Commission is empowered to adopt implementing acts in order to determine the conditions for applying the CBAM to goods referred to in paragraph 2. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 29(2).
- 7. If a third country or territory has an electricity market which is integrated with the Union internal market for electricity through market coupling, and it has not been possible to find a technical solution for the application of the CBAM to the importation of electricity into the Union, from that third country or territory, such the importation of electricity from the country or territory shall be exempt from the application of the CBAM, provided all of the following conditions are satisfied:
  - (a) the third country or territory has concluded an agreement with the Union, setting out an obligation to apply the Union law in the field of electricity, including the legislation on the development of renewable energy sources, as well as other rules in the field of energy, environment and competition;
  - (b) the national law in that third country or territory implements the main provisions of the Union electricity market legislation, including on the development of renewable energy sources and the coupling of electricity markets;
  - (c) the third country or territory has submitted a roadmap to the Commission, containing a timetable for the adoption of measures to implement the conditions set out in points (d) and (e);
  - (d) the third country or territory has committed to climate neutrality by 2050 and has accordingly formally formulated and communicated, where applicable, to the United Nations Framework Convention on Climate Change a mid-century, long-term low greenhouse gas emissions development strategy aligned with that objective, and has implemented that obligation in its domestic legislation;
  - (e) the third country or territory has, when implementing the roadmap pursuant to point (c), demonstrated substantial progress towards the alignment of domestic legislation with Union law in the field of climate action on the basis of that roadmap, including towards carbon pricing at an equivalent level as the Union at least insofar as the generation of electricity is concerned. The implementation of an emission trading system for electricity, with a price equivalent to the EU ETS, shall be finalised by 1 January 2030;
  - (f) the third country or territory has put in place an effective systems to prevent indirect import of electricity in the Union from other third countries not meeting the requirements set out in points (a) to (e).
- 8. A third country or territory satisfying the conditions set out in paragraph 7, points (a) to (f), shall be listed in Annex II, Section B, of this Regulation, and shall submit two reports on the fulfilment of the conditions pursuant to paragraph 7, points (a) to (f), one before 1 July 2025 and another before 1 July 2029. By 31 December 2025 and by 31 December 2029, the Commission shall assess, notably on the basis of the roadmap pursuant to paragraph 7, point (c), and the reports received from the third country or territory, whether that third country or territory continues to respect the conditions set out in paragraph 7.

9. A third country or territory listed in Annex II, Section B of this Regulation, shall be removed from that list:
  - (a) if the Commission has reasons to consider that the country or territory has not shown sufficient progress to comply with one of the requirements listed in paragraph 7, points (a) to (f), or if the country or territory has taken action incompatible with the objectives set out in the Union climate and environmental legislation;
  - (b) if the third country or territory has taken steps contrary to its decarbonisation objectives, such as providing public support for the establishment of new generation capacity that emits more than 550 g of CO<sub>2</sub> of fossil fuel origin per kWh of electricity.
10. The Commission is empowered to adopt delegated acts in accordance with Article 28 to set out requirements and procedures for countries or territories that are deleted from the list in Annex II, Section B, to ensure the application of this Regulation to their territories with regard to electricity. If in such cases market coupling remains incompatible with the application of this Regulation, the Commission may decide to exclude the third countries or territories from Union market coupling and require explicit capacity allocation at the border between the Union and the third country, so that the CBAM can apply.
11. The Commission is empowered to adopt delegated acts in accordance with Article 28 to amend the lists in Annex II, Sections A or B, depending on whether the conditions in paragraphs 5, 7 or 9 are satisfied.
12. The Union, may conclude agreements with third countries with a view to take account of carbon pricing mechanisms in these countries in the application of Article 9.

### *Article 3* *Definitions*

For the purposes of this Regulation, the following definitions apply:

- (1) ‘goods’ mean goods listed in Annex 1;
- (2) ‘greenhouse gases’ mean greenhouse gases as specified in Annex I in relation to each of the goods listed in that Annex;
- (3) ‘emissions’ mean the release of greenhouse gases into the atmosphere from the production of goods;
- (4) ‘importation’ means the release for free circulation provided for in Article 201 of Regulation (EU) No 952/2013;
- (5) ‘EU ETS’ means the system for greenhouse gas emissions allowance trading within the Union in respect of activities listed in Annex I to Directive 2003/87/EC other than aviation activities;
- (6) ‘third country’ means a country or territory outside the customs territory of the Union;
- (7) ‘continental shelf’ means the continental shelf as defined in the United Nations Convention on the Law of the Sea;

- (8) 'exclusive economic zone' means the exclusive economic zone as defined in the United Nations Convention on the Law of the Sea and which has been declared as exclusive economic zone by a Member State pursuant to that convention;
- (9) 'market coupling' means allocation of transmission capacity via an Union system which simultaneously matches orders and allocates cross-zonal capacities as set out in Commission Regulation (EU) 2015/1222;
- (10) 'explicit capacity allocation' means the allocation of cross-border transmission capacity separate from the trade of electricity;
- (11) 'competent authority' means the authority, designated by each Member State in accordance with Article 11 of this Regulation;
- (12) 'customs authorities' mean the customs administrations of Member States as defined in Article 5(1) of Regulation (EU) No 952/2013;
- (13) 'declarant' means a person lodging a customs declaration for release for free circulation in its own name or the person in whose name such a declaration is lodged in accordance with Regulation (EU) No 952/2013;
- (14) 'person' means a natural person, a legal person and any association of persons which is not a legal person but which is recognised under Union or national law as having the capacity to perform legal acts;
- (15) 'direct emissions' mean emissions from the production processes of goods over which the producer has direct control;
- (16) 'embedded emissions' mean direct emissions released during the production of goods, calculated pursuant to the methods set out in Annex III;
- (17) 'tonne of CO<sub>2</sub>e' means one tonne of carbon dioxide ('CO<sub>2</sub>') or CO<sub>2</sub>, nitrous oxide and perfluorocarbons as referred for goods in Annex I;
- (18) 'CBAM certificate' means a certificate in electronic format corresponding to one tonne of embedded emissions in goods;
- (19) 'surrender' means offsetting of CBAM certificates against the declared embedded emissions in imported goods;
- (20) 'production processes' mean the chemical and physical processes carried out to produce goods in an installation;
- (21) 'default value' means a value that is calculated or drawn from secondary data representing embedded emissions in goods;
- (22) 'actual emissions' mean the emissions calculated based on primary data from the production processes of goods;
- (23) 'carbon price' means the monetary amount paid in a third country in the form of a tax or emission allowances under a greenhouse gas emissions trading system, calculated on greenhouse gases covered by such a measure and released during the production of goods;
- (24) 'installation' means a stationary technical unit where a production process is carried out;
- (25) 'operator' means any person who operates or controls an installation in a third country;

- (26) ‘national accreditation body’ means a national accreditation body as appointed by each Member State in accordance with Article 4(1) of Regulation (EC) No 765/2008;
- (27) ‘EU ETS allowance’ means an allowance referred to in Article 3(a) of Directive 2003/87/EC in respect of activities listed in Annex I of that Directive other than aviation activities;
- (28) ‘indirect emissions’ mean emissions from the production of electricity, heating and cooling, which is consumed during the production processes of goods.

## **Chapter II**

### **Obligations and rights of authorised declarants of goods**

#### *Article 4* *Importation of goods*

Goods shall only be imported into the customs territory of the Union by a declarant that is authorised by the competent authority in accordance with Article 17 (‘authorised declarant’).

#### *Article 5* *Application for an authorisation*

1. Any declarant shall, prior to importing goods as referred to in Article 2, apply to the competent authority at the place where it is established, for an authorisation to import those goods into the customs territory of the Union.
2. By way of derogation from paragraph 1, where transmission capacity for the import of electricity is allocated via explicit capacity allocation, the person to which capacity has been allocated for import and which nominates this capacity for import shall, for the purposes of this Regulation, be regarded as an authorised declarant in the Member State where the person declares the import of electricity. Imports are to be measured per border for time periods not longer than one hour and no deduction of export or transit in the same hour is possible.
3. The application for an authorisation shall include the following information about the declarant which must be established in the Union:
  - (a) name, addresses and contact information;
  - (b) Economic Operators Registration and Identification number (‘EORI’) in accordance with Article 9 of Regulation (EU) No 952/2013;
  - (c) main economic activity carried out in the Union;
  - (d) certification by the tax authority in the Member State, where the declarant is established, that the declarant is not subject to an outstanding recovery order for national tax debts;
  - (e) declaration on honour that the declarant was not involved in any serious infringements or repeated infringements of customs legislation, taxation rules and market abuse rules during the five years preceding the year of the application, including that it has no record of serious criminal offences relating to its economic activity;

- (f) information necessary to demonstrate the declarant's financial and operational capacity to fulfil its obligations under this Regulation and, if decided by the competent authority on the basis of a risk assessment, supporting documents confirming that information, such as the profit and loss account and the balance sheet for up to the three last financial years for which the accounts were closed;
  - (g) estimated monetary value and volume of imports of goods to the customs territory of the Union by the type of goods, for the calendar year during which the application is submitted and for the following calendar year;
  - (h) names and contact information of the persons on behalf of whom the declarant is acting, if applicable.
4. The applicant may at any time withdraw its application.
  5. The authorised declarant shall inform the competent authority without delay of any changes of the information provided under paragraph 3, arising after the decision was taken, which may influence the decision taken pursuant to Article 17 or content of the authorisation in accordance with Article 17.
  6. The Commission is empowered to adopt implementing acts, concerning the standard format of the application and the delays and procedure to be followed by the competent authority when processing applications for authorisation in accordance with paragraph 1 and the rules for identification by the competent authority of the declarants for the importation of electricity. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 29(2).

*Article 6*  
*CBAM declaration*

1. By 31 May of each year, each authorised declarant shall submit a declaration ('CBAM declaration'), for the calendar year preceding the declaration, to the competent authority.
2. The CBAM declaration shall contain the following:
  - (a) the total quantity of each type of goods imported during the calendar year preceding the declaration, expressed in megawatt hours for electricity and in tonnes for other goods;
  - (b) the total embedded emissions, expressed in tonnes of CO<sub>2</sub>e emissions per megawatt-hour of electricity or for other goods per tonne of CO<sub>2</sub>e emissions per tonne of each type of goods, calculated in accordance with Article 7;
  - (c) the total number of CBAM certificates corresponding to the total embedded emissions, to be surrendered, after the reduction due on the account of the carbon price paid in a country of origin in accordance with Article 9 and the adjustment necessary of the extent to which EU ETS allowances are allocated free of charge in accordance with Article 31.
3. Where the imported goods are processed products resulting from the inward processing procedure as referred to in Article 256 of Regulation (EU) No 952/2013, the authorised declarant shall report in the CBAM declaration the total emissions embedded in the goods placed under the inward processing procedure that are listed in Annex I to this Regulation, even if the processed product is not listed in that Annex.

4. Where the imported goods are processed products resulting from the outward processing procedure as referred to in Article 259 of Regulation (EU) No 952/2013, the authorised declarant shall report in the CBAM declaration only the emissions of the processing operation undertaken outside the customs territory of the Union, provided that the processed product is listed in Annex I to this Regulation.
5. Where the imported goods are returned goods as referred to in Article 203 of Regulation (EU) No 952/2013, the authorised declarant shall report separately, in the CBAM declaration, 'zero' for the total embedded emissions corresponding to those goods.
6. The Commission is empowered to adopt implementing acts concerning the standard format and the procedure for submitting the CBAM declaration and the arrangements for surrendering CBAM certificates provided for in paragraph 2, point (c). Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 29(2).

*Article 7*  
*Calculation of embedded emissions*

1. Embedded emissions in goods shall be calculated pursuant to the methods set out in Annex III.
2. Embedded emissions in goods other than electricity shall be determined based on the actual emissions in accordance with the methods set out in Annex III, points 2 and 3. When actual emissions cannot be adequately determined, the embedded emissions shall be determined by reference to default values in accordance with the methods set out in Annex III, point 4.1.
3. Embedded emissions in imported electricity shall be determined by reference to default values in accordance with the method set out in Annex III, point 4.2, unless the authorised declarant chooses to determine the embedded emissions based on the actual emissions in accordance with that annex, point 5.
4. The authorised declarant shall keep records of the information required to calculate the embedded emissions in accordance with the requirements laid down in Annex IV. Those records shall be sufficiently detailed to enable verifiers accredited pursuant to Article 18 to verify the embedded emissions in accordance with Article 8 and Annex V and to enable the competent authority to review the CBAM declaration in accordance with Article 19(1).
5. The authorised declarant shall keep those records of information referred to in paragraph 4, including the report of the verifier, until the end of the fourth year after the year in which the CBAM declaration has been or should have been submitted.
6. The Commission is empowered to adopt implementing acts concerning detailed rules regarding the elements of the calculation methods set out in Annex III, including determining system boundaries of production processes, emission factors, installation-specific values of actual emissions and default values and their respective application to individual goods as well as laying down methods to ensure the reliability of data on the basis of which the default values shall be determined, including the level of detail and the verification of the data. Where necessary, those acts shall provide that the default values can be adapted to particular areas, regions or countries to take into account specific objective factors such as geography, natural resources, market conditions, prevailing energy sources, or industrial processes. The

implementing acts shall build upon existing legislation for the verification of emissions and activity data for installations covered by Directive 2003/87/EC, in particular Implementing Regulation (EU) No 2018/2067.

7. The implementing acts referred to in paragraph 6 shall be adopted in accordance with the examination procedure referred to in Article 29(2).

#### *Article 8*

##### *Verification of embedded emissions*

1. The authorised declarant shall ensure that the total embedded emissions declared in the CBAM declaration submitted pursuant to Article 6 are verified by a verifier accredited pursuant to Article 18, based on the verification principles set out in Annex V.
2. For embedded emissions in goods produced in registered installations in a third country in accordance with Article 10, the authorised declarant may choose to use verified information disclosed to it in accordance with Article 10(7) to fulfil the obligation referred to in paragraph 1.
3. The Commission is empowered to adopt implementing acts concerning the principles of verification referred to in paragraph 1 as regards the possibility to waive the obligation for the verifier to visit the installation where relevant goods are produced and the obligation to set thresholds for deciding whether misstatements or non-conformities are material and concerning the supporting documentation needed for the verification report.

The implementing acts referred to in the first subparagraph shall be adopted in accordance with the examination procedure referred to in Article 29(2).

#### *Article 9*

##### *Carbon price paid in a country of origin*

1. An authorised declarant may claim in its CBAM declaration a reduction in the number of CBAM certificates to be surrendered in order for the carbon price paid in the country of origin for the declared embedded emissions to be taken into account.
2. The authorised declarant shall keep records of the documentation, certified by an independent person, required to demonstrate that the declared embedded emissions were subject to a carbon price in the country of origin of the goods and keep evidence of the proof of the actual payment for that carbon price which should not have been subject to an export rebate or any other form of compensation on exportation.
3. The authorised declarant shall keep those records referred to in paragraph 2 until the end of the fourth year after the year during which the CBAM declaration has been or should have been submitted.
4. The Commission is empowered to adopt implementing acts establishing the methodology for calculating the reduction in the number of CBAM certificates to be surrendered, regarding the conversion of the carbon price paid in foreign currency into euro at yearly average exchange rate in accordance with paragraph 1, and regarding the qualifications of the independent person certifying the information as well as elements of proof of the carbon price paid and the absence of export rebates or other forms of compensation on exportation being applied as referred to in

paragraph 2. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 29(2).

#### *Article 10*

##### *Registration of operators and installations in third countries*

1. The Commission shall, upon request by an operator of an installation located in a third country, register the information on that operator and on its installation in a central database referred to in Article 14(4).
2. The request for registration referred to in paragraph 1 shall include the following information to be included in the database upon registration:
  - (a) the name, address and contact details of the operator;
  - (b) the location of each installation including complete address and coordinates expressed in longitude and latitude including 6 decimals;
  - (c) the main economic activity of the installation in the third country;
3. The Commission shall notify the operator on the registration in the database. The registration shall be valid for a period of five years from the date of its notification to the operator of the installation.
4. The operator shall inform the Commission without delay of any changes in the information referred to in paragraph 2 arising after the registration and the Commission shall update the relevant information.
5. The operator referred to in paragraph 1 shall be obliged to:
  - (a) determine the embedded emissions calculated in accordance with the methods set out in Annex III, by type of goods produced at the installation referred to in paragraph 1;
  - (b) ensure that the embedded emissions referred to in point (a) are verified in accordance with the verification principles set out in Annex V by a verifier accredited pursuant to Article 18;
  - (c) keep a copy of the verifier's report as well as records of the information required to calculate the embedded emissions in goods as laid down in Annex IV for a period of four years after the verification has been performed.
6. The records referred to in paragraph 5, point (c), shall be sufficiently detailed to enable the verification in accordance with paragraph 5, point (b), and to enable any competent authority to review, in accordance with Article 19(1), the CBAM declaration made by an authorised declarant to whom the relevant information was disclosed in accordance with paragraph 8.
7. An operator may disclose the information on the verification of embedded emissions referred to in paragraph 5 to an authorised declarant. The authorised declarant shall be entitled to avail itself of that disclosed information to fulfil the obligation referred to in Article 8.
8. The operator may, at any time, ask to be deregistered from the database.

## **Chapter III**

### **Competent authorities**

#### *Article 11*

##### *Competent authorities*

1. Each Member State shall designate the competent authority to carry out the obligations under this Regulation and inform the Commission thereof.

The Commission shall make available to the Member States a list of all competent authorities and publish this information in the *Official Journal of the European Union*.

2. Member States shall require that competent authorities exchange any information that is essential or relevant to the exercise of their functions and duties.

#### *Article 12*

##### *Commission*

The Commission shall assist the competent authorities in carrying out their obligations under this Regulation and coordinate their activities.

#### *Article 13*

##### *Professional secrecy and disclosure of information*

All information acquired by the competent authority in the course of performing its duty which is by its nature confidential or which is provided on a confidential basis shall be covered by an obligation of professional secrecy. Such information shall not be disclosed by the competent authority without the express permission of the person or authority that provided it. It may be shared with customs authorities, the Commission and the European Public Prosecutors Office and shall be treated in accordance with Council Regulation (EC) No 515/97.

#### *Article 14*

##### *National registries and central database*

1. The competent authority of each Member State shall establish a national registry of declarants authorised in that Member State in the form of a standardised electronic database containing the data regarding the CBAM certificates of those declarants, and to provide for confidentiality in accordance with the conditions set out in Article 13.
2. The database referred to in paragraph 1 shall contain accounts with information about each authorised declarant, in particular:
  - (a) the name and contact details of the authorised declarant;
  - (b) the EORI number of the authorised declarant;
  - (c) the CBAM account number;
  - (d) the number, the price of sale, the date of purchase, the date of surrender, or the date of re-purchase, or that of the cancellation by the competent authority, of CBAM certificates for each authorised declarant.

3. The information in the database referred to in paragraph 2 shall be confidential.
4. The Commission shall establish a central database accessible to the public containing the names, addresses and contact details of the operators and the location of installations in third countries in accordance with Article 10(2). An operator may choose not to have its name, address and contact details accessible to the public.

*Article 15*  
*Central administrator*

1. The Commission shall act as central administrator to maintain an independent transaction log recording the purchase of CBAM certificates, their holding, surrender, re-purchase and cancellation and ensure coordination of national registries.
2. The central administrator shall carry out risk-based controls on transactions recorded in national registries through an independent transaction log to ensure that there are no irregularities in the purchase, holding, surrender, re-purchase and cancellation of CBAM certificates.
3. If irregularities are identified as a result of the controls carried out under paragraph 2, the Commission shall inform the Member State or Member States concerned for further investigation in order to correct the identified irregularities.

*Article 16*  
*Accounts in the national registries*

1. The competent authority shall assign to each authorised declarant a unique CBAM account number.
2. Each authorised declarant shall be granted access to its account in the registry.
3. The competent authority shall set up the account as soon as the authorisation referred to in Article 17(1) is granted and notify the authorised declarant thereof.
4. If the authorised declarant has ceased its economic activity or its authorisation was revoked, the competent authority shall close the account of that declarant.

*Article 17*  
*Authorisation of declarants*

1. The competent authority shall authorise a declarant who submits an application for authorisation in accordance with Article 5(1), if the following conditions are fulfilled:
  - (a) the declarant has not been involved in a serious infringement or repeated infringements of customs legislation, taxation rules and market abuse rules and has no record of serious criminal offences relating to its economic activity during the five years preceding the application;
  - (b) the declarant demonstrates its financial and operational capacity to fulfil its obligations under this Regulation.
2. Where the competent authority finds that the conditions listed in paragraph 1 are not fulfilled, or where the applicant has failed to provide the information listed in Article 5(3), the authorisation of the declarant shall be refused.

3. If the competent authority refuses to authorise a declarant, the declarant requesting the authorisation may, prior to an appeal, object to the relevant authority under national law, who shall either instruct the national administrator to open the account or uphold the refusal in a reasoned decision, subject to requirements of national law that pursue a legitimate objective compatible with this Regulation and are proportionate.
4. A decision of the competent authority authorising a declarant shall contain the following information
  - (a) the name and the address of the authorised declarant;
  - (b) the EORI number of the authorised declarant;
  - (c) the CBAM account number.
5. An authorised declarant may, at any time, ask for its authorisation to be revoked.
6. The competent authority shall require the provision of a guarantee in order to authorise a declarant in accordance with paragraph 1, if the declarant was not established throughout the two financial years that precede the year when the application in accordance with Article 5(1) was submitted.
 

The competent authority shall fix the amount of such guarantee at the maximum amount, as estimated by the competent authority, of the value of the CBAM certificates that the authorised declarant have to surrender, in accordance with Article 22.
7. The guarantee shall be provided as a bank guarantee, payable at first demand, by a financial institution operating in the Union or by another form of guarantee which provides equivalent assurance. Where the competent authority establishes that the guarantee provided does not ensure, or is no longer certain or sufficient to ensure the amount of CBAM obligations, it shall require the authorised declarant either to provide an additional guarantee or to replace the initial guarantee with a new guarantee, according to its choice.
8. The competent authority shall release the guarantee immediately after 31 May of the second year in which the authorised declarant has surrendered CBAM certificates in accordance with Article 22.
9. The competent authority shall revoke the authorisation for a declarant who no longer meets the conditions laid down in paragraph 1, or who fails to cooperate with that authority.

*Article 18*  
*Accreditation of verifiers*

1. Any person accredited pursuant to Implementing Regulation (EU) No 2018/2067 shall be regarded as an accredited verifier under this Regulation.
2. In addition to paragraph 1, a national accreditation body may on request accredit a person as a verifier under this Regulation after checking the documentation attesting its capacity to apply the verification principles referred to Annex V to perform the obligations of control of the embedded emissions established in Articles 8, 10 and 38.
3. The Commission is empowered to adopt delegated acts in accordance with Article 28 for the accreditation referred to in paragraph 2, specifying conditions for the control

and oversight of accredited verifiers, for the withdrawal of accreditation and for mutual recognition and peer evaluation of the accreditation bodies.

#### *Article 19*

##### *Review of CBAM declarations*

1. The competent authority may review the CBAM declaration within the period ending with the fourth year after the year in which the declaration should have been submitted. The review may consist in verifying the information provided in the CBAM declaration on the basis of the information communicated by the customs authorities in accordance with Article 25(2) and any other relevant evidence, and on the basis of any audit deemed necessary, including at the premises of the authorised declarant.
2. Where a CBAM declaration in accordance with Article 6 has not been submitted, the competent authority of the Member State of establishment of the authorised declarant shall assess the CBAM obligations of that declarant on the basis of the information at its disposal and calculate the total number of CBAM certificates due at the latest by the 31 December of the fourth year following that when the CBAM declaration should have been submitted.
3. Where the competent authority has established that the declared number of CBAM certificates to be surrendered is incorrect, or that no CBAM declaration has been submitted pursuant to paragraph 2, it shall adjust the number of CBAM certificates due by the authorised declarant. The competent authority shall notify the authorised declarant of the adjustment and request that the authorised declarant shall surrender the additional CBAM certificates within one month.
4. The recipient of the notification referred to in paragraph 3 may lodge an appeal of the notification. The recipient of the notification shall be provided with information regarding the procedure to be followed in the event of an appeal.
5. Where CBAM certificates have been surrendered in excess of the number due, the competent authority shall, without delay, reimburse the authorised declarant the value of CBAM certificates surrendered in excess, calculated at the average price paid for CBAM certificates by the authorised declarant during the year of import.

## **Chapter IV**

### **CBAM certificates**

#### *Article 20*

##### *Sale of CBAM certificates*

1. The competent authority of each Member State shall sell CBAM certificates to declarants authorised in that Member State at the price calculated in accordance with Article 21.
2. The competent authority shall ensure that each CBAM certificate is assigned a unique unit identification code upon its creation and shall register the unique unit identification number, the price and date of sale of the certificate in the national registry in the account of the authorised declarant purchasing it.

*Article 21*  
*Price of CBAM certificates*

1. The Commission shall calculate the price of CBAM certificates as the average price of the closing prices of EU ETS allowances on the common auction platform in accordance with the procedures laid down in Commission Regulation (EU) No 1031/2010<sup>26</sup> for each calendar week.

For those calendar weeks in which there are no auctions scheduled on the common auction platform, the price of CBAM certificates shall be the average price of the closing prices of EU ETS allowances of the last week in which auctions on the common auction platform took place.

2. This average price shall be published by the Commission on its website on the first working day of the following calendar week and shall be applied from the following working day to the first working day of the following calendar week.
3. The Commission is empowered to adopt implementing acts to further define the methodology to calculate the average price of CBAM certificates and practical arrangements for the publication of the price. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 29(2).

*Article 22*  
*Surrender of CBAM certificates*

1. By 31 May of each year, the authorised declarant shall surrender a number of CBAM certificates to the competent authority that corresponds to the embedded emissions declared in accordance with Article 6(2)(c) and verified in accordance with Article 8 for the calendar year preceding the surrender
2. For the purposes of paragraph 1, the authorised declarant shall ensure that the required number of CBAM certificates is available on its account in the national registry. In addition, the authorised declarant shall ensure that the number of CBAM certificates on its account in the national registry at the end of each quarter corresponds to at least 80 per cent of the embedded emissions, determined by reference to default values in accordance with the methods set out in Annex III, in all goods it has imported since the beginning of the calendar year.
3. Where the competent authority finds that the number of CBAM certificates in the account of an authorised declarant is not in compliance with the obligations pursuant to paragraph 2, second sentence, that authority shall notify the adjustment and request that the authorised declarant surrenders the additional CBAM certificates within one month.
4. The recipient of the notification referred to in paragraph 3 may lodge an appeal of the notification. The recipient of the notification shall be provided with information regarding the procedure to be followed in the event of an appeal.

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<sup>26</sup> Commission Regulation (EU) No 1031/2010 of 12 November 2010 on the timing, administration and other aspects of auctioning of greenhouse gas emission allowances pursuant to Directive 2003/87/EC (OJ L 302, 18.11.2010, p. 1).

*Article 23*  
*Re-purchase of CBAM certificates*

1. The competent authority of each Member State shall, on request by a declarant authorised in that Member State, re-purchase the excess of CBAM certificates remaining on the account of the declarant in the national registry after the certificates have been surrendered in accordance with Article 22. The request to re-purchase shall be submitted by 30 June of each year when CBAM certificates were surrendered.
2. The number of certificates subject to re-purchase as referred to in paragraph 1 shall be limited to one third of the total CBAM certificates purchased by the authorised declarant during the previous calendar year.
3. The re-purchase price for each CBAM certificate shall be the price paid by the authorised declarant for that certificate at the time of purchase.

*Article 24*  
*Cancellation of CBAM certificates*

By 30 June of each year, the competent authority of each Member State shall cancel any CBAM certificates that were purchased during the year before the previous calendar year and that remained in the accounts in the national registry of the declarants authorised in that Member State.

## **Chapter V**

### **Border administration of goods**

*Article 25*  
*Procedures at the border when goods are imported*

1. The customs authorities shall not allow the importation of goods unless the declarant is authorised by a competent authority at the latest at the release for free circulation of the goods.
2. The customs authorities shall periodically communicate information on the goods declared for importation, which shall include the EORI number and the CBAM account number of the declarant, the 8-digit CN code of the goods, the quantity, the country of origin, the date of declaration and the customs procedure, to the competent authority of the Member State where the declarant has been authorised.
3. The custom authorities shall carry out controls on the goods in accordance with Article 46 of Regulation (EU) No 952/2013, including the 8-digit CN code, the quantity and the country of origin of the imported goods. The Commission shall include the risks relating to CBAM in the design of the common risk criteria and standards pursuant to Article 50 of Regulation (EU) No 952/2013.
4. The customs authorities may communicate in accordance with Article 12(1) of Regulation (EU) No 952/2013, confidential information acquired by the customs authorities in the course of performing their duty or provided on a confidential basis, to the competent authority of the Member State where the declarant has been authorised. The competent authorities of the Member States shall treat and exchange this information in accordance with Council Regulation (EC) No 515/97.

5. The Commission is empowered to adopt implementing acts defining the information, the timing and the means for communicating the information pursuant to paragraph 2. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 29(2).

## **Chapter VI**

### **Enforcement**

#### *Article 26* *Penalties*

1. An authorised declarant who fails to surrender, by 31 May of each year, a number of CBAM certificates corresponding to the emissions embedded in goods imported during the previous year shall be liable to a penalty identical to the excess emissions penalty set out in Article 16(3) of Directive 2003/87/EC, increased pursuant to Article 16(4) of that Directive, in the year of importation of the goods, for each CBAM certificate that the authorised declarant should have surrendered.
2. Any person other than an authorised declarant, introducing goods into the customs territory of the Union without surrendering CBAM certificates according to this Regulation shall be liable to the penalty referred to in paragraph 1 in the year of introduction of the goods, for each CBAM certificate that the person should have surrendered.
3. Payment of the penalty shall in no case release the authorised declarant from the obligation to surrender the outstanding number of CBAM certificates in a given year to the competent authority of the Member State where the declarant has been authorised.
4. If the competent authority determines that an authorised declarant has failed to comply with the obligation to surrender CBAM certificates as specified in paragraph 1, or that a person has introduced goods into the customs territory of the Union as specified in paragraph 2, the competent authority shall impose the penalty and notify the authorised declarant or, in the situation under paragraph 2, the person:
  - (a) that the competent authority has concluded that the authorised declarant or the person fails to comply with the obligation of surrendering CBAM certificates for a given year;
  - (b) of the reasons for its conclusion;
  - (c) of the amount of the penalty imposed on the authorised declarant or on the person;
  - (d) of the date from which the penalty is due;
  - (e) of the action the competent authority considers the authorised declarant or the person should take to comply with its obligation under point (a) depending on the facts and circumstances of the case; and
  - (f) of the right of the authorised declarant or of the person to appeal under national rules.
5. Member States may apply administrative or criminal sanctions for failure to comply with the CBAM legislation in accordance with their national rules in addition to

penalties referred to in paragraph 2. Such sanctions shall be effective, proportionate and dissuasive.

#### *Article 27* *Circumvention*

1. The Commission shall take action, based on relevant and objective data, in accordance with this Article, to address practices of circumvention of this Regulation.
2. Practices of circumvention include situations where a change in the pattern of trade in relation to goods included in the scope of this Regulation has insufficient due cause or economic justification other than avoiding obligations as laid down in this Regulation and consist in replacing those goods with slightly modified products, which are not included in the list of goods in Annex I but belong to a sector included in the scope of this Regulation.
3. A Member State or any party affected or benefitted by the situations described in paragraph 2 may notify the Commission if it is confronted, over a two-month period compared with the same period in the preceding year with a significant decrease in the volume of imported goods included in the scope of this Regulation and an increase of volume of imports of slightly modified products, which are not included in the list of goods in Annex I. The Commission shall continually monitor any significant change of pattern of trade of goods and slightly modified products at Union level.
4. The notification referred to in paragraph 3 shall state the reasons on which it is based and shall include relevant data and statistics regarding the goods and products referred to in paragraph 2.
5. Where the Commission, taking into account the relevant data, reports and statistics, including when provided by the customs authorities of Member States, has sufficient reasons to believe that the circumstances referred to in paragraph 3 are occurring in one or more Member States, it is empowered to adopt delegated acts in accordance with Article 28 to supplement the scope of this Regulation in order to include slightly modified products for anti-circumvention purposes.

## **Chapter VII**

### **Exercise of delegation and committee procedure**

#### *Article 28* *Exercise of the delegation*

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in Articles 2(10), 2(11), 18(3) and 27(5) shall be conferred on the Commission for an indeterminate period of time.
3. The delegation of power referred to in Articles 2(10), 2(11), 18(3) and 27(5) may be revoked at any time by the European Parliament or by the Council.

4. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated act already in force.
5. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Inter-institutional Agreement on Better Law-Making of 13 April 2016.
6. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
7. A delegated act adopted pursuant to Articles 2(10), 2(11), 18(3) and 27(5) shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of two months of notification of that act to the European Parliament and to the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

#### *Article 29*

##### *Exercise of implementing powers by the Commission*

1. The Commission shall be assisted by the CBAM Committee. The committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

## **Chapter VIII** **Reporting and review**

#### *Article 30*

##### *Review and reporting by the Commission*

1. The Commission shall collect the information necessary with a view to extending the scope of this Regulation to indirect emissions and goods other than those listed in Annex I, and develop methods of calculating embedded emissions based on environmental footprint methods.
2. Before the end of the transitional period, the Commission shall present a report to the European Parliament and the Council on the application of this Regulation. The report shall contain, in particular, the assessment of the possibilities to further extend the scope of embedded emissions to indirect emissions and to other goods at risk of carbon leakage than those already covered by this Regulation, as well as an assessment of the governance system. It shall also contain the assessment of the possibility to further extend the scope to embedded emissions of transportation services as well as to goods further down the value chain and services that may be subject to the risk of carbon leakage in the future.
3. The report by the Commission shall, if appropriate, be accompanied by a legislative proposal.

## **Chapter IX**

### **Coordination with free allocation of allowances under the EU ETS**

#### *Article 31*

##### *Free allocation of allowances under the EU ETS and obligation to surrender CBAM certificates*

1. The CBAM certificates to be surrendered in accordance with Article 22 shall be adjusted to reflect the extent to which EU ETS allowances are allocated free of charge in accordance with Article 10a of Directive 2003/87/EC to installations producing, within the Union, the goods listed in Annex I.
2. The Commission is empowered to adopt implementing acts laying down a calculation methodology for the reduction referred to in paragraph 1. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 29(2).

## **Chapter X**

### **Transitional provisions**

#### *Article 32*

##### *Scope*

During the transitional period of this Regulation, the CBAM mechanism shall apply as a reporting obligation as set out in Articles 33 to 35.

#### *Article 33*

##### *Importation of goods*

1. A declarant importing goods shall be obliged to fulfil a reporting obligation as set out in Article 35.
2. The customs authorities shall, at the moment of the release of those goods for free circulation at the latest, inform the declarant of the obligation referred to in paragraph 1.
3. The customs authorities shall, by means of the surveillance mechanism established pursuant to Article 56(5) of Regulation (EU) No 952/2013, communicate to the competent authority of the Member State of importation information on imported goods, including processed products resulting from the outward processing procedure. Such information shall include the EORI number of the declarant, the 8-digit CN code, the quantity, the country of origin and the declarant of the goods, the date of declaration and the customs procedure.

#### *Article 34*

##### *Reporting obligation for certain customs procedures*

1. For processed goods resulting from the inward processing procedure as referred to in Article 256 of Regulation (EU) No 952/2013, the reporting obligation referred to in Article 33(1) shall include the goods placed under the inward processing procedure

that are listed in Annex I to this Regulation, even if the processed product is not listed in that Annex.

2. The reporting obligation shall not apply to import of:
  - (a) processed products resulting from the outward processing procedure as referred to in Article 259 of Regulation (EU) No 952/2013;
  - (b) imported goods qualifying as returned goods in accordance with Article 203 of Regulation (EU) No 952/2013.

#### *Article 35*

#### *Reporting obligation*

1. Each declarant shall, for each quarter of a calendar year, submit a report ('CBAM report') containing information on the goods imported during that quarter, to the competent authority of the Member State of importation or, if goods have been imported to more than one Member State, to the competent authority of the Member State at the declarant's choice, no later than one month after the end of each quarter.
2. The CBAM report shall include the following information:
  - (a) the total quantity of each type of goods, expressed in megawatt hours for electricity and in tonnes for other goods, specified per installation producing the goods in the country of origin;
  - (b) the actual total embedded emissions, expressed in tonnes of CO<sub>2</sub>e emissions per megawatt-hour of electricity or for other goods in tonne of CO<sub>2</sub>e emissions per tonne of each type of goods, calculated in accordance with the method set out in Annex III;
  - (c) the actual total embedded indirect emissions, expressed in tonnes of CO<sub>2</sub>e emissions per tonne of each type of other goods than electricity, calculated in accordance with a method set out in an implementing act referred to in paragraph 6;
  - (d) the carbon price due in a country of origin for the embedded emissions in the imported goods, which is not subject to an export rebate or other form of compensation on exportation.
3. The competent authority shall communicate the information referred to in paragraph 2 to the Commission at the latest two months after the end of the quarter covered by a report.
4. The competent authority shall impose a proportionate and dissuasive penalty on declarants who fail to submit a CBAM report.
5. If the competent authority determines that a declarant has failed to comply with the obligation to submit a CBAM report as specified in paragraph 1, the competent authority shall impose the penalty and notify the declarant:
  - (a) that the competent authority has concluded that the declarant fails to comply with the obligation of submitting a report for a given quarter;
  - (b) of the reasons for its conclusion;
  - (c) of the amount of the penalty imposed on the declarant;
  - (d) of the date from which the penalty is due;

- (e) of the action the competent authority considers the declarant should take to comply with its obligation under point (a) depending on the facts and circumstances of the case; and
  - (f) of the right of the declarant or to appeal under national rules.
6. The Commission is empowered to adopt implementing acts concerning the information to be reported, the procedures for communicating the information referred to in paragraph 3 and the conversion of the carbon price paid in foreign currency into euro at yearly average exchange rate. The Commission is also empowered to adopt implementing acts to further define the necessary elements of the calculation method set out in Annex III, including determining system boundaries of production processes, emission factors, installation-specific values of actual emissions and their respective application to individual goods as well as laying down methods to ensure the reliability of data, including the level of detail and the verification of this data. The Commission is further empowered to adopt implementing acts to develop a calculation method for indirect emissions embedded in imported goods.
7. The implementing acts referred to in the first subparagraph shall be adopted in accordance with the examination procedure referred to in Article 29(2).

## **Chapter XI**

### **Final provisions**

#### *Article 36*

#### *Entry into force*

1. This Regulation shall enter into force on the [twentieth] day following that of its publication in the *Official Journal of the European Union*.
2. It shall apply from 1 January 2023.
3. By way of derogation from paragraph 2:
  - (a) Articles 32 to 34 shall apply until 31 December 2025.
  - (b) Article 35 shall apply until 28 February 2026.
  - (c) Articles 5 and 17 shall apply from 1 September 2025.
  - (d) Articles 4, 6, 7, 8, 9, 14, 15, 16, 19, 20, 21, 22, 23, 24, 25, 26, 27 and 31 shall apply from 1 January 2026.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*

## **LEGISLATIVE FINANCIAL STATEMENT**

### **1. FRAMEWORK OF THE PROPOSAL/INITIATIVE**

- 1.1. Title of the proposal/initiative
- 1.2. Policy area(s) concerned in the ABM/ABB structure
- 1.3. Nature of the proposal/initiative
- 1.4. Objective(s)
- 1.5. Grounds for the proposal/initiative
- 1.6. Duration and financial impact
- 1.7. Management mode(s) planned

### **2. MANAGEMENT MEASURES**

- 2.1. Monitoring and reporting rules
- 2.2. Management and control system
- 2.3. Measures to prevent fraud and irregularities

### **3. ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL/INITIATIVE**

- 3.1. Heading(s) of the multiannual financial framework and expenditure budget line(s) affected
- 3.2. Estimated impact on expenditure
  - 3.2.1. *Summary of estimated impact on expenditure*
  - 3.2.2. *Estimated impact on operational appropriations*
  - 3.2.3. *Estimated impact on appropriations of an administrative nature*
  - 3.2.4. *Compatibility with the current multiannual financial framework*
  - 3.2.5. *Third-party contributions*
- 3.3. Estimated impact on revenue

## LEGISLATIVE FINANCIAL STATEMENT

### 1. FRAMEWORK OF THE PROPOSAL/INITIATIVE

#### 1.1. Title of the proposal/initiative

Carbon Border Adjustment Mechanism.

#### 1.2. Policy area(s) concerned

Climate policy.

#### 1.3. The proposal/initiative relates to:

a new action

a new action following a pilot project/preparatory action<sup>27</sup>

the extension of an existing action

a merger or redirection of one or more actions towards another/a new action

#### 1.4. Objective(s)

##### 1.4.1. General objective(s)

In light of the EU's increased climate ambitions, the introduction of a CBAM has the overarching objective of addressing climate change by reducing GHG emissions in the EU and globally.

##### 1.4.2. Specific objective(s)

###### Specific objective

The overarching objective of addressing climate change is further articulated in a number of specific objectives, namely:

(i) Addressing the risk of carbon leakage under increased EU ambition.

(ii) Contributing to the provision of a stable and secure policy framework for investments in low or zero carbon technologies.

(iii) Ensuring that domestic production and imports are subject to similar level of carbon pricing.

(iv) Encouraging producers in third countries who export to the EU to adopt low carbon technologies.

(v) Ensuring that the measure is effective, minimising the risk of being circumvented, thus providing environmental integrity.

(vi) Ensuring a proportionate administrative burden for businesses and public authorities in the application of the measure.

##### 1.4.3. Expected result(s) and impact

*Specify the effects which the proposal/initiative should have on the beneficiaries/groups targeted.*

<sup>27</sup> As referred to in Article 58(2)(a) or (b) of the Financial Regulation.

The introduction of a CBAM envisages a reduction in greenhouse gas emissions both in the EU-27 and in the rest of the world in the sectors covered by CBAM. The CBAM is also expected to reduce the risks of carbon leakage, therefore gradually replacing the free allocation of allowances under the EU ETS.

As regards economic impacts, the modelling indicates that the introduction of a CBAM and other measures needed to reach the EU's increased climate ambitions could lead to a GDP contraction for the EU 27 by 0.22 % to 0.23 % in 2030. Impact on the investment side is modest. On the consumption side CBAM appears to have a slightly stronger negative effect relative to the scenario of increased climate ambition and no CBAM.

By effectively reducing carbon leakage, the introduction of a CBAM leads to a reduction in imports in the EU 27. Overall, the social impacts of CBAM are limited.

Administrative impacts on national authorities and businesses are expected. Altogether, compliance costs for businesses and authorities, while significant, are expected to be proportionate, and manageable in light of the environmental benefits of the measure.

While revenue generation is not an objective of CBAM is expected to generate additional revenue, which for 2030 is estimated at above EUR 2.1 billion.

#### 1.4.4. Indicators of performance

*Specify the indicators for monitoring progress and achievements.*

Objectives	Indicators	Measurement tools/data sources
<b>Reduce emissions</b> <b>GHG</b>	<ul style="list-style-type: none"> <li>- Level of emissions in the EU</li> <li>- Level of emissions globally</li> </ul>	<ul style="list-style-type: none"> <li>- Emission statistics</li> <li>- Sector statistics</li> </ul>
<b>Incentivise cleaner production processes in third countries</b>	<ul style="list-style-type: none"> <li>- Evolution of actual emissions for CBAM sectors in third countries</li> </ul>	<ul style="list-style-type: none"> <li>- Level of emissions demonstrated by third country producers subject to CBAM</li> </ul>
<b>Prevent carbon leakage</b>	<ul style="list-style-type: none"> <li>- As indicators of GHG emissions above</li> <li>- Level of emissions in the EU relative to level of emissions globally</li> <li>- Trade flows in CBAM sectors</li> <li>- Trade flows downstream</li> </ul>	<ul style="list-style-type: none"> <li>- Emission statistics</li> <li>- Trade statistics</li> <li>- Sector statistics</li> </ul>
<b>Ensure consistency with EU policies</b>	<ul style="list-style-type: none"> <li>- Import certificates price in line with the price in the EU ETS</li> </ul>	<ul style="list-style-type: none"> <li>- Statistics from EU ETS and CBAM authorities</li> </ul>
<b>Limit administrative burden</b>	<ul style="list-style-type: none"> <li>- Timely treatment of CBAM enforcement (e.g. possible reconciliation procedure)</li> <li>- Frequency of updating EU ETS pricing</li> <li>- Checks of actual level of</li> </ul>	<ul style="list-style-type: none"> <li>- Feedback from industry and public authorities responsible for CBAM implementation</li> </ul>

	emissions by exporter	- Number of staff necessary for CBAM administration
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## 1.5. Grounds for the proposal/initiative

### 1.5.1. Requirement(s) to be met in the short or long term including a detailed timeline for roll-out of the implementation of the initiative

The CBAM is expected to be introduced in 2023. A simplified system of the CBAM scheme will be in place for the first years after the entry into force. Specifically, a transitional period will apply to facilitate the smooth roll out of the CBAM and allow traders and importers to adjust. Simplifications include the procedures applied at the border when goods are imported and the use of default values to determination the CBAM obligation.

### 1.5.2. Added value of Union involvement (it may result from different factors, e.g. coordination gains, legal certainty, greater effectiveness or complementarities). For the purposes of this point 'added value of Union involvement' is the value resulting from Union intervention which is additional to the value that would have been otherwise created by Member States alone.

**Reasons for action at European level (ex-ante)** Reducing GHG emissions is fundamentally a trans-boundary issue that requires effective action at the largest possible scale. The EU as a supranational organisation is well-placed to establish effective climate policy in the EU, like it has done with the EU ETS.

There exists already a harmonised carbon price at EU level. This consists of the price resulting from the EU ETS for the sectors covered by the system. These sectors are energy-intensive and subject to international competition. In order to ensure a well-functioning single market when the EU increases its climate ambition, it is essential that a level playing field is created for the relevant sectors in the internal market. The single effective way to do this is by taking action at the level of the EU. Any initiative needs to be implemented in a way that provides importers, regardless of country of origin and port of entry or destination within the EU, with uniform conditions and incentives for GHG emission reductions that are equivalent to those of domestic producers.

The only meaningful way to ensure equivalence between the carbon pricing policy applied in the EU's internal market and the carbon pricing policy applied on imports is to take action at the level of the Union.

**Expected generated Union added value (ex-post):** In parallel to the EU ETS, reduction of GHG emissions and protection against the risk of carbon leakage in the EU single market can be established most adequately at the EU level. Additionally, the need for minimal administrative costs is best achieved by establishing consistent rules for the entire single market, further underlining the added value of an intervention at the EU level.

The public consultation has confirmed the added value of taking action on the CBAM at the EU level. In particular, stakeholders agree that an EU CBAM is needed due to existing differences of ambition between the EU and the rest of the world and in order to support the global climate efforts. In addition, in view of the EU's position in international trade, if it introduces a CBAM the environmental effect on

international climate ambitions will be most effective as a potential example to follow.

Thus, the objective of reducing emissions and climate neutrality requires – without equally ambitious global policies – action by the European Union.

*1.5.3. Lessons learned from similar experiences in the past*

The CBAM is a new mechanism. The preferred option in the Impact Assessment draws from the EU Emissions Trading System and aims at replicating some of its features.

*1.5.4. Compatibility with the Multiannual Financial Framework and possible synergies with other appropriate instruments*

In the interinstitutional agreement of 16 December 2020, signed in the context of the negotiations, the European Parliament, the Council and the Commission agreed that "the institutions will work towards introducing sufficient new own resources with a view to covering an amount corresponding to the expected expenditure related to the repayment" of NextGenerationEU<sup>28</sup>. As part of the mandate received, the Commission was invited to put forward a proposal for a CBAM in the first semester of 2021, with a view to its introduction at the latest by 1 January 2023.

*1.5.5. Assessment of the different available financing options, including scope for redeployment*

Implementation costs for CBAM will be financed by the EU budget.

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<sup>28</sup> Interinstitutional Agreement of 16 December 2020 between the European Parliament, the Council of the European Union and the European Commission on budgetary discipline, on cooperation in budgetary matters and on sound financial management, as well as on new own resources, including a roadmap towards the introduction of new own resources (OJ L 433I , 22.12.2020, p. 28).

## 1.6. Duration and financial impact of the proposal/initiative

### limited duration

- in effect from [DD/MM]YYYY to [DD/MM]YYYY
- Financial impact from YYYY to YYYY for commitment appropriations and from YYYY to YYYY for payment appropriations.

### × unlimited duration

- Implementation with a start-up period from 1 January 2023
- followed by full-scale operation.

## 1.7. Management mode(s) planned<sup>29</sup>

### ✓ Direct management by the Commission

- by its departments, including by its staff in the Union delegations;
- by the executive agencies.

### Shared management with the Member States

### Indirect management by entrusting budget implementation tasks to:

- third countries or the bodies they have designated;
- international organisations and their agencies (to be specified);
- the EIB and the European Investment Fund;
- bodies referred to in Articles 70 and 71 of the Financial Regulation;
- public law bodies;
- bodies governed by private law with a public service mission to the extent that they provide adequate financial guarantees;
- bodies governed by the private law of a Member State that are entrusted with the implementation of a public-private partnership and that provide adequate financial guarantees;
- persons entrusted with the implementation of specific actions in the CFSP pursuant to Title V of the TEU, and identified in the relevant basic act.
- *If more than one management mode is indicated, please provide details in the 'Comments' section.*

Comments

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<sup>29</sup> Details of management modes and references to the Financial Regulation may be found on the BudgWeb site:  
<https://myintracom.ec.europa.eu/budgweb/EN/man/budgmanag/Pages/budgmanag.aspx>

## 2. MANAGEMENT MEASURES

### 2.1. Monitoring and reporting rules

*Specify frequency and conditions.*

The Commission will ensure that arrangements are in place to monitor and evaluate the functioning of the CBAM and evaluate it against the main policy objectives. Given that CBAM is one of the policy proposals under the 'Fit for 55 Package', monitoring and evaluation could be carried out in alignment with the other policies of the package.

The administration system should be evaluated after the first year of operation to identify any issues also in terms of governance and potential improvements. In addition, when more data is available, the Commission will also review the scope of the CBAM to examine the possibility of extending it to cover emissions of additional sectors and further down the value chain. For this, it is necessary to monitor the effect of CBAM on the shortlisted sectors.

### 2.2. Management and control system(s)

#### 2.2.1. *Justification of the management mode(s), the funding implementation mechanism(s), the payment modalities and the control strategy proposed*

A set-up similar to the EU ETS building on national competent authorities allows a swift implementation of the CBAM. In addition, limited functions in particular as regards IT carried out at central level should ensure cooperation and collaboration in the implementation of CBAM.

#### 2.2.2. *Information concerning the risks identified and the internal control system(s) set up to mitigate them*

The proposed CBAM will be based on a declarative system, which entails the risk of non-declaration or misdeclaration.

In order to address the risk of non-declaration, the system requires an authorisation before importing goods in the scope of the Regulation. National customs authorities will be in charge of enforcing this rule by not releasing into free circulation these goods as long as the declarant is not authorised according to this Regulation.

In order to address the risk of misdeclaration a system of auditing on risk assessment criteria as well as random audits will be in place coupled with sanctions set up as a sufficiently high level to serve as deterrent. Auditing will take place both at the level of CBAM declaration by the national authorities and at the level of import declarations by customs authorities.

#### 2.2.3. *Estimation and justification of the cost-effectiveness of the controls (ratio of "control costs ÷ value of the related funds managed"), and assessment of the expected levels of risk of error (at payment & at closure)*

The role of the national authorities will be to control the correct application of CBAM, in particular the surrender of CBAM certificates and the collection of funds. A risk management system will be applied to ensure cost-effective controls.

### 2.3. Measures to prevent fraud and irregularities

*Specify existing or envisaged prevention and protection measures, e.g. from the Anti-Fraud Strategy.*

The financial interests of the Union should be protected through proportionate measures throughout the expenditure cycle, including the prevention, detection and investigation of irregularities, the recovery of funds lost, wrongly paid or incorrectly used and, where appropriate, administrative and financial penalties.

An authorised declarant who fails to surrender, by 31 May of each year, a number of CBAM certificates corresponding to the emissions embedded in goods imported during the previous year or submits to the national competent authority false information related to actual emissions with a view to obtain a favourable individual treatment, shall be held liable for the payment of a penalty.

The amount of the penalty will be based on penalties in the EU ETS. Payment of the penalty shall not release the authorised declarant from the obligation to surrender the outstanding number of CBAM certificates to the national competent authority.

In case of repeated offences, the national competent authority may decide to suspend the account of the declarant.

Implementing acts will provide more detail on the application of penalties.

### 3. ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL/INITIATIVE

#### 3.1. Heading(s) of the multiannual financial framework and expenditure budget line(s) affected

- Existing budget lines

In order of multiannual financial framework headings and budget lines.

Heading of multiannual financial framework	Budget line	Type of expenditure	Contribution			
	Number	Diff./Non-diff. <sup>1</sup>	from EFTA countries <sup>2</sup>	from candidate countries <sup>3</sup>	from third countries	within the meaning of Article 21(2)(b) of the Financial Regulation
7	20 01 02 01	Non-diff.	NO	NO	NO	NO

- New budget lines requested

In order of multiannual financial framework headings and budget lines.

Heading of multiannual financial framework	Budget line	Type of expenditure	Contribution			
	Number	Diff./non-diff.	from EFTA countries	from candidate countries	from third countries	within the meaning of Article 21(2)(b) of the Financial Regulation
3	09.20.YY – Carbon Border Adjustment Mechanism	Diff.	NO	NO	NO	NO

<sup>1</sup> Diff. = Differentiated appropriations / Non-diff. = Non-differentiated appropriations.

<sup>2</sup> EFTA: European Free Trade Association.

<sup>3</sup> Candidate countries and, where applicable, potential candidates from the Western Balkans.

### 3.2. Estimated impact on expenditure

#### 3.2.1. Summary of estimated impact on expenditure

EUR million (to three decimal places): Current Prices

<b>Heading of multiannual financial framework</b>	Number	3 Natural resources and environment
---	--------	-------------------------------------

DG: TAXUD						2022	2023	2024	2025	2026	2027	TOTAL
• Operational appropriations												
Budget line <sup>1</sup>	Commitments	(1a)	1.3	2.25	2.45		1.8	1.65	1.55			11.1
	Payments	(2a)	1.3	2.25	2.45		1.8	1.65	1.55			11.1
<b>TOTAL appropriations for DG TAXUD</b>	Commitments	=1a	1.3	2.25	2.45		1.8	1.65	1.55			11.1
	Payments	=2a	1.3	2.25	2.45		1.8	1.65	1.55			11.1

<sup>1</sup> According to the official budget nomenclature.

<b>Heading of multiannual financial framework</b>	<b>7</b>	‘Administrative expenditure’
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EUR million (to three decimal places): Current Prices

		2023	2024	2025	2026	2027	<b>TOTAL 2021 -2027 MFF</b>
DG: TAXUD							
• Human resources		1.064	1.216	1.216	1.216	0.912	<b>5.624</b>
• Other administrative expenditure – Missions							
<b>TOTAL DG TAXUD</b>	Appropriations	1.064	1.216	1.216	1.216	0.912	<b>5.624</b>

<b>TOTAL appropriations under HEADING 7 of the multiannual financial framework</b>	(Total commitments = Total payments)	1.064	1.216	1.216	1.216	0.912	<b>5.624</b>
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EUR million (to three decimal places): Current Prices

		2023	2024	2025	2026	2027	<b>TOTAL 2021 – 2027 MFF</b>
<b>TOTAL appropriations under HEADINGS 1 to 7 of the multiannual financial framework</b>	Commitments	<b>3.114</b>	<b>2.566</b>	<b>2.416</b>	<b>2.316</b>	<b>1.712</b>	<b>12.124</b>
	Payments	<b>3.114</b>	<b>2.566</b>	<b>2.416</b>	<b>2.316</b>	<b>1.712</b>	<b>12.124</b>

### 3.2.2. Summary of estimated impact on Commission's administrative appropriations

- The proposal/initiative does not require the use of appropriations of an administrative nature
- The proposal/initiative requires the use of appropriations of an administrative nature, as explained below:

EUR million (to three decimal places)

	Year 2021	Year 2022	Year 2023	Year 2024	Year 2025	Year 2026	Year 2027	TOTAL
--	--------------	--------------	--------------	--------------	--------------	--------------	--------------	-------

<b>HEADING 7 of the multiannual financial framework</b>								
Human resources			1.064	1.216	1.216	1.216	0.912	<b>5.624</b>
Other administrative expenditure								
<b>Subtotal HEADING 7 of the multiannual financial framework</b>			1.064	1.216	1.216	1.216	0.912	<b>5.624</b>

<b>Outside HEADING 7<sup>1</sup> of the multiannual financial framework</b>								
Human resources								
Other expenditure of an administrative nature								
<b>Subtotal outside HEADING 7 of the multiannual financial framework</b>								

<b>TOTAL</b>			1.064	1.216	1.216	1.216	0.912	<b>5.624</b>
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The appropriations required for human resources and other expenditure of an administrative nature will be met by appropriations from the DG that are already assigned to management of the action and/or have been redeployed within the DG, together if necessary with any additional allocation which may be granted to the managing DG under the annual allocation procedure and in the light of budgetary constraints.

<sup>1</sup> Technical and/or administrative assistance and expenditure in support of the implementation of EU programmes and/or actions (former 'BA' lines), indirect research, direct research.

### 3.2.2.1. Estimated requirements of human resources

- The proposal/initiative does not require the use of human resources.
- The proposal/initiative requires the use of human resources, as explained below:

*Estimate to be expressed in full time equivalent units*

	2023	2024	2025	2026	2027	Total
<b>• Establishment plan posts (officials and temporary staff)</b>						
20 01 02 01 (Headquarters and Commission's Representation Offices)	7	8	8	8	6	6
20 01 02 03 (Delegations)						
01 01 01 01 (Indirect research)						
01 01 01 11 (Direct research)						
Other budget lines (specify)						
<b>• External staff (in Full Time Equivalent unit: FTE)<sup>1</sup></b>						
20 02 01 (AC, END, INT from the 'global envelope')						
20 02 03 (AC, AL, END, INT and JPD in the delegations)						
<b>XX 01 xx yy zz<sup>2</sup></b>	- at Headquarters					
	- in Delegations					
01 01 01 02 (AC, END, INT - Indirect research)						
01 01 01 12 (AC, END, INT - Direct research)						
Other budget lines (specify)						
<b>TOTAL</b>	<b>7</b>	<b>8</b>	<b>8</b>	<b>8</b>	<b>6</b>	<b>6</b>

**XX** is the policy area or budget title concerned.

The human resources required will be met by staff from the DG who are already assigned to management of the action and/or have been redeployed within the DG, together if necessary with any additional allocation which may be granted to the managing DG under the annual allocation procedure and in the light of budgetary constraints.

Description of tasks to be carried out:

Officials and temporary staff	The CBAM regulation requires the Commission to follow up with several delegated and implementing acts once the CBAM regulation is adopted. Commission staff will also be needed to review and assess the functioning of the CBAM system and to implement the IT system.
External staff	

<sup>1</sup> AC= Contract Staff; AL = Local Staff; END= Seconded National Expert; INT = agency staff; JPD= Junior Professionals in Delegations.

<sup>2</sup> Sub-ceiling for external staff covered by operational appropriations (former 'BA' lines).

3.2.3. *Compatibility with the current multiannual financial framework*

The proposal/initiative is compatible the current multiannual financial framework.

The proposal/initiative will entail reprogramming of the relevant heading in the multiannual financial framework.

The proposal/initiative requires application of the flexibility instrument or revision of the multiannual financial framework<sup>1</sup>.

**3.3. Estimated impact on revenue**

The proposal/initiative has no financial impact on revenue.

The proposal/initiative has the following financial impact:

on own resources

on other revenue

please indicate, if the revenue is assigned to expenditure lines

EUR million (to three decimal places)

Budget revenue line:	Appropriations available for the current financial year	Impact of the proposal/initiative							
		2023	2024	2025	2026	2027	2028	2029	2030
Article .....		0	0	0	1,510	1,660	1,810	1,960	2,100

Note: CBAM is not expected to generate revenue in the transitional period from 2023 to 2025.

During its definitive stage, namely from 2026, yearly CBAM revenues will depend on the degree of phase-out of free allocation and the respective phase-in of the border measure.

In 2030, total yearly revenues from the border measure alone are expected to amount to EUR 2.1 billion are expected to be raised by the border measure and EUR 7 billion from additional.

For miscellaneous ‘assigned’ revenue, specify the budget expenditure line(s) affected.

Specify the method for calculating the impact on revenue.

The JRC GEM-E3 model was used to estimate revenues generated by CBAM.

<sup>1</sup> See Articles 12 and 13 of Council Regulation (EU, Euratom) No 2093/2020 of 17 December 2020 laying down the multiannual financial framework for the years 2021 to 2027.



Brussels, 14.7.2021  
COM(2021) 564 final

ANNEXES 1 to 5

## **ANNEXES**

**to the**

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**establishing a carbon border adjustment mechanism**

{SEC(2021) 564 final} - {SWD(2021) 643 final} - {SWD(2021) 644 final} -  
{SWD(2021) 647 final}

**ANNEX I**  
**List of goods and greenhouse gases**

1. For the purpose of the identification of goods, this Regulation shall apply to goods listed in the following sectors currently falling under the combined nomenclature ('CN') codes listed below, and shall be those of Council Regulation (EEC) No 2658/87<sup>(1)</sup>.
2. For the purposes of this Regulation, the greenhouse gases relating to goods falling in the sectors listed below, shall be those listed below for each type of goods.

**Cement**

<b>CN code</b>	<b>Greenhouse gas</b>
2523 10 00 – Cement clinkers	Carbon dioxide
2523 21 00 – White Portland cement, whether or not artificially coloured	Carbon dioxide
2523 29 00 – Other Portland cement	Carbon dioxide
2523 90 00 – Other hydraulic cements	Carbon dioxide

**Electricity**

<b>CN code</b>	<b>Greenhouse gas</b>
2716 00 00 – Electrical energy	Carbon dioxide

**Fertilisers**

<b>CN code</b>	<b>Greenhouse gas</b>
2808 00 00 – Nitric acid; sulphonitric acids	Carbon dioxide and nitrous oxide
2814 – Ammonia, anhydrous or in aqueous solution	Carbon dioxide
2834 21 00 - Nitrates of potassium	Carbon dioxide and nitrous oxide
3102 – Mineral or chemical fertilisers, nitrogenous	Carbon dioxide and nitrous oxide
3105 – Mineral or chemical fertilisers containing two or three of the fertilising elements nitrogen, phosphorus and potassium; other fertilisers; goods of this chapter in tablets or similar forms or in packages of a gross weight not exceeding 10 kg - Except: 3105 60 00 – Mineral or chemical fertilisers containing the two fertilising elements phosphorus and potassium	Carbon dioxide and nitrous oxide

<sup>1</sup> Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 256, 7.9.1987, p. 1).

## Iron and Steel

CN code	Greenhouse gas
72 – Iron and steel Except: 7202 – Ferro-alloys 7204 – Ferrous waste and scrap; remelting scrap ingots and steel	Carbon dioxide
7301- Sheet piling of iron or steel, whether or not drilled, punched or made from assembled elements; welded angles, shapes and sections, of iron or steel	Carbon dioxide
7302 – Railway or tramway track construction material of iron or steel, the following: rails, check-rails and rack rails, switch blades, crossing frogs, point rods and other crossing pieces, sleepers (cross-ties), fish- plates, chairs, chair wedges, sole plates (base plates), rail clips, bedplates, ties and other material specialised for jointing or fixing rails	Carbon dioxide
7303 00 – Tubes, pipes and hollow profiles, of cast iron	Carbon dioxide
7304 – Tubes, pipes and hollow profiles, seamless, of iron (other than cast iron) or steel	Carbon dioxide
7305 – Other tubes and pipes (for example, welded, riveted or similarly closed), having circular cross-sections, the external diameter of which exceeds 406,4 mm, of iron or steel	Carbon dioxide
7306 – Other tubes, pipes and hollow profiles (for example, open seam or welded, riveted or similarly closed), of iron or steel	Carbon dioxide
7307 – Tube or pipe fittings (for example, couplings, elbows, sleeves), of iron or steel	Carbon dioxide
7308 – Structures (excluding prefabricated buildings of heading 9406) and parts of structures (for example, bridges and bridge-sections, lock-gates, towers, lattice masts, roofs, roofing frameworks, doors and windows and their frames and thresholds for doors, shutters, balustrades, pillars and columns), of iron or steel; plates, rods, angles, shapes, sections, tubes and the like, prepared for use in structures, of iron or steel	Carbon dioxide
7309 – Reservoirs, tanks, vats and similar containers for any material (other than compressed or liquefied gas), of iron or steel, of a capacity exceeding 300 l, whether or not lined or heat-insulated, but not fitted with mechanical or thermal equipment	Carbon dioxide

7310 – Tanks, casks, drums, cans, boxes and similar containers, for any material (other than compressed or liquefied gas), of iron or steel, of a capacity not exceeding 300 l, whether or not lined or heat-insulated, but not fitted with mechanical or thermal equipment	Carbon dioxide
7311 – Containers for compressed or liquefied gas, of iron or steel	Carbon dioxide

### Aluminium

<b>CN code</b>	<b>Greenhouse gas</b>
7601 – Unwrought aluminium	Carbon dioxide and perfluorocarbons
7603 – Aluminium powders and flakes	Carbon dioxide and perfluorocarbons
7604 – Aluminium bars, rods and profiles	Carbon dioxide and perfluorocarbons
7605 – Aluminium wire	Carbon dioxide and perfluorocarbons
7606 – Aluminium plates, sheets and strip, of a thickness exceeding 0,2 mm	Carbon dioxide and perfluorocarbons
7607 – Aluminium foil (whether or not printed or backed with paper, paper-board, plastics or similar backing materials) of a thickness (excluding any backing) not exceeding 0,2 mm	Carbon dioxide and perfluorocarbons
7608 – Aluminium tubes and pipes	Carbon dioxide and perfluorocarbons
7609 00 00 – Aluminium tube or pipe fittings (for example, couplings, elbows, sleeves)	Carbon dioxide and perfluorocarbons

**ANNEX II**  
**Countries and territories outside the scope of this Regulation**

**1. SECTION A- COUNTRIES AND TERRITORIES OUTSIDE THE SCOPE OF THIS REGULATION**

This Regulation shall not apply to goods originating in the following countries:

- Iceland
- Liechtenstein
- Norway
- Switzerland

This Regulation shall not apply to goods originating in the following territories:

- Büsingen
- Heligoland
- Livigno
- Ceuta
- Melilla

**2. SECTION B - COUNTRIES AND TERRITORIES OUTSIDE THE SCOPE OF THIS REGULATION WITH REGARD TO THE IMPORTATION OF ELECTRICITY INTO THE CUSTOMS TERRITORY OF THE UNION**

[Currently empty]

**ANNEX III**  
**Methods for calculating embedded emissions**

**1. DEFINITIONS**

For the purposes of this Annex and Annex IV, the following definitions apply:

- (a) ‘simple goods’ means goods produced in a production process requiring exclusively input materials and fuels having zero embedded emissions;
- (b) ‘complex goods’ means goods requiring the input of other simple goods in its production process;
- (c) ‘specific embedded emissions’ means the embedded emissions of one tonne of goods, expressed as tonnes of CO<sub>2e</sub> emissions per tonne of goods;
- (d) ‘CO<sub>2</sub> emission factor’, means the weighted average of the CO<sub>2</sub> intensity of electricity produced from fossil fuels in a geographic area. The CO<sub>2</sub> emission factor is the result of the division of the CO<sub>2</sub> emission data of the energy sector divided by the gross electricity generation based on fossil fuels. It is expressed in tonne of CO<sub>2</sub> per megawatt-hour;
- (e) ‘power purchase agreement’ means a contract under which a person agrees to purchase electricity directly from an electricity producer;
- (f) ‘Transmission System Operator’ means an operator as defined in Article 2(35) of Directive (EU) 2019/944 of the European Parliament and of the Council <sup>(2)</sup>.

**2. DETERMINATION OF ACTUAL DIRECT EMBEDDED EMISSIONS FOR SIMPLE GOODS**

For determining the specific actual embedded emissions of simple goods produced in a given installation, only direct emissions shall be accounted for. For this purpose, the following equation is to be applied:

$$SEE_g = \frac{AttrEm_g}{AL_g}$$

Where  $SEE_g$  are the specific embedded emissions of goods  $g$ , in terms of CO<sub>2e</sub> per tonne,  $AttrEm_g$  are the attributed emissions of goods  $g$ , and  $AL_g$  is the activity level of the goods. The activity level is the amount of the goods produced in the reporting period in that installation.

‘Attributed emissions’ mean the part of the installation’s direct emissions during the reporting period that are caused by the production process resulting in goods  $g$  when applying the system boundaries of the process defined by the implementing acts adopted pursuant to Article 7(6). The attributed emissions shall be calculated using the following equation:

$$AttrEm_g = DirEm$$

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<sup>2</sup> Directive (EU) 2019/944 of the European Parliament and of the Council of 5 June 2019 on common rules for the internal market for electricity and amending Directive 2012/27/EU (OJ L 158, 14.6.2019, p. 125).

Where DirEm are the direct emissions, resulting from the production process, expressed in tonnes of CO<sub>2</sub>e, within the system boundaries referred to in the implementing act pursuant to Article 7(6).

### 3. DETERMINATION OF ACTUAL DIRECT EMBEDDED EMISSIONS FOR COMPLEX GOODS

For determining the specific actual embedded emissions of complex goods produced in a given installation, only direct emissions will be accounted for. In this case, the following equation is to be applied:

$$SEE_g = \frac{AttrEm_g + EE_{ImpMat}}{AL_g}$$

Where AttrEm<sub>g</sub> are the attributed emissions of goods *g*, and AL<sub>g</sub> the activity level of the goods, the latter being the amount of goods produced in the reporting period in that installation, and EE<sub>ImpMat</sub> are the embedded emissions of the input materials (precursors) consumed in the production process. Only input materials listed as relevant to the system boundaries of the production process as specified in the implementing act adopted pursuant to Article 7(6) are to be considered. The relevant EE<sub>ImpMat</sub> are calculated as follows:

$$EE_{ImpMat} = \sum_{i=1}^n M_i \cdot SEE_i$$

Where M<sub>i</sub> is the mass of input material *i* used in the production process, and SEE<sub>i</sub> its specific embedded emissions for the input material. For SEE<sub>i</sub> the operator of the installation shall use the value of emissions resulting from the installation where the input material was produced, provided that that installation's data can be adequately measured.

### 4. DETERMINATION OF DEFAULT VALUES REFERRED IN ARTICLES 7(2) AND (3)

If actual monitoring data referring to direct emissions in accordance with points 2 and 3 cannot be adequately provided, a default value shall apply.

For the purpose of determining default values, only actual values shall be used for the determination of embedded emissions. In the absence of actual data, literature values may be used. The Commission shall publish guidance for the approach taken to correct for waste gases or greenhouse gases used as process input, before collecting the data required to determine the relevant default values for each type of goods listed in Annex I. Default values shall be determined based on the best available data. They shall be revised periodically through implementing acts based on the most up-to-date and reliable information, including on the basis of information provided by a third country or group of third countries.

#### 4.1. Default values referred in Article 7(2)

When actual emissions cannot be adequately determined by the authorised declarant, default values shall be used. These values shall be set at the average emission intensity of each exporting country and for each of the goods listed in Annex I other than electricity, increased by a mark-up, the latter to be determined in the implementing acts of this Regulation. When reliable data for the exporting country cannot be applied for a type of goods, the default values shall be based on the average emission intensity of the 10 per cent worst performing EU installations for that type of goods.

## **4.2. Default values for imported electricity in Article 7(3)**

Default values for imported electricity shall be determined based on either specific default values for a third country, group of third countries or region within a third country, or if those values are not available, on EU default values for similar electricity production in the EU, according to point 4.2.2.

### *4.2.1. Specific default values for a third country, group of third countries or region within a third country*

Specific default values shall be based on the best data available to the Commission determining the average CO<sub>2</sub> emission factor in tonnes of CO<sub>2</sub> per megawatt-hour of price-setting sources in the third country, group of third countries or region within a third country.

Where specific default values are determined for a third country, a group of third countries or a region within a third country, and electricity is imported from another third country or another region into the third country, or another group of third countries or region within a third country with the purpose of being re-exported to the Union, the same specific default value shall not be used.

### *4.2.2. Alternative default values*

Where no specific default value has been determined for a third country, a group of third countries, or a region within a third country, the default value for electricity shall represent the CO<sub>2</sub> emission factor in the EU, in tonne of CO<sub>2</sub> per megawatt-hour. That means the weighted average of the CO<sub>2</sub> intensity of electricity produced from fossil fuels in the EU. The weight reflects the production mix of the fossil fuels in the EU. The CO<sub>2</sub> factor is the result of the division of the CO<sub>2</sub> emission data of the energy industry divided by the gross electricity generation based on fossil fuels in megawatt-hour.

Where authorised declarants of goods originating in a third country, or for a group of third countries having a significant exchange of electricity with the EU, it can be demonstrated, on the basis of reliable data, that the average CO<sub>2</sub> emission factor of price-setting sources in that third country or that group of third countries is lower than the one in the EU or lower than the specific default value, an alternative default value based on that average CO<sub>2</sub>e emission factor shall be established for that country or group of countries.

Where alternative default values are defined for a third country or region in a third country, or a group of third countries or regions within third countries, and electricity is imported from another third country or from another region within a third country, or another group of third countries or regions within third countries into the third country subject to the alternative default value, the same alternative default value may not be used.

## **5. CONDITIONS TO APPLYING ACTUAL EMBEDDED EMISSIONS IN ELECTRICITY**

An authorised declarant may require to apply actual embedded emissions instead of default values for the calculation referred to in Article 7(3) if the following cumulative criteria are met:

- (a) the authorised declarant has concluded a power purchase agreement with a producer of electricity located in a third country for an amount of electricity that is equivalent to the amount for which the use of a specific value is claimed;
- (b) the installation producing electricity is either directly connected to the EU transmission system or it can be demonstrated that at the time of export, there was no

physical network congestion at any point in the network between the installation and the EU transmission system;

- (c) an equivalent amount of electricity to the electricity for which the use of actual embedded emissions is claimed has been firmly nominated to the allocated interconnection capacity by all responsible transmission system operators in the country of origin, the country of destination and, if relevant, each third country of transit, and the nominated capacity and the production of electricity by the installation referred to in point (b) refer to the same period of time which shall not be longer than one hour;
- (d) meeting the above criteria is certified by an accredited verifier. The verifier shall receive at least monthly interim reports demonstrating how the above criteria are fulfilled.

## **6. ADAPTATION OF DEFAULT VALUES BASED ON REGION SPECIFIC FEATURES**

Default values can be adapted to particular areas, regions of countries where specific characteristics prevail in terms of objective factors such as geography, natural resources, market conditions, energy mix, or industrial production. When data adapted to those specific local characteristics are available and can define more targeted default values, the latter may be used instead of default values based on EU installations.

Where declarants for goods originating in a third country, or a group of third countries can demonstrate, on the basis of reliable data, that alternative region specific adaptation of default values are lower than the default values defined by the Commission the former can be used.

## ANNEX IV

### Book-keeping requirements for data used for the calculation of embedded emissions

#### **1. MINIMUM DATA TO BE KEPT BY AN AUTHORISED DECLARANT FOR IMPORTED GOODS:**

1. Data identifying the authorised declarant:
  - (a) name;
  - (b) the unique identifier assigned by the competent national authority;
2. Data on imported goods:
  - (a) type and quantity of each type of goods;
  - (b) country of origin;
  - (c) actual emissions or default values.

#### **2. MINIMUM DATA TO BE KEPT BY AN AUTHORISED DECLARANT FOR EMBEDDED EMISSIONS IN IMPORTED GOODS BASED ON ACTUAL EMISSIONS**

For each type of goods to which this Regulation applies, the following additional data has to be kept:

- (a) identification of the installation where the goods were produced;
- (b) contact information of the operator of the installation where the goods were produced;
- (c) the verified emissions report including the data regarding the embedded emissions of each type of declared goods as set out in Annex V;
- (d) the specific embedded emissions of the goods.

**ANNEX V**  
**Verification principles and content of a verification report**

**1. PRINCIPLES OF VERIFICATION**

The following principles shall apply for verifications requested according to Article 8:

- (a) verifiers shall carry out verifications with an attitude of professional scepticism;
- (b) an emissions report shall be considered as verified and fit for purpose only if the verifier finds with reasonable assurance that the report is free of material misstatements and of material non-conformities regarding the calculation rules of Annex III;
- (c) installation visits by the verifier shall be mandatory except where specific criteria for waiving the installation visit are met;
- (d) for deciding whether misstatements or non-conformities are material, the verifier shall use thresholds given by the implementing acts adopted in accordance with Article 8.

For parameters for which no such thresholds are defined, the verifier shall use expert judgement to whether misstatements, individually or when aggregated with other misstatements, justified by their size and nature, have to be considered material, i.e. and could affect the use of the report by the intended users, in particular the competent national authorities.

**2. CONTENT OF A VERIFICATION REPORT**

A verification report shall include, at least, the following information:

- (a) identification of the installation where the goods were produced;
- (b) contact information of the operator of the installation where the goods were produced;
- (c) the applicable reporting period;
- (d) name and contact information of the verifier;
- (e) ID of accreditation, name of the Accreditation Body;
- (f) the date of the installation visit, if applicable, or the reasons for not carrying out an installation visit;
- (g) quantities of each type of declared goods produced in the reporting period;
- (h) direct emissions of the installation during the reporting period;
- (i) a description on how the installation's emissions are attributed to different types of goods;
- (j) quantitative information on the goods, emissions and energy flows not associated with those goods;
- (k) in case of complex goods:
  - i. quantities of input materials (precursors) used;
  - ii. the specific embedded emissions;

- iii. in case actual emissions are used: the identification of the installation where the input material has been produced and the actual emissions from the production on that material.
- (l) the verification opinion statement;
- (m) information on material misstatements found and not corrected, where applicable;
- (n) information of non-conformities with calculation rules set out in Annex III, where applicable.