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COMMISSION IMPLEMENTING REGULATION (EU) …/...

of XXX

laying down rules for the application of Regulation (EU) 2023/956 of the European Parliament and of the Council as regards the calculation of the free allocation adjustment to the number of CBAM certificates to be surrendered

(Text with EEA relevance)

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(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) 2023/956 of the European Parliament and of the Council of 10 May 2023 establishing a carbon border adjustment mechanism[1], and in particular Article 31(2) thereof,

Whereas:

(1) Regulation (EU) 2023/956 establishes the Carbon Border Adjustment Mechanism (CBAM) which seeks to replace the allocation of free allowances used to prevent the risk of carbon leakage under the system for greenhouse gas emission allowance trading within the Union established under Directive 2003/87/EC of the European Parliament and of the Council (the 'EU ETS'). To ensure a gradual transition from the current system of free allowances in the EU ETS to the CBAM, the CBAM is to be progressively phased in, while free allowances in sectors covered by the CBAM are to be phased out. The combined and transitional application of EU ETS allowances allocated free of charge and of Regulation (EU) 2023/956 should in no case result in more favourable treatment for Union goods compared to goods imported into the customs territory of the Union.

(2) Article 31(1) of Regulation (EU) 2023/956 therefore requires that the CBAM certificates to be surrendered are to be adjusted to reflect the extent to which EU ETS allowances are allocated free of charge. The Commission is to adopt implementing acts laying down detailed rules for the calculation of such adjustment (the 'free allocation adjustment').

(3) The determination of the free allocation adjustment requires taking into account the quantity of imported goods, the cross-sectoral correction factor of the total amount of free allowances under the EU ETS, the relevant CBAM factor as established in Article 10a of Directive 2003/87/EC and a value combining the relevant EU ETS benchmarks for the goods concerned. By analogy with the EU ETS, that value should be called the CBAM benchmark.

(4) The EU ETS benchmarks, used to determine the level of free allocation at the level of installations producing, within the Union, the goods listed in Annex I to Regulation (EU) 2023/956, apply to individual sub-installations, while the free allocation adjustment applies at the level of goods as listed in Annex I to Regulation (EU)

[1] OJ L 130, 16.5.2023, p. 52, ELI: http://data.europa.eu/eli/reg/2023/956/oj.

2023/956. Therefore, the CBAM benchmarks should be determined for each commodity code.

(5) Regulation (EU) 2023/956 allows authorised declarants to report the embedded emissions in imported CBAM goods based on either actual emissions or default values. The free allocation adjustment should reflect that principle. If actual emissions are declared, the free allocation adjustment should equally reflect the actual production process and the composition of goods ('actual free allocation adjustment'). If default values for emissions are declared, the adjustment should equally be based on default values for free allocation.

(6) Under the EU ETS, free allocation is determined at installation level, using a limited number of product benchmarks. Where emissions and products cannot be assigned to product benchmarks, the heat and fuel benchmarks are used as fallback approaches. Where neither heat nor fuel fallback benchmarks can be assigned, relevant processes are allocated free allowances under a process emission sub-installation based on historical activity levels. For the purposes of the CBAM, those EU ETS benchmarks and fallback approaches should be combined to result in CBAM benchmarks that refer to specific goods.

(7) The determination of the actual free allocation adjustment requires not only taking into account the processes at the installation where the goods are produced, but also the processes to produce input materials (precursors) used by the installation. Moreover, the CBAM requires more detailed information than the EU ETS, as the concept of dividing the installation into sub-installations according to the benchmarks would have to be applied at goods level. Finally, the actual free allocation adjustment of goods very much depends on the origin of the precursors and the composition of the goods. The determination of the actual free allocation should be as simple as possible while reflecting the actual conditions of the installation where the goods are produced, that is in terms of production route, the origin of precursors and the composition of goods.

(8) The adjustment based on default values for free allocation should be determined based on default CBAM benchmarks. In order to ensure equivalence between embedded emissions and embedded free allocation, the default CBAM benchmarks should reflect the same conditions as those used for the determination of default values for emissions, that is, in terms of production route, the origin of precursors and the composition of goods. However, where this approach would lead to excessive complexity of the calculation rule, simplifying assumptions for the development of the CBAM benchmarks should be made. In particular, the CBAM benchmarks should be applicable independently of the country of origin of the imported good or precursor used.

(9) EU ETS benchmarks are determined for the periods from 2021 to 2025 and from 2026 to 2030. In order to ensure equal treatment of imports, the CBAM benchmarks to be applied in the period from 2026 to 2030 should be based on the EU ETS benchmarks applicable during that period. Furthermore, the factor used for calculating the free allocation of process emissions sub-installations in the EU ETS from 1 January 2028 will be different from the value used until 2027. Therefore, CBAM benchmarks based on a process emissions fallback approach should take this change into account.

(10) EU ETS benchmarks for the period from 2026 to 2030 will only become available in early 2026. However, based on the already collected data, estimates with a high degree of certainty can already be made for the majority of the ETS benchmarks relevant for CBAM, while for the remaining ETS benchmarks estimates with a good degree of

certainty can be made. In order to provide more certainty to importers of CBAM goods already at the beginning of 2026, the CBAM benchmarks in 2026 should be based on the estimated ETS benchmarks to be applied in the period from 2026 to 2030 and apply from 1 January 2026. These CBAM benchmarks should be reviewed at the latest one month after the final EU ETS benchmarks for the period from 2026 to 2030 are published. The updated CBAM benchmarks based on the final ETS benchmarks for the period 2026 to 2030 should apply to goods imported from 1 January 2027. Where the Commission receives evidence demonstrating that the CBAM benchmarks are too high or too low, it should revise the relevant CBAM benchmarks.

(11) Article 10a(1), second subparagraph, of Directive 2003/87/EC provides that no free allocation is to be made in respect of any electricity production. Therefore, the free allocation adjustment for electrical energy (CN 2716 00 00) should be zero.

(12) To simplify the identification of the reporting period for goods, with the exception of electricity imported into the customs territory of the Union, a presumption should be established that such goods were produced during the year of import. Authorised CBAM declarants should be given the possibility to rebut that presumption by providing evidence demonstrating the actual period during which the goods were produced. As the authorised CBAM declarants are to surrender the CBAM certificates that correspond to the declared embedded emissions for the first time in 2027 for the year 2026, the reporting period should not cover any period before 2026.

(13) For precursors used in the production of a complex good, the operator of the complex good should, for the purpose of determining embedded free allocation based on actual emissions, identify the applicable reporting period during which the precursor was produced and use the corresponding verified actual values. To simplify the identification of the applicable reporting period, a presumption should be established that precursors used in the production of a complex good were produced during the reporting period during which that complex good was produced. Operators should be given the possibility to rebut that presumption by providing evidence to the verifier demonstrating the actual period during which the precursor was produced. As the authorised CBAM declarants are to surrender the CBAM certificates that correspond to the declared embedded emissions for the first time in 2027 for the year 2026, the reporting period should not cover any period before 2026.

(14) To ensure consistency, the reporting period for the calculation of the free allocation adjustment should correspond to the reporting period used for the determination of embedded emissions based on actual values in accordance with Commission Implementing Regulation (EU) C(2025)8151[2].

(15) In order to reflect the EU ETS benchmarks, CBAM benchmarks for simple goods were calculated using the EU ETS product benchmarks of the same type of good. Where no product benchmark is defined, the average share of the heat versus the fuel benchmark for the period 2021-2025 in the EU ETS reported for relevant product groups in the relevant baseline data was used to determine their respective contribution to the CBAM benchmarks. As no data on energy consumption per tonne of good is available from EU ETS data, energy consumption levels to be applied to these fallback benchmarks as well as the level of process emissions, where relevant, were aligned

[2] Commission Implementing Regulation .... of ... laying down the rules for the application of Regulation (EU) 2023/956 of the European Parliament and the Council as regards the methods for the calculation of emissions embedded in goods.

with the data and assumptions used for the determination of default values for the embedded emissions. In order to further align the CBAM benchmarks for complex goods with the default values for embedded emissions, the quality and quantity of precursors implied in the calculation was aligned with the data used for the calculation of the default values embedded emissions. This includes the selection of reference levels of clinker contained in cement, formulation of mixed fertilisers, and alloy grades for steel. EU ETS benchmarks are not fully aligned with CN codes or the aggregated goods categories defined in Commission Implementing Regulation (EU) C(2025)8151. In particular, some EU ETS benchmarks depend on certain production routes. For ensuring that under the CBAM the respective goods are treated equally as under the EU ETS, production-route specific values were determined for primary and secondary aluminium as well as for crude steel based on blast furnace, direct reduced iron (DRI) and electric arc furnace (EAF) routes.

(16) Union policy on the environment is to be based on the polluter pays principle, in accordance with Article 191(2) of the Treaty. This principle is also applied in the EU ETS for the free allocation of allowances, as set out in Commission Delegated Regulation (EU) 2019/331[3]. Currently, direct reduced iron (DRI) is covered by the hot metal benchmark of the EU ETS and, without further differentiation, imports of steel based on natural-gas DRI would receive a free allocation adjustment that exceeds their embedded emissions for the first years in which a CBAM obligation is due, which means that no CBAM certificates would be due for DRI-based goods. Compared to this, secondary steel imports would face a CBAM obligation, despite having lower actual embedded emissions than DRI. In addition, the potential free allocation adjustment stemming from the hot metal benchmark would create a situation in which more carbon-intensive natural gas based DRI imports would receive more free allocation adjustment than secondary steel producers, which receive comparably less free allocation based on the electric arc furnace (EAF) benchmarks, therefore increasing the carbon leakage risk for secondary steel producers in the Union. In line with the principles to be applied for the allocation of free allowances under the EU ETS, to ensure the environmental integrity of the CBAM and to address the potential risk of carbon leakage of the production of secondary steel in the Union, a dedicated CBAM benchmark for natural gas-based DRI should be created. Taking into account the relative level of embedded emissions, the level of the DRI benchmark should be chosen to ensure that the CBAM obligation for primary natural gas-based DRI imports is lower than for primary blast furnace steel, but higher than for secondary steel.

(17) The rules for the exchangeability of fuel and electricity have been removed for the determination of free allocation under the EU ETS starting in 2026. This means that free allocation granted under some ETS product benchmarks in the steel sector will cover indirect emissions to a certain extent. As the CBAM scope currently only covers direct emissions in the steel sector, only the direct emission share of the respective ETS benchmarks should be considered when determining the corresponding CBAM benchmarks. For these benchmarks, improvement rates in accordance with [points (c) and (d) of the third subparagraph of] Article 10a(2) of Directive 2003/87/EC do not appropriately reflect the direct emissions to be covered by the CBAM benchmarks.

[3] Commission Delegated Regulation (EU) 2019/331 of 19 December 2018 determining transitional Union-wide rules for harmonised free allocation of emission allowances pursuant to Article 10a of Directive 2003/87/EC of the European Parliament and of the Council (OJ L 59, 27.2.2019, p. 8, ELI: http://data.europa.eu/eli/reg_del/2019/331/oj).

Therefore, the average direct emissions of the 10% best installations under these ETS benchmarks in the new baseline years 2021 and 2022 should serve as proxy instead of the EU ETS benchmarks for the purpose of calculating the CBAM benchmarks.

(18) In line with the European Commission's Better Regulation guidelines, in parallel with technical consultations with the Member States, including at expert level, the European Commission carried out extensive consultations with relevant stakeholders, including industry representatives, to gather input in its preparatory work on the rules laid down in this Regulation. A call for evidence was organised between 28 August and 25 September 2025 to collect feedback on the main elements of this Regulation.

(19) The provisions in this Regulation relate to the free allocation adjustment in respect of greenhouse gas emissions released from 1 January 2026. This Regulation should therefore apply from 1 January 2026. This Regulation should be revised in 2027.

(20) The measures provided for in this Regulation are in accordance with the opinion of the CBAM Committee,

HAS ADOPTED THIS REGULATION:

Article 1

Calculation of the adjustment to the number of CBAM certificates to be surrendered

1. The adjustment to the number of CBAM certificates, as referred to in Article 31 of Regulation (EU) 2023/956 ('free allocation adjustment'), shall be calculated in accordance with point 2 of the Annex to this Regulation.

2. The free allocation adjustment for electrical energy (CN code 2716 00 00) shall be zero.

Article 2

Use of actual values for the calculation of the free allocation

The specific embedded free allocation of a good shall be calculated based on actual data in accordance with point 3 of the Annex.

Article 3

Use of default values for the calculation of the free allocation

By way of derogation from Article 2, the free allocation adjustment shall be calculated based on default values in accordance with point 4 of the Annex, if default values for the specific embedded emissions are used in the CBAM declaration.

Article 4

Precursors produced in different installations

Where an installation producing complex goods uses a type of precursor from multiple installations, the embedded free allocation of the complex goods shall by default be

determined, for the part of the free allocation embedded in that precursor, as the weighted average of the free allocation embedded in the precursors of that type of precursor used from the different installations. However, if there is sufficient evidence demonstrating that the installation producing the complex goods used, for a given production process, only precursors from a single installation, or from a subset of installations, the embedded free allocation of precursors used in goods produced through that production process shall be determined, respectively, based on the embedded free allocation of precursors obtained from that single installation, or as the weighted average of free allocation embedded in the precursors used from the different installations part of the subset.

Article 5

Entry into force and application

This Regulation shall enter into force on the third day following that of its publication in the *Official Journal of the European Union*.

It shall apply from 1 January 2026.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the Commission
The President