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WK 3950/2025 INIT

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## **WORKING DOCUMENT**

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From:	General Secretariat of the Council
To:	Simplification
N° prev. doc.:	7437/25
N° Cion doc.:	6609/25
Subject:	Omnibus package on sustainability - CBAM; explanatory note to the Presidency compromise text

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In relation to the Omnibus package on sustainability – CBAM, delegations will find attached an explanatory note to the Presidency compromise text based on the informal consolidated version, as circulated in doc. 7437/25, in preparation of discussions at the meeting of the Antici Group (Simplification) on 31 March 2025.

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# EXPLANATORY NOTE

## CBAM SIMPLIFICATION – 1st Presidency compromise

### Antici Group on Simplification (AGS)

31 March 2025, Monday

The purpose of this explanatory note is to provide delegations with additional information, clarifications and reasoning for the amendments proposed by the Presidency.

This document is for reference only, the order of discussion will be set out in the Presidency Flash.

To be noted, at this stage, the Presidency only proposes the amended recitals 2 to 6, which accompany the suggested new Article 2a. All other recitals in the amending Regulation (recitals in the text of the Commission proposal) will be updated at a later stage, when the main text of the draft Regulation is stabilized.

ARTICLE	REASONING
Art. 2(3a) – deletion; Art 2a – insertion; relevant amendments in Annex VII and throughout the text of the CBAM Regulation	<p>Presidency suggests to redraft the text relating to the “de minimis” threshold to provide clarity and legal certainty.</p> <p>First of all, we propose to reflect the content of Article 2(3a) as proposed by the Commission in a new Article 2a as the “de minimis” exemption is not an exemption from the “scope” of CBAM, but an exemption applied to importers below the threshold.</p> <p>Insertion of this new Article 2a provides further clarity that once the threshold is exceeded in the relevant calendar year, the importer is subject to all CBAM obligations in respect of all of the embedded emissions in the goods imported, including those under the threshold.</p> <p>Furthermore, we suggest to specify and streamline the empowerment of the Commission to adopt delegated acts for the purpose of adapting the threshold, in order to correctly express the objectives and the scope of the empowerment. This concerns both new Article 2a and Annex VII.</p> <p>For reasons of further precision and certainty, recitals 2 to 6 of the Commission proposal have been redrafted to set out more clearly the reasoning behind the new de minimis exemption (the single mass-based threshold).</p> <p>Across the text of the whole CBAM Regulation, the references in the text have been adjusted accordingly, to refer to the new Article 2a.</p>

Article 5	A number of drafting improvements were made, without the objective to change the scope or meaning of the Commission proposal. This includes updates of references to the new Article 2a. Please see also specific explanation regarding two amendments in Article 5(5) set out further down.
Article 5(5), point (g)	Reference to “monetary value” was deleted, as this information can be considered excessive for the purposes of CBAM.
Article 5(5), new point (ga)	For the purposes of further simplification and efficiency, this new point will permit applicants to submit their AEO number. This information can be used by the competent authorities in the assessment (risk analysis) phase of the authorization process, leading to quicker authorization.
Adjustment of dates :  Article 6 (1); Article 17(7); Article 22(1) Article 23(1), second subparagraph Article 24(1) Article 26(1)	Adjustment of dates, as discussed in the AGS meeting on 12 and 14 March 2025.
Article 6(1)(b)	Addition for the purposes of clarification.
Article 6(6)	Addition of a reference to Article 9(3a), for the purposes of further certainty and clarity.
Article 7(2), incl. amendment in Annex IV 4.1	An amendment to clarify that both methods for calculation of embedded emissions are a matter of choice. See also the corresponding amendment in Annex IV 4.1.
Article 7(7)	Editorial.
Article 9(3a) and Article 9(4)	Drafting improvements, for further precision.
Article 10a(5)	Deletion of words “upon request from an operator” as these are considered to be an unnecessary limitation in this case.
Article 14(6)	Editorial improvement and addition of a reference to 25a(3), in order to ensure clear empowerments to the Commission, needed to

	ensure proper functioning of monitoring and enforcement of the threshold.
Article 17(1)	Redrafting, for the purposes of precision and clarity (also, to avoid using the words „period prescribed for the decision concerned“, as no such period seems to be prescribed by CBAM Regulation).
Article 18	<p>Proposal to ensure clarification of the accreditation process where there are two possibilities for verifiers to become accredited for CBAM: (1) Candidate verifier submits a new application to a national accreditation body (NAB). The CBAM Delegated Act will specify the conditions for this process. (2) Candidate verifier is already an accredited verifier under the EU ETS for a relevant group of activities – in this case, the national accreditation body has an obligation to take into account the qualifications of an accredited “ETS verifier”. The CBAM Implementing Regulation will identify the relevant group of activities under the EU ETS AVR. No matter which accreditation route is used, the national accreditation body (NAB) will award an accreditation certificate to the certifier.</p> <p>Therefore, the Presidency suggests to:</p> <p>a) delete Article 18(1);</p> <p>b) supplement Article 18(2) with a clarification that the national accreditation body has an obligation to take into account the qualifications of an accredited “ETS verifier” that are necessary to perform verifications for the purposes of CBAM; and</p> <p>c) update the reference in Article 18(3) accordingly, specifying the empowerment given to the Commission in this regard.</p>
Article 20(6)	The Omnibus amendment envisages to update the reference to Commission Delegated Regulation (EU) No 2023/2830 (ETS Delegated Regulation). Amendment needed to ensure a proper legal basis.
Article 21(1a)	Drafting adjustments for the purpose of clarity and precision.
Article 22(2)	Drafting adjustments for the purpose of clarity and precision.
Article 22(2a)	Adjustments resulting from insertion of Article 2a, as well as for the purposes of clarity and precision on the situation of importers exempted under Article 2a.
Article 23(2)	<p>It is suggested to simplify and clarify the first subparagraph, and to add the second subparagraph to Article 23(2), which would clearly provide for the following simplification:</p> <p>- authorised CBAM declarants that purchase certificates while expecting to exceed the “single mass-based threshold” but do not exceed it during that calendar year, shall have their certificates repurchased in their entirety.</p>

Article 23(2a)	It is suggested to simplify and clarify the wording of the proposed Article 23(2a).
Article 24(2)	It is suggested to simplify and clarify the wording of the proposed Article 24(2).
Article 25(1)	A clarification, with regard to new Article 2a.
Article 25(2)	An additional precision.
Article 25(3)	A specification, that such information shall be communicated periodically.
Article 25a	<p>The core of the adjustments suggested in this Article are made for the purposes of specification, clarification and further legal certainty.</p> <p>A reference to the new “single mass-based threshold” is made throughout the text, for the purposes of clarity and alignment with the new Article 2a.</p> <p>In Article 25a(2) a reference to Article 25(2) is inserted for further precision. The second subparagraph of this Article is supplemented with the wording relating to requesting of additional documentary evidence for the purposes of monitoring and control of the new de minimis threshold.</p> <p>Article 25(3) has been redrafted to clarify and streamline the process covering the cases where the threshold is exceeded and the consequences thereof.</p> <p>Article 25(4) has been redrafted to specify the rules that permit competent authorities to disregard a practice or an arrangement, or a series thereof that are not genuine (where, having regard to all relevant facts and circumstances, it cannot be considered that they are put in place for valid commercial reasons).</p>
Article 26(1)	It is suggested to further clarify Article 26(1a) proposed by the COM to ensure that the basis for its application are not too broad and apply to cases where CBAM declarants without malicious intent have relied on data provided by third-party (operator or verifier), which they cannot verify. Additionally, since the amount of penalty in para 1 is fixed, it is suggested to set the amount of reduced penalty at 50% of the regular penalty.
Article 26(2)	It is suggested to delete the additional sentence proposed by the Commission since it is redundant and misleading to the extent that it indicates that persons other than the authorised declarant are obliged to submit CBAM declaration and surrender certificates. Only authorised CBAM declarant has obligation to submit CBAM declaration (see Article 6 of CBAM Reg) and surrender CBAM certificates (see Article 22 of CBAM Reg).
Article 26(3)	The proposed addition is considered redundant.

Article 26(4a)	For the purposes of further precision with regard to penalties, it is suggested to insert this new paragraph in order to further specify how to calculate the total number of CBAM certificates that should have been surrendered.
Article 27(2)(b)	Adjustment for further precision, also given the insertion of new Article 2a.
Article 28	Adjustment of references, given the new Article 2a.
Article 36(2)(b)	Correction of omissions.
ANNEX IV	4.1 is updated, given the amendment to Article 7(2).
ANNEX V 1(e)	Addition of a point to specify the method used.
ANNEX VII	The text is updated to refer to the new Article 2a. Furthermore, the explanatory wording of the annex is simplified, also due to the fact that part of the text is reflected in the new Article 2a.