



CBAM

European Parliament's latest draft report – key issues at a glance

On 21 December 2021, the European Parliament's rapporteur from the Committee on the Environment, Public Health and Food Safety (*ENVI*), Mohammed Chahim, published his [draft report](#) on the proposal for a regulation of the European carbon border adjustment mechanism (*CBAM*). The draft report is the European Parliament's first reaction to the European Commission's initial CBAM [proposal](#) issued on 14 July 2021. Although the European Parliament will only vote on the final report after another round of amendments from its shadow-rapporteurs, the draft report gives a good indication of what route the discussions around CBAM may take.

While ENVI is the lead Committee dealing with the CBAM proposal, it is also important to note that the European Parliament's Committee on International Trade (*INTA*) is also associated with the process and has exclusive competence on aspects relating to compatibility with WTO rules and existing EU free trade agreements. A draft INTA report was also published recently and is available [here](#). The ENVI and INTA reports are complementary and each must take into account the conclusions reached by the other committee.

In our [first briefing](#) on CBAM in July 2021, we highlighted how the CBAM mechanism works and how to comply with it (see also our [article](#) "Fit for 55: what the EU's 2030 decarbonisation plan means for the hydrogen and ammonia industries"). This briefing provides an update on the European Parliament's ENVI Committee's latest draft report. The key points to note are as follows:

Broadening the scope of CBAM

In addition to the products already covered in the Commission's proposal (steel, cement, fertilisers, aluminium and electricity), the rapporteur proposes the inclusion of organic chemicals, hydrogen and polymers, as well as bringing into scope 'indirect emissions' released during the production of electricity used either in the production of a CBAM good or upstream products. The latter would significantly impact e.g. non-European aluminium manufacturers, since aluminium production requires massive amounts of electricity. Furthermore, the rapporteur proposes that the Commission considers whether to extend the scope to goods further down the value chain (so-called "*downstream products*"). This could e.g. affect non-European steel that is used to produce a machine which is subsequently imported into the EU.

Tightening the implementation timeline

The Commission's timeline proposes that CBAM does not become fully operational before 2036 – this is too late for the rapporteur. The draft report proposes phasing-out the allocation of free ETS-allowances in sectors subject to CBAM by the end of 2028 (i.e. 7 years earlier than currently proposed). In relation to cement, the rapporteur proposes a complete phase-out by the end of 2025 as he considers European cement producers are not exposed to relevant carbon leakage risks. Consequently, declarants importing CBAM goods into the EU after these dates would no longer be able to benefit from the reduction in CBAM certificates that have to be surrendered that would otherwise have to be applied to mirror the previously available free ETS allowances. Furthermore, the rapporteur recommends shortening the transitional period (i.e. the period when CBAM would only be operated as a quarterly reporting mechanism for declarants) by one year so that it expires on 31 December 2024.



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Implementation of one central CBAM authority

The rapporteur proposes the creation of a single CBAM authority for all EU member states instead of relying on 27 national authorities. In his view a decentralised system would lead to uneven implementation of CBAM by the 27 competent authorities with a high risk of “forum shopping” which would be detrimental to the integrity of the single market. In this respect, the draft report is in line with an early, not officially circulated, version of the Commission’s proposal on the CBAM regulation which also proposed a comparable centralistic approach.

Reintroduction of litigation rights

The report considers setting up an independent European Board of Appeal for appeals against decisions taken by the CBAM authority. This Board would consist of three members appointed by the European Parliament, the Council and the Commission respectively. The appeal, which would have to be filed within a period of two months, would have suspensory effect. Legal actions against Board decisions could be brought before the General Court and ultimately before the Court of Justice, also with suspensory effect. Introducing a chapter for legal actions into the draft regulation is also not an entirely new idea: the European Commission’s unofficial draft foresaw a comparable mechanism which was, however, deleted in the draft that was later published.

Revenue of CBAM to be used for cooperation with least developed countries

To support the least developed countries’ in their efforts in decarbonising their manufacturing industries, the draft report proposes that, as a minimum, the equivalent of the yearly revenues generated by the sale of CBAM certificates should be used. This proposal is independent from another [proposal](#) currently being discussed by the Member States which would see 75 per cent of revenues generated by CBAM being assigned to the EU budget. Interestingly, the draft report also suggests the introduction of a review-clause under which the Commission would be required to assess within two years of CBAM being implemented whether any mechanism is needed to address any negative impacts of CBAM on European exports (by means of a new legislative proposal). In this context, the rapporteur voices his view that explicit export rebates are not in line with WTO principles, a point already highlighted by several business representatives. Currently, the WTO is being consulted on potential solutions to this issue that avoids conflicts with fundamental WTO principles.

Strengthening the co-legislators’ role regarding CBAM implementation

In July, the Commission proposed the adoption of several technical elements via so-called implementing acts, which would not need to be approved by the European Parliament and the Member States before entering into force. Contrary to that, the draft report proposes that most of these elements would have to be authorised by delegated acts, which, crucially, need to be approved by the European Parliament and the Member States. With this proposed amendment, the rapporteur aims to ensure that the co-legislators remain responsible for the essential elements of the regulation. This is a technical yet recurring point of tension between the Commission and the European Parliament as regards their respective competences.

Next steps

The co-rapporteurs will now amend the draft report. We expect the shadow-rapporteurs, especially the Christian-Democrat and Conservative Members of the European Parliament (**MEPs**), to take a more conservative approach and push back on several elements proposed by socialist Rapporteur Chahim. The main sticking point seems to be around whether EU exporting companies should be better protected from international competitors and either be given a longer period of free allowances in the ETS or even export rebates, something that right-leaning MEPs are calling for.

A final report made up of “compromise amendments” that most political groups can support, would be put to a vote in the ENVI Committee by the end of February/March 2022. This report will then be subject to a debate and a vote in the European Parliament’s plenary. The European Parliament will also vote to enter so-called interinstitutional negotiations (also referred to as “trilogues”) with the Council of the EU. Indeed, once the EU27 Member States, in the Council, agree on their own position amending the Commission’s proposal on CBAM (something that could happen as soon as mid-March 2022), the three EU institutions – the European Parliament, the Council and the Commission – will sit down together to try and agree on a final version of the CBAM text. There is no fixed timeline for this part of the process, which takes on average between 3 and 6 months. However, we expect the CBAM trilogue negotiations to be somewhat delicate given the diverging views of Member States and MEPs. They may therefore drag on a little longer than usual.

We expect the entire legislative process on the CBAM regulation to take between eight months and one year, meaning that the final text might be approved and published in the EU Official Journal by the end of the year 2022.



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