

DRAFT IMPLEMENTING REGULATION ON REPORTING OBLIGATIONS DURING THE TRANSITIONAL PERIOD OF CBAM

POSITION PAPER

Brussels, 6 July 2023

This note outlines the position and European Aluminium's proposed legislative amendments to the draft implementing regulation on reporting obligations during the transitional period for products under the scope of the Carbon Border Adjustment Measure, currently [open for public consultation](#) until 11 July 2023.

These proposed amendments are based on two European Aluminium's memos (enclosed separately):

- Comments to "UBA Methodology & system boundaries for monitoring & verifying embedded emissions applicable during the transitional period and circumvention risks" (21 February 2023).
- Comments to ANNEX IV CBAM Regulation, par 4.3 on "Default values for embedded indirect emissions in goods" & Par 6-7 on "Conditions for applying actual embedded emissions or region-specific values" (24 May 2023).

The rules are expected to be discussed and voted in the EU Member States CBAM Committee on 13 July 2023 (agenda [here](#)).

We therefore urge the European Commission and EU Member States to carefully consider our proposals prior to their final adoption.

Summary

MRV Principles & Annex III

- CBAM is a Carbon Leakage protection tool. The MRV methodology must therefore ensure that CBAM, in the definitive period, will charge a carbon cost on imports which is equal to the ETS carbon cost incurred by European producers. It will be important that all materials from third countries that do not provide independent proof of paid climate levies comparable to the EU scheme, are treated equally with European producers, and have to pay a CBAM levy when entering the EU market.
- Flexibility and derogations should not be allowed as they negatively impact the robustness of the data collection process during the transitional period. Default values should be the norm while actual embedded emission should be included in the reports on a voluntary basis.
- For the purposes of better data consistency and comparability, the reporting declarant must (not may!) request the producer of the goods to use the electronic template provided by the Commission, containing the reporting elements laid down in Annex IV of the implementing regulation. The country of origin of goods and precursors should also be included in the report. For the same reason as above, the default reporting period for operators should be a calendar year. Different reporting periods may be complementary for information purposes.

- As a rule, calculation of embedded emissions for scope 2/indirect emissions must be based on IEA data. This will facilitate the calculation of embedded indirect emissions in imported goods, and ensure collection of uniform and correct data; actual indirect emissions/derogations should be limited to none. Use of national grid mix is the only methodology which will provide an incentive for third countries to decarbonise their power sector, in line with the aim of CBAM.
- Verification and checks of data provided in CBAM reports must be carried out during the transitional period, to ensure correctness and robustness of data collected. The accuracy of declared scrap content in imported products will be challenging, and should therefore be combined with full visibility on all the statistics that will be generated through the CBAM systems and a systematic analysis of such data. A comparison with customs data, so that chances of “spotting” circumvention cases (on scrap content but not only) can be maximized.
- Access to data collected through the CBAM reports during the transitional period should be allowed for European producers, who are best placed to assess the data’s accuracy and identify potential circumvention practices. Non-commercially sensitive data should be available as well to registered non-EU facilities operators. This is required to ensure consistent data and reporting (e.g. when a non-EU primary producer supplies products to multiple users both in the EU and outside: If the non-EU primary producer’s reported emissions data is available to all EU and non-EU users, it would avoid the possibility of inconsistent reporting by the users).

Reporting indirect emissions in embedded CBAM products

- The CBAM Regulation and draft MRV implementing act appears to grant a lot of flexibility to importers and third country producers for reporting the embedded indirect emissions in aluminium products. This will only result in resource shuffling where the goods based on fossil fuel power production remain in the local market, while the renewable based ones are exported to EU. The only incentive for third countries to decarbonise their power sector, in line with the aim of CBAM, is to apply the grid mix.
- Clarifications are therefore urgently needed to ensure there is no fragmentation among importers when reporting indirect emissions in CBAM products and the methodology is as sound as possible to protect European producers from ETS indirect carbon costs, which are unique to Europe because of the higher climate ambition under the EU reformed ETS.
- The use of internationally accepted IEA data is crucial because the data reported during the transitional period will not be subject to third party verification. If the methodology for possibly extending the emissions scope and applying the CBAM to indirect emissions will be based on data collected during 2022-2025, the lack of third-party verification and diverging reporting practices, will lead to inaccurate data and incorrect impact assessment study results. We are thus very much concerned that inaccurate reporting of emissions data could then be used to determine the methodology to be initially applied to sectors currently not eligible to ETS indirect cost compensation, namely cement and fertilisers products under the CBAM.
- EU producers of cement and fertilisers are less exposed to ETS indirect carbon costs in their electricity costs’ share as they are less electro-intensive and not global price takers on international markets: Aluminium is a global commodity priced on the London Metal Exchange (LME). As such, aluminium producers have no control over their product’s sale price. Aluminium primary producers in Europe are “price takers” and therefore unable to pass-on additional local costs to their customers. This is why the Aluminium sector is on the list of eligible sectors to ETS

indirect costs compensation and why preserving such framework is crucial for preserving the full value chain in Europe.

- We would therefore recommend during the transitional period that:
 - **All importers must refer to emission factors internationally accepted such as the IEA Electricity Emission factors. Third countries' national grid mix should be the compulsory value to be used for reporting indirect emissions in CBAM products.**
 - **If available and on a voluntary basis, other emission factors can be used to complement IEA electricity emission factors.**
 - **Use of energy attribute certificates (irrespective of their name in the 3rd country) must be explicitly and clearly excluded since there is no global robust system ensuring uniform and horizontal rules for energy attribute certificates. Allowing the use of such certificates would also facilitate institutionalized greenwashing, whereby even a facility that is directly connected to a coal plant would be able to purchase some certificates (at extremely low prices) in order to 'prove' that the electricity is decarbonized. The Annex must clearly reflect this exclusion.**

Annex II – Production routes for goods

- Reading Section 2 point 2.17.2.2 of Annex II on the production routes for the secondary melting of aluminium together with Annex III Section F, point F.2, we understand that the draft implementing regulation proposes to assign “zero embedded emissions when entering another production process” for “off-spec products, by-products, waste and scrap produced in a production process”.
- There is disagreement among European members about whether embedded emissions of scrap should be counted in the installation’s emissions activity level monitoring for the CBAM. Therefore, European Aluminium cannot suggest any amendment proposals on this topic.
- We see both pros and cons with distinguishing between scrap types used in remelting processes when determining the embedded emissions of aluminium in the CBAM methodology. From the current standpoint it is not foreseeable how the treatment of scrap will influence competition, product prices and product flows in and outside the EU.
- As a carbon leakage instrument, the CBAM needs to primarily reflect the ETS costs existing in Europe and apply them to imported products. Circumvention could happen if in the third country there is no carbon cost applied to the emissions emitted in another installation generating scrap (as we have in Europe because of the EU ETS), and selling it on the market: external scrap with no related carbon cost could be used by other installations to lower the declared emissions of the product produced and then exported to Europe. This incentive could potentially become even stronger if indirect emission will ever be covered by the CBAM.
- Therefore, during the transitional period:
 - **Further analysis about the treatment of scrap in the CBAM is required, in consultation with industry and third countries. The Commission should first carry out a robust collection of information on the scrap flows (pre consumer, post-consumer, internal scrap) for the purpose of improving traceability.**
 - **For the initial monitoring and verification of declared emissions, there should be a stringent third-party verification system to prevent circumvention via over-declaring scrap content or primary aluminium in the monitored emissions of imported CBAM products. If the share of scrap in aluminium products cannot be proven, the product should be assumed as 100% primary and the default value for primary product will apply.**

Administration and enforcement

- The wording used to lay down the provisions related to the checks of CBAM reports and the use of information by the Commission (Article 11) provides the Commission with the option to check CBAM reports and assess compliance with the reporting obligations of the declarants:
 - ***The checks of CBAM by the Commission should be mandatory, and the wording employed should reflect this obligation. The purpose of the CBAM’s transitional period must be to ensure that the system is capable of functioning as intended; this can only be done if the accuracy of the CBAM declarations is vigorously checked in order to identify any loopholes, weaknesses in the various methodologies, and/or circumvention practices.***
- Article 14(3) provides 31 December 2025 as the date after which “competent authorities may initiate the correction procedure” regarding specific issues with the CBAM reports:
 - ***The competent authorities’ checks must be an obligation, not an option, as the lack of enforcement will not only facilitate circumvention but also remove all other incentives for third countries to actually decarbonise. The timeframe for carry out the correction procedure is completely inappropriate as it will be done AFTER the end of the transitional period (31 December 2023) – thus allowing and even encouraging collection of potential incorrect data.***
- The amount of the penalties (Article 16) must be high enough to motivate the submission of reports with correct and complete data. A too low penalty will encourage non-compliance with reporting rules:
 - ***We therefore ask for clear and solid implementation of penalties as of 1st day of transitional period and for the amount of penalty to be set at a level enticing compliance with regulations.***
 - ***For the definitive period, penalties should be fully aligned with those of EU installations under the EU ETS***
 - ***We propose “automatic filling” of the reporting templates with the default values by national competent authorities when correction procedures are initiated.***

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