



Bird & Bird & Direct interventions on emissions, the ETS and the Border Carbon Adjustment Mechanism

July 07, 2021, 9 am (CEST) to 4 pm (CEST)

EFELA Conference: THE EUROPEAN GREEN DEAL AND THE ENERGY SECTOR

Good to see you!



Matthias Lang
Partner, Regulatory & Administrative,
Infrastructure, Energy & Utilities

Agenda

1. Green Deal Background
2. European Parliament Resolution
3. Draft CBAM Regulation
4. Next Steps



Introduction

EU ETS and Carbon Border Adjustment Mechanism (CBAM)

- Instruments for CO₂ pricing
- Focus new CBAM: To introduce levy on imported carbon in products
- May hit three birds with one stone
 - Incentivise other countries to move ahead with climate protection
 - Protect European industry
 - Provide funds to the EU
- Revision of EU ETS and CBAM Regulation to be part of Fit for 55 package (14 July 2021)



Part 1: Green Deal Background

Background

Green Deal Communication

Communication "The European Green Deal" COM(2019) 640 final

- Increase the EU's climate ambition for 2030 and 2050
- Plan to increase the EU's GHG reductions target for 2030 to at least 50% and towards 55% compared with 1990 levels
- By June 2021 revision of all relevant climate-related policy instruments, including
 - Carbon Border Adjustment Mechanism

Background

Green Deal Communication

Green Deal reforms shall help to ensure effective carbon pricing throughout the economy

- Where international partners do not share the same ambition as the EU, there is a risk of carbon leakage
- If risk materialises, there will be no reduction in global emissions, and this will frustrate the efforts of the EU and its industries to meet the global climate objectives of the Paris Agreement

Carbon Border Adjustment Mechanism

- *"Should differences in levels of ambition worldwide persist, as the EU increases its climate ambition, the Commission will propose a **carbon border adjustment mechanism**, for selected sectors, to reduce the risk of **carbon leakage**. This would ensure that the price of imports reflect more accurately their carbon content. This measure will be designed to comply with World Trade Organization rules and other international obligations of the EU. It would be an alternative to the measures that address the risk of carbon leakage in the EU's Emissions Trading System"*
- COM(2019) 640 final, 11 December 2019, page 5



Part 2: EP Resolution

European Parliament Resolution

CBAM Resolution 10.03.2021 (1)

Resolution "Towards a WTO-compatible EU carbon border adjustment mechanism"

- GHG emissions in the EU have fallen by 24%, GHG emissions embedded in imports into the EU have continued to rise
- Net imports of goods and services into the EU account for over 20% of the EU's CO₂ emissions
- Establishment of a European carbon border adjustment mechanism
 - Compatible with WTO rules and the EU's free trade agreements and
 - Exclusively designed to advance climate objectives and not misused as a tool to enhance protectionism

European Parliament Resolution

CBAM Resolution 10.03.2021 (2)

- CBAM to be coupled with EU ETS revision, covering products imported under EU ETS, including when embedded in products
- As a starting point from 2023, CBAM should cover the power sector and energy-intensive industrial sectors such as cement, steel, aluminium, oil refinery, paper, glass, chemicals and fertilisers
- To comply with WTO rules, the mechanism shall charge the carbon content of imports in a way that mirrors the carbon costs paid by EU producers
 - CBAM carbon pricing should mirror price of EU allowances while ensuring predictability and less volatility in the price of carbon

European Parliament Resolution

CBAM Resolution 10.03.2021 (3)

- GHG emissions content of imports should be accounted for on the basis of transparent, reliable and up-to-date product-specific benchmarks at the level of the installations in third countries
- Carbon pricing of imports should cover both direct and indirect emissions and therefore also take into account the country-specific carbon intensity of the electricity grid or, if data is made available by the importer, the carbon intensity of the energy consumption at the level of the installation

European Parliament Resolution

CBAM Resolution 10.03.2021 (4)

- Parliament supported Commission's intention to use the revenue generated by the border carbon adjustment mechanism as new own resources for the EU budget
- The new revenue should further support climate action and the objectives of the Green Deal
- Primary aim of the CBAM shall be environmental



Part 3: Draft CBAM Regulation

Draft CBAM Regulation

Leaked Drafts

Regulation on the Establishment of a Carbon Border Adjustment Mechanism

- Leaked informal draft documents (2 June 2021)
- Text of regulation plus annexes with
 - I. List of covered goods
 - II. Countries and territories outside the scope of the regulation
 - III. Approach to calculating embedded emissions
 - IV. Reporting requirements
 - V. Verification principles
- Several open issues in draft
- Publication proposal 14 July 2021
 - Part of broader Fit for 55 legislative package

Draft CBAM Regulation

Key Concepts (1)

New Mechanism, integrated with EU ETS

- Regulation establishes a Carbon Border Adjustment Mechanism
 - For regulating greenhouse gas emissions in certain goods
 - Upon their importation into the customs territory of the EU customs territory
 - With the purpose of preventing the risk of carbon leakage
- CABM shall integrate into EU ETS system by applying an equivalent regime on imports into the Union

Draft CBAM Regulation

Key Concepts (2)

How it works

- Regulation shall apply to import of specific goods covered in annexes
 - Cement, electricity, fertilisers, iron and steel, aluminium
- Originating in countries/territories outside the Custom Union
 - Exception for countries/territories listed in annex
- Import by a "declarant" authorised by a new CBAM Authority
 - Annual submission of CBAM declaration by 31 May
 - [Import of electricity special treatment?]
- Declaration of installation-specific values for embedded emissions of imported good
 - Default values higher

Draft CBAM Regulation

Key Concepts (3)

Excluded Countries

- Outside of scope
 - Iceland
 - Liechtenstein
 - Norway
 - Switzerland
- Additional exclusions via Commission delegated acts, notably reflecting whether the third country is fully integrated into the EU ETS or an agreement has been concluded between the third country and the Union linking the EU ETS and the third country emission trading system

Draft CBAM Regulation

Key Concepts (4)

Deduction of Paid Carbon Price

- Declarant may claim a reduction in the number of CBAM certificates to be surrendered corresponding to the carbon price paid in the country of origin for the declared emissions
- Information on paid carbon price needs to be certified by a competent independent person

Draft CBAM Regulation

Key Concepts (5)

Registration of Third Country Installations

- Operator of an installation located in a third country can request CBAM Authority to confirm the embedded emissions in goods produced in that installation and register the operator in the CBAM registry
- Operator can then disclose embedded emissions to declarant
- Declarant can rely on this information without any further verification for two years

Draft CBAM Regulation

Key Concepts (6)

Administration

- New CBAM Authority
 - CBAM registry, authorisation of declarants (i.e. authorised importers), accreditation of verifiers, review of CBAM declarations, management of CBAM certificates
 - Specific administrative rules for decisions of CBAM Authority, including appeals procedure
- Power to adopt delegated acts conferred to the Commissions for various CBAM aspects
 - Including urgency procedure, objection procedure for European Parliament or Council
- [All provisions relating to the choice of CBAM Authority as administrative body under discussion, awaiting political guidance]

Draft CBAM Regulation

Key Concepts (7)

Entry into Force / Transitional Period

- Entry into force envisaged for 1 January 2026
- [3] year initial transitional period with simplified system for the application of the Mechanism
 - To reduce the risk of disruptive impacts on trade flows and alleviating the initial administrative burden for declarants importing goods into the Union while at the same time fulfilling the objective of the Mechanism
- [Transitional provisions under development, awaiting political guidance]



Part 4: Next Steps

Next Steps

CBAM Regulation



Legislative Procedure

- Fit for 55 Package 14 July 2021
- To include CBAM regulation proposal (and revision of EU ETS)
- Ordinary legislative procedure (Art. 192(1) TFEU)
 - Council, European Parliament
- International discussions
 - WTO compliance (free allowances)?
 - Pushback Russia, Turkey, Ukraine, South Korea, China, India, USA?
- Start 2023



Q & A

Thank you!
Further questions?

Dr. Matthias Lang

Partner

Direct: +491743144234
matthias.lang@twobirds.com

Bird & Bird LLP, Düsseldorf



Thank you & Bird & Bird



twobirds.com

The information given in this document concerning technical legal or professional subject matter is for guidance only and does not constitute legal or professional advice. Always consult a suitably qualified lawyer on any specific legal problem or matter. Bird & Bird assumes no responsibility for such information contained in this document and disclaims all liability in respect of such information.

This document is confidential. Bird & Bird is, unless otherwise stated, the owner of copyright of this document and its contents. No part of this document may be published, distributed, extracted, re-utilised, or reproduced in any material form.

Bird & Bird is an international legal practice comprising Bird & Bird LLP and its affiliated and associated businesses.

Bird & Bird LLP is a limited liability partnership, registered in England and Wales with registered number OC340318 and is authorised and regulated by the Solicitors Regulation Authority. Its registered office and principal place of business is at 12 New Fetter Lane, London EC4A 1JP. A list of members of Bird & Bird LLP and of any non-members who are designated as partners, and of their respective professional qualifications, is open to inspection at that address.