

Alert | Regulatory & Compliance



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Possible Amendments to EU Proposed Carbon Border Adjustment Mechanism

This GT Alert covers the following:

- Rapporteur in Parliament's Committee proposes amendments to the CBAM
- Amendments, if adopted, would result in major changes, including broader and faster implementation of the CBAM

As discussed in an earlier [GT Alert](#), the European Commission (Commission) proposed a [Regulation](#) for a Carbon Border Adjustment Mechanism (the CBAM) in July 2021. Key elements of the Commission's proposal include that the CBAM will apply to cement, electricity, fertilizers, iron and steel, and aluminum on Jan. 1, 2026, with a transitional period expected to commence on Jan. 1, 2023. However, as indicated in the earlier GT Alert, the Commission's proposal regarding the "CBAM is (...) still subject to discussion and review within the EU, and the final version may differ (...)." Indeed, the final text of the CBAM will have to be agreed by the European Parliament (Parliament) and the Council of the European Union (Council), who are currently reviewing the Commission's proposal.

Mr. Mohammed Chamin – a Member of the Parliament, where he is part of an alliance of Socialists & Democrats – is the “rapporteur”¹ on the CBAM in the Parliament’s Committee² on Environment, Public health and Food Safety (ENVI). On Jan. 5, 2022, Mr. Chamin announced that a draft report on the CBAM proposal (Draft ENVI Report) was sent that day to shadow rapporteurs for discussion. The Draft ENVI Report has since become available online and is dated Dec. 21, 2021.

Contents of the Draft ENVI Report

The Explanatory Statement to the Draft ENVI Report provides that the rapporteur welcomes the overall design of the Commission’s CBAM proposal and considers it a solid starting point for the legislative process. Nevertheless, the Explanatory Statement makes clear that the rapporteur intends to further strengthen the CBAM’s climate ambition, its effectiveness, and its governance through several amendments.

The amendments, if adopted, would lead to the following five major changes to the Commission’s proposed CBAM:

1. *Broadening of CBAM’s scope*

The Commission’s proposed CBAM targets imports of cement, electricity, fertilizers, iron and steel, and aluminum into the EU, and only applies to direct emissions released during the production process of these targeted goods. However, the Draft ENVI Report suggests to also include organic chemicals – including hydrogen – and polymers – i.e., plastics and articles thereof – and to extend the CBAM to indirect emissions in all sectors covered by the CBAM.

2. *Faster implementation of the CBAM*

The Commission’s proposal provides that the CBAM will have a transitional period from Jan. 1, 2023 until and including Dec. 31, 2025, and that free allowances³ made under the EU Emissions Trading System (ETS) in sectors covered by the CBAM will gradually phase out over 10 years – i.e., a complete phase-out by Dec. 31, 2035. However, the Draft ENVI Report proposes to shorten the transitional period by one year so that the CBAM will apply by Jan. 1, 2025 (instead of Jan. 1, 2026). Moreover, the Draft ENVI Report suggests to completely phase out free allowances far earlier than proposed by the Commission, namely by the end of 2028. The Draft ENVI Report remarks in this regard (at p. 8) that “[g]uaranteeing free allowances until 2036 is not in line with the Union’s 2030 climate objective.” Furthermore, the Draft ENVI Report suggests the following CBAM factors – to reduce free allowances – until then: 90% in 2025, 70% in 2026, and 40% in 2027.

3. *Establishment of one central CBAM authority*

The Commission’s proposal foresees a decentralized system with competent CBAM authorities in all 27 EU Member States where importers of CBAM-covered goods would have to register and buy CBAM certificates. Instead, the Draft ENVI Report is suggesting a centralized system with one European

¹ A rapporteur is a Member of the Parliament made responsible for handling a legislative proposal adopted by the Commission, both procedurally and substantively.

² A Committee prepares the proceedings of the full Parliament meeting in plenary by putting together reports for consideration by the Parliament, or by drawing up opinions addressed to other Committees, which are themselves preparing reports.

³ These free allowances are currently granted under the ETS to carbon-intensive industries to prevent “carbon leakage.” Carbon leakage refers to the transfer of production to other countries with laxer emission constraints. Carbon leakage could lead to an increase in total emissions.

CBAM authority, which – in the rapporteur’s view – offers economies of scale and helps avoid forum shopping because of mismatches between EU Member States.

4. Use of CBAM proceeds to assist least developed countries

The Commission’s proposal does not specify how CBAM income will be used, but one option is that it would go to the EU budget. The Draft ENVI Report points out that the EU needs to avoid the CBAM affecting least developed countries (LDCs) disproportionately. The Draft ENVI Report suggests that the EU provides financial support to LDCs to stimulate decarbonization of their industry. According to the Draft ENVI Report, this financial support should at least be the equivalent of yearly revenues generated by the sale of the CBAM certificates.

5. Changes to the scope of the implementing acts

The Commission’s proposed CBAM leaves several elements of the CBAM to be defined through implementing acts. The Draft ENVI Report points out (at p. 83) that some implementing acts proposed are “*not sufficiently well-framed, are too vague and far-reaching*” (e.g., the detailed rules regarding the elements of the calculation methods set out in Annex III to the CBAM). With the amendments proposed in the Draft ENVI Report, the rapporteur intends to ensure a greater balance between delegated and implementing acts. The rapporteur also aims to better define the scope of the empowerments granted to the Commission to ensure that the co-legislators – i.e., the Parliament and the Council – remain responsible for the essential elements of the CBAM.

Conclusion

As a next step, the Draft ENVI Report will be discussed and voted on in the ENVI committee. This vote currently is expected to occur in April 2022. In turn, this will form the Parliament’s position, which will ultimately shape the final text of the CBAM during the negotiations among the different EU institutions. Final agreement on the CBAM presently is expected to take place before July 1, 2022.

The Draft ENVI Report suggests that the scope of the CBAM be broader, the implementation faster, its regulation performed by a single European CBAM authority, and certain implementing acts defined more precisely. The Draft ENVI Report thus gives a sense of direction regarding what topics the negotiations may focus on.

Those with questions about the CBAM’s potential impact on their company should consult with experienced EU regulatory counsel.

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