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Proposal for a

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

**on the establishment of a Carbon Border Adjustment Mechanism ('CBAM')**

(Text with EEA relevance)

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## REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

### on the establishment of 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>(1)</sup>, [where necessary]

Having regard to the opinion of the Committee of the Regions <sup>(2)</sup>, [where necessary]

Acting in accordance with the ordinary legislative procedure,

Whereas:

(1) [Initial capital...].

(2) [Initial capital...].

HAVE ADOPTED THIS REGULATION:

## Chapter I General provisions

### *Article 1*

#### *Subject matter*

1. This Regulation establishes a Carbon Border Adjustment Mechanism (the 'Mechanism') for regulating greenhouse gas emissions embedded in certain goods referred to in Article 2, upon their importation into the customs territory of the Union, with the purpose of preventing the risk of carbon leakage.
2. The Mechanism integrates into the system established for greenhouse gas emission allowance trading within the Union by Directive 2003/87/EC by applying an equivalent regime on imports into the Union.
3. For goods referred to in paragraph 1, the Mechanism is an alternative to the mechanisms established under Directive 2003/87/EC to address the risk of carbon leakage, namely financial measures referred to in Article 10a(6) of

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<sup>1</sup> OJ C [...], [...], p. [...].

<sup>2</sup> OJ C [...], [...], p. [...].

Directive 2003/87/EC and the allocation of allowances free of charge in accordance with Article 10b of Directive 2003/87/EC.

## *Article 2* *Scope*

1. This Regulation shall apply to goods listed in Annex I, originating in countries and territories outside of the Custom Union, with the exception of countries and territories listed in Annex II, in sectors and subsectors determined in the list established pursuant to Article 10b of Directive 2003/87/EC, when those goods are imported to the Union.
2. The Commission, acting in accordance with Article 34, may adopt delegated acts with a view to modify the list in Annex I.
3. The Commission is empowered to adopt delegated acts in accordance with Article 33 to amend the lists in Annex II, notably reflecting whether the third country is fully integrated into the EU ETS or an agreement has been concluded between the third country and the Union linking the EU ETS and the third country emission trading system.

## *Article 3* *Definitions*

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

- (a) ‘greenhouse gases’ means greenhouse gases as defined in Article 3(c) of Directive 2003/87/EC;
- (b) ‘emissions’ means emissions as defined in Article 3(b) of Directive 2003/87/EC;
- (c) ‘good’ means a good listed in Annex I;
- (d) ‘third country’ means a country or territory outside the customs territory of the Union.
- (e) ‘EU ETS’ means the system for greenhouse gas emissions allowance trading within the Union as defined in Article 1 of Directive 2003/87/EC;
- (f) ‘importation’ means the release for free circulation as defined in Regulation (EU) No 952/2013 of the European Parliament and of the Council <sup>(3)</sup>;
- (g) ‘CBAM Authority’ means the authority appointed in accordance with Article 12;
- (h) ‘declarant’ means a person lodging a customs declaration for release for free circulation in its own name or a person in whose name such a declaration is lodged in accordance with Regulation (EU) No 952/2013;
- (i) ‘authorised declarant’ means a declarant that is authorised by the CBAM Authority to import goods;
- (j) ‘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;

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<sup>3</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).

- (k) ‘EORI number’ means an Economic Operators Registration and Identification number assigned on the basis of Article 9 of Regulation (EU) No 952/2013;
- (l) ‘NACE code’ means the statistical classification of economic activities in the Union in accordance with Regulation (EC) No 1893/2006 of the European Parliament and of the Council <sup>(4)</sup>;
- (m) ‘CBAM declaration’ means a declaration submitted according to Article 7;
- (n) ‘embedded emissions’ means direct emissions and indirect emissions released during the production of a relevant good and its upstream products applying the principles laid down in Articles 7 and 8 and the system boundaries relating to each good;
- (o) ‘surrender’ means the accounting of CBAM certificates by an authorised declarant against its declared emissions embedded in imported goods;
- (p) ‘CBAM certificate’ means a certificate in electronic format corresponding to one tonne of CO<sub>2</sub>e emissions embedded in goods imported by an authorised declarant, that is sold, surrendered, re-purchased and cancelled in accordance with this Regulation;
- (q) ‘default value’ means a value representing embedded emissions in a good that is not based on the actual emissions resulting from the production of that good;
- (r) ‘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 activities listed in Annex I of Directive 2003/87/EC, irrespective of the thresholds set in that Annex;
- (s) ‘installation’ means installation as defined in Article 3(e) of Directive 2003/87/EC;
- (t) ‘operator’ means an operator as defined in Article 3(f) of Directive 2003/87/EC;
- (u) ‘CBAM registry’ means a registry set up in accordance with Article 15;
- (v) ‘tonne of CO<sub>2</sub>e’ means one metric tonne of carbon dioxide (CO<sub>2</sub>) or an amount of any other greenhouse gas with an equivalent global-warming potential as defined in Article 3(j) of Directive 2003/87/EC;
- (w) ‘EU ETS allowances’ means allowances as defined in Article 3(a) of Directive 2003/87/EC;
- (x) ‘like product’ means a product which is identical, that is to say, alike in all respects, to the product under consideration, or, in the absence of such a product, another product which, although not alike in all respects, has characteristics closely resembling those of the product under consideration;
- (y) ‘implicit capacity allocation’ means ..... [to be added by EG ENER]
- (z) ‘explicit capacity allocation’ means ..... [to be added by DG ENER]

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<sup>4</sup> Directive (EU) 2019/944 of the European Parliament and of the Council of 5 June 2019 on common rules for the internal market for electricity and amending Directive 2012/27/EU (OJ L 158, 14.6.2019, p. 125).<sup>5</sup> Commission Implementing Regulation (EU) 2020/1577 of 21 September 2020 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 361, 30.10.2020, p. 1).

- (aa) ‘CN codes’ means the codes of the combined nomenclature of Commission Implementing Regulation (EU) 2020/1577 <sup>(5)</sup>;
- (bb) ‘specific embedded emissions’ means the embedded emissions of one tonne of relevant product, expressed as tonne of CO<sub>2e</sub> emissions/tonne product;
- (cc) ‘direct emissions’ means emissions taking place as part of a production process of goods of 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;
- (dd) ‘indirect emissions’ means greenhouse gas emissions from the production of electricity which is consumed during the production process of goods;
- (ee) ‘production processes’ means the chemical and physical processes carried out to produce a relevant good in stationary installations. For the purposes of this Regulation, the system boundaries of production processes are limited to greenhouse gases and activities listed in Annex I of Directive 2003/87/EC, no matter if the installation is located in the EU or not, irrespective of the thresholds set in that Annex;
- (ff) ‘power purchase agreement’ means a contract under which a natural or legal person agrees to purchase electricity directly from an electricity producer;
- (gg) ‘Transmission System Operators’ mean transmission system operators as defined in Article 2(35) of Directive (EU) 2019/944 of the European Parliament and of the Council <sup>(6)</sup>.

## **Chapter II**

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

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

1. Importation of goods shall, under the conditions laid down in this Regulation, only be made by a declarant that is authorised by the CBAM Authority in accordance with Article 17.
2. The authorised declarant of the goods shall be held liable for failure to comply with the obligations set out in this Regulation.

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<sup>5</sup> Commission Implementing Regulation (EU) 2020/1577 of 21 September 2020 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 361, 30.10.2020, p. 1).

<sup>6</sup> Directive (EU) 2019/944 of the European Parliament and of the Council of 5 June 2019 on common rules for the internal market for electricity and amending Directive 2012/27/EU (OJ L 158, 14.6.2019, p. 125).

*Article 5*  
*Application for authorisation to import goods*

1. Any person may apply for authorisation by the CBAM Authority to import goods. The CBAM Authority will authorise an applicant who meets the criteria set out in Article 17.

By way of derogation from the first subparagraph, for the import of electricity, the declarant shall be considered as authorised for the purposes of this Regulation.

[Notice: a discussion is ongoing between services on how to address the imports of electricity from countries with which our market is coupled or will be coupled in the coming years]

2. The application for authorisation shall include the following information on the applicant:
  - (a) name and contact information, as well as authorised signatories;
  - (b) EORI number;
  - (c) national registration number or other proof of the permanent establishment of the business in the Union;
  - (d) main economic activity carried out in the Union at a 4-digit level (NACE-4 code);
  - (e) certification by the competent national authority in the Member State where the main economic activity is carried out that the applicant is not subject to an outstanding recovery order for national tax debts;
  - (f) confirmation that the applicant and, if the applicant is a legal entity, the applicant's shareholders which have a minimum holding of 25 per cent in the capital of the applicant, have no record during five years preceding the date of application of serious criminal offences relating to the economic activity of the applicant;
  - (g) verified financial statements of its total economic activity in the Union for each of the two preceding financial years;
  - (h) estimated monetary value and volume of imports of goods to the Union by the applicant as declarant, specified by the type of goods in accordance with Annex I, for the current and the following financial year;
  - (i) names and contact information of the persons the applicant is acting on behalf of as declarant.
3. The applicant may at any time withdraw its application.
4. The Commission shall specify, by means of implementing acts, the format and any further details of the communication between the applicant and the CBAM Authority according to this Article. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 35(2).

*Article 6*  
*Content of a CBAM declaration*

1. In accordance with the principles set out in Article 7, each authorised declarant shall, by 31 May each year, submit a CBAM declaration to the CBAM Authority.

The declaration shall contain the following:

- (a) the emissions embedded in imported goods during the previous calendar year;
  - (b) the number of CBAM certificates corresponding to the total embedded emissions in imported goods that the declarant states to be surrendered in accordance with Articles 7 and 10.
2. 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 declarant shall report the 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.
  3. 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 declarant shall report 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.
  4. Where the imported goods are returned goods as referred to in Article 203 of Regulation (EU) No 952/2013, the declarant shall report zero emissions relating to these goods.
  5. The Commission shall adopt implementing acts concerning the content and format of the declaration referred to in paragraph 1. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 35(2).

#### *Article 7*

##### *Calculation of embedded emissions and CBAM certificates to be surrendered*

1. The CBAM declaration shall contain the total quantity of goods imported during the calendar year, expressed in megawatt hours for electricity and in metric tonnes for other goods, multiplied by the embedded emissions of each good based on the principles set out in paragraph 2.
2. The embedded emissions shall be relied on for the calculation of the number of CBAM certificates to be surrendered by the authorised declarant. A methodology for calculating the embedded emissions in a good shall be set out in Annex III and complemented by implementing acts referred to in paragraph 4.
3. In case the actual emissions cannot be adequately verified, including cases where the authorised declarant has failed to submit the necessary information, the number of CBAM certificates to be surrendered shall be determined in accordance with default values. Annex III shall set out the principles for determining such default values.
4. For electricity, the number of CBAM certificates to be surrendered shall be determined in accordance with default values except when the authorised declarant, who complies with the conditions set out in Annex III, opts to declare actual emissions. Annex III shall set out the principles for determining such default values.
5. The authorised declarant shall keep records of information required to determine the embedded emissions of imported goods and the CBAM certificates to be surrendered. Those records shall be sufficiently detailed to enable the independent verifiers to verify the embedded emissions according to Article 8 and to enable the

CBAM Authority to review the CBAM declaration according to Article 19(1). Those records shall be kept for the period specified in Article 19(1).

6. The Commission shall adopt implementing acts to specify the methodology criteria set out in Annex III and to establish detailed arrangements for the calculation of embedded emissions, including how such emissions are to be reflected in the declarations concerning imported goods falling within the scope of this Regulation. The Commission shall also adopt implementing acts to set the default values referred to in paragraph 2 for each good listed in Annex I, in accordance with the principles laid down in Annex III. The Commission shall also adopt implementing acts to set the default values referred to in paragraph 3 and to specify the records required according to paragraph 4.

The implementing acts referred to in the first subparagraph shall be adopted in accordance with the advisory procedure referred to in Article 35(2).

#### *Article 8*

##### *Verification of embedded emissions*

1. Each authorised declarant shall ensure that the embedded emissions declared pursuant to Article 7 are verified by an independent verifier referred to in Article 18 in accordance with the criteria set out in Annex IV and any detailed provisions adopted by the Commission in accordance with this Article.
2. The Commission shall adopt implementing acts concerning the verification based on the principles set out in Annexes IV and V. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 35(2).

#### *Article 9*

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

1. An authorised declarant may in its declaration claim a reduction in the number of CBAM certificates to be surrendered corresponding to the carbon price paid in the country of origin for the declared emissions. The authorised declarant shall submit sufficient information, accurately certified by a competent independent person, that the declared emissions are subject to a carbon price in the country of origin of the good and proof that such carbon price has been paid in the country of origin and cannot be subject to an export rebate or other form of compensation linked to the fact that the good is exported.
2. The Commission shall adopt implementing acts concerning the certification of the carbon price referred to in paragraph 1. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 35(2).
3. The Union, in accordance with Article 218 TFEU, may conclude sectoral agreements with third countries with a view to take account of carbon pricing mechanisms in these countries as referred to in paragraph 1.

#### *Article 10*

##### *Surrender of CBAM certificates*

1. An authorised declarant shall, by 31 May each year, surrender a number of CBAM certificates to the CBAM Authority that corresponds to the embedded emissions



declared and verified in accordance with Articles 6 and 8 for the previous calendar year.

When calculating the number of CBAM certificates to be surrendered, the carbon price paid by the authorised declarant in the country of origin as referred to in Article 9 shall be taken into account by the CBAM Authority in accordance with Article 19.

2. The Commission shall adopt implementing acts concerning specific arrangements and modalities for the surrender of CBAM certificates referred to in paragraph 1. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 35(2).

## **Chapter III**

### **Installations in third countries**

#### *Article 11*

#### *Registration of third country installations*

1. The CBAM Authority shall, upon request by an operator of an installation located in a third country, take a decision to confirm the embedded emissions in goods produced in that installation as verified by an independent verifier referred to in Article 18, and register the operator in the CBAM registry.

The request for registration shall include the following:

- (j) name and contact details of the operator, as well as authorised signatories;
  - (k) location and main economic activity of the installation in the third country at a 4-digit level (NACE-4 code);
  - (l) the embedded emissions calculated in accordance with the principles set for the determination of actual values in Annex III, specified by type of goods;
  - (m) the information referred to in subparagraph (c) as verified by an independent verifier in accordance with the criteria set out in Article 8.
  - (n) The decision taken by the CBAM Authority shall be valid for a period of two years from the date of its adoption.
2. Following registration by the CBAM Authority, the operator may opt to disclose such information to an authorised declarant in accordance with Article 14. The authorised declarant shall be entitled to avail itself of the disclosed information without any further verification of the relevant embedded emissions for two years from the date of registration of the operator, insofar as the information provided by the operator stay unchanged.
  3. The operator may, at any time, withdraw its request or ask the CBAM Authority to deregister it from the CBAM registry.
  4. The Commission shall adopt implementing acts concerning the content and format of the request referred to in paragraph 1 and the detailed arrangements for the verification of the actual values in accordance with Annexes III and V. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 35(2).

## [Chapter IV

### **The CBAM Authority- all provisions relating to the choice of the administrative body set out in this chapter is under discussion, awaiting political guidance]**

#### *Article 12*

##### *Appointment of the CBAM Authority*

The Commission shall appoint the competent authority to perform obligations referred to in Articles 17 to 20 as the ‘CBAM Authority’.

#### *Article 13*

##### *Decisions taken by the CBAM Authority*

1. The CBAM Authority shall, without delay, take any decision that is required to implement the provisions of this Regulation.
2. Any decision of the CBAM Authority shall take effect from the date of its notification to the holder of the decision.
3. If the CBAM Authority considers that it does not have all the necessary information to take a decision, it shall contact the holder of the decision and specify what additional information is required. The holder of the decision shall submit the required information to the CBAM Authority without delay.
4. The holder of the decision shall inform the CBAM Authority without delay of any changes to the information provided arising after the decision was taken, which may influence its continuation or content. In this case, the CBAM Authority shall re-assess its decision in light of that information.
5. Any decision taken by the CBAM Authority which adversely affects the holder of the decision shall set out the grounds on which it is based and shall include a reference to the right of appeal provided for in Article 30. Before the decision is taken, the CBAM Authority shall give the holder of the decision the opportunity to make its point of view known to the CBAM Authority within a given period of time. Following the expiry of that period, the holder of the decision shall be notified of the decision in the appropriate form.
6. The CBAM Authority may, at any time, annul, revoke or amend its decision upon reasoned request by the holder of the decision or on its own initiative, if appropriate.
7. The Commission shall specify, by means of implementing acts, any further detailed arrangement or procedural rule concerning the decision-making of the CBAM Authority. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 35(2).

#### *Article 14*

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

1. All information acquired by the CBAM 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 the obligation of professional secrecy. Such information shall not

be disclosed by the CBAM Authority without the express permission of the person or authority that provided it.

Such information may, however, be disclosed without permission where this Regulation provides for it and where the CBAM Authority is obliged or authorised to do so pursuant to the provisions in force, particularly in respect of data protection, or in connection with legal proceedings.

2. Confidential information referred to in paragraph 1 may be communicated to the customs authorities of the Union.
3. Any disclosure or communication of information as referred to in the first and second paragraphs shall ensure an adequate level of data protection in full compliance with data protection provisions in force.

#### *Article 15* *CBAM Registry*

1. The CBAM Authority shall set up a CBAM Registry for the execution of processes relating to CBAM certificates, in accordance with the conditions set in Articles 22 to 26.
2. The CBAM Registry shall contain a database 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 held by each authorised declarant.
3. The CBAM Registry shall also contain, in a separate section of the database, the names and additional details of the operator and of the third country installations registered in accordance with Article 11.
4. This database shall be confidential. Only the names of the authorised declarants and of the operator and of the third country installations included in the database shall be accessible to the public.
5. The Commission shall adopt implementing acts concerning the infrastructure and specific processes of the CBAM Registry and the electronic databases containing the information above. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 35(2).

#### *Article 16* *Accounts in the CBAM Registry*

1. The CBAM Authority shall assign to each authorised declarant a unique CBAM account number.

Each declarant shall be granted access to its account in the CBAM Registry to fulfil its obligations pursuant to Article 10.
2. The CBAM Authority shall set up the account at the time of authorisation and notify the authorised declarant thereof.

3. If the authorised declarant has ceased activity or the CBAM authorisation is withdrawn, the CBAM Authority shall close the account of that declarant.
4. The Commission shall adopt implementing acts laying down procedures concerning the accounts of the CBAM Registry. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 35(2).

*Article 17*  
*Authorisation of declarants*

1. The CBAM Authority shall authorise a person who applies for authorisation in accordance with Article 5, if the person meets the following criteria:
  - (a) the absence of any serious infringement or repeated infringements of customs legislation and taxation rules during the five years preceding the application, 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 applicant has good financial standing, which enables him or her to fulfil his or her commitments, with due regard to the characteristics of the type of business activity concerned.
2. A decision of the CBAM Authority to authorise a person shall contain the following information relating to the authorised person:
  - (a) the name and the address;
  - (b) the EORI number;
  - (c) the account number in the CBAM Registry.
3. If the applicant is
  - (a) in existence for less than the two financial years that precede the year of the application; or
  - (b) a legal person and at least one of its shareholders, which has a minimum holding of 25 per cent in the capital of the applicant, does not meet the criterion set out in paragraph 1(a),

the applicant shall supply a guarantee.

The guarantee shall cover the amount of the price of CBAM certificates that the authorised declarant will have to surrender, in accordance with Article 24, on the basis of the imports of goods for the current and the forthcoming year, as estimated by the CBAM Authority. The guarantee may be provided as a bank guarantee, payable at first demand, by a bank established in the Union or by another form of guarantee which provides equivalent assurance. Where the CBAM 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, the CBAM Authority shall require the authorised declarant to provide an additional guarantee or to replace the original guarantee with a new guarantee, according to his or her choice. The CBAM Authority shall release the guarantee, if the CBAM certificates have been surrendered in accordance with Article 24 for the year in which the applicant has been authorised and for the following year.

4. The CBAM Authority may verify the accuracy and completeness of the information given by the applicant in accordance with Article 5(2) and the existence, authenticity, accuracy and validity of any supporting document. Such controls may be carried out at the premises of the applicant.
5. The Commission shall adopt, by means of implementing acts, the modalities for the application of the criteria referred to in paragraph 1 and for guarantees referred to in paragraph 3. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 35(2).

*Article 18*  
*Accreditation of verifiers*

1. The CBAM Authority shall, on the request of a person established in a third country, accredit the person to verify information in accordance with this Regulation. The CBAM Authority shall designate the requesting person as an accredited verifier on the basis of supporting documentation attesting the person's proven competence, independence and impartiality for the performance of the obligations under this Regulation.
2. Any person accredited pursuant to Article 15 of Directive 2003/87/EC or in accordance with agreements referred to in paragraph 4 shall be regarded as verifiers under this Regulation.
3. The Commission shall adopt implementing acts concerning the requirements and modalities for accreditation referred to in the first paragraph. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 35(2).
4. The Union may, in accordance with Article 218 TFEU, conclude agreements with third countries to recognise verifiers as accredited verifiers under this Regulation.

*Article 19*  
*Review of CBAM declarations*

1. The CBAM declaration is subject to review by the CBAM Authority until the end of the fourth year after the year in which the CBAM declaration has been submitted. The review may in particular consist in cross-examining the information provided in the CBAM declaration with the information communicated by the customs authorities in accordance with Article 27(2) and any other relevant evidence, and in any audit deemed necessary, including at the premises of the authorised declarant.
2. During the period specified in the first sentence of paragraph 1 the authorised declarant may apply for the correction of his or her CBAM declaration.
3. Where the CBAM Authority has determined, ex officio or upon application by the authorised declarant, that the total amount of CBAM certificates to be surrendered according to the CBAM declaration is incorrect, the CBAM Authority shall adjust the amount due by the authorised declarant. In case an outstanding amount is due, the CBAM Authority shall issue a notice to surrender the outstanding CBAM certificates and shall enforce that notice, if necessary. In case CBAM certificates have been surrendered in excess of the amount due, the CBAM Authority shall reimburse the excessive CBAM certificates to the authorised declarant.

4. The Commission shall specify, by means of implementing acts, any further detailed arrangement or procedural rule concerning the review and correction of CBAM declarations as well as the following decisions and their enforcement by the CBAM Authority. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 35(2).

*Article 20*  
*Management of CBAM certificates*

The CBAM Authority shall administer the sale, re-purchase and cancellation of CBAM certificates in accordance with provisions set out in Articles 22 to 26.

*Article 21*  
*Revenues*

The revenues generated by the sale of CBAM certificates shall constitute internal assigned revenue in accordance with Article 21(4) of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council <sup>(7)</sup>. They shall be assigned to cover the costs of the operation and maintenance of the CBAM Authority. Any revenue remaining after covering these costs shall be assigned to the Union budget.

## **Chapter V** **CBAM certificates**

*Article 22*  
*Sale of CBAM certificates*

1. The CBAM Authority shall sell CBAM certificates to each authorised declarant at the price referred to in Article 23.
2. The CBAM 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 CBAM Registry in the account of the authorised declarant.
3. The Commission shall adopt implementing acts concerning the sale and any further detailed arrangement connected with the sale of CBAM certificates. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 35(2).

*Article 23*  
*Price of CBAM certificates*

1. The CBAM Authority shall calculate the price of CBAM certificates as the average of the closing prices of all auctions of EU ETS allowances conducted in auctioning platforms appointed in accordance the procedures laid down in Article 10(4) of Directive 2003/87/EC during each calendar week.

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<sup>7</sup> Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 (OJ L 298 26.10.2012, p. 1).

This average price shall be published in the Official Journal of the European Union on the last working day of each calendar week and shall be applied to sales concluded during the following calendar week.

2. The Commission shall adopt implementing acts concerning the calculation of the price and any further arrangement connected with it. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 35(2).

#### *Article 24*

##### *Surrender of CBAM certificates*

1. The CBAM Authority shall ensure, by 31 May each year, that each authorised declarant surrender the number of CBAM certificates stated in its declaration in accordance with Article 6.
2. The authorised declarant shall fulfil the surrender obligation referred to in the first paragraph by way of ensuring that the required number of CBAM certificates is available on its account in the CBAM registry by 31 May of each year at the latest.
3. The CBAM Certificates shall be surrendered according to the chronological order of their purchase.
4. The Commission shall adopt implementing acts concerning more detailed arrangements about the surrender of CBAM certificates. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 35(2).

#### *Article 25*

##### *Re-purchase of CBAM certificates*

1. The CBAM Authority shall, on request by an authorised declarant, re-purchase the excess of CBAM certificates remaining on the account of that declarant in the CBAM Registry after the yearly surrender of certificates in accordance with Article 24.
2. The number of certificates subject to re-purchase referred to in the first paragraph shall be limited to 10 per cent 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.  
The CBAM certificates shall be re-purchased according to the chronological order of their purchase.
4. The CBAM certificates exceeding the percentage referred to in the second paragraph shall be cancelled according to Article 26.
5. The Commission shall adopt implementing acts concerning the administration of re-purchase claims referred to in the first to third paragraph. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article xx.

*Article 26*  
*Cancellation of CBAM certificates*

1. The CBAM Authority shall, by 31 July each year, cancel the CBAM certificates purchased during the previous calendar year that remained in the account of each authorised declarant in the CBAM Registry after the surrendering of certificates in accordance with Article 24 and possible re-purchasing of certificates in accordance with Article 25.
2. The Commission shall adopt implementing acts concerning the administration of cancellation procedures referred to in the first paragraph. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 35(2).

## **Chapter VI**

### **Border administration of goods**

*Article 27*  
*Procedures at the border when goods are imported*

1. The customs authorities shall ensure that the declarant of the goods is registered with the CBAM Authority when the goods are declared for importation and at the latest at the moment of the release of the goods.
2. The customs authorities shall periodically communicate to the CBAM Authority information on the goods listed in Annex I that are declared for importation, which shall include at least the quantity, country of origin and declarant of the goods. The customs authorities may communicate confidential information, referred to in Article 12(1) of Regulation (EU) No 952/2013, to the CBAM Authority for the purpose of application of this Regulation.
3. Imported products shall be considered as originating in third countries according to non-preferential rules of origin as defined in Article 59 of Regulation (EU) No 952/2013.
4. The Commission shall define, by means of implementing acts, the periodicity and the information referred to in paragraph 2. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 35(2).
5. As of the initiation of investigations under Articles 28 and 29 and having informed the Member States in due time, the Commission may direct the customs authorities to take the appropriate steps to register imports, so that measures may subsequently be applied against those imports from the date of such registration. Imports shall be made subject to registration following a request, from the Union industry, which contains sufficient evidence to justify such action. Imports may also be made subject to registration on the Commission's own initiative. Registration shall be introduced by Commission regulation. Such regulation shall specify the purpose of the action and, if appropriate, the estimated amount of possible future liability. Imports shall not be made subject to registration for a period longer than nine months.



## Chapter VII Enforcement

### *Article 28 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 or submits to the 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.
2. The amount of the penalty should be equivalent to three times the average price of CBAM certificates in the previous year for each CBAM certificate that the authorised declarant did not surrender in accordance with Article 24. Payment of the penalty shall not release the authorised declarant from the obligation to surrender the outstanding number of CBAM certificates to the CBAM Authority.
3. In case of repeated offences, the CBAM Authority may decide to suspend the account of the declarant.
4. The Commission shall adopt implementing acts concerning detailed rules in respect of the procedures referred to in paragraph 1. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 35(2).

### *Article 29 Circumvention*

1. The Commission shall take action to address practices of circumvention.
2. Practices of circumvention occur where there is evidence that the Mechanism is being wilfully abused. This shall include situations where a change in the pattern of trade between third countries and the Union or between individual companies in relation with products included in the scope of this regulation have insufficient due cause or economic justification other than avoiding obligations as laid down in this Regulation.
3. Following a complaint from an interested party or on its own initiative, the Commission may decide, upon a thorough investigation to extend obligations laid down in this regulation to imports of slightly modified like products when circumvention of the measures in force is taking place.
4. Decisions referred to in the third paragraph shall be subject to the appeal procedure as set out in Article 30.
5. Investigations shall be initiated pursuant to this Article on the initiative of the Commission or at the request of a Member State or of any interested party on the basis of sufficient evidence regarding the factors set out in the second paragraph. Initiations shall be made by means of a Commission regulation which shall also instruct customs authorities of Member States to subject imports to registration in accordance with Article 27(5). The Commission shall provide information to the Member States once an interested party or a Member State has submitted a request justifying the initiation of an investigation and the Commission has completed its

analysis thereof, or where the Commission has itself determined that there is a need to initiate an investigation.

6. Investigations shall be carried out by the Commission. The Commission may be assisted by customs authorities and the investigation shall be concluded within nine months.
7. Where the facts as finally ascertained justify the extension of obligations, this shall be done by the Commission adopting delegated acts in accordance with Article 33. The relevant procedural provisions of this Regulation concerning the initiation and the conduct of investigations shall apply pursuant to this Article.
8. The Commission shall adopt delegated acts pursuant to Article 33, to define the procedure of investigation of circumvention in accordance with this Article.

## **Chapter VIII**

### **Appeals**

#### *Article 30*

##### *Appeals against decisions taken by the CBAM Authority*

1. An appeal shall lie from decisions of the CBAM Authority that adversely affect any interested person, including decisions on penalties, circumvention and actual emission values. Those decisions shall take effect only as from the date of expiration of the appeal period of two months. The filing of the appeal shall have suspensive effect. Products concerned by an appeal will be subject to registration according to Article 27(5).
2. Any party to proceedings adversely affected by a decision may appeal. Any other parties to the proceedings shall be parties to the appeal proceedings as of right.
3. The Board of Appeal shall be newly set up and consist of three full members, to be respectively appointed by the Council, by the European Parliament and by the Commission. The chair will be appointed by the Council. The Council and the European Parliament will respectively appoint two additional alternate members.
4. The Commission shall adopt delegated acts pursuant to Article 33, to define the composition, the appointment and the procedures of the Board of Appeal with a view to assure the independence of its members, including during the transitional period. During the transitional period the Commission will hold the functions of the Board of Appeal.

#### *Article 31*

##### *Examination of appeals*

1. The Board of Appeal shall examine whether the appeal is admissible.
2. In the examination of the appeal, the Board of Appeal shall invite the parties, as often as necessary, to file observations, within a period to be fixed by the Board of Appeal, on communications from the other parties or issued by itself.
3. Following the examination as to the admissibility of the appeal, the Board of Appeal shall decide on the appeal. The Board of Appeal may either exercise any power

within the competence of the CBAM Authority or remit the case to the latter for further prosecution.

4. If the Board of Appeal remits the case for further prosecution to the CBAM Authority, the latter shall be bound by the line of reasoning of the Board of Appeal, in so far as the facts are the same.
5. The decisions of the Board of Appeal shall take effect only as from the date of expiry of a period of two months, if an action has been brought before the General Court within that period, as from the date of dismissal of such action or of any appeal filed with the Court of Justice against the decision of the General Court.

#### *Article 32*

#### *Actions before the Court of Justice*

1. Actions may be brought before the General Court against decisions of the Boards of Appeal in relation to appeals.
2. Actions may be brought before the General Court against any decision of the CBAM Authority. In this case administrative appeal under Article 31 will be precluded.
3. The action may be brought on grounds of lack of competence, infringement of an essential procedural requirement, infringement of the TFEU, infringement of this Regulation or of any rule of law relating to their application or misuse of power.
4. The General Court shall have jurisdiction to annul or to alter the contested decision.
5. The action shall be open to any party to proceedings before the Board of Appeal adversely affected by its decision.
6. The action shall be brought before the General Court within two months of the date of notification of the decision of the Board of Appeal in case of action under paragraph 1 of this Article and within two month of the date of the notification of the decision of the CBAM Authority in case of actions under paragraph 2 of this Article.
7. The CBAM Authority shall take the necessary measures to comply with the judgment of the General Court or, in the event of an appeal against that judgment, the Court of Justice.

## **Chapter IX**

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

#### *Article 33*

#### *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, 29 and 30 shall be conferred on the Commission for an indeterminate period of time beginning with the entry into force of this Regulation.
3. The delegation of power referred to in Articles 2, 29 and 30 may be revoked at any time by the European Parliament or by the Council.

4. The institution which has commenced an internal procedure for deciding whether to revoke the delegation of power shall inform the other legislator and the Commission at the latest one month before the final decision is taken, stating the delegated powers which could be subject to revocation and the reasons for a revocation.
5. 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 acts already in force.
6. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making (8).
7. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
8. A delegated act adopted pursuant to Articles 2, 29 and 30 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 34*

##### *Urgency procedure for delegated acts*

1. Delegated acts adopted under this Article shall enter into force without delay and shall apply as long as no objection is expressed in accordance with paragraph 2. The notification of a delegated act to the European Parliament and to the Council shall state the reasons for the use of the urgency procedure.
2. Either the European Parliament or the Council may object to a delegated act in accordance with the procedure referred to in Article 33(6). In such a case, the Commission shall repeal the act immediately following the notification of the decision to object by the European Parliament or by the Council.

#### *Article 35*

##### *Committee procedure (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 4 of Regulation (EU) No 182/2011 shall apply.

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<sup>8</sup> OJ L 123, 12.5.2016, p. 1.

## Chapter X

### Reporting and review

#### *Article 36*

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

1. [Three years] after the end of the transitional period provided for in Article 37, the Commission shall present a report to the European Parliament and the Council on the application of this Regulation.
2. The report shall contain, in particular, an assessment of the impact of this Regulation to the goods listed in Annex I in order to examine the possibility of extending its scope to other goods at risk of carbon leakage than those listed in Annex I 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 XI

### Transitional provisions on the coordination with the EU ETS

#### *Article 37*

##### *Free allocation in the EU ETS and obligation to surrender CBAM certificates*

1. The CBAM certificates to be surrendered in accordance with Article 10 shall be reduced in number to reflect the extent to which EU ETS allowances are allocated free of charge in accordance with Article 10b of Directive 2003/87/EC in installations producing the same kind of goods within the Union as are covered by Annex I.
2. The Commission shall adopt implementing acts concerning the calculation methodology for the reduction referred to in paragraph 1. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 35(2).

## [Chapter XII

### Initial transitional period]

**Note: The full chapter XII is under development, awaiting political guidance; text in Articles are thus simply tentative]**

#### *Article 38*

##### *General scope of transitional provisions*

1. During a period of [three] years following the entry into force of this Regulation, transitional provisions set out in Articles 39 to 43 shall apply providing for a

simplified system for application of the Mechanism, with the objective of reducing the risk of disruptive impacts on trade flows and alleviating the initial administrative burden for declarants importing goods into the Union while at the same time fulfilling the objective of the Mechanism as set out in Article 1.

2. During the transitional period referred to in paragraph 1 the Commission shall perform obligations in accordance with Articles 40, 42 and 43.

#### *Article 39*

##### *Procedures at the border when goods are imported*

1. The customs authorities shall ensure that a declarant of goods for each megawatt hour of electricity and for each metric tonne of other goods will pay a CBAM price as defined in Article 40 when the goods are declared for importation and at the latest at the moment of the release of the goods.
2. The customs authorities shall communicate to the Commission information on the goods declared for importation, which shall include at least the quantity, price paid, country of origin and declarant of the goods.
3. Imported products shall be considered as originating in third countries according to non-preferential rules of origin as defined in Article 59 of Regulation (EU) No 952/2013.
4. The Commission shall define, by means of implementing acts, the periodicity and the information referred to in paragraph 2. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 35(2).

#### *Article 40*

##### *CBAM price for imported goods*

1. The Commission shall calculate a CBAM price expressed in EUR per megawatt hour of electricity and in EUR per metric tonne of each other good in accordance with the provisions set out in paragraphs 2 and 3, using default values for each good in accordance with Article 41.
2. The CBAM price shall be calculated as the average of the closing prices of all auctions of EU ETS allowances conducted in auctioning platforms appointed in accordance the procedures laid down in Article 10(4) of Directive 2003/87/EC during each calendar week. This average price shall be published in the Official Journal of the European Union on the last working day of each week and shall be applied to sales concluded during the following week.
3. The Commission shall adopt implementing acts concerning the calculation of the price and any further appropriate arrangement connected with the price. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 35(2).

#### *Article 41*

##### *Calculation of default values during the transitional period*

1. Specific default values shall be set out to be used for the calculation of the CBAM price during the transitional period referred to in Article 38. Annex III shall set out the principles for determining such default values for each good.

2. The Commission shall adopt implementing acts to set the default values referred to in paragraph 1 for each good listed in Annex I, in accordance with the principles laid down in Annex III. These implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 35(2).

#### *Article 42*

##### *Use of actual values of embedded emissions instead of default values*

1. A declarant may, after having paid a CBAM price in accordance with Article 40, apply to the Commission for a reimbursement of the CBAM price paid corresponding to a calculation of actual embedded emissions in the imported goods calculated in accordance with the principles set out in paragraph 2.
2. A methodology for calculating the embedded emissions in a good shall be set out in Annex III and complemented by implementing acts referred to in paragraph 4.
3. A declarant shall ensure that the embedded emissions referred to in paragraph 1 are certified by accredited verifiers referred to in Article 18 in accordance with the criteria set out in Annex V and any detailed provisions adopted by the Commission in accordance with this Article.
4. The Commission shall adopt implementing acts to specify the methodology criteria set out in Annex III and to establish detailed arrangements for the calculation of embedded emissions. The Commission shall also adopt implementing acts concerning the verification based on the principles set out in Annex V.

The implementing acts referred to in the first subparagraph shall be adopted in accordance with the advisory procedure referred to in Article 35(2).

#### *Article 43*

##### *Compensation for carbon price paid in countries of origin*

1. A declarant may, after having paid a CBAM price in accordance with Article 40, apply to the Commission for compensation corresponding to the carbon price paid in the country of origin for the embedded emissions in imported goods. The declarant shall submit sufficient information verified in accordance with Article 8 of these emissions and that they are subject to a carbon price in the country of origin of the good and proof that such carbon price has been paid in the country of origin and cannot be subject to an export rebate or other form of compensation linked to the fact that the good is exported.
2. The Commission shall adopt implementing acts concerning the verification of the carbon price referred to in paragraph 1 and the administration of the compensation applications and payment of compensation. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 35(2).
3. The Union, in accordance with Article 218 TFEU, may conclude agreements with countries of origin on how to take account of carbon pricing mechanisms in these countries referred to in paragraph 1.

## Chapter XII

### Final provisions

#### *Article 44*

- *Note. We need to ensure that certain provisions – such as handling of applications for authorisations to act as authorised declarants and third country installations are in force earlier than [1 January 2026 – pending decision on transitional period] to enable the system to start being applied on imports from that date (1 September 2025?).*
- *If transitional period is apply, settle what provisions are to still enter into effect on 1 January 2023 (Article 1, 2, 3 (or just some of the definitions?) + xxxx) and what provisions will enter into effect after date of expiry of transitional period.*
- *Ensure that provisions relating to applications for authorisation of authorised declarants and verification of third country sites are in force prior to 1 January 2026 (1 September 2025?) to enable persons to be ready for imports according to the new system by 1 January 2026.*

#### *Article 45*

##### *Entry into force*

This Regulation shall enter into force on the [...] day following that of its publication in the *Official Journal of the European Union*.

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

Its territorial application is extended, where appropriate, to the continental shelf of Member States and to the exclusive economic zone declared by Member States pursuant to the to the United Nations Convention on the Law of the Sea (UNCLOS).

Done at Brussels,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*