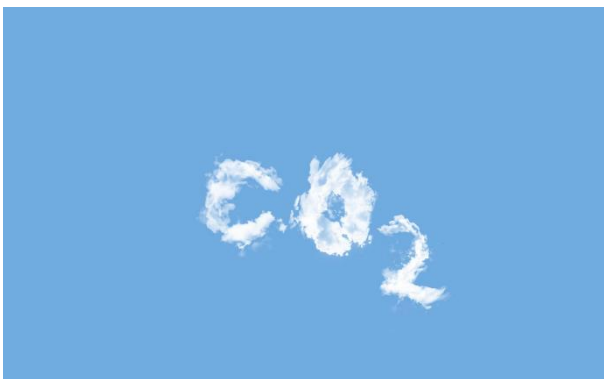


# Unveiling CBAM Regulation and its reporting obligations

On 10 May 2023, the Council of the European Union and the European Parliament adopted the new regulation (EU) 2023/956 establishing a carbon border adjustment mechanism (CBAM). CBAM is designed to address greenhouse gas emissions embedded in specific goods on their importation into the customs territory of the European Union (EU) to prevent the risk of carbon leakage. Carbon leakage occurs when, for cost reasons related to climate policies, businesses in certain industry sectors or subsectors transfer production to other countries, or import from other countries products that are more carbon-intensive than equivalent products manufactured in the EU.



CBAM is designed to work alongside the EU Emission Trading System (ETS), complementing its functioning for imported goods, and replacing it to the extent to which EU ETS allowances are allocated free of charge.

## CBAM's scope

CBAM will deal with specific goods, which will initially include: cement, electricity, fertilisers (including upstream products such as ammonia and potassium nitrate), iron and steel, aluminium (including downstream products), and hydrogen, from the production of which greenhouse gases (i.e. carbon dioxide (CO<sub>2</sub>), nitrous oxide (N<sub>2</sub>O) and perfluorocarbons (PFCs)) are released into the atmosphere, with the exception of:

- › the above goods imported into the EU customs territory when their intrinsic value does not exceed a total of EUR 150;
- › goods contained in the personal luggage of travellers coming from a third country, whose intrinsic value does not exceed a total of EUR 150;
- › goods to be moved or used in the context of military activities;

- › goods originating in the following countries: Iceland, Liechtenstein, Norway, Switzerland, and the following territories: Büsingen, Helgoland, Livigno, Ceuta, Melilla.

The regulation applies to greenhouse gas emissions embedded in Annex I goods, whether direct (from the production processes of goods, including emissions from the production of heating and cooling that is consumed during the production processes, irrespective of the location of the production of the heating or cooling) or indirect (from the production of electricity that is consumed during the production processes). For goods in Annex II, only direct emissions shall be determined.

CBAM obligations will come into effect when goods are imported into the EU in accordance with customs regulations. This results in a close connection between CBAM and customs law. The customs regulations regarding the determination of the origin of the goods are also taken into account. However, they are not a perfect fit, and certain scenarios could arise. For instance, CBAM will also apply to goods within its scope that are transported to "an artificial island, a fixed or floating installation, or any other structure on the continental shelf or in the EEZ". CBAM's implementation details in such situations are yet to be determined.

## Registration

The customs authorities will not allow, starting from 1 January 2026, the importation of the goods subject to CBAM by any person other than an authorised CBAM declarant.

All importers established in an EU Member State (i.e. having a registered office, headquarters or a permanent establishment) will be obliged, prior to the import of goods, either to apply for the status of an authorised CBAM declarant or to appoint an indirect customs representative. It is expected that this will significantly complicate the import of such products by non-EU companies.

Where an importer is not established in a Member State, he/she will be obliged to appoint an indirect customs representative acting on behalf of this importer. It is expected that this obligation will significantly complicate the import of such products by non-EU companies.

The authorised CBAM declarant's status, along with a unique CBAM account number, will be granted by a competent authority designated by each EU Member State. In cases where an indirect customs representative needs to be appointed, they will submit the application for authorisation on their own behalf.

The European Commission will keep a CBAM registry of authorised CBAM declarants in the form of a standardised electronic database containing the data regarding the CBAM certificates of those authorised CBAM declarants. The CBAM registry will also contain, upon request by an operator of an installation located in a third country, the information about that operator and its installation (i.e. a stationary technical unit where a production process is carried out), including the emissions related to these installations. The verified data on the embedded emissions of these operators and installations that is contained in the CBAM registry may be used by the authorised declarants as the basis of their own declaration.

The authorisation procedure and provisions referring to the CBAM registry will apply from 31 December 2024.

### Reporting obligations in the post-transitional phase

By 31 May of each year, and for the first time in 2027 for fiscal year 2026, authorised CBAM declarants will be required to submit CBAM declarations via the CBAM registry for the preceding calendar year that state:

- › the total quantity of each type of good imported during the preceding calendar year,

expressed in tonnes, or, for electricity, in megawatt-hours;

- › the total embedded emissions, expressed in tonnes of CO<sub>2</sub>e emissions (one metric tonne of CO<sub>2</sub>, or an amount of N<sub>2</sub>O or PFCs with an equivalent global warming potential), and verified by the EU accredited verifier;
- › the total number of CBAM certificates to be surrendered, corresponding to the total embedded emissions;
- › copies of verification reports, issued by accredited verifiers.

In the CBAM declaration, an authorised CBAM declarant has the ability to request a reduction in the quantity of CBAM certificates to be surrendered, considering the carbon price paid in the country of origin for the declared embedded emissions. The authorised CBAM declarant will ensure that the total declared embedded emissions are verified by an accredited verifier or use verified information provided by an operator registered in the CBAM registry.

Detailed guidance on reporting obligations and the transitional period is expected to be published in Q3 2023 through Implementing Acts.

### The process

Member States will sell CBAM certificates on a common central platform (established and managed by the European Commission) to authorised CBAM declarants established in those countries. The CBAM certificate is a certificate in electronic format corresponding to one tonne of CO<sub>2</sub>e of embedded emissions. The price will be calculated as the average of the closing prices of EU ETS allowances on the auction platform for each calendar week. Please note that non-EU suppliers will have to take into account that these prices will be determined in Euro and that FX differences will have an impact.

Authorised CBAM declarants will be required to purchase CBAM certificates for surrendering. By 31 May of each year, and for the first time in 2027 for fiscal year 2026, the authorised CBAM declarants will surrender via the CBAM registry a number of CBAM certificates that corresponds to the embedded emissions declared in the CBAM declaration. **The provisions regarding purchases and the surrendering of CBAM certificates will apply from 1 January 2026.**

## Penalties

Penalties will be imposed on authorised CBAM declarants who fail to surrender, by 31 May of each year, the number of CBAM certificates corresponding to the emissions embedded in goods imported during the preceding calendar year. The authorised CBAM declarants will be held liable for the payment of a penalty identical to the excess emissions penalties set out in EU ETS, which amount to EUR 100 for each tonne of CO<sub>2</sub>e emitted and increased in accordance with the European index of consumer prices, applicable in the year of the goods' importation.

Such a penalty will apply for each CBAM certificate that the authorised CBAM declarant has not surrendered, and the payment of the penalty will not release the authorised CBAM declarant from the obligation to surrender the outstanding number of CBAM certificates in a given year.

Penalties could also be imposed on persons other than authorised CBAM declarants introducing goods into the EU without complying with the obligations under CBAM regulation, ranging from three to five times the penalties applicable to the authorised CBAM declarants.

The CBAM regulation's provisions regarding these penalties will apply from 1 January 2026.

Please note that these EU fines are a minimum. Other penalties applicable under EU and national law may be imposed. In particular, the draft Regulation refers to customs rules. Given the link with customs rules – and also taking into account that CBAM will be part of the EU's 'own resources' – not complying with CBAM obligations will in principle also be subject to national fines under customs rules (whether criminal or not).

## Circumvention

This is defined as a change in the pattern of trade in goods for which there is insufficient due cause of economic justification other than avoiding CBAM obligations. The Commission will monitor this area. Interested parties, such as Member States but also NGOs may notify the Commission on circumvention.

Under the CBAM Regulation the only consequence of detecting circumvention is, potentially, an enlargement of CBAM's scope.

However, it is also clear that circumvention will be tackled by customs law: discussions on the nomenclature code of products, and discussion on the origin of a product (non-preferential origin rules). OLAF, the EU anti-fraud office, will have an important role in this area.

Businesses should be aware that changes in supply chains in connection with products within CBAM's scope will be closely monitored by the EU and the national authorities.

## Entry into force

The CBAM regulation (EU) 2023/956 came into force on 17 May 2023. The transitional phase, during which the implementing rules will be adopted by the CBAM Committee, will last from October 2023 until December 2025. CBAM in its final form will be phased in as from January 2026.

Throughout the transitional period, every importer (or their indirect customs representative) who has imported goods within a specific quarter of a calendar year will be obliged to submit a CBAM report to the European Commission. This report will include details about the imported goods for that quarter and must be submitted no later than one month following the end of that quarter.

The CBAM report will include the following information:

- › the total quantity of each type of goods, expressed in tonnes or, for electricity, in megawatt-hours, specified for each installation producing the goods in the country of origin;
- › the actual total embedded emissions, expressed in tonnes of CO<sub>2</sub>e emissions;
- › the total indirect emissions calculated in accordance with the implementing act adopted by the European Commission;
- › the carbon price due in a country of origin for the embedded emissions in the imported goods, taking into account any rebate or other form of compensation available.

**The first CBAM report will have to be submitted by 31 January 2024. If the CBAM report is not submitted, sanctions may be levied.**

To read our previous article on this topic ([see](#)).

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