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COVER NOTE

From: Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director

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To: Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union

No. Cion doc.: SWD(2025) 987 final

Subject: COMMISSION STAFF WORKING DOCUMENT Accompanying the document Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) 2023/956 as regards the extension of its scope to downstream goods and anti-circumvention measures

Delegations will find attached document SWD(2025) 987 final.

Encl.: SWD(2025) 987 final



Brussels, 17.12.2025
SWD(2025) 987 final

COMMISSION STAFF WORKING DOCUMENT
Accompanying the document

Proposal for a Regulation of the European Parliament and of the Council
amending Regulation (EU) 2023/956 as regards the extension of its scope to downstream
goods and anti-circumvention measures

{COM(2025) 989 final} - {SEC(2025) 989 final} - {SWD(2025) 988 final} -
{SWD(2025) 989 final}

Subsidiarity Grid

1. Can the Union act? What is the legal basis and competence of the Unions' intended action?
1.1 Which article(s) of the Treaty are used to support the legislative proposal or policy initiative?
<p>The proposal amends an existing regulation. Therefore, the legal basis for the proposal is the same as the legal basis of the amended Regulation, namely Article 192(1) of the Treaty on the Functioning of the European Union ('TFEU') in the area of environment protection. In accordance with Articles 191 and 192(1) of TFEU, the Union 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.</p> <p>Article 30(3) of the CBAM Regulation sets out that the Commission present a report to the European Parliament and to the Council that identifies downstream products to be considered for inclusion within the scope of this Regulation.</p>
1.2 Is the Union competence represented by this Treaty article exclusive, shared or supporting in nature?
<p>In the case of environment, the Union's competence is shared.</p> <p><i>Subsidiarity does not apply for policy areas where the Union has exclusive competence as defined in Article 3 TFEU¹. It is the specific legal basis which determines whether the proposal falls under the subsidiarity control mechanism. Article 4 TFEU² sets out the areas where competence is shared between the Union and the Member States. Article 6 TFEU³ sets out the areas for which the Unions has competence only to support the actions of the Member States.</i></p>
2. Subsidiarity Principle: Why should the EU act?
2.1 Does the proposal fulfil the procedural requirements of Protocol No. 2⁴:
<ul style="list-style-type: none">- Has there been a wide consultation before proposing the act?- Is there a detailed statement with qualitative and, where possible, quantitative indicators allowing an appraisal of whether the action can best be achieved at Union level?
<p>The Commission engaged in an array of public and targeted consultations, for the preparation of this proposal. A Call for Evidence and a public consultation were carried out from 1 July to 26 August 2025 with the aim to collect feedback on the problems, objectives and policy options to improve the functioning of CBAM. In addition to these, the Commission services engaged in extensive consultations with public authorities within the EU and third countries, as well as with industry representatives, civil society representatives and international or intergovernmental organisations. These took the form of bilateral meetings, discussions at the CBAM informal expert working group, interviews in the context of studies dedicated to the downstream scope extension and electricity, as well as surveys of the national competent authorities and customs authorities in the context of the CBAM risk management framework.</p>

¹ <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12008E003&from=EN>

² <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12008E004&from=EN>

³ <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:12008E006:EN:HTML>

⁴ <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12016E/PRO/02&from=EN>

The explanatory memorandum of the proposal and the impact assessment, under chapters 3.2 and 3.3, contain a qualitative appraisal of how the proposal is in conformity with the principle of subsidiarity. More information is available in the answer to question 2.2. below.

2.2 Does the explanatory memorandum (and any impact assessment) accompanying the Commission’s proposal contain an adequate justification regarding the conformity with the principle of subsidiarity?

The explanatory memorandum and accompanying impact assessment clearly explain why the objectives of this initiative cannot be adequately achieved by Member States acting alone and can be better achieved by taking action at Union level. The three problem strands addressed by the initiative, namely the risks of downstream carbon leakage, CBAM avoidance, and limited decarbonisation incentives for electricity imports, arise from causes that are common to all Member States. If Member States were to act separately, they would likely exhibit diverging approaches, risk legal uncertainty and could create market distortions, undermining the integrity of the internal market.

2.3 Based on the answers to the questions below, can the objectives of the proposed action be achieved sufficiently by the Member States acting alone (necessity for EU action)?

The three problems of downstream carbon leakage, CBAM avoidance and ineffective treatment of electricity imports addressed by the proposal stem from the incomplete design of the CBAM, which is an EU-level environmental policy tool. CBAM is designed to complement and reinforce the EU ETS, which is itself an EU-wide instrument. The effectiveness of both mechanisms depends on a uniform carbon price signal applied consistently for the relevant sectors across all EU Member States. Action to safeguard CBAM’s environmental integrity going forward can thus only be effectively taken at Union level.

(a) Are there significant/appreciable transnational/cross-border aspects to the problems being tackled? Have these been quantified?

All three problem strands addressed have significant cross-border and transnational dimensions, which is why they cannot be effectively tackled by individual Member States. In the case of downstream carbon leakage, production of carbon-intensive downstream goods may be replaced by imports from third countries with lower or no carbon pricing compared to the EU. The risk arises because of persistent carbon price gaps between the EU and third countries and because supply chains and trade flows operate across borders. CBAM avoidance practices are also cross-border by nature as they are inseparable from CBAM being an EU-wide instrument whose integrity requires consistent enforcement along the EU’s external border. Electricity imports equally involve transnational aspects as decarbonisation incentives for third country grid operators depend in part on CBAM being applied in a way that acknowledges and rewards their decarbonisation efforts. The magnitude of the risks has been quantified for the problem of downstream carbon leakage and electricity, while for anti-avoidance they have been qualitatively assessed based on evidence from the transitional period and stakeholder feedback.

(b) Would national action or the absence of the EU level action conflict with core objectives of the Treaty⁵ or significantly damage the interests of other Member States?

National responses to deal with downstream carbon leakage, avoidance risks, and electricity imports would likely exhibit diverging approaches, risk legal uncertainty and could create market

⁵ https://europa.eu/european-union/about-eu/eu-in-brief_en

distortions, undermining the integrity of the internal market. In the absence of EU level action, the identified problems would remain unaddressed, risking negative impacts on meeting EU and global climate goals.

(c) To what extent do Member States have the ability or possibility to enact appropriate measures?

Member States do not have the possibility to enact appropriate measures as they cannot amend the CBAM itself, which is necessary to effectively address the risks related to downstream carbon leakage, CBAM avoidance, and limited decarbonisation of electricity imports. Any national measures could therefore not address the root causes (e.g. CBAM's limited product scope) but only the symptoms, for instance, by providing direct support to affected downstream producers. These would likely have significant unintended consequences as outlined in the answer to question 2.3.(b) above.

(d) How does the problem and its causes (e.g. negative externalities, spill-over effects) vary across the national, regional and local levels of the EU?

For downstream carbon leakage, the underlying drivers (i.e. carbon price gap, limited product scope) are common to all Member States, however, exposure is geographically concentrated. Specifically, the problem is more significant in countries, regions and towns with a large 'fabricated metal products' sector, where cost pass-through from basic materials is strongest, and deep integration into global value chains.

For CBAM avoidance, the main causes (i.e. carbon price gap, limited product scope, sub-optimal monitoring structures, remaining regulatory oversight vulnerabilities) are also EU-wide, but practical risks and enforcement challenges may vary by Member State due to differences in administrative capacity.

For electricity imports, the problem arises in Member States (and regions) that are physically interconnected with non-EU power systems, and its magnitude depends on the carbon intensity of those systems and the volume of cross-border flows.

(e) Is the problem widespread across the EU or limited to a few Member States?

The problem drivers are the same across the EU, while exposure to the problems is likely to be higher in some Member States as outlined in the answer to question 2.3.(d) above.

(f) Are Member States overstretched in achieving the objectives of the planned measure?

No, the preferred policy options have been selected in part to keep the administrative burden and enforcement costs to a minimum. The proposed balanced scope extension to at-risk downstream goods with significant climate relevance would cover mostly goods with a high basic material share for which assigning embedded emissions is expected to be more straightforward than for more complex goods. For avoidance, the preferred option reflects a targeted approach that focuses enforcement efforts on the highest and most material avoidance risks rather than imposing blanket obligations on all importers. As concerns electricity, the administrative impacts of the proposed amendments are expected to be limited, as the assessed policy options for electricity do not entail a change in the CBAM scope but rather an adjustment of the methodology. Therefore, the preferred policy option will not affect the number of electricity importers covered by CBAM or the number of declarations submitted.

(g) How do the views/preferred courses of action of national, regional and local authorities differ across the EU?

Feedback received from Member States' authorities either in the context of bilateral consultations or in discussions in Council, the CBAM Committee, the CBAM informal expert working group, dedicated surveys have confirmed general support to the proposed targeted interventions to strengthen the effectiveness of CBAM. Notwithstanding these different views exist among Member States to the extensiveness of the proposed action. For example, certain Member States favour a more extensive downstream extension outright, while others supporting a more measured approach in the beginning followed by further waves of scope extension in the future. Similarly certain Member States have favoured more stringent approaches to address avoidance than others. Regarding electricity, there is broad support for a change of the existing rules, with Member States importing electricity from third countries that have a considerable share of renewables in their electricity grid being particularly interested in a review of the current approach to the calculation of the default values.

2.4 Based on the answer to the questions below, can the objectives of the proposed action be better achieved at Union level by reason of scale or effects of that action (EU added value)?

EU-level action to strengthen and adapt CBAM delivers clear added value compared to uncoordinated national measures or inaction. It ensures that a uniform carbon price continues to be applied consistently throughout the EU, thereby upholding the principle of fair competition between businesses across Member States based on a level playing field. Furthermore, only coordinated EU-level action can ensure continued coherence between CBAM and the EU ETS as well as sectoral decarbonisation initiatives, such as the Clean Industrial Deal. This integrated approach strengthens the effectiveness of the EU's clean transition framework as a whole. Lastly, EU-level action sends a far stronger and more credible signal to the world than fragmented national measures, affirming that decarbonisation investments and ambitious climate policies are necessary and worthwhile.

(a) Are there clear benefits from EU level action?

Yes, as only a strengthening of CBAM at EU-level can effectively address the risk of downstream carbon leakage, close avoidance channels, and provide adequate incentives for decarbonisation of electricity imports.

(b) Are there economies of scale? Can the objectives be met more efficiently at EU level (larger benefits per unit cost)? Will the functioning of the internal market be improved?

Yes, as only coordinated EU-level action can ensure continued coherence between CBAM and the EU ETS as well as sectoral decarbonisation initiatives, such as the Clean Industrial Deal. This integrated approach strengthens the effectiveness of the EU's clean transition framework as a whole. Lastly, EU-level action sends a far stronger and more credible signal to the world than fragmented national measures, affirming that decarbonisation investments and ambitious climate policies are necessary and worthwhile.

(c) What are the benefits in replacing different national policies and rules with a more homogenous policy approach?

The revision of CBAM will not replace national policies.

(d) Do the benefits of EU-level action outweigh the loss of competence of the Member States and the local and regional authorities (beyond the costs and benefits of acting at national, regional and local levels)?

The revision of CBAM will not lead to any loss of competence of the Member States nor of the local and regional authorities.
(e) Will there be improved legal clarity for those having to implement the legislation?
Yes, action at Union level to revise CBAM ensures that a uniform carbon price continues to be applied consistently throughout the EU, thereby upholding the principle of fair competition between businesses across Member States based on a level playing field. For the simplification of declaring actual values for electricity imports, specifically, the preferred option is explicitly designed to improve legal clarity for importers.
3. Proportionality: How the EU should act
3.1 Does the explanatory memorandum (and any impact assessment) accompanying the Commission’s proposal contain an adequate justification regarding the proportionality of the proposal and a statement allowing appraisal of the compliance of the proposal with the principle of proportionality?
The proposal is limited to targeted adjustments of an existing EU-level mechanism. These were in part already foreseen at the time of CBAM’s adoption (in the case of the scope extension to downstream products) and do not go beyond what is necessary to address clearly identified shortcomings (in the case of avoidance and electricity).
3.2 Based on the answers to the questions below and information available from any impact assessment, the explanatory memorandum or other sources, is the proposed action an appropriate way to achieve the intended objectives?
Yes, as the initiative concerns the strengthening of CBAM, an EU-level instrument, to address the risk of downstream carbon leakage and encourage decarbonisation in a feasible and cost-effective way, thus reducing GHG emissions and fighting climate change globally. The proposed changes to CBAM, including its scope (downstream), enforcement capability (avoidance), and methodological simplification (electricity), can only be delivered at Union level.
(a) Is the initiative limited to those aspects that Member States cannot achieve satisfactorily on their own, and where the Union can do better?
Yes, as outlined in the answer to question 3.2 above.
(b) Is the form of Union action (choice of instrument) justified, as simple as possible, and coherent with the satisfactory achievement of, and ensuring compliance with the objectives pursued (e.g. choice between regulation, (framework) directive, recommendation, or alternative regulatory methods such as co-legislation, etc.)?
The preferred options to address the three problem strands were in part chosen because they keep the administrative burden for importers and third country producers low relative to the expected environmental gains. The proposal also simplifies CBAM further where it can and aims to make its enforcement mechanisms more robust.
(c) Does the Union action leave as much scope for national decision as possible while achieving satisfactorily the objectives set? (e.g. is it possible to limit the European action to minimum standards or use a less stringent policy instrument or approach?)

Yes, as the initiative adjusts only the EU-level design features of CBAM to strengthen its effectiveness. Member States remain free to adopt national measures in the concerned domain of environment, for instance, through complementary national decarbonisation policies.

(d) Does the initiative create financial or administrative cost for the Union, national governments, regional or local authorities, economic operators or citizens? Are these costs commensurate with the objective to be achieved?

The proposed downstream extension and the additional anti-avoidance measures will entail an increase in enforcement costs for National Competent Authorities and Customs Authorities as well as increased compliance costs for some EU importers and their suppliers in third countries. These enforcement and administrative costs have been quantified in the accompanying impact assessment. The preferred options have been chosen precisely because they exhibit the strongest cost/benefit ratio, that is they aim to keep the administrative burden low relative to the environmental gains.

The adjusted treatment of electricity imports, on the other hand, will reduce the reporting burden when actual emissions are declared compared to the current situation. They may also lower enforcement costs for National Competent Authorities, though this effect is less certain.

(e) While respecting the Union law, have special circumstances applying in individual Member States been taken into account?

Not applicable