



***COMMISSION INFORMAL EXPERT GROUP ON THE CARBON BORDER ADJUSTMENT
MECHANISM (CBAM)***

TERMS OF REFERENCE

1. BACKGROUND

Article 191 of the Treaty assigned the Union and the Member States the task of ensuring that Union policy on the environment shall aim at a high level of protection and shall be based on the principle that the polluter should pay.

Regulation (EU) 2023/956¹ of the European Parliament and of the Council establishing a carbon border adjustment mechanism (CBAM) was adopted on 10 May 2023. It will serve as an essential element of the Union’s toolbox for meeting the objectives of reducing net greenhouse gas emissions by at least -55% by 2030 and achieving climate-neutrality at the latest by 2050 in line with the Paris Agreement and the European Climate Law², by addressing the risk of carbon leakage that results from the Union’s increased climate ambition. The CBAM is expected to also contribute to promoting decarbonisation in third countries.

The Commission’s Directorate-General for Taxation and Customs Union (‘DG TAXUD’) has taken the initiative to set up the Commission informal expert group on the CBAM.

The overall mission of the group shall be to assist DG TAXUD in the development and implementation of the CBAM, in particular for the adoption of the non-legislative acts which may be required, and to bring about an exchange of experience and good practices.

The group is expected to operate until the end of Q1 2026, after which the need for its continued existence should be assessed. Its operatibility could be extended if deemed necessary.

2. SUBJECT MATTER

The expert group on the Carbon Border Adjustment Measure (‘the group’) is set up.

3. TASKS

The group’s tasks shall be to assist DG TAXUD in the development and implementation of the CBAM, and particularly:

¹ OJ L 130, 16.5.2023, p. 52.

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 (‘European Climate Law’), OJ L 243, 9.7.2021, p. 1–17.

1. in the preparation of delegated acts provided for in the CBAM Regulation, including the following acts:
 - requirements and procedures for third countries or territories that have been removed from the list of third countries or territories outside the scope of the CBAM Regulation with regard to the importation of electricity, under Article 2(10);
 - amendments to the list of third countries or territories outside the scope of the CBAM Regulation with regard to the importation of electricity, under Article 2(11);
 - the conditions for accreditation of verifiers, under Article 18(3);
 - the sale and re-purchase of CBAM certificates, under Article 20(6);
 - amendments to the list of goods in Annex I for anti-circumvention purposes, under Article 27(6).
2. in the early preparation of implementing acts provided for in the CBAM Regulation, before submission to the CBAM Committee in accordance with Regulation (EU) N°182/2011, including the following acts:
 - the goods brought to the continental shelf or the exclusive economic zone of a Member State that is adjacent to the customs territory of the Union, under Article 2(2);
 - the administrative procedures and communications for the authorisation of CBAM and the identification of the authorised CBAM declarants for the importation of electricity, under Article 5(8);
 - the standard format of the CBAM declaration, under Article 6(6);
 - the calculation of embedded emissions in CBAM goods, under Article 7(7) and section 4.3 of Annex IV;
 - the application of the verification principles set out under Annex VI, under Article 8(3);
 - the conversion of the yearly average carbon price effectively paid into a corresponding reduction of the number of CBAM certificates to be surrendered, under Article 9(4);
 - the CBAM Registry, under Article 14(6);
 - the conditions relating to the authorisation of declarants, under Article 17(10);
 - the conditions for accreditation of verifiers, under Article 18(1);
 - the calculation and publication of the average price of CBAM certificates, under Article 21(3);
 - the communication of information by the customs authorities to the Commission of information on the goods declared for importation, under Article 25(6);
 - the calculation of the adjustment to reflect the extent to which EU ETS allowances are allocated free of charge, under Article 31(2).
3. in the preparation of the reports to the European Parliament and to the Council on the application of the CBAM Regulation and the potential extension of the scope of the

CBAM goods, under Article 30(2) and (3), and the early preparation of legislative proposals relating to the CBAM, as necessary.

4. by exchanging experience, and providing advice and expertise in relation to:
- the development of methods to monitor, quantify, report and verify the embedded emissions of CBAM goods. This includes direct emissions for all goods under Annex I of the Regulation, as well as indirect emissions for those goods not listed in Annex II of the regulation;
 - the determination of default values that will be applied when actual emissions cannot be adequately determined and reported;
 - the deductions applied to the CBAM obligation i.e. the carbon price paid and the free allocation of allowances corresponding to CBAM goods under the EU ETS;
 - the different processes relating to the implementation of CBAM. These will include notably the following:
 - the authorisation of CBAM declarants;
 - the sale and re-purchase of CBAM certificates including risk analysis of transactions;
 - the operation of the CBAM (temporary) registry;
 - the elaboration of technical material such as guidelines and reporting templates;
 - potential circumvention practices;
 - the extension of the scope of the CBAM to:
 - indirect emissions for additional CBAM goods;
 - other sectors covered by the Emissions Trading System (ETS)³, especially those at risk of carbon leakage;
 - upstream goods (precursors) used as inputs into CBAM goods;
 - downstream goods, meaning goods that use CBAM goods as inputs.

During the year 2024, the work of the informal Expert Group will focus on the following aspects:

- the implementing acts relating to the authorisation of CBAM declarants;
- the implementing acts relating to the technical arrangements for the CBAM Registry;
- the implementing and delegated acts relating to verification and the accreditation of verifiers;
- the early preparation of the reports to the European Parliament and to the Council on the application of the CBAM Regulation and its potential scope extension, particularly under Article 30(3) of the CBAM Regulation;
- the exchange of experience, advice and expertise on the aforementioned secondary legislation as well as the methods to monitor, quantify, report and verify embedded

³ 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.

emissions; the determination of default values; the elaboration of technical materials; and potential circumvention practices.

The other aspects of the mandate of the informal Expert Group, including the finalisation of the reports to the European Parliament and to the Council under Article 30 of the CBAM Regulation are expected to be covered from 2025.

4. MEMBERSHIP

1. Members shall be:
 - a. Member States' competent authorities;
 - b. Competent authorities from EEA/EFTA countries, provided that they have incorporated the CBAM Regulation acquis;
 - c. organisations whose expertise includes, for each good covered under the CBAM or the ETS, the methods, technical material and default values for the monitoring, reporting, quantification, pricing, and verification of embedded emissions. As regards sectors only covered under the ETS, priority will be given to sectors deemed to be at greater risk of carbon leakage within the meaning of Commission Delegated Decision (EU)2019/708⁴. The following organisations will be eligible:
 - i. European associations representing European producers of goods in the industries under the scope of the CBAM or the ETS. For ETS sectors, priority will be given to sectors deemed to be at greater risk of carbon leakage within the meaning of Commission Delegated Decision (EU) 2019/708⁵;
 - ii. Non-Governmental Organisations, academia, research institutes and Think Tanks.
2. Member States' authorities, other public entities and organisations shall nominate their representatives and shall be responsible for ensuring that their representatives provide a high level of expertise. DG TAXUD may refuse the nomination by an organisation of a representative if it considers this nomination inappropriate in the light of the requirements specified in the call for applications. In such case, the organisation concerned shall be asked to appoint another representative.
3. Member organisations who are no longer capable of contributing effectively to the expert group's deliberations, who, in the opinion of DG TAXUD, do not comply with the conditions set out in Article 339 of the Treaty on the Functioning of the European Union or who resign, shall no longer be invited to participate in any meetings of the group and may be replaced for the remainder of their term of office.

⁴ Commission Delegated Decision (EU) 2019/708 of 15 February 2019 supplementing Directive 2003/87/EC of the European Parliament and of the Council concerning the determination of sectors and subsectors deemed at risk of carbon leakage for the period 2021 to 2030 (OJ L 120, 8.5.2019, p. 20).

⁵ Ibid.

5. SELECTION PROCESS

1. The selection of the member organisations shall be carried out via a public call for applications, to be published on the Register of Commission expert groups and other similar entities ('the Register of expert groups'). In addition, the call for applications may be published through other means, including on dedicated websites. The call for applications shall clearly outline the selection criteria, including the required expertise and the interests to be represented in relation to the work to be performed. The minimum deadline for applications shall be four weeks.
2. Registration in the Transparency Register is required for organisations to be appointed.
3. The members of the group shall be appointed by the Director-General of DG TAXUD from applicants with competence in the areas referred to in points 3 and 4, and who have responded to the call for applications.
4. Members shall be appointed for 2,5 years. They shall remain in office until the end of their term of office or until replaced. Their term of office may be renewed. If the operability of the group is extended beyond the end of Q1 2026, a new call for applications will be published.
5. DG TAXUD shall establish a reserve list of suitable candidates that may be used to appoint members' replacements. DG TAXUD shall ask applicants for their consent before including their names on the reserve list.
6. Member States' authorities and other public entities shall be appointed by direct invitation.

6. CHAIR

The group shall be chaired by a representative of DG TAXUD.

7. OPERATION

1. The group shall act at the request of DG TAXUD, in compliance with the Commission's horizontal rules on expert groups ('the horizontal rules')⁶.
2. The group shall meet in different formations, depending on the meeting agenda and the type of membership. Specifically, meetings can be strictly limited to Member States' authorities, or involve also other public entities and/or stakeholder organisations (see point 4 above on membership).
3. Meetings of the group shall, in principle, be held on Commission premises or virtually, depending on the circumstances.
4. DG TAXUD shall provide secretarial services. Commission officials from other departments with an interest in the proceedings may attend meetings of the group and any of its sub-groups.
5. In agreement with DG TAXUD, the group may, by simple majority of its members, decide that deliberations shall be public.

⁶ C(2016) 3301, Article 13(1).

6. Minutes on the discussion on each point on the agenda and on the opinions delivered by the group shall be meaningful and complete. Minutes shall be drafted by the secretariat under the responsibility of the Chair.
7. The group shall adopt its opinions, recommendations or reports by consensus.

8. SUB-GROUPS:

1. DG TAXUD may set up sub-groups for the purpose of examining specific questions on the basis of terms of reference defined by DG TAXUD. Sub-groups shall operate in compliance with the horizontal rules and shall report to the group. They shall be dissolved as soon as their mandate is fulfilled.
2. The members of sub-groups that are not members of the group shall be selected via a public call for applications, in compliance with section 5 and the horizontal rules⁷.

9. INVITED EXPERTS

DG TAXUD may invite experts with specific expertise with respect to a subject matter on the agenda to take part in the work of the group or sub-groups on an *ad hoc* basis.

10. OBSERVERS

1. Organisations or public entities other than EU Member States' authorities may be granted an observer status, in compliance with the horizontal rules, by direct invitation.
2. Organisations and public entities appointed as observers shall nominate their representatives.
3. Observers' representatives may be permitted by the Chair to take part in the discussions of the group and sub-groups which relate to the task referred to in point 3.4 only, and provide expertise. However, they shall not participate in the formulation of recommendations or advice of the group and sub-groups.

11. RULES OF PROCEDURE

On a proposal by and in agreement with DG TAXUD the group shall adopt its rules of procedure by simple majority of its members, on the basis of the standard rules of procedure for expert groups, in compliance with the horizontal rules⁸. Sub-groups shall operate in compliance with the group's rules of procedure.

12. PROFESSIONAL SECRECY AND HANDLING OF CLASSIFIED INFORMATION

The members of the group and their representatives, as well as invited experts and observers, are subject to the obligation of professional secrecy, which by virtue of the Treaties and the rules implementing them applies to all members of the institutions and their staff, as well as to the Commission's rules on security regarding the protection of Union classified information,

⁷ C(2016) 3301, Articles 10 and 14(2).

⁸ C(2016) 3301, Article 17.

laid down in Commission Decisions (EU, Euratom) 2015/443⁹ and 2015/444¹⁰. Should they fail to respect these obligations, the Commission may take all appropriate measures.

13. TRANSPARENCY

1. The group and sub-groups shall be registered in the Register of Commission expert groups and other similar entities ('the Register of expert groups').
2. As regards the group and sub-groups composition, the following data shall be published on the Register of expert groups:
 - (a) the name of the Member States' authorities;
 - (b) the name of other public entities;
 - (c) the name of member organisations; the interest represented shall be disclosed;
 - (d) the names of observers.
3. All relevant documents, including the agendas, the minutes and the participants' submissions, shall be made available on the Register of expert groups. In particular, DG TAXUD shall publish the agenda and other relevant background documents in due time ahead of the meeting, followed by timely publication of minutes. Exceptions to publication shall only be possible where it is deemed that disclosure of a document would undermine the protection of a public or private interest as defined in Article 4 of Regulation (EC) N° 1049/2001¹¹.

14. MEETING EXPENSES

1. Participants in the activities of the group and sub-groups shall not be remunerated for the services they offer.
2. Travel and subsistence expenses incurred by participants in the activities of the group and sub-groups will only be reimbursed by the Commission in the case of Member States' representatives, where the agenda includes formal consultations on delegated acts, and in the case of representatives of NGOs, research institutes or universities who are not based in Brussels.
3. Reimbursement shall be made in accordance with the provisions in force within the Commission and within the limits of the available appropriations allocated to the Commission departments under the annual procedure for the allocation of resources.

Done in Brussels, on 27 October 2023.

⁹ Commission Decision (EU, Euratom) 2015/443 of 13 March 2015 on Security in the Commission (OJ L 72, 17.3.2015, p. 41).

¹⁰ Commission Decision (EU, Euratom) 2015/444 of 13 March 2015 on the security rules for protecting EU classified information (OJ L 72, 17.3.2015, p. 53).

¹¹ These exceptions are intended to protect public security, military affairs, international relations, financial, monetary or economic policy, privacy and integrity of the individual, commercial interests, court proceedings and legal advice, inspections/investigations/audits and the institution's decision-making process.