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#### NOTE

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From: Presidency  
To: Permanent Representatives Committee (Part 2)  
Subject: Proposal for a Regulation of the European Parliament and of the Council establishing a carbon border adjustment mechanism  
- Confirmation of the final compromise text with a view to agreement

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#### I. STATE OF PLAY

1. The Commission proposal for a Regulation of the European Parliament and of the Council establishing a carbon border adjustment mechanism<sup>1</sup> (CBAM) was published on 14 July 2021 as part of the ‘Fit for 55’ package.
2. On 15 March 2022, the Council of the EU reached agreement on a general approach on the draft CBAM Regulation.<sup>2</sup> The Council also took note of the Annex to doc. ST 6978/22, which contains a list of issues that are of significance to the implementation of the CBAM.
3. On 22 June 2022, the European Parliament (EP) adopted a number of amendments to the CBAM legislative proposal by the European Commission, which constituted the position of the EP in the negotiations with the Council on this file.<sup>3</sup>

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<sup>1</sup> Doc. ST 10871/21 + ADD 1 to 6; (2021/0214 (COD)).

<sup>2</sup> Doc. 7226/22.

<sup>3</sup> [https://www.europarl.europa.eu/doceo/document/TA-9-2022-0248\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-9-2022-0248_EN.html)

4. On 13 July 2022 the Committee of the Permanent Representatives (Part 2) took note that work in the Council on the matters outside of CBAM Regulation but important to its functioning<sup>4</sup> has progressed to a sufficient degree, which enabled the Presidency to begin negotiations with the European Parliament on the CBAM Regulation.
5. Negotiations with the European Parliament were ongoing since July 2022. Four ‘trilogues’ and 17 informal technical meetings took place. The Presidency followed the Council general approach and the guidance received at the Committee of Permanent Representatives Committee (Part 2) on 4 November<sup>5</sup> and 9 December<sup>6</sup>, as well as on the basis of preparatory work carried out at the meetings of the Ad Hoc Working Party on CBAM (AHWP CBAM).<sup>7</sup>
6. On 12-13 December 2022, after ten hours of negotiations, the Presidency has reached a provisional agreement with the representatives of the European Parliament on the draft text of the CBAM Regulation, which is set out in doc. ST 16060/22.

## II. KEY PARAMETERS OF THE PROVISIONAL AGREEMENT

7. Key parameters of the provisional agreement with the European Parliament on the draft CBAM Regulation could be summarised as follows:
  - a) Scope (Annex I): The initial scope agreed in the Council general approach was approved, and enlarged with hydrogen, as well as a few additional goods (CN codes);
  - b) Inclusion of indirect emissions (emissions from electricity used for production of CBAM goods): indirect emissions initially will not be calculated for the goods listed in Annex IA (goods in respect of which financial measures to compensate for indirect emissions costs are applied). The methodology to calculate indirect emissions will be adopted by a Commission implementing act. Extension of indirect emissions coverage to other sectors would be possible upon the review of CBAM, on the basis of a new legislative proposal by the Commission;

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<sup>4</sup> Annex to doc. ST 6978/22.

<sup>5</sup> Doc. ST 14085/22.

<sup>6</sup> Doc. ST 15183/22.

<sup>7</sup> Doc. ST 10846/21.

- c) “De minimis”: the exemption of small consignments was maintained, with further clarifications, in particular that CBAM goods in passenger luggage would also be exempt, up to the value applicable for exempt small consignments;
- d) Future extension of CBAM scope: it would be possible after the transitional period, following a report by the Commission and on the basis of a new legislative proposal. There would be no automatic extension to all sectors under EU ETS by 2030. Agreement was reached only on a “2030 pathway”: such an extension should be a goal, with steps to be taken to extend the scope of CBAM as soon as possible, if the goal of 2030 cannot be reached;
- e) Starting date of the transitional (‘reporting only’) period of CBAM: 1 October 2023;
- f) “Phase-in” of CBAM (starting date, pace, and rate of “phase-in”): these aspects will be automatically determined by the starting date of the “phase-out” of the free allowances under the EU ETS. Therefore, the principle of aligning ‘phase-in’ with ‘phase-out’, agreed in the Council general approach, was fully preserved in the negotiations with the European Parliament;
- g) Carbon leakage on exports: The Presidency made it clear that this issue needs to be resolved in the negotiations on dossiers other than CBAM. The ‘phase-out’ of the free allowances under the EU ETS Directive has to be of an optimal trajectory to smoothen the transition towards full ‘phase-in’ of CBAM. The revision of the EU ETS should also include measures on supporting further decarbonisation of the industry and better targeting the resources of the Innovation Fund, where specific elements are to be provided concerning the CBAM sectors;

- h) Revenues from CBAM and commitment to finance LDCs<sup>8</sup>: Member States will be the owners of the receipts from the sale of CBAM certificates. The CBAM Regulation will contain only a factual recital which states that work is ongoing in the EU on the CBAM-based new own resource. Recitals in the CBAM Regulation will also specify that the EU should assist both technically and financially, the least developed countries through the EU budget, through NDICI<sup>9</sup>, to support the Paris agreement and decarbonisation goals, in line with the Multiannual Financial Framework. The European Parliament has therefore also dropped its request to include Article 24a into the final compromise text;
- i) Governance of CBAM: agreement reached in previous trilogues on a more centralised governance model was confirmed and maintained;
- j) Administrative expenses related to CBAM: this issue is not covered by the text of the CBAM Regulation. Nevertheless, it is clear that the agreed more centralised CBAM governance model will indeed lead to additional administrative expenditure for the Commission, as additional staff would be required to carry out the tasks entrusted to the Commission by the CBAM Regulation. How to address this challenge will be decided in future discussions on the annual budget of the EU, as appropriate;
- k) Review: most of the aspects of CBAM Regulation will be subject to a review and reporting by the Commission. Reports would be accompanied by legislative proposals, as appropriate.

8. As clarified by the Council<sup>10</sup> and the Committee of Permanent Representatives<sup>11</sup>, agreement on and implementation of the CBAM Regulation is dependent on acceptance by the Council of solutions to be found on a number of issues that are related to CBAM but which are not part of the CBAM Regulation. To that effect, the Presidency clarified the relevant aspects to the negotiating parties, and concluded negotiations on the CBAM Regulation by making a statement which is reproduced in the Annex to this note.

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<sup>8</sup> Least Developed Countries.

<sup>9</sup> Regulation (EU) 2021/947 of the European Parliament and of the Council of 9 June 2021 establishing the Neighbourhood, Development and International Cooperation Instrument (NDICI).

<sup>10</sup> Doc. ST 7226/22, incl. its Annex.

<sup>11</sup> Doc. ST 15183/22 and doc. ST 14085/22.

### III. WAY FORWARD

9. The Presidency holds the view that the text of the draft CBAM Regulation set out in doc. ST 16060/22 should be an acceptable compromise to Member States. Once this compromise is approved by the Committee of the Permanent Representatives (Part 2), and when the outcome of negotiations on revision of the EU ETS Directive is approved as well, the Presidency could proceed with notifying the European Parliament of an agreement on the CBAM Regulation, as appropriate.
10. Against this background, the Permanent Representatives Committee is invited to:
- approve the text of the proposal for a Regulation as set out in doc. ST 16060/22 with a view to reaching an agreement at first reading with the European Parliament;
  - mandate the Chair of the Permanent Representatives Committee to inform the Chair of the European Parliament's Committee on the Environment, Public Health and Food Safety that, should the European Parliament adopt its position at first reading, in accordance with Article 294(3) of the TFEU, in the form of the text set out in doc. ST 16060/22 (subject to finalisation by the lawyer-linguists of the two institutions), the Council would, in accordance with Article 294(4) of the TFEU, approve the European Parliament's position and the act shall be adopted in the wording which corresponds to the European Parliament's position; and
  - confirm that the Presidency should proceed with notifying the European Parliament of the agreement on the draft CBAM Regulation only once the Committee of the Permanent Representatives (Part I) has approved the outcome of negotiations on revision of the EU ETS Directive, in the context of the 'Fit for 55' package.

**STATEMENT BY THE PRESIDENCY OF THE COUNCIL OF THE EU**

The provisional agreement reached today in the informal negotiations by the co-legislators on the text of the CBAM Regulation is also dependent on acceptance by the Council of solutions that are expected to be found on a number of issues that are related to CBAM but are not part of the CBAM Regulation and which are still pending, in particular:

- a) the rate at which the obligation to surrender CBAM certificates becomes gradually more extensive ('phase-in') under the CBAM Regulation has to be determined by the rate of the 'phase-out' of the free allowances established by the EU Emissions Trading System (EU ETS) Directive, which are allocated to industry sectors covered by the CBAM;
- b) in spite of the implications for CBAM, the issue of the pace and duration of the 'phase-out' has to be resolved in the negotiations on the draft Directive amending Directive 2003/87/EC establishing a system for greenhouse gas emission allowance trading within the Union;
- c) the 'phase-out' of the free allowances under the EU ETS Directive has to be of an optimal trajectory to smoothen the transition towards full phase-in of CBAM. The solution found on this issue will be part of the overall compromise on the related dossier;
- d) revision of the EU ETS should include measures on supporting further decarbonisation of the industry and better targeting the resources of the Innovation Fund. Specific elements are to be provided on the special attention to be paid to the CBAM sectors;
- e) it remains of specific importance for the delegations to monitor, discuss and further specify, before the CBAM Regulation is formally adopted by the co-legislators, the relevant operational aspects of the applicability of CBAM towards trading partners of the Union, in particular those having ambitious and progressive environmental policies in place;
- f) limiting carbon leakage from exports needs to be addressed to ensure level-playing field, economic efficiency, environmental integrity and WTO compatibility.