



Brussels, **XXX**  
[...] (2021) **XXX** draft

**SENSITIVE\***  
*UNTIL ADOPTION*

Proposal for a

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

**establishing a Carbon Border Adjustment Mechanism (CBAM)**

(Text with EEA relevance)

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## 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 EU 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>. To deliver on these GHG emissions reductions, 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>7</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 EU climate ambition. On the same page, the European Parliament adopted in March 2021 a resolution advocating for the introduction of a WTO-compatible carbon border adjustment mechanism<sup>8</sup>.

The Commission also announced the promotion of relevant instruments and incentives to better implement the polluter pays principle<sup>9</sup> and thus complete the phasing out of 'pollution

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

<sup>2</sup> Commission Communication. (2019). 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> Commission Communication. (2020). Stepping up Europe's 2030 climate ambition. (COM(2020) 562 final: Part 1/2).

<sup>5</sup> European Council. (2020). 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> Commission Work Programme 2021. (COM(2020) 690 final). Annex I outlines all the instruments under the package.

<sup>8</sup> European Parliament resolution of 10 March 2021 'Towards a WTO-compatible EU carbon border adjustment mechanism'.

<sup>9</sup> Article 191(2) of the Treaty on the Functioning of the European Union.

for free' in the EU Action Plan: Towards Zero Pollution for Air, Water and Soil<sup>10</sup> with a view to maximising synergies between decarbonisation and the zero pollution ambition.

The Commission committed 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>11</sup>'.

This mechanism would eventually become an alternative to the measures that address the risk of carbon leakage in the EU's Emissions Trading System and is meant to avoid that the emissions reduction efforts of the Union are offset by emissions increase outside the EU. 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>12</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 EU, and differences in the price applied to GHG emissions remain, there is a risk of what is generally referred to as carbon leakage. Carbon leakage refers to the situation that 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 intensive products due to the difference in climate policy. This 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 Celsius above pre-industrial levels.

Currently, the risk of carbon leakage is being addressed in the EU under the EU Emissions Trading System ('EU ETS')<sup>13</sup>. 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 auctioning. It thus affects the incentives for investment into further abatement of GHG emissions.

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<sup>10</sup> Commission Communication. (2021). Pathway to a Healthy Planet for All. (COM(2021) 400 final).

<sup>11</sup> Commission Communication. (2019). The European Green Deal (COM(2019) 640 final), p. 4.

<sup>12</sup> Article 4(3) of the Paris Agreement.

<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).

At the same time, as the EU 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, carbon price in the EU ETS is expected to increase and widen the difference with countries without carbon pricing mechanisms. Moreover, free allocation will also decline over time, in line with the reduction of the emission cap. Should the transition to greener production methods be slower than the new targets, the risk of carbon leakage may increase.

Considering the problems described above, this proposal addresses the problem of reducing GHG emissions in the EU, while at the same avoiding that these emissions reduction efforts are offset globally by emissions increase outside the EU. 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 EU 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 genuine climate measure aiming at preserving the integrity of the EU ETS and supporting the increased climate ambition of the EU of reducing GHG emissions 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 interdependence between the EU ETS and the CBAM.

As part of the 'Fit for 55 Package' the EU ETS is also proposed for revision<sup>14</sup>. This involves the extension of the EU ETS to maritime transport, as well as to possibly introduce emissions trading to the buildings and road transport sectors<sup>15</sup>. 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 naturally decline. A more stringent cap may imply an increase of the EU ETS carbon price at which allowances' supply and demand match. 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 carbon leakage. In particular, free allocation of allowances prevents carbon leakage risks but also weakens the carbon price signal for EU industry compared to full auctioning.

As indicated by the European Green Deal, the CBAM would ensure that the price of imports reflect more accurately their carbon content. This measure has been designed to comply with World Trade Organization (WTO) rules and other international obligations of the EU'. Furthermore, President von der Leyen has underlined that 'carbon must have its price – because nature cannot pay the price anymore. This 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 and businesses would be important with regard to the understanding of and compliance with CBAM requirements.

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). Those mechanisms can co-exist with a CBAM during a transitional period but it needs to be ensured that they are not cumulative and that they are gradually phased out as the CBAM is gradually

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<sup>14</sup> [Link to the proposed EU ETS revision will be included after their publication.]

<sup>15</sup> Add footnote 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)

phased in. This means that the phase-in of a CBAM during a transitional period will need to be coordinated with the phasing-out of the free allocation of EU ETS to installations in the EU laid down in the Directive 2003/87/EC and in the relevant delegated acts.

- **Consistency with other Union policies**

The EU 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 EU and favour decarbonisation in third countries.

Since 1992, the EU 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 EU 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) TFEU. In accordance with Articles 191 and 192(1) TFEU, the EU 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 EU 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 efficient applied at EU-level in a uniform way, mirroring EU ETS and designed in a compatible way with WTO rules.

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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).

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 EU while at the same time avoiding that these emissions reduction efforts are offset by emissions increase outside the EU. 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 EU 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 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 imports of energy intensive products into the EU are on equal footing with EU products in terms of EU ETS carbon pricing 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 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, such an approach may involve high administrative costs in the beginning and therefore for an initial transitory period it is proposed to use default values with the possibility for the importers to demonstrate that their products were produced with actual emissions lower than the default value, and therefore be subject to a lower CBAM obligation.

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. To this end, the Commission may be supported by an 'EU Carbon Emission Body' while performing implementing activities established by this Regulation and not requiring discretionary choices. Its main objective should be to support, develop, and strengthen the necessary coordination with competent national authorities and to ensure that the objectives of the CBAM are met in a cost-effective way. The EU Carbon Emission Body will operate under an annual programme approved by the Commission and will be supervised by the internal auditor of the Commission.

- **Choice of the instrument**

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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).

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 EU in order to pursue the objectives of Articles 32 and 207 TFUE.

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 effectivity.

### **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

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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>

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 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 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 EU 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

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<sup>22</sup> [Link to the impact assessment will be included after their publication.]

<sup>23</sup> [Link to full study will be included after their publication.]

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.

- **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 EU (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 EU 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 in the EU, 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 a default value; however, importers would be given the opportunity, at the moment of the yearly reconciliation exercise, to claim a

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<sup>24</sup> [Links to the summary sheet and the positive opinion of the RSB will be included after their publication.]

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 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 transitional period starting at the earliest 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 that transitional 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 EU 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 EU 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 EU, 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 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 EU 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 EU, 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 with a progressive introduction during which the CBAM certificates to be surrendered shall be reduced in number to reflect the extent to which EU ETS allowances are still allocated free of charge in the corresponding ETS installations. This policy option ensures a high level of effectiveness for the CBAM. A system based on actual emissions ensures a fair and equal treatment of all imports and a close correlation to the EU ETS which is also based on the actual emission reported by the EU ETS operators. The CBAM system will, however, need to be complemented by a possibility to base calculations on set 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 the transitional 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 horizon 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 EU and avoiding that these emissions are replaced by emissions outside the EU. In addition, the gradual phase out of allocating EU ETS allowances for free would allow businesses and authorities to carry out a prudent and predictable transition. •

#### 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. In the special European Council of 17-21 July 2020<sup>26</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

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

<sup>26</sup> See [European Council conclusions, 17-21 July 2020](#).

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>27</sup>. The institutions agreed to put forward proposals on new own resources, which would include the CBAM in the first semester of 2021, with a view to its introduction at the latest by 1 January 2023.

The costs of a new EU Carbon Emission Body will be covered under Heading 2b of the Multiannual Financial Framework, in accordance with the proposal for amendment of the Council Regulation (EU) 2020/2093 laying down the multiannual financial framework for the years 2021 to 2027<sup>28</sup>, i.e. COM/2021/XXX

## 5. OTHER ELEMENTS

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

As part of the mandate received by the Commission from the special European Council of 17-21 July 2020, the CBAM would need to be introduced at the latest by 1 January 2023. This timetable was confirmed in the inter-institutional agreement between the European Parliament, the Council and the Commission of 16 December 2020, including a roadmap towards the introduction of new own resources.

In order to meet this ambitious timeline a simplified system of the CBAM will be applied during a transitional period of three years after the entry into force, in 2023. Specifically, such a period will facilitate the smooth roll out of the CBAM and impose the least burden possible on trade flows and trade operators. Simplifications include the procedures applied at the border when goods are imported and the use of default values to determine the CBAM obligation.

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.

Three years after 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.

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<sup>27</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).

<sup>28</sup> **Add reference when available**

This proposal falls within the scope of the Protocol on Ireland/Northern Ireland. Once the Regulation is adopted, the Union should inform the United Kingdom of Great Britain and Northern Ireland, request that the Joint Committee hold an exchange of views and propose to the Joint Committee to adopt a decision adding the Regulation to Annex 2 to the Protocol, in accordance with Article 13(4) of the Protocol on Ireland/Northern Ireland.

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 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 information during a five years period with no further verification required of the embedded emissions when importing the goods produced in the registered installation registered in the central database to the EU.

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 establishes the EU Carbon Emission Body to support the competent national authorities (Article 20). It will be set up by the Commission as a body with a public service role (Articles 21 and 22), and seated where the Commission is located (Article 23). The body will be managed by a director, which will submit the work programme, and it will perform the tasks conferred by this proposal (Article 24, 25 and 26). It will have own budget (Article 27 and 28) and staff (Article 29), with the same privileges and immunities of the EU (Article 30). It will be liable, and it will supervised by the Commission, OLAF and the Court of Auditors (Article 31 and 32). Finally, and in order to perform its tasks, it will have access to documents needed for their tasks and covered by the professional secrecy (Article 33).

Chapter V contains provisions regarding the CBAM certificates. Articles 34 to 38 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 34 concerns in detail the sale of certificates by the competent national authorities. Article 35 is about the calculation of the price of the certificates, done by the Commission, on a weekly basis. Article 36 lays down the procedures to ensure that each declarant fulfil its obligation to surrender certificates in the national registry. Article 37 establishes the right of an authorised declarant to ask the competent national authority to re-purchase a limited number of CBAM certificates remaining on its account after surrender. Finally, Article 38 specifies that, by 30 June of each year, the competent national authority is required to cancel the certificates remaining in the account of each declarant after surrender and re-purchase, if any.

Chapter VI deals with how Customs Authorities should deal with the procedures for the administration of goods at the border (Article 39). Under Chapter VII, penalties for no compliance are set in Article 40 and a special provision on circumvention is provided in case there are changes the of the pattern of trade (Article 41).

Chapter VIII contains provisions regarding the exercise of the delegation to the Commission to adopt delegated acts (Article 42) and examination procedure for implementing acts (Article 43). The power to adopt delegated acts is referred to in Articles 2, 18 and 41. Articles 2, 5 to 9, 21, 35, 36, 39, 45, 49 and 50 to 53 contain provisions on implementing powers.

Chapter IX contains provisions in Article 44 on the evaluation of the Regulation and its possible review.

Chapter X (Article 45) deals with the reduction of the CBAM obligation to reflect the transitional allocation of EU ETS allowances for free in installations producing, in the EU, the same kinds of goods which are covered by the proposal.

Chapter XI contains specific provisions to be applied during an initial transitional period. In those provisions, a simplified CBAM will apply for the first years of application of the measure. That transitional period will have a duration of three years, as established in Article 46, during which the yearly declaration will not be required. Declarants will buy CBAM certificates from the customs authorities before the CBAM goods enter into free circulation (Article 47); same procedure applies for inward procedures (Article 48). The calculation of CBAM certificates will be made by the customs authorities (Article 49) given the price published by the Commission (Article 50). This transitional period will be based on default values, taking into account the free allocation of allowances in the EU ETS (Articles 51), and the declarant will have the possibility for a follow-up revision of the obligation based on verified embedded emissions in the imported goods (Article 52) as well as ensuring compensation for a carbon price paid on the embedded emissions in the country of origin (Article 53). The chapter also contains provisions on control of reimbursements and compensations (Article 54).

Last, Chapter XII indicates the entry into force of the proposal, with some of the provisions applying only during the transitional period (Article 55) and others in 2026.

Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**  
**establishing a Carbon Border Adjustment Mechanism(CBAM)**

(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>29</sup>,  
Having regard to the opinion of the Committee of the Regions<sup>30</sup>,  
Acting in accordance with the ordinary legislative procedure,  
Whereas:

- (1) The Commission has, in its Communication of 11 December 2019 entitled ‘The European Green Deal<sup>31</sup>’, set out a new growth strategy that aims to transform the EU into a fair and prosperous society, with a modern, resource-efficient and competitive economy, where there are no net emissions of greenhouse gases (‘GHG’) in 2050 and where economic growth is decoupled from resource use. It 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, this transition must be just and inclusive, leaving no one behind. The Commission also announced the promotion of relevant instruments and incentives to better implement the Polluter Pays Principle<sup>32</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>33</sup> with a view to maximising synergies between decarbonisation and the zero pollution ambition.
- (2) The Paris Agreement, adopted in December 2015 under the United Nations Framework Convention on Climate Change (‘UNFCCC’) entered into force in November 2016 (‘the Paris Agreement’). Its Parties have agreed to 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 environmental-related challenges and reaching the objectives of the Paris Agreement are at the core of the Communication on ‘The European Green

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<sup>29</sup> OJ C, [n’t we specify this in the regulation](#), p. [...].

<sup>30</sup> OJ C, [...], p. [...].

<sup>31</sup> Commission Communication - The European Green Deal, (COM(2019) 640 final) of 11 December 2019.

<sup>32</sup> Article 191(2) of the Treaty on the Functioning of the European Union.

<sup>33</sup> Commission Communication. (2021). Pathway to a Healthy Planet for All. (COM(2021) 400 final).

Deal', adopted by the Commission on 11 December 2019<sup>34</sup>. The necessity and value of the European Green Deal have 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 committed to reducing the Union's economy-wide net greenhouse gas emissions by at least 55 % by 2030 below 1990 levels in the updated nationally determined contribution submitted to the UNFCCC Secretariat on 17 December 2020<sup>35</sup>.
- (5) In Regulation (EU) [--] of the European Parliament and of the Council<sup>36</sup> the Union has enshrined the target of economy-wide climate neutrality by 2050 in legislation. That Regulation also establishes a binding Union domestic reduction commitment of net greenhouse gas emissions (emissions after deduction of removals) of at least 55 % below 1990 levels by 2030.
- (6) The Intergovernmental Panel on Climate Change's (IPCC) Special Report on the impacts of global temperature increases of 1.5 °C above pre-industrial levels and related global GHG emission pathways<sup>37</sup> provides a strong scientific basis for tackling climate change and illustrates the need to step up climate action. It confirms that GHG emissions need to be urgently reduced, and that climate change needs to be limited to a global temperature increase of 1.5 °C, in particular to reduce the likelihood of extreme weather events.
- (7) The EU has been pursuing an ambitious policy on climate action and has put in place a regulatory framework to achieve its 2030 GHG emission reduction target. The legislation implementing this target consists, inter alia, of Directive 2003/87/EC of the European Parliament and of the Council<sup>38</sup>, which establishes a system for GHG emission allowance trading within the EU ('EU ETS') and delivers harmonised pricing of GHG emissions at EU level for energy-intensive sectors and subsectors, Regulation (EU) 2018/842 of the European Parliament and of the Council<sup>39</sup>, which introduced national targets for reduction of GHG emissions by 2030, and Regulation (EU) 2018/841 of the European Parliament and of the Council<sup>40</sup>, which

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<sup>34</sup> Commission Communication (2019). The European Green Deal (COM(2019) 640 final).

<sup>35</sup> See:

[https://www4.unfccc.int/sites/ndcstaging/PublishedDocuments/European%20Union%20First/EU\\_NDC\\_Submission\\_December%202020.pdf](https://www4.unfccc.int/sites/ndcstaging/PublishedDocuments/European%20Union%20First/EU_NDC_Submission_December%202020.pdf)

<sup>36</sup> Regulation (EU) 2021/... of the European Parliament and of the Council of ... establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 ('European Climate Law') (OJ L ...).

<sup>37</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>38</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>39</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).

<sup>40</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

requires Member States to balance GHG emissions and removals from land use, land use change and forestry.

- (8) As long as a significant number of the EU'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 refers to the situation that 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 these countries would replace equivalent but less GHG intensive products. This 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 part of the 'Fit for 55 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 resulting from the increased EU climate ambition.
- (10) Existing mechanisms to address the risk of carbon leakage in sectors or sub-sectors at risk of carbon leakage are laid down in Articles 10a(6) and 10b of Directive 2003/87/EC. These mechanisms 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. 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. Free allocation is a transitional measure and the amount of free allowances granted decreases over time.
- (11) To ensure a gradual transition from the current system of free allowances to the CBAM, the CBAM will be progressively phased in while free allowances are phased out. The combined and transitional application of EU ETS allowances allocated free of charge, of indirect cost compensation of carbon costs passed on electricity prices and of the CBAM should in no case result in more favourable treatment for EU products compared to imported goods.
- (12) While the objective of the CBAM is to prevent the risk of carbon leakage, this Regulation is expected to also encourage the use of more GHG-efficient technologies by third countries producers, 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 closely replicates the EU ETS by applying carbon costs equivalent to the ones that would have been borne under the EU ETS. The CBAM is essentially a climate measure which should preserve the integrity of the EU ETS and support the EU's increased ambition on climate mitigation, while ensuring WTO compatibility.
- (14) This Regulation should apply to goods imported in the EU except when their production has already be subject to the EU ETS or to carbon pricing systems fully aligned with the EU ETS.

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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).

- (15) In order to exclude from the CBAM third countries fully integrated into, or linked, to the EU ETS, the Commission should be empowered to amend the list of countries in Annex II by means of delegated acts pursuant to Article 290 TFEU.
- (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>41</sup>, with a view to preventing the risk of carbon leakage in offshore installations.
- (17) The GHGs to be covered by the CBAM should correspond to those GHGs 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). As for its scope, the CBAM should apply to direct emissions of those GHG from the production of goods up to the time of import, as well as related indirect emissions, mirroring the scope of the EU ETS.
- (18) The EU ETS and the CBAM have the common objective of pricing 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 emissions, in line with the environmental objective of the EU.
- (19) However, the different operative context of the two instruments justifies certain adaptations. While the EU ETS sets an absolute cap on the emissions from the activities under its scope and allows tradability of allowances (so called ‘cap and trade system’), the CBAM does not establish quantitative limits to import, as it would be at odds with trade rules. Moreover, while the EU ETS tackles installations based in the EU, the CBAM is applied to certain goods imported into the EU.
- (20) A series of specific features of the CBAM system compared to the EU ETS should therefore be provided for in this Regulation, including on the calculation of the price of CBAM certificates, on certain limits to the possibilities to trade certificates and on their validity over time. Conversely, as the objective of the CBAM is to reflect the EU ETS price, giving operators the possibility to bank and trade certificates could result in situations where the price for CBAM certificates would no longer reflect the evolution of the price in the EU ETS. This would weaken the incentive to decarbonisation between domestic and imported products, 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 bank them 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 and avoid that imports are subject to a less favourable treatment than domestic production, this Regulation should foresee a system where importers can sell back excess certificates to the authorities.
- (21) In view of the fact that the CBAM applies to import of goods into the customs territory of the Union rather than to installations, certain adaptations and simplifications would need to apply in the CBAM regime as compared with the EU ETS system. One of these simplification should consist in a declarative system where importers should report the total verified emissions embedded in goods imported in a given calendar year. A different timing compared to that in place for the EU ETS should also be

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<sup>41</sup> Convention on the Law of the Sea, Montego Bay, 10 December 1982.

applied to avoid any potential bottleneck resulting from obligations for authorised verifiers under this Regulation and the EU ETS.

- (22) In terms of sanctions, the Member States should apply penalties to infringements of this Regulation and ensure that they are implemented. Those penalties shall be equivalent to penalties currently applied within the Union in case of infringement of EU ETS.
- (23) The product coverage of the CBAM should be framed by the activities covered by the EU ETS as this scheme is the most comprehensive GHG emissions regulatory scheme in the EU, the product scope of which is itself based on quantitative and qualitative criteria linked to its environmental objective.
- (24) Setting a product scope for the CBAM reflecting the EU ETS will also contribute to ensuring that imported products are granted a treatment no less favourable than that accorded to like products of domestic origin.
- (25) Whilst the ultimate objective is a broad coverage, it should be prudent to start with a selected number of sectors with relatively homogeneous products where carbon leakage plays a role. Sectors deemed at risk of carbon leakage are listed in Commission Delegated Decision No 2019/708 of 15 February 2019<sup>42</sup>.
- (26) While the EU ETS targets certain production processes and activities, the CBAM should target the corresponding goods production. This requires certain adaptations in order to unambiguously identify imported goods by way of their classification in the combined nomenclature<sup>43</sup> ('CN') and linking them to reference values of embedded emissions.
- (27) The goods under this Regulation should be selected after a careful analysis of their relevance in terms of cumulated GHG emissions and the risk of carbon leakage in the corresponding EU ETS sectors while limiting complexity and administrative effort.
- (28) Certain goods at risk of carbon leakage listed in order of cumulated emissions should not at this stage be addressed in this Regulation, due to certain particular characteristics.
- (29) In particular, organic chemicals are not targeted due to technical limitations that do not allow to clearly define the embedded emissions of imported goods. In particular, for these goods the applicable benchmark under the EU ETS is a basic parameter, which does not allow for the unambiguous allocation of emissions embedded in individual imported goods. A more targeted allocation to organic chemicals will require more data and analysis.
- (30) Similar technical constraints apply to refinery products, whereby it is not possible to unambiguously assign GHG emissions to each refinery output product. The relevant benchmark in the EU ETS does not directly relate to specific products, such as gasoline, diesel or kerosene, but to all the refinery output.

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<sup>42</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).

<sup>43</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).

- (31) Aluminium products should be included in the CBAM, as they embed high level of emissions, especially when taking into account not only direct but also indirect emissions.
- (32) 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 likelihood of circumventing the enclosure of steel products in the CBAM by modifying the pattern of trade towards downstream products.
- (33) Conversely, this Regulation does 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).
- (34) Import of electricity should also be included in the scope of this Regulation, as this sector is responsible for 30 per cent of GHG emissions in the EU. The enhanced EU climate ambition will increase the gap in carbon costs between electricity production in the EU and abroad. Combined with the progress in connecting the EU electricity grid to that of its neighbours this will increase the risk of carbon leakage due to increased imports of electricity, a significant part of which is produced by coal-fired power plants.
- (35) As importers of goods covered by the scope of this Regulation should not have to fulfil their CBAM obligations at the time of importation, specific administrative measures should be applied to ensure that obligations are fulfilled at a later stage. Therefore, importers should only be entitled to import CBAM goods after authorisation by competent national authorities after having provided sufficient information on their financial and overall liability.
- (36) The CBAM should be based on a declarative system where an authorised declarant, who may represent more than one importer, annually declares to the competent national authority the embedded emissions in goods imported to the EU and surrenders a number of CBAM certificates corresponding to the declared emissions.
- (37) An authorised declarant should be allowed to claim a reduction in the number of CBAM certificates to be surrendered in proportion to the carbon price already paid on these emissions in other jurisdictions. Where possible, the Union, in accordance with Article 218 TFEU, may conclude sectoral agreements with third countries with a view to simplifying the information needed to take account of such a carbon price. In any case it the carbon price should have been effectively charged and not been subject to an export rebate or other form of compensation on exportation.
- (38) An authorised declarant should ensure that the embedded emissions reported in the yearly declaration are verified by a person accredited by a national accreditation body in accordance with Article 4(1) of Regulation No 756/2008 of the European Parliament and of the Council<sup>44</sup> or pursuant to Commission Implementing Regulation (EU) No 2018/2067<sup>45</sup>.

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<sup>44</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>45</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).

- (39) The system should allow operators of production installations in third countries to register in a central EU database and to make their verified embedded emissions from production of goods available to authorised declarants.
- (40) To enable the yearly cycle of compliance, a common framework for the sale, surrender, re-purchase and cancellation of CBAM certificates should be established. Under this common framework, competent national authorities should be responsible for authorising declarants, the administration of declarations, national registries and the management of CBAM certificates.
- (41) CBAM certificates differ from EU ETS allowances for which tradability is an essential feature and whose prices fluctuate on a daily basis. The static feature of CBAM certificates and the need to unambiguously communicate a clear price makes a daily publication excessively burdensome and confusing for operators, as daily prices risk becoming obsolete upon publication. Besides, publication of CBAM prices on a weekly basis accurately reflects the pricing trend of EU ETS allowances and pursue the same climate objective. The calculation of the price of CBAM certificates 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 such an average price.
- (42) In order to give the authorised declarants flexibility in compliance 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. However, in order to ensure the collection of CBAM, the authorised declarant should build up along the year the amount of certificates required at the time of surrendering, with thresholds set at the end of each quarter.
- (43) 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 resort to the calculation of actual emissions of the imported electricity only when claimed by the authorised declarants. Electricity trade is markedly 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 EU-wide.
- (44) Electricity used to produce goods can be produced from all the different energy sources in the mix. In the absence of more accurate information of the electricity source to produce the imported goods, the average CO<sub>2</sub> emission factor of price-setting sources in the country of origin of the electricity used for the production of this good should be used as a proxy for calculating emissions indirectly embedded in goods.
- (45) Countries participating in the Treaty establishing the Energy Community<sup>46</sup> or being part to Association Agreements including Deep and Comprehensive Free Trade Areas are committed to decarbonisation processes that should eventually result in the

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<sup>46</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).

adoption of carbon pricing mechanisms similar or equivalent to the EU ETS or in their participation in the EU ETS.

- (46) 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>47</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 thereby reducing the carbon intensity of their electricity generation. Integration of third countries into the Union electricity also contributes to security of electricity supplies in those countries and in the neighbouring Member States.
- (47) 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 territory of the 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. In particular, the third country should develop a roadmap and commit to implement a carbon pricing mechanism providing for an equivalent price as the EU ETS, as well as fulfil a number of cumulative conditions demonstrating commitment to achieve carbon neutrality by 2050 and to align with Union legislation in the areas of environment, climate, competition and energy. Such exemption should be withdrawn at any time, and in any event no later than 2030, if there are reasons to believe that the country in question does not meet the established requirements or if it has not adopted by 2030 an ETS that fully satisfies the conditions set out in this Regulation.
- (48) A transitional period should apply for the first three years after the entry into force of this Regulation. A simplified CBAM system should apply, with the objective of facilitating a smooth roll out of the mechanism reducing the risk of disruptive impacts on trade flows and limiting the initial administrative burden for persons importing goods into the customs territory of the Union while still fulfilling the purpose of preventing the risk of carbon leakage. Among the simplifications of the mechanism, the CBAM obligation should be determined by default values and the customs declarants should fulfil the CBAM obligation at the time of importation by surrendering a sufficient number CBAM certificates. However, the system should allow for a follow-up revision of the obligation based on verified embedded emissions in the goods as well as ensuring compensation for a carbon price paid on the embedded emissions in the country of origin.
- (49) To facilitate the functioning of the overall CBAM mechanism, the Commission should provide support to the competent national authorities in carrying out their obligations under this Regulation and the Commission should be empowered to set up an EU body to be entrusted with certain of those tasks. This body should perform implementing activities established by this Regulation and not requiring discretionary choices. Its main objective should be to support, develop, and strengthen the necessary coordination with competent national authorities and to ensure that the objectives of the CBAM are met in a cost-effective way. The body will operate under an annual

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<sup>47</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).

programme approved by the Commission and will be supervised by the internal auditor of the Commission.

- (50) The Commission should evaluate the application of this Regulation three years after the end of the transitional period and report to the European Parliament and the Council thereon. The report of the Commission should in particular focus on possibilities to enhance climate actions towards the objective of a climate neutral EU by 2050. The Commission should as part of the evaluation initiate collection of information necessary to develop methods of calculating embedded emissions, including setting benchmarks, based on the Environmental Footprint methods<sup>48</sup>.
- (51) In light of the above, a dialogue with the 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.
- (52) This Regulation respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. In particular, it guarantees rights of participation and of appeal against decisions of the competent national authorities, adversely affecting rights of individuals. The provisions of this Regulation are without prejudice to Regulation (EU) 2016/679 of the European Parliament and of the Council<sup>49</sup> (General Data Protection Regulation or 'GDPR') and Regulation (EU) 2018/1725 of the European Parliament and of the Council<sup>50</sup>.
- (53) Whereby personal data become relevant and available to persons or authorities entrusted to perform their obligations under the same Regulation, this Regulation should include specific provisions and safeguards on data protection that comply with the EU Regulations in force in this field, namely with Council Regulation (EC) No 515/97<sup>51</sup>.
- (54) The Commission should be empowered to supplement the list of goods in Annex I by means of delegated acts pursuant to Article 290 TFEU to the extent necessary to remedy circumvention of the provisions of this Regulation.
- (55) 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>52</sup>. In particular, to ensure equal

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<sup>48</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).

<sup>49</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>50</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>51</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>52</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).

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.

- (56) 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>53</sup>.
- (57) The financial interests of the EU 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>53</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**

### **General provisions**

#### *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 regime to imports into the customs territory of the Union of goods referred to in Article 2.

#### *Article 2*

##### *Scope*

1. This Regulation applies to goods 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>54</sup>, are imported into the customs territory of the Union.
2. This Regulation applies to 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 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 are considered as originating in third countries according to non-preferential rules of origin as defined in Article 59 of Regulation (EU) No 952/2013.
5. The Commission is empowered to adopt delegated acts in accordance to Article 42 to amend the list of countries and territories set out in Annex II, Section A insofar the following conditions are fulfilled:
  - (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;
  - (b) the price paid in the exporting country is effectively charged on products exported to the EU without any rebate beyond those also applied in the EU ETS.
6. The Commission is empowered to adopt implementing acts in order to specify the conditions for applying the CBAM on goods referred to in paragraph 2, in particular, to define when the obligations arise, and to determine the competent national

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<sup>54</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).

authority. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 43(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 its exports of electricity to the Union, such country or territory shall be exempted from the application of the CBAM with regard solely to the importation of electricity, provided the following conditions are cumulatively satisfied:
  - (a) the third country or territory has concluded an agreement with the Union, setting out an obligation to apply Union law in the field of electricity, including on the development of renewable energies, as well as other relevant rules in the field of energy, environment and competition;
  - (b) the national law in that country or territory implements the main provisions of the Union electricity market legislation, including on the development of renewable energies 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 this objective, and implemented this obligation in 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 the Union law in the field 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. In no case should the implementation of an emission trading system for electricity, with a price equivalent to the EU ETS, be finalised later than 2030;
  - (f) the third country or territory has put in place effective systems to prevent indirect exports to 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 points 7(a) to (f) shall be listed in Annex II, Section B, and shall as a result submit two reports on the fulfilment of the conditions pursuant to points 7(a) to (f), one before 1 July 2025 and another before 1 July 2029. By 31 December 2025 and 31 December 2029, the Commission shall assess, notably on the basis the roadmap pursuant to point 7(c), and any reports received from the third country, whether the third country continues to respect the conditions set out in paragraph 1.
9. A third country or territory listed in Annex II, Section B, shall be deleted from that list:
  - (a) at any point in time and in any event no later than 1 January 2030, if the Commission has sufficient reasons to consider that the country has not shown sufficient progress to comply with one of the requirements listed in paragraph

- 7(a) to (f), or if the country 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 42 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 42 to amend the lists in Annex II, Sections A or B, depending on whether the conditions in paragraphs 5, 6 or 7 are satisfied.
12. The Commission is empowered to adopt implementing acts, to specify the conditions for applying the mechanism on goods brought to the continental shelf or the exclusive economic zone of a Member State. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 43(2).

### *Article 3* *Definitions*

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

- (1) ‘good’ means a good 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’ means the release of greenhouse gases into the atmosphere from the production of a good;
- (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 of 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) ‘explicit capacity allocation’ means the allocation of cross-border transmission capacity separate from the trade of electricity;

- (10) ‘declarant’ means a person lodging a customs declaration for release for free circulation in his or her own name or the person in whose name such a declaration is lodged in accordance with Regulation (EU) No 952/2013;
- (11) ‘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;
- (12) ‘direct emissions’ means emissions from the production processes of a good over which the producer has direct control, including emissions from the production of heating and cooling consumed during the production process but produced by another person than the producer of the good;
- (13) ‘embedded emissions’ mean direct and indirect emissions released during the production of a good, calculated pursuant to the methods set out in Annex III;
- (14) ‘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 each good, in Annex I;
- (15) ‘CBAM certificate’ means a certificate in electronic format corresponding to one tonne of embedded emissions in a good, that is sold, surrendered, re-purchased or cancelled in accordance with this Regulation;
- (16) ‘surrender’ means the offsetting of CBAM certificates by an authorised declarant against the declared embedded emissions in imported goods;
- (17) ‘production processes’ means the chemical and physical processes carried out to produce a good in an installation;
- (18) ‘default value’ means a value that is calculated or drawn from secondary data representing embedded emissions in a good;
- (19) ‘actual emissions’ mean the emissions calculated based on primary data from the production processes of a good;
- (20) ‘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 a good;
- (21) ‘secondary aluminium’ refers to aluminium that is produced from recycled aluminium originating from various forms of aluminium scrap including new production off-cuts, machining swarf, drosses or obsolete end-of-life aluminium products;
- (22) ‘installation’ means a stationary technical unit where a production process is carried out;
- (23) ‘operator’ means any person who operates or controls an installation in a third country;
- (24) ‘national accreditation body’ means a national accreditation body as appointed by each Member State in accordance with Article 4(1) of Regulation No 765/2008 of the European Parliament and of the Council<sup>55</sup>;

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<sup>55</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).

- (25) ‘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;
- (26) ‘indirect emissions’ means emissions from the production of electricity, heating and cooling, which is consumed during the production processes of a good.

## **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 national authority in accordance with Article 17 (‘authorised declarant’).

#### *Article 5*

##### *Application for an authorisation*

1. Any declarant, prior to importing goods referred to in Article 2, shall apply to the competent national authority 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 be regarded as an authorised declarant for the purposes of this Regulation. 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 on the declarant which must be established in the EU:
  - (a) name and contact information, as well as authorised signatories;
  - (b) Economic Operators Registration and Identification number<sup>56</sup> (EORI);
  - (c) main economic activity carried out in the Union, classified at a 4-digit level (NACE-4 code) in accordance with Annex I of Regulation (EC) No 1893/2006 of the European Parliament and of the Council<sup>57</sup>;
  - (d) certification by a competent 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) confirmation by the declarant that no serious infringement or repeated infringements of customs legislation, taxation rules and market abuse rules

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<sup>56</sup> In accordance with Article 9 of Regulation (EU) No 952/2013.

<sup>57</sup> Regulation (EC) No 1893/2006 of the European Parliament and of the Council of 20 December 2006 establishing the statistical classification of economic activities NACE Revision 2 and amending Council Regulation (EEC) No 3037/90 as well as certain EC Regulations on specific statistical domains (OJ L 393 30.12.2006, p. 1).

- during the five years preceding the year of the application, including no record of serious criminal offences relating to the economic activity of the applicant;
- (f) information necessary to demonstrate the applicant's financial and operational capacity to fulfil its financial obligations according to 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 declarant specified by the type of goods, for the current and the following financial year;
  - (h) names and contact information of the persons on behalf of whom the declarant is acting, if applicable.
4. The competent national authority shall not authorise an applicant who fails to provide the information listed in paragraph 3.
  5. The applicant may at any time withdraw its application. An authorised declarant may also at any time ask for its authorisation to be revoked.
  6. The authorised declarant shall inform the competent national authority without delay of any changes of the information provided under paragraph 3, arising after the decision was taken, which may influence the validity or content of the authorisation in accordance with Article 17.
  7. The Commission is empowered to adopt implementing acts, concerning the format and the procedure for communication exchanges between the applicant and the competent national authority. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 43(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 national authority.
2. The CBAM declaration shall contain the following:
  - (a) the total quantity of each type of good 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 good per tonne of CO<sub>2</sub>e emissions per tonne of each good, calculated in accordance with Article 7;
  - (c) the total number of CBAM certificates corresponding to the total embedded emissions, to be surrendered in accordance with Article 36, after the reduction due on the account of the carbon price paid in a country of origin in accordance with Articles 9 and of the extent to which EU ETS allowances are allocated free of charge in with Article 45.
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 format and the procedure for submitting the CBAM declaration and the arrangements for surrendering CBAM certificates. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 43(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 points 2 and 3 of Annex III. 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 point 4.1 of Annex III.
3. Embedded emissions in imported electricity shall be determined by reference to default values in accordance with the methods set out in point 4.2 of Annex III unless the authorised declarant chooses to determine the embedded emissions based on the actual emissions in accordance with point 5 of that annex.
4. The authorised declarant shall keep records of the information required to calculate the embedded emissions in goods as 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 national 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 to further define the necessary 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. Default values can be adapted to particular areas, regions or countries where specific characteristics prevail in terms of 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 Commission Implementing Regulation (EU) No 2018/2067.

7. The implementing acts referred to in the first subparagraph shall be adopted in accordance with the examination procedure referred to in Article 43(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 accordance with Article 10(8) to fulfil the obligation referred to in paragraph 1.
3. The Commission is empowered to adopt implementing acts concerning the principles of verification 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 43(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 a competent independent person, required to demonstrate that the declared embedded emissions are subject to a carbon price in the country of origin of the good 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 of documentation referred to in paragraph 2 until the end of the fourth year after the year in 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 certifications to be surrendered, including the conversion of the carbon price paid in foreign currency into euro at yearly average exchange rate, the qualifications of the competent independent person certifying the information referred to in paragraph 2 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. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 43(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) name and contact details of the operator, as well as authorised signatories;
  - (b) location of each installation including complete address and coordinates expressed in longitude and latitude including 6 decimals;
  - (c) main economic activity of the installation in the third country classified at a 4-digit level (NACE-4 code) in accordance with Annex I of Regulation (EC) No 1893/2006 <sup>(58)</sup>;
3. The operator shall inform the Commission without delay of any changes in the information referred to in the first subparagraph arising after the registration and the Commission shall include the updated information in the database.
4. 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 by a verifier accredited pursuant to Article 18 in accordance with the verification principles set out in Annex V;
  - (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.
5. 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.
6. The records referred to in paragraph 4(c) shall be sufficiently detailed to enable the verification in accordance with paragraph 4(b) and to enable any competent national authority to, in accordance with Article 19(1), review the CBAM declaration made by an authorised declarant making use of the information in accordance with paragraph 8.

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<sup>58</sup> In accordance with Annex I of Regulation (EC) No 1893/2006 of the European Parliament and of the Council of 20 December 2006 establishing the statistical classification of economic activities NACE Revision 2 and amending Council Regulation (EEC) No 3037/90 as well as certain EC Regulations on specific statistical domains (OJ L 393 30.12.2006, p. 1).

7. The operator shall keep those records of information, 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.
8. An operator may disclose the information on the verification of embedded emissions referred to in paragraph 4 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.
9. The operator may, at any time, ask to be deregistered from the database.

## **Chapter III**

### **Competent authorities**

#### *Article 11*

##### *Competent national authorities*

1. Member States shall designate the appropriate competent national authority or authorities for the implementation of the provisions of this Regulation. Where more than one competent national authority is designated, the work of these authorities undertaken pursuant to this Regulation must be coordinated.
2. Each Member State shall set up a central point of contact that shall serve as the main communication channel with authorities of other Member States and the Commission.
3. All communication or information relating to the provisions of this Regulation shall be in the official language or languages of the competent national authority in the Member State and English.

#### *Article 12*

##### *Commission*

The Commission shall assist competent national authorities in carrying their obligations under this Regulation and coordinate their activities to ensure a proper functioning of the CBAM.

#### *Article 13*

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

All information acquired by the competent national 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 national 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 according to Council Regulation (EC) No 515/97.

#### *Article 14*

##### *National registries*

1. The competent national 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 common data elements to track the sale, holding, surrender, re-purchase and cancellation of CBAM certificates, and to provide for public access and 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) name and contact details of the authorised declarant;
  - (b) EORI number of the authorised declarant;
  - (c) CBAM account number;
  - (d) number, price and date of purchase of CBAM certificates owned by each authorised declarant.
3. The information in the database referred to in paragraph 2 shall be confidential. Only the names of the authorised declarants shall be accessible to the public.
4. The Commission shall establish a database accessible to the public containing the names and additional details of the operator and of the third country installations registered in accordance with Article 10(2).

*Article 15*  
*Central Administrator*

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

*Article 16*  
*Accounts in the national registries*

1. The competent national 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 national authority shall set up the account as soon as the authorisation is granted and notify the authorised declarant thereof.
4. If the authorised declarant has ceased economic activity or its authorisation is revoked, the competent national authority shall close the account of that declarant.

*Article 17*  
*Authorisation of declarants*

1. The competent national authority shall authorise a declarant who submits an application for authorisation in accordance with Article 5, if that declarant meets the following criteria:
  - (a) the absence of any serious infringement or repeated infringements of customs legislation, taxation rules and market abuse rules during the five years preceding the application for authorisation in accordance with Article 5, including no record of serious criminal offences relating to the economic activity of the applicant;
  - (b) financial solvency, which shall be deemed to be proven where the declarant has good financial standing, which enables it to fulfil its commitments, with due regard to the characteristics of the type of business activity concerned.
2. The competent national authority shall deny an authorisation whereby the declarant does not fulfil the criteria under this paragraph. Such denial shall be binding for the competent authorities of all Member States.
3. A decision of the competent national 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.
4. The issuance of the decision for authorisation shall be conditional upon the provision of a guarantee if the declarant is economically active for less than the two financial years that precede the year in which the application in accordance with Article 5 has been submitted.
5. The guarantee shall cover the amount of the price of CBAM certificates that the authorised declarant is to surrender, in accordance with Article 36, on the basis of the imports of goods for the current and the forthcoming year, as estimated by the competent national authority. 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 assurance equivalent to the one provided by the former.
6. Where the competent national authority establishes that the guarantee provided does not ensure, or is no longer certain or sufficient to ensure the fulfilment of the authorised declarant's obligations in accordance with previous paragraph, it shall require the authorised declarant to provide an additional guarantee or to replace the initial guarantee with a new guarantee, according to its choice.
7. The competent national authority shall release the guarantee, if the authorised declarant has surrendered CBAM certificates in accordance with Article 36 for the year in which the declarant has been authorised and for the following year.
8. The competent national authority shall revoke the authorisation for a declarant who no longer meets the criteria provided for in paragraph 1 or who fails to cooperate with that national authority.

*Article 18*  
*Accreditation of verifiers*

1. Any person accredited pursuant to Commission 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 perform the obligations of control of the embedded emissions established in Articles 8, 10 and 52.
3. The Commission is empowered to adopt delegated acts in accordance with Article 42 for the accreditation referred to in paragraph 2, specifying conditions, including control and oversight of accredited verifiers and conditions for possible withdrawal of accreditation, for mutual recognition and peer evaluation of the accreditation bodies, as appropriate.

*Article 19*  
*Review of CBAM obligations*

1. The competent national authority may review the CBAM declaration and shall check whether a CBAM declaration should have been submitted within the period ending with the fourth year after the year in which it has been or should have been submitted. In particular, the review may consist in cross-examining the information provided in the CBAM declaration with the information communicated by the customs authorities in accordance with Article 39(2) and any other relevant evidence, and in any audit deemed necessary, including at the premises of the authorised declarant.
2. Where the competent national authority has established, that the total amount of CBAM certificates to be surrendered according to the CBAM declaration is incorrect, or that no CBAM declaration has been submitted, it shall adjust the amount of CBAM certificates due by the authorised declarant. The competent national authority shall notify the authorised declarant of the adjustment and request that the authorised declarant shall surrender the additional CBAM certificates within one month. In case CBAM certificates have been surrendered in excess of the amount due, the competent national authority shall reimburse to the authorised declarant without delay the value of excessive CBAM certificates calculated at the average price paid by the authorised declarant during the year of import.

## **Chapter IV** **EU Carbon Emission Body**

*Article 20*  
*Support to competent national authorities*

The Commission or an EU body ('the EU Carbon Emission Body') shall provide support to the competent national authorities in carrying out their obligations under this Regulation and shall coordinate their activities to ensure a proper functioning of the CBAM.

*Article 21*  
*Setting-up of an EU Carbon Emission Body*

The Commission is empowered to adopt implementing acts to set up an EU Carbon Emission Body with a view to entrusting it with certain tasks relating to the implementation of this Regulation. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 43(2).

*Article 22*  
*Legal status*

1. The EU Carbon Emission Body is a Union body with a public service role.
2. The EU Carbon Emission Body shall have legal personality. In each Member State, it shall enjoy full legal capacity accorded to legal persons under national law. In particular, it will be allowed to acquire or dispose of movable and immovable property and to be a party to legal proceedings. To this end, it shall be represented by its Director.

*Article 23*  
*Seat*

The EU Carbon Emission Body shall be located at the place where the Commission and its departments are located in accordance with the Protocol No 6 on the location of the seats of the institutions and of certain bodies, offices, agencies and departments of the European Union.

*Article 24*  
*Tasks*

The Commission may entrust the EU Carbon Emission Body with any of its tasks for implementation of this Regulation. Those tasks shall not include tasks requiring discretionary powers in implementing political choices.

*Article 25*  
*Director*

1. The EU Carbon Emission Body shall be managed by a director who shall be entrusted with managerial authority over its staff.
2. The director of the EU Carbon Emission Body shall be appointed by the Commission, which shall to that end appoint an official within the meaning of Article 1a of the Staff Regulations of officials and the conditions of employment of other servants of the European Communities laid down by Regulation (EEC, Euratom, ECSC) No 259/68 of the Council<sup>59</sup>, hereafter referred to as ‘Staff Regulations’.

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<sup>59</sup> Regulation (EEC, Euratom, ECSC) No 259/68 of the Council of 29 February 1968 laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Communities and instituting special measures temporarily applicable to officials of the Commission (OJ L 56, 4.3.1968, p. 1).

3. The director shall be appointed for a term of four years. This appointment may be renewed. The Commission may remove the director from office before expiry of the term of office upon a proceeding established under Annex IX of the Staff Regulation.
4. The director shall ensure that the annual work programme of the EU Carbon Emission Body is implemented. In particular, the director shall be responsible for performing the tasks referred to in Article 24 and shall take the relevant decisions to that effect.
5. The director shall draw up the provisional statement of revenue and expenditure and, as an authorising officer, shall implement the budget of the EU Carbon Emission Body in accordance with the Regulation (EU, Euratom) 2018/1046.

*Article 26*  
*Work programme*

1. On the basis of a draft submitted by the director, the Commission shall, no later than at the beginning of each year, adopt an EU Carbon Emission Body's annual work programme. The work programme must comply with the programming defined by the Commission in accordance with the applicable legislation, in particular with this Regulation. The annual work programme may be amended during the year following the same procedure. The work programme shall be accompanied by an estimate of the necessary expenditure.
2. The director shall report at the end of the year on the implementation of the work programme.

*Article 27*  
*Budget*

1. The budget of the EU Carbon Emission Body shall display revenue and expenditure which shall be in balance.
2. The revenue of the EU Carbon Emission Body shall include a subsidy entered in the general budget of the European Union without prejudice to other revenue.

*Article 28*  
*Implementation of the budget and discharge*

1. The director shall implement the EU Carbon Emission Body's budget.
2. The European Parliament, acting on a recommendation from the Council, shall grant a discharge to the EU Carbon Emission Body for the implementation of its budget no later than 29 April of the second year after examination of the report by the Court of Auditors.
3. Such discharge shall be granted together with that relating to implementation of the general budget of the European Union.

*Article 29*  
*Staff*

The EU Carbon Emission Body's staff shall consist of Community officials seconded as temporary staff members by the institutions to positions of responsibility in the EU Carbon Emission Body and of other temporary staff members directly recruited by the EU Carbon

Emission Body, as well as of other servants recruited by the EU Carbon Emission Body on the basis of renewable contracts. The nature of the contract, governed by either private law or public law, its duration, the extent of the servants' obligations vis-à-vis the EU Carbon Emission Body, and the appropriate eligibility criteria shall be determined on the basis of the specific nature of the tasks to be performed and shall comply with the Staff Regulations as well as with current national legislation.

*Article 30*  
*Privileges and immunities*

The Protocol No 7 on the privileges and immunities of the European Union shall apply to both the EU Carbon Emission Body and its staff, insofar as it is subject to the Staff Regulations.

*Article 31*  
*Supervision*

1. The function of internal auditor shall be performed in the EU Carbon Emission Body by the internal auditor of the Commission.
2. The Commission and the EU Carbon Emission Body shall implement the recommendations of the internal auditors, each according to their respective powers.
3. The European Anti-Fraud Office ('OLAF') shall enjoy the same powers in respect of the EU Carbon Emission Body and their staff as it enjoys in respect of Commission departments.
4. The Court of Auditors shall examine the EU Carbon Emission Body's accounts in accordance with Article 248 of the Treaty.
5. All acts of the Carbon Emission Body, and in particular all decisions adopted and contracts concluded by it, must provide explicitly that the Commission's internal auditor, OLAF and the Court of Auditors and, for those Member States participating in enhanced cooperation pursuant to Council Regulation (EU) 2017/1939, the European Public Prosecutor's Office (EPPO) may conduct on-the-spot inspections of the documents of all contractors and sub-contractors which have received Union funds, including at the premises of the final beneficiaries.

*Article 32*  
*Liability*

1. The contractual liability of the EU Carbon Emission Body shall be governed by the law applicable to the contract in question.
2. In the case of non-contractual liability, the EU Carbon Emission Body shall make good any damage caused by the agency or its servants in the performance of their duties, in accordance with the general principles common to the laws of the Member States. The Court of Justice shall have jurisdiction in disputes relating to compensation for any such damage.
3. The personal liability of staff towards the EU Carbon Emission Body shall be governed by the rules applicable to them.

### *Article 33*

#### *Access to documents and confidentiality*

1. The EU Carbon Emission Body shall be subject to Regulation (EC) No 1049/2001 of the European Parliament and of the Council<sup>60</sup> when it receives a request for access to a document in its possession.
2. The director and members of staff and all persons involved in the activities of the EU Carbon Emission Body shall be required, even after their duties have ceased, not to disclose information of the kind covered by the obligation of professional secrecy.

## **Chapter V**

### **CBAM certificates**

### *Article 34*

#### *Sale of CBAM certificates*

1. The competent national authority of each Member State shall sell CBAM certificates to declarants authorised in that Member State at the price calculated in accordance with Article 35.
2. The competent national authority shall ensure that each CBAM certificate is assigned a unique unit identification code upon its creation and is registered along with the price and date of sale of the certificate in the national registry in the account of the authorised declarant.

### *Article 35*

#### *Price of CBAM certificates*

1. The Commission shall calculate the price of CBAM certificates as the average price of the closing prices of all auctions of EU ETS allowances conducted in auctioning platforms appointed in accordance the procedures laid down in Commission Regulation (EU) No 1031/2010<sup>61</sup> during each calendar week.
2. This average calculated price shall be published on the Europa website on the first working day of each calendar week and shall be applied to sales concluded 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 43(2).

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<sup>60</sup> Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43).

<sup>61</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 36*  
*Surrender of CBAM certificates*

1. By 31 May of each year, an authorised declarant shall surrender a number of CBAM certificates to the competent national authority that corresponds to the embedded emissions declared in accordance with Article 6 and verified in accordance with Article 8 for the calendar year preceding the surrender, due account taken of Articles 9 and 45.
2. To comply with its obligation to surrender CBAM certificates under 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, by the end of each quarter, ensure that the number of CBAM certificates on its account in the national registry 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. The conditions and procedures laid down in Article 19 on the review of CBAM declarations shall, where relevant, apply to controls by the competent national authority of the obligations pursuant to the second sentence of paragraph 2.
4. The Commission is empowered to adopt implementing acts which further define the arrangements for the surrender of CBAM certificates referred to in paragraph 1 and 2. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 43(2).

*Article 37*  
*Re-purchase of CBAM certificates*

1. The competent national 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 yearly surrender of certificates in accordance with Article 36 but not later than 30 June of the same year.
2. The number of certificates subject to re-purchase 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 sale.

*Article 38*  
*Cancellation of CBAM certificates*

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

## **Chapter VI**

### **Border administration of goods**

#### *Article 39*

#### *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 national authority at the latest at the moment of 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 of the declarant, the 8 digits CN code of the goods, the quantity, the country of origin, the date of declaration and the customs procedure, to the competent national 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 national authority of the Member State where the declarant has been authorised. The competent national authorities of the Member States will treat and exchange this information according to Council Regulation (EC) No 515/97.
5. The Commission is empowered to adopt implementing acts defining the kind of information, the timing and the means for communicating the information as well as how to deal with corrections. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 43(2).

## **Chapter VII**

### **Enforcement**

#### *Article 40*

#### *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 corresponding to Article 16(3) and (4) of Directive 2003/87/EC in the year of importation of the goods, for each CBAM certificate that the authorised declarant should have surrendered.
2. A person introducing goods into the customs territory of the Union without complying with the obligations on import set out in Regulation (EU) No 952/2013 and resulting in the surrender of no CBAM certificates 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 national authority of the Member State where the declarant has been authorised.
4. If the competent national 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 national authority shall impose the penalty and notify the authorised declarant or, in the situation under paragraph 2, the person:
  - (a) that the competent national authority has determined 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 determination;
  - (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 national 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 according to their national rules in addition to penalties referred to in paragraph 2. Such sanctions shall be effective, proportionate and dissuasive.

*Article 41*  
*Circumvention*

6. The Commission shall take action, based on relevant and objective data, in accordance with this Article, to address practices of circumvention.
7. 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 falling within the scope of this Regulation as laid down in Annex I.
8. 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, at Union level, any significant change of pattern of trade of goods and slightly modified products.

9. 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.
10. 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 42 to supplement the scope of this Regulation in order to include slightly modified products for anti-circumvention purposes.

## **Chapter VIII**

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

#### *Article 42*

##### *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(5), 2(10), 2(11), 18(3) and 41(5) shall be conferred on the Commission for an indeterminate period of time.
3. The delegation of power referred to in Articles 2(5), 2(10), 2(11), 18(3) and 41(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(5), 2(10), 2(11), 18(3) and 41(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 43*

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

1. The Commission shall be assisted by a 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 IX**

### **Reporting and review**

#### *Article 44*

##### *Reporting and review by the Commission*

1. The Commission shall initiate collection of information necessary to develop methods of calculating embedded emissions based on the Environmental Footprint methods, including setting benchmarks, for enabling an extension of the scope of this Regulation to goods other than those listed in Annex I.
2. Three years after 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, an assessment of the possibilities to further extend the scope of embedded emissions to emissions of transportation services as well as an assessment of the governance system. It shall also assess the possibility to further extend the scope to other emissions and to other goods at risk of carbon leakage than those already covered by this Regulation as well as to goods further down the value chain 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 X**

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

#### *Article 45*

##### *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 36 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 the goods listed in Annex I within the Union.
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 43(2).

## **Chapter XI**

### **Transitional provisions**

#### *Article 46*

##### *Scope*

For a period of three years following the entry into force of this Regulation, a simplified CBAM mechanism shall apply as set out in Articles 47 to 54.

#### *Article 47*

##### *Importation of goods and purchase of CBAM certificates*

1. Importation of goods shall be conditional on the purchase by a declarant of a number of CBAM certificates calculated in accordance with Article 49 at the moment of the release of those goods for free circulation at the latest.
2. For the purposes of paragraph 1, the customs authorities of the Member State of importation shall sell the CBAM certificates to the declarant on behalf of the competent authority of that Member State.
3. The customs authorities shall treat the receipts from the sale of the CBAM certificates in accordance with the provisions for the customs debt on import of Regulation (EU) No 952/2013.
4. 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 national 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 digits CN code, the quantity, the country of origin and the declarant of the goods, the date of declaration and the customs procedure and the receipts from the sale of the CBAM certificates under the conditions established in Article 34(5).
5. The custom authorities shall carry out risk-based controls on the goods in accordance with Article 46 of Regulation (EU) No 952/2013, in particular to verify the 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.

#### *Article 48*

##### *CBAM certificates 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, CBAM certificates shall be calculated on 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 obligation to purchase CBAM certificates 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 49*  
*Calculation of CBAM certificates*

The customs authorities shall calculate the number of CBAM certificates to be purchased by a declarant upon importation by multiplying the quantity of imported goods by the default values set for each good in accordance with Article 51.

*Article 50*  
*Price of CBAM certificates*

1. The Commission shall calculate and publish the price of CBAM certificates in accordance with Article 35(1).
2. The price referred to in paragraph 1 shall be published on the Europa website on the first working day of each calendar week and shall be applied to payments made for CBAM certificates in accordance with Article 47 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 43(2).

*Article 51*  
*Default values and free allocation of allowances under the EU ETS*

1. Default values shall be determined for the embedded emissions in each good in accordance with the methods set out in point 4.4 of Annex III.
2. Default values set in accordance with paragraph 1 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 the goods listed in Annex I within the Union.
3. The Commission is empowered to adopt implementing acts determining the default values for each good in accordance with paragraphs 1 and 2, including determining system boundaries of production processes, emission factors 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. Default values can be adapted to particular areas, regions or countries where specific characteristics prevail in terms of objective factors such as geography, natural resources, market conditions, prevailing energy sources, or industrial production.

Those implementing acts referred to in subparagraph 1 shall be adopted in accordance with the examination procedure referred to in Article 43(2).

*Article 52*  
*Reimbursement of CBAM payment in excess*

1. A declarant may apply to the competent authority of the Member State of importation for reimbursement of the excess payment made for the CBAM certificates purchased in accordance with Article 47. The excess shall correspond to the difference resulting from the amount paid for certificates at the time of importation and the amount resulting from the multiplication of the price of CBAM

certificates set at the time of purchase and the actual embedded emissions in the imported goods as recalculated by the declarant.

2. For the purpose of applying the provision in paragraph 1, the declarant shall group all its claims for reimbursement of the excess payments made for the CBAM certificates per each quarter of the calendar year and submit the application to the competent authority of the Member State of importation no later than two months after the end of that quarter.
3. A methodology for calculating the actual embedded emissions for each good is set out in Annex III.
4. A declarant shall ensure that the embedded emissions referred to in paragraph 1 are certified by a verifier accredited pursuant to Article 18, following the principles for verification set out in Annex V, including relevant data as set out in Annex IV.
5. The Commission is empowered to adopt implementing acts to further define the necessary 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 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 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 Commission Implementing Regulation (EU) No 2018/2067.

Those implementing acts referred to in the first subparagraph shall be adopted in accordance with the examination procedure referred to in Article 43(2).

### *Article 53*

#### *Compensation for carbon price paid in a country of origin*

1. A declarant may apply to the competent national authority of the Member State of importation for compensation for the carbon price paid in the country of origin for the embedded emissions in the imported goods. The compensation shall be granted in proportion to the payment made for CBAM certificates in accordance with Article 47 with due account taken of any reimbursement granted in accordance with Article 52. The declarant shall provide documentation, certified by a competent independent person, required to demonstrate that the embedded emissions are subject to the carbon price in the country of origin of the good and submit evidence of the proof of the actual payment of that carbon price which should not have been subject to an export rebate or other form of compensation on exportation.
2. For the purpose of applying the provision in paragraph 1, the declarant shall group all its claims for compensation relating to each quarter of the calendar year and submit the application to the competent authority of the Member State of importation no later than five months after the last payment of the carbon price paid in the country of origin.
3. The Commission is empowered to adopt implementing acts establishing a methodology for the calculation of the compensation amount, including the conversion of the carbon price paid in foreign currency into euro under a yearly average exchange rate, the qualifications of the competent independent person certifying the information referred to in paragraph 1 as well as the elements of proof of the carbon price paid, the absence of export rebates or other forms of

compensation on exportation being applied and the practical arrangements on applications and disbursements of compensations. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 43(2).

#### *Article 54*

##### *Control of reimbursements and compensations*

1. Any reimbursement made in accordance with Article 52 or any compensation made in accordance with Article 53 is subject to control by the competent national authorities until the end of the first year following the year of the decision on reimbursement or compensation.
2. The conditions and procedures laid down in Article 19 on the review of CBAM declarations as well as the provisions laid down in Article 13 on professional secrecy and disclosure of information shall, where relevant, apply to any decision referred to in paragraph 1.

## **Chapter XII**

### **Final provisions**

#### *Article 55*

##### *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* and will apply from 1<sup>st</sup> January 2023.
2. It shall apply from 1 January 2023.
3. By way of derogation from paragraph 2:
  - (c) Articles 46 to 54 shall apply until 31 December 2025.
  - (d) Articles 5 and 17 shall apply from 1 September 2025. -
  - (e) Articles 4, 6, 7, 8, 9, 11, 14, 15, 16, 19, 34, 35, 36, 37, 38, 39, 40, 41 and 45 shall apply from 1 January 2026.
4. 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>62</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>62</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 9 billion.

#### 1.4.4. Indicators of performance

*Specify the indicators for monitoring progress and achievements.*

Objectives	Indicators	Measurement tools/data sources
<b>Reduce GHG emissions</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>63</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>63</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>64</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>64</sup> Details of management modes and references to the Financial Regulation may be found on the BudgWeb site:  
<https://myintracomm.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 carried out at central level should ensure consistency in the application of CBAM as well as provides the necessary 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>65</sup>	from EFTA countries <sup>66</sup>	from candidate countries <sup>67</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
2b	06.10.YY – EU Carbon Emission Body	Diff.	NO	NO	NO	NO

<sup>65</sup> Diff. = Differentiated appropriations / Non-diff. = Non-differentiated appropriations.

<sup>66</sup> EFTA: European Free Trade Association.

<sup>67</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	2b Resilience and values
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06.XX.YY.YY: EU Carbon Emission Body			2023	2024	2025	2026	2027	<b>TOTAL 2021 – 2027 MFF</b>
Title 1:	Commitments	(1)	0,816	1,111	1,200	1,368	1,399	<b>5,894</b>
	Payments	(2)	0,816	1,111	1,200	1,368	1,399	<b>5,894</b>
Title 2:	Commitments	(1a)	0,097	0,149	0,168	0,206	0,210	<b>0,83</b>
	Payments	(2a)	0,097	0,149	0,168	0,206	0,210	<b>0,83</b>
Title 3:	Commitments	(3a)	6	10,841	11,925	11,925	6,505	<b>47,196</b>
	Payments	(3b)	6	10,841	11,925	11,925	6,505	<b>47,196</b>
<b>TOTAL appropriations for EU Carbon Emission Body</b>	Commitments	=1+1a +3a	<b>6,913</b>	<b>12,101</b>	<b>13,293</b>	<b>13,499</b>	<b>8,114</b>	<b>53,920</b>
	Payments	=2+2a +3b	<b>6,913</b>	<b>12,101</b>	<b>13,293</b>	<b>13,499</b>	<b>8,114</b>	<b>53,920</b>

<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>
<b>DG: TAXUD</b>							
• Human resources		0,456	0,456	0,456	0,456	0,456	<b>2,736</b>
• Other administrative expenditure – Missions							
<b>TOTAL DG TAXUD</b>	Appropriations	0,456	0,456	0,456	0,456	0,456	<b>2,736</b>

<b>TOTAL appropriations under HEADING 7 of the multiannual financial framework</b>	(Total commitments = Total payments)	0,456	0,456	0,456	0,456	0,456	<b>2,736</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>7,369</b>	<b>12,557</b>	<b>13,749</b>	<b>13,955</b>	<b>8,570</b>	<b>56,200</b>
	Payments	<b>7,369</b>	<b>12,557</b>	<b>13,749</b>	<b>13,955</b>	<b>8,570</b>	<b>56,200</b>

3.2.2. *Estimated impact on Carbon Emission Body's appropriations*

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

Commitment appropriations in EUR million (to three decimal places): Current Prices

Indicate objectives and outputs ↓	OUTPUT S	Average cost	2023		2024		2025		2026		2027		TOTAL 2021 – 2027 MFF
			No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	Total cost
			Type <sup>68</sup>										
SPECIFIC OBJECTIVE No 1 <sup>69</sup> ...													
- Databases and IT systems (including transitional costs)	Database / IT			6		10,841		11,925		11,925		6,505	47,196
- Translation	Translation												
- Missions	Missions												
- Legal representation	External counsel												
<b>TOTAL COST</b>				<b>6</b>		<b>10,841</b>		<b>11,925</b>		<b>11,925</b>		<b>6,505</b>	<b>47,196</b>

<sup>68</sup> Outputs are products and services to be supplied (e.g.: number of student exchanges financed, number of km of roads built, etc.).

<sup>69</sup> As described in point 1.4.2. 'Specific objective(s)...

### 3.2.3. Estimated impact on Carbon Emission Body's human resources

#### 3.2.3.1. Summary

- 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): Current prices – Only the part that is Union funded

	2023	2024	2025	2026	2027	<b>TOTAL 2021 – 2027 MFF</b>
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Temporary agents (AD Grades)	0,544	0,556	0,564	0,576	0,588	2,828
Temporary agents (AST grades)	0,272	0,417	0,423	0,432	0,441	2,121
Contract staff		0,138	0,213	0,360	0,370	1,081
Seconded National Experts						

<b>TOTAL</b>	<b>0,816</b>	<b>1,111</b>	<b>1,2</b>	<b>1,368</b>	<b>1,399</b>	<b>5,894</b>
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Staff requirements (FTE):

	2023	2024	2025	2026	2027	<b>TOTAL</b>
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Temporary agents (AD Grades)	4	4	4	4	4	<b>4</b>
Temporary agents (AST grades)	2	3	3	3	3	<b>3</b>
Contract staff	0	2	3	5	5	<b>5</b>
Seconded National Experts						

<b>TOTAL</b>	<b>6</b>	<b>9</b>	<b>10</b>	<b>12</b>	<b>12</b>	<b>12</b>
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It is assumed that the selection process for hiring staff would start gradually from 2023 onwards, in order for the Carbon Emission Body to be fully functional in 2026. The recruitment procedure would therefore start before the legal establishment of the body.

### 3.2.4. 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			0,456	0,456	0,456	0,456	0,456	<b>2,736</b>
Other administrative expenditure								
<b>Subtotal HEADING 7 of the multiannual financial framework</b>			0,456	0,456	0,456	0,456	0,456	<b>2,736</b>

<b>Outside HEADING 7<sup>70</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>			0,456	0,456	0,456	0,456	0,456	<b>2,736</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>70</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.

### 3.2.4.1. 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)	3	3	3	3	3	3
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>71</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</b> <sup>72</sup>	- 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>3</b>	<b>3</b>	<b>3</b>	<b>3</b>	<b>3</b>	<b>3</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.
External staff	

<sup>71</sup> AC= Contract Staff; AL = Local Staff; END= Seconded National Expert; INT = agency staff; JPD= Junior Professionals in Delegations.

<sup>72</sup> Sub-ceiling for external staff covered by operational appropriations (former 'BA' lines).

### 3.2.5. *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.

Explain what reprogramming is required, specifying the budget lines concerned and the corresponding amounts.

A new budget line will need to be created, corresponding to the establishment of the new EU Carbon Emission Body. In addition, the Multiannual Financial Framework 2021-2027 will need to be programmed so that the required resources are provided for the implementation of this legislation.

- ✓ The proposal/initiative requires application of the flexibility instrument or revision of the multiannual financial framework<sup>73</sup>.

Explain what is required, specifying the headings and budget lines concerned and the corresponding amounts.

The Multiannual Financial Framework is proposed to be revised via the introduction of an automatic adjustment of the ceilings for sub-heading 2b in commitment appropriations, and of the ceiling for payment appropriations. The mechanism for the annual adjustment will be implemented as of 2024, based on new own resources, which would enable accommodating early repayment of NextGenerationEU borrowing and financing the EU Carbon Emission body through a subsidy by the EU budget.<sup>74</sup>

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<sup>73</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.

<sup>74</sup> COM(2021)XXXX