



# Going Green

Maeve Crockett, Senior Associate, Construction and Engineering at Arthur Cox explores new Obligations impacting the Construction Industry.

**WE FOCUSED** in recent articles on transition to net zero. Ireland has committed to a 51% reduction in greenhouse gas (“GHG”) emissions by 2030 (relative to 2018 levels) and net-zero emissions by 2050. These targets sit within an ecosystem of climate action by the EU, which bring in new obligations impacting the construction sector.

## THE PRICE OF CARBON EMISSIONS IN CONSTRUCTION<sup>1</sup>

The EU Emissions Trading Scheme (“EU ETS”) reduced emissions in the sectors it covers, which include industry involved, for example, in the manufacture of construction materials.

It imposes a cap on total GHGs that may be emitted in a year. Operators receive or buy emission allowances they can trade. After each year, operators must surrender enough allowances to cover their emissions, or face fines. The cap and number of allowances decrease each year. In early 2023, allowances traded for the first time at just over €100/tonne of carbon.

The EU ETS has recently been tightened to speed up transition to net zero, with a new objective of reducing emissions by 62% in 2030 (compared to 2005 levels).

## WHAT ABOUT GOODS PRODUCED OUTSIDE THE EU?

Can the cost of carbon in the EU be avoided by simply shifting production to, or importing products from, jurisdictions outside the EU? This is known as carbon leakage.

To mitigate the risk of carbon leakage, a new Regulation (EU) 2023/956 establishes a Carbon Border Adjustment Mechanism (“CBAM”).

The CBAM will price in the differential in the price of carbon as between the EU and the country from which goods are being imported. It will be phased in gradually, comprising reporting obligations until the end of 2025, following which companies importing goods from outside the EU will be required to purchase CBAM certificates reflective of the carbon price differential.

## WHAT GOODS ARE COVERED?

The Regulation applies to listed goods originating in a third country, where those goods are imported into the customs territory of the EU. Examples of specified goods include cement, iron and steel, aluminium, and certain chemicals, so the Regulation will have a significant impact on the construction sector.

Goods can only be imported into the customs territory of the EU by an authorised CBAM declarant. The CBAM declarant will be required to file an annual declaration (by 31 May of each calendar year, commencing in 2027 for the calendar year 2026) in respect of the preceding calendar year.

*The declaration must contain the following information:*

1. total quantity of each type of goods imported;
2. total embedded emissions in the goods;
3. total number of CBAM certificates to be surrendered (to correspond to the total embedded emissions); and
4. copies of verification reports (total embedded emissions declared must be verified by an accredited verifier).

The declaration can also include a claim for the reduction of the number of CBAM certificates to be surrendered, based on the

carbon price already paid in the country of origin. The declarant must keep records to demonstrate that the declared embedded emissions were subject to a carbon price in the country of origin, and that the carbon price was paid.

Member States will sell CBAM certificates on a common central platform to authorised CBAM declarants established within that Member State. The price will be calculated using the average closing prices of the EU ETS allowances auction on a weekly basis.

While first declarations under the Regulation are due by 31 May 2027, a transitional period applies from 1 October 2023 to 31 December 2025.

## WHAT WILL THE TRANSITIONAL REPORTING PHASE INVOLVE?

During the transitional period, where an importer has imported goods in any given quarter of a calendar year, they shall (not later than one month from the end of the relevant quarter) submit a CBAM report including the following information:

1. total quantity of each type of goods specified for each installation producing the goods in the country of origin;
2. actual total embedded emissions;
3. total indirect emissions;
4. the carbon price due in a country of origin for the embedded emissions in the imported goods (taking into account any rebate or form of compensation).

These obligations apply from 1 October 2023 and there is a fine for failure to meet them. An Implementing Regulation lays down rules on reporting obligations for the transitional phase.

In light of these developments, it would be prudent for construction companies to assess their supply chains. Supply chain due diligence and, particularly, the collection of emissions-related data, is of increasing value and importance, not just in the context of reporting obligations, but also in the broader context of demonstrating green credentials to lenders, employers and other counterparties.

## DOES THE CBAM APPLY TO IMPORTS FROM THE UK?

Yes. However, the Regulation provides a derogation for goods from a third country listed in the Annex, and which meet certain criteria, namely that: (1) the EU ETS applies to the third country, or an agreement has been concluded with the EU linking the EU ETS and the third country’s emissions trading system; and (2) the carbon price paid in the third country in is effectively charged on

emissions embedded in those goods (without any rebates beyond those which would also apply in the EU ETS).

The UK is not listed. However, the Annex can be amended. The UK now has a separate ETS and is setting up a UK CBAM, and it has been reported that linking it with the EU’s system is a potential topic of discussion. In the meantime, however, the price of carbon in the UK has dropped, the UK Government having released more carbon allowances.

**“The CBAM Regulation already anticipates that it may be expanded to include other goods, and there is provision to make implementing measures to prevent circumvention of the Regulation.”**

## THE EU TAXONOMY REGULATION

We previously looked at the EU Taxonomy Regulation but, by way of reminder, the taxonomy is a classification system for determining whether an economic activity is environmentally sustainable. It includes significant detail on the construction sector. While it applies principally to participants in the financial products market and large public interest entities which exceed certain thresholds (although the scope will extend to all large companies and EU listed companies under the Corporate Sustainability Reporting Directive), it will have a significant impact on construction. For example, lenders will need to ensure that their portfolios are appropriately ‘taxonomy-aligned’, which presents additional opportunities for construction projects which already can demonstrate how they meet taxonomy criteria.

## REGULATORY ROUND-UP

By way of a quick update on some other instruments that will impact the construction industry:

- the Recast Energy Efficiency Directive has been agreed and comes into force 20 days after publication in the OJEU. It increases Ireland’s 2030 energy efficiency targets and lays down rules designed to implement energy efficiency as a priority across all sectors,

- the Recast Renewable Energy Directive III has been agreed. Once it receives final sign-off by the Parliament and Council, it will be published in the OJEU and come into force 20 days later. It includes provisions aimed at mainstreaming renewable energy in buildings and supporting the development of district heating and cooling,

- the Recast Energy Performance of Buildings Directive has been scrutinised by the Council and Parliament, which will negotiate a final text. It includes mechanisms aimed at achieving a zero-emission building stock by 2050,

- a proposal for a revised Construction Products Regulation is being scrutinised by the Council and Parliament. The objective is to update the rules for making construction products available on the market, to align with circular economy principles. Revisions are expected to broaden the scope of the Regulation by widening the definition of ‘construction product’ (for example to include components of construction products).

## SO WHAT?

New regulation aimed at turning the tide on climate degradation will significantly impact construction. Whether or not businesses are within the scope of existing regulations, it is imperative that they review their business and supply chains in the context of carbon saving, and implement practices to allow for the capturing of emissions-data. The CBAM Regulation already anticipates that it may be expanded to include other goods, and there is provision to make implementing measures to prevent circumvention of the Regulation.

The direction of travel on climate action is clear, and there is a wide consensus that entities overlooking ESG (environmental, social and governance principles) must either get on board or be left behind. ■

<sup>1</sup> Carbon dioxide is the most emitted-GHG. GHGs are often converted to their carbon dioxide equivalent for comparison purposes, and so frequently referred to as carbon emissions.



Maeve Crockett,  
Senior Associate,  
Construction and Engineering  
[www.arthurcox.com](http://www.arthurcox.com)