



Council of the European Union  
General Secretariat

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**Interinstitutional files:  
2021/0214 (COD)**

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**Brussels, 15 September 2022**

**WK 12021/2022 REV 1**

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## **MEETING DOCUMENT**

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From: General Secretariat of the Council  
To: Delegations

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Subject: Draft Article 26 of the CBAM Regulation

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Delegations will find attached the draft text of Article 26 of the CBAM Regulation (in the 4th column of the table), as suggested by the EP delegation.

Article 26 – EP suggestions

	<b>CION PROPOSAL</b>	<b>COUNCIL GA</b> <i>(shown as amendments to CION proposal)</i>	<b>EP POSITION</b>	<b>EP SUGGESTION for a poss. compromise</b> <i>(shown as amendments to the text of the COUNCIL GA)</i>
361.	Article 26 Penalties	Article 26 Penalties	[deleted]	Article 26 Penalties
362.	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 shall be liable to a penalty identical to the excess emissions penalty set out in Article 16(3) of Directive 2003/87/EC, increased pursuant to Article 16(4) of that Directive, in the year of importation of the goods, for each CBAM certificate that the authorised declarant should have surrendered.	1. An authorised <b>CBAM</b> 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 <del>previous</del> <b>preceding</b> year shall be <b>held</b> liable <del>to for the payment of</del> a penalty. <b>Such penalty shall be</b> identical to the excess emissions penalty set out in Article 16(3) of Directive 2003/87/EC, <b>and</b> increased pursuant to Article 16(4) of that Directive, <b>applicable</b> in the year of importation of the goods, <b>and shall apply</b> for each CBAM certificate that the authorised <b>CBAM</b> declarant <del>should have</del> <b>has not</b> surrendered.	[deleted]	1. An authorised <b>CBAM</b> declarant who fails to surrender, by 31 May of each year, <del>athe</del> number of CBAM certificates <del>corresponding</del> <b>which correspond</b> to the emissions embedded in goods imported during the preceding year shall be held liable for the payment <del>of</del> a penalty. <del>Such penalty shall be</del> identical to the excess emissions penalty set out in Article 16(3) of Directive 2003/87/EC, <b>and</b> increased pursuant to Article 16(4) of that Directive. <b>The penalty is</b> applicable in the year of importation of the goods, and shall apply for each CBAM certificate that the authorised <b>CBAM</b> declarant has not surrendered.
363.	2. Any person other than an authorised declarant, introducing goods into the customs territory of the Union without surrendering CBAM certificates according to this Regulation shall be liable to the penalty referred to in paragraph 1 in the year of introduction of the goods, for each CBAM certificate that the person should have	2. <del>Any</del> <b>Where a</b> person other than an authorised <b>CBAM</b> declarant, <del>introducing</del> <b>introduces</b> goods into the customs territory of the Union without <del>surrendering</del> <b>CBAM certificates according to complying with the obligations of</b> this Regulation, <del>that person</del> shall be <b>held</b> liable <del>to for the payment of</del> <b>a penalty. Such penalty shall, depending on the duration,</b>	[deleted]	2. Where a person other than an authorised <b>CBAM</b> declarant, <del>introduces</del> <b>introduces</b> goods into the customs territory of the Union <del>[without complying with the obligations of this Regulation,]</del> that person shall be held liable for the payment of a penalty. Such <del>a</del> penalty shall, <del>depending on the duration, gravity and scope of such non-compliance, amount to three to five</del> <b>be [X]</b> times


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	surrendered.	<u>gravity and scope of such non-compliance, amount to three to five times</u> the penalty referred to in paragraph 1, <u>applicable</u> in the year of introduction of the goods, for each CBAM certificate that the person <del>should have</del> <u>has not</u> surrendered.		the penalty referred to in paragraph 1, applicable in the year of <del>introduction</del> <u>importation</u> of the goods, for each CBAM certificate that the person <del>has not</del> <u>should have</u> surrendered.
364.	3. Payment of the penalty shall in no case release the authorised declarant from the obligation to surrender the outstanding number of CBAM certificates in a given year to the competent authority of the Member State where the declarant has been authorised.	3. Payment of the penalty shall <del>in no case</del> <u>not</u> release the authorised <b>CBAM</b> declarant from the obligation to surrender the outstanding number of CBAM certificates <del>in a given year to the competent authority of the Member State where the declarant has been authorised.</del> <u>determined in accordance with Article 19(3).</u>	<i>[deleted]</i>	3. Payment of the penalty shall not release the authorised <del>CBAM</del> declarant from the obligation to surrender the outstanding number of CBAM certificates <del>determined in accordance with Article 19(3).</del> <u>in a given year [to the CBAM authority].</u>
365.	4. If the competent authority determines that an authorised declarant has failed to comply with the obligation to surrender CBAM certificates as specified in paragraph 1, or that a person has introduced goods into the customs territory of the Union as specified in paragraph 2, the competent authority shall impose the penalty and notify the authorised declarant or, in the situation under paragraph 2, the person:	4. If the competent authority determines, <u>including on the basis of the reviews of CBAM declarations referred to in Article 19</u> , that an authorised <b>CBAM</b> declarant has failed to comply with the obligation to surrender CBAM certificates as specified in paragraph 1, or that a person has introduced goods into the customs territory of the Union <u>without surrendering CBAM certificates pursuant to this Regulation</u> as specified in paragraph 2, the competent authority shall impose the penalty <del>and</del> <u>pursuant to paragraph 1 or 2, as applicable.</u> <u>To that end, the competent</u>	<i>[deleted]</i>	4. If the <del>competent</del> <b>[CBAM]</b> authority determines, including on the basis of the reviews of CBAM declarations referred to in Article 19, that an authorised <del>CBAM</del> declarant has failed to comply with the obligation to surrender CBAM certificates <del>as</del> specified in paragraph 1, or that a person has <del>introduced</del> <u>imported</u> goods into the customs territory of the Union <u>[without surrendering CBAM certificates pursuant to this Regulation as specified in paragraph 2,]</u> the <del>competent</del> <b>[CBAM]</b> authority shall impose the penalty pursuant to paragraph 1 or 2, as applicable. To

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		<u>authority shall</u> notify the authorised <u>CBAM</u> declarant or, <del>in the situation under</del> <u>where</u> paragraph 2 <u>applies</u> , the person:		that end, the <del>competent</del> <u>[CBAM authority]</u> shall notify the authorised <del>CBAM</del> -declarant or, where paragraph 2 applies, the person:
366.	(a) that the competent authority has concluded that the authorised declarant or the person fails to comply with the obligation of surrendering CBAM certificates for a given year;	(a) that the competent authority has concluded that the authorised <u>CBAM</u> declarant or the person <del>fails</del> <u>failed</u> to comply with the obligation <del>of surrendering to</del> <u>surrender</u> CBAM certificates for a given year;	<del>[deleted]</del>	(a) that the <del>competent</del> <u>[CBAM]</u> authority has concluded that the authorised <del>CBAM</del> -declarant or the person failed to comply with the obligation <del>to surrender of</del> <u>surrendering</u> CBAM certificates for a given year;
367.	(b) of the reasons for its conclusion;	(b) of the reasons for its conclusion;	<del>[deleted]</del>	(b) of the reasons for its conclusion;
368.	(c) of the amount of the penalty imposed on the authorised declarant or on the person;	(c) of the amount of the penalty imposed on the authorised <u>CBAM</u> declarant or on the person;	<del>[deleted]</del>	(c) of the amount of the penalty imposed on the authorised <del>CBAM</del> -declarant or on the person;
369.	(d) of the date from which the penalty is due;	(d) of the date from which the penalty is due;	<del>[deleted]</del>	(d) of the date from which the penalty is due;
370.	(e) of the action the competent authority considers the authorised declarant or the person should take to comply with its obligation under point (a) depending on the facts and circumstances of the case; and	(e) of the action <del>the competent authority considers that</del> the authorised <u>CBAM</u> declarant or the person <del>should</del> <u>referred to in paragraph 2 is to</u> take to <del>comply with its obligation under point (a) depending on the facts and circumstances of the case</del> <u>pay the penalty</u> ; and	<del>[deleted]</del>	(e) of the action that the authorised <del>CBAM</del> -declarant or the person referred to in paragraph 2 is to take to <del>pay</del> <u>comply with its obligation under point (a) depending on</u> the <del>penalty; facts and circumstances of the case;</del> <u>and</u>
371.	(f) of the right of the authorised declarant or of the person to appeal under national rules.	(f) of the right of the authorised <u>CBAM</u> declarant or of the person to appeal under national rules.	<del>[deleted]</del>	(f) of the right of the authorised <del>CBAM</del> -declarant or of the person to appeal <del>[under national rules.]</del>

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371a.				<p><u>5. Where the penalty has not been paid within the prescribed period, the [CBAM] authority shall secure payment of that amount by all means available to it under the national law of the Member State concerned.</u></p>
372.	<p>5. Member States may apply administrative or criminal sanctions for failure to comply with the CBAM legislation in accordance with their national rules in addition to penalties referred to in paragraph 2. Such sanctions shall be effective, proportionate and dissuasive.</p>	<p><del>5. Member States may apply administrative or criminal sanctions for failure to comply with the CBAM legislation in accordance with their national rules in addition to penalties referred to in paragraph 2. Such sanctions shall be effective, proportionate and dissuasive.</del> <u>5. Where the penalty has not been paid within the prescribed period, the competent authority shall secure payment of that amount by all means available to them under the law of the Member State concerned.</u></p>	[deleted]	<p><del>5. Where the penalty has not been paid within the prescribed period, the competent authority shall secure payment of that amount by all means available to them under the law of the Member State concerned.</del> <u>6. Member States shall apply administrative or criminal penalties for other infringements of CBAM legislation than those listed in paragraphs 1 and 2 in accordance with national law in addition to penalties referred to in paragraph 2. Such penalties shall apply, inter alia for providing false information to a [competent/CBAM] authority or customs authority in order to avoid or mitigate the obligation to surrender CBAM certificates or gain in any other way favourable treatment. Such penalties shall be effective, proportionate and dissuasive.</u></p>
372a.				<p><u>7. In the case of repeated offences, the [CBAM authority] may decide to suspend the CBAM account of the authorised declarant.</u></p>

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373.			<b>Article 26a Penalties</b>	<a href="#">[...]</a>
374.			<b>1. An authorised declarant who fails to surrender, by 31 May of each year, the number of CBAM certificates corresponding to the emissions embedded in goods imported during the previous year or who submits to the authority false information related to actual emissions with a view to obtaining a favourable individual treatment, shall be liable for the payment of a penalty.</b>	<a href="#">[...]</a>
375.			<b>2. The amount of the penalty shall 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 22. The payment of the penalty shall not release the authorised declarant from the obligation of surrendering the outstanding number of CBAM certificates to the CBAM authority.</b>	<a href="#">[...]</a>
376.			<b>3. In the case of repeated offences, the CBAM authority may decide to suspend the CBAM account of the authorised declarant.</b>	<a href="#">[...]</a>
377.			<b>4. In addition to the penalty referred to in paragraph 2,</b>	<a href="#">[...]</a>

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			<b>Member States shall apply administrative or criminal penalties for failure to comply with the CBAM in accordance with their national law. Such penalties shall be effective, proportionate and dissuasive.</b>	
378.			<b>5. If the CBAM authority determines that an authorised declarant has failed to comply with the obligation to surrender CBAM certificates or has submitted false information to the authority, the CBAM authority shall impose the penalty referred to in paragraph 2 and notify the authorised declarant:</b>	<b>[...]</b>
379.			<b>(a) that the CBAM authority has concluded that the authorised declarant fails to comply with the obligation of surrendering CBAM certificates for a given year in accordance with Article 22 or has submitted false information to the authority;</b>	<b>[...]</b>
380.			<b>(b) of the reasons for its conclusion;</b>	<b>[...]</b>
381.			<b>(c) of the amount of the penalty imposed on the authorised declarant;</b>	<b>[...]</b>
382.			<b>(d) of the date from which the penalty is due;</b>	<b>[...]</b>

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383.			<b>(e) of the action the competent authority considers the authorised declarant should take to comply with its obligations under point (a) depending on the facts and circumstances of the case; and</b>	<b>[...]</b>
384.			<b>(f) of the right of the authorised declarant to appeal under national law.</b>	<b>[...]</b>