



Council of the European Union
General Secretariat

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

Brussels, 12 November 2021

WK 13755/2021 INIT

LIMITE

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From:	Presidency
To:	Delegations
Subject:	CBAM - Presidency steering note

Delegations will find attached the Presidency steering note for the AHWP CBAM meeting on 19 November 2021.

**CBAM: PROGRESS AND THE WAY FORWARD DURING THE SLOVENIAN PRESIDENCY TERM*****Presidency steering note*****I. INTRODUCTION**

1. The European Council in its conclusions of 10-11 December 2020¹ endorsed a binding EU target of a net domestic reduction of at least 55% in greenhouse gas emissions by 2030 compared to 1990. It has also invited the European Commission to propose a carbon border adjustment mechanism to ensure the environmental integrity of EU policies and avoid carbon leakage in a WTO-compatible way.
2. Article 2 of the European Climate Law² provides that Union-wide greenhouse gas emissions and removals regulated in Union law shall be balanced within the Union at the latest by 2050, thus reducing emissions to net zero by that date, and that the Union shall aim to achieve negative emissions thereafter. Moreover, the relevant Union institutions and the Member States shall take the necessary measures at Union and national level, respectively, to enable the collective achievement of this climate-neutrality objective, taking into account the importance of promoting both fairness and solidarity among Member States and cost-effectiveness in achieving this objective.
3. In its conclusions of 17-21 July 2020, the European Council, among other points, indicated that the European Commission will propose a carbon border adjustment mechanism, as a basis for additional own resources for the EU.³ Work on the carbon border adjustment mechanism is also referred to in the Roadmap towards the introduction of new own resources, which is part of the Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission of 16 December 2020.⁴

¹ See doc. EUCO 22/20, points 14 and 17.

² Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 (OJ L 243, 9.7.2021, p. 1.).

³ See doc. EUCO 10/20, point A29.

⁴ OJ L 433I, 22.12.2020, p. 28.

4. The proposal for a Regulation of the European Parliament and of the Council establishing a carbon border adjustment mechanism (CBAM) (2021/0214 (COD)) was issued on 14 July 2021, as part of the 'Fit for 55' package.
5. The principal objective of the Commission proposal for CBAM (as an environmental measure) is to address the risk of carbon leakage, caused by asymmetrical climate policies of non-EU countries (where policies applied to fight climate change are less ambitious than those of the EU). The application of CBAM would prevent that the emissions reduction efforts of the Union are offset by increasing emissions outside the Union through relocation of production to non-EU countries or increased imports of carbon-intensive products. Without such a carbon border adjustment mechanism, carbon leakage is likely to result in an overall increase in global emissions.
6. The Commission proposes that CBAM initially covers a number of specific products in some of the most carbon-intensive sectors: iron and steel, cement, fertilisers, aluminium and electricity.
7. CBAM would work in parallel with the EU's Emissions Trading System⁵ ('EU ETS'), to mirror and complement its functioning on imported goods. It will gradually replace the existing EU mechanisms to address the risk of carbon leakage, in particular the free allocation of EU ETS allowances. Following a review planned to take place in 2025, the Commission intends to assess the possibility to extend the measure to indirect emissions and, in this context, analyse the compatibility with existing financial measures to compensate for indirect emission costs from increases in electricity prices due to the EU ETS.
8. To allow producers, importers and traders to adjust to the new regime, the reduction of free allocation should be implemented gradually, while the CBAM is phased-in, in order to ensure that these measures are not cumulative. In accordance with the Commission proposal, in 2023-2025, CBAM would function as a reporting obligation only, and be gradually phased-in from 2026 (over 10 years, until 2035).

⁵ Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a system for greenhouse gas emission allowance trading within the Union and amending Council Directive 96/61/EC (OJ L 275, 25.10.2003, p. 32).

9. CBAM would serve as an essential element of the toolbox to meet the EU climate-neutrality objectives, in line with the Paris Agreement⁶, adopted in December 2015 under the United Nations Framework Convention on Climate Change ('UNFCCC').

II. STATE OF PLAY

10. On 22 July 2021, the Committee of Permanent Representatives (Part 2) established an *Ad Hoc* Working Party on the carbon border adjustment mechanism ("AHWP CBAM"), to conduct the preparatory work related to the negotiations on this legislative proposal and to efficiently address the cross-sectoral subject matters covered by this dossier.
11. AHWP CBAM works on the design of CBAM in accordance with its mandate⁷ and draws on the expertise of Member State delegates working in the relevant areas, as appropriate. AHWP CBAM will cease to exist upon the adoption of a Regulation establishing a CBAM, based on the above-mentioned legislative proposal. To be noted, the mandate of the AHWP CBAM can be updated or revised, including its possible prolongation, as necessary, in order to carry out legislative or non-legislative technical and preparatory work instrumental to ensure the smooth functioning of CBAM.
12. The activities of the AHWP CBAM are without prejudice to the work outside the proposal for a Regulation establishing CBAM, carried out in other sectorial preparatory bodies, which remain responsible for distinct sector-specific legislative and non-legislative files (e. g. the Working Party on Own Resources, Working Party on Customs Union, Working Party on the Environment, Trade Policy Committee, Working Party on Tax Questions, etc.).
13. During the term of Slovenian Presidency, [six] meetings of AHWP CBAM will have taken place (due to restrictions related to COVID-19 pandemic, in the form of an informal videoconference of the members, on 2 and 22 September, 14 October, 4 and 19 November, and [9 December 2021]).

⁶ OJ L 282, 19.10.2016, p.4.
⁷ Doc. 10846/21.

14. The AHWP CBAM meetings were principally devoted to a detailed presentation of the Commission proposal and the accompanying impact assessment, followed by article-by-article examination of the proposal. Exchanges in more detail took place on a number of aspects, such as:
- a) correlation of CBAM with the EU ETS;
 - b) impact of applying CBAM to direct emissions of imported in-scope products;
 - c) provisions of the proposal for a CBAM Regulation, where it is suggested to empower the Commission adopt delegated acts (TFEU Art. 290) and implementing acts (TFEU Art. 291);
 - d) role of customs authorities in the administration of CBAM;
 - e) methods for calculation of embedded emissions;
 - f) provisions of the CBAM proposal concerning electricity sector.

III. WAY FORWARD

15. On the basis of the discussions on CBAM that have taken place so far, the Presidency holds the view that, besides the overarching climate objectives, a number of guiding principles will have to be taken into consideration to implement the Fit for 55 package, which have been endorsed by the European Council already. For example - the need to preserve the EU's competitiveness and taking account of Member States' different starting points and specific national circumstances and emission reduction potential, the need to achieve the 2030 target collectively⁸, etc.
16. While climate objectives are not contested, the discussions in the AHWP have confirmed that Member States attach significant importance to this proposal in the context of international trade, the competitiveness of EU industry and its effects on the economy, including the labour market. As already indicated in the explanatory memorandum of the Commission proposal, it will remain important to ensure that the design of CBAM is in compliance with World Trade Organization rules and other international obligations of the EU.

⁸ See doc. EUCO 22/20, point 14.

17. The Presidency believes that, due to the novelty of the proposed measure, further technical discussions at the AHWP CBAM will be required, as delegations need to ascertain how CBAM will function in practice, including the aspects related to the overall design and administration of the new mechanism. Among other issues, further insights would be beneficial on the following:
- a) administrative aspects relating to the procedures at the border when goods are imported;
 - b) penalties for infringements and provisions to prevent circumvention of CBAM rules;
 - c) process of registration and relevant controls of operators and installations in non-EU countries;
 - d) record-keeping specifics as regards carbon price paid in the country of origin;
 - e) particularities of sale, price and surrender of CBAM certificates;
 - f) measures to ensure that relevant InfoTech systems and networks are adequate for control and co-operation pursuant to the rules of CBAM.
18. The Presidency notes that Member States are committed to continue the work on the basis of the Commission proposal. However, at this stage, it remains too early to draw any conclusive remarks on the contents of a possible compromise agreement for a general approach of the Council (its position in the future negotiations with the European Parliament) on this legislative file.
19. **Against this background, the Presidency will produce its progress report on this dossier, and the Committee of Permanent Representatives/Council will be invited to take note thereof** ('I/A' ('no discussion') item in Coreper (Part 2) on 1 December and ECOFIN on 7 December).

IV. HANDLING OF THE FORTHCOMING AHWP CBAM MEETINGS

20. Given the high political priority of this dossier, the Presidency also deems appropriate to continue the further detailed analysis of the Commission proposal at the level of AHWP CBAM.
21. For that purpose, at the AHWP CBAM meeting of 19 November, the Presidency suggests to cover the following aspects:
- a) a more detailed discussion on the Annex III of the CBAM proposal (methods for calculation of embedded emissions);
 - b) the provisions of the CBAM proposal concerning electricity sector;
 - c) an exchange of views on delegated and implementing acts (see doc.WK 13757/2021 on this matter);
 - d) if relevant, a Q&A session on docs. WK 12394/2021 (CBAM-suggested line to take) and WK 12391/2021 ('non-paper' concerning direct emissions)
22. The Slovenian Presidency intends to convene one more AHWP CBAM meeting during its term. The meeting will take place on 9 December (informal videoconference), and it will be aimed at covering a range of aspects relating to governance, administrative and operational structure ('model') of the future CBAM.
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