ISSN 1971-1964

Economia, Azienda e Sviluppo

Rivista del
Dipartimento di Scienze dell'Economia dell'Università del Salento

COLLANA DEI QUADERNI DELLA RIVISTA

FACOLTÀ DI ECONOMIA "ANTONIO DE VITI DE MARCO" - LECCE

Proceedings of UAE's Congress on Green economy, Energy and Environmental Protection: Challenges and Opportunities in Europe

QUADERNO n° 15

CACUCCI EDITORE BARI

Economia, Azienda e Sviluppo

Rivista del
Dipartimento di Scienze dell'Economia
dell'Università del Salento

Proceedings of UAE's Congress on Green economy, Energy and Environmental Protection: Challenges and Opportunities in Europe

University of Salento - Conference Center
Lecce, Italy, 6 June 2025

Preface by the italian Deputy Minister of Justice
Francesco Paolo Sisto

Quaderno n° 15
Allegato al n° 2/2025 della Rivista

CACUCCI EDITORE BARI

Union des Avocats Européens
European Lawyers' Union

President
Rosanna Marzocca

INDEX OF PROCEEDINGS

PREFACE
Francesco Paolo Sisto ..... p. 5

INTRODUCTION
Rosanna Marzocca ..... p. 8
Fabio Saponaro ..... p. 10
Dario Marsella ..... p. 12

CHAPTER 1
Effective Remedies for Environmental and Human Protection Between Public and Private Enforcement ..... p. 13

Laura Stanila
Eco-Legislation 2.0: Legal environmental resilience and its challenges ..... p. 15

Giuseppe Mormandi
Infrastructure 2030: legal perspectives, governance and investment sustainability ..... p. 35

Simon De Zordo
Environmental compliance and due diligence in corporate transactions ..... p. 39

Mariella Fiorentino
Protection of the environment and the ecosystem between a fundamental right and a new human right in European Law and Italian Constitutional law ..... p. 45

CHAPTER 2
Greenwashing, ESG Sustainability and Strategic Business Risk Management ..... p. 53

Michael Poduschka
Greenwashing litigation in Europe ..... p. 55

Boglar Szervatiusz
Greenwashing, legal risks and management strategies in the green transition ..... p. 59

Estelle Logeais
The conditions of workers in the context of climate change: the challenges to be faced ..... p. 73

Nicola Buquicchio
ESG Sustainability and Corporate Compliance ..... p. 76

CHAPTER 3
Green Taxation: Critical Issues and Opportunities ..... p. 79

Fabio Saponaro
Tax aspects of the emissions trading system ..... p. 81

Rossella Miceli
Ecological Transition through the Fiscal Instruments ..... p. 87

Chiara Francioso
Rulemaking in the EU on Environmental Taxation: Challenges and New Perspectives ..... p. 93

Antonella Villani
The Impact of Tax Measures on Energy Saving ..... p. 98

Paolo Polastri
Tax Aspects of the Sharing Economy ..... p. 107

Vincenzo Carbone
Green taxation and ecological governance in China: from domestic reform to global challenges ..... p. 124

Cosimo Franzoso
ESG Transformation and Transfer Pricing Implications ..... p. 136

Francesco Garganese
First Reflections on the carbon border adjustment mechanism ..... p. 142

CHAPTER 4
Cybersecurity, Data Protection and Competition in the Era of Circular Economy and Sustainable Finance ..... p. 147

Valentin Ramognino
Cybersecurity, data protection and AI compliance for EU businesses in the green economy – regulations and tools ..... p. 149

Pedro de Gouveia e Melo, Joana Fraga Nunes
Sustainability Agreements and Competition Law: An Overview of Recent Practice in Europe ..... p. 155

César García de Quevedo
Intellectual Property Challenges in a Sustainable and Circular Economy .. p. 175

Riccardo Abeti
Cybersecurity (NIS2), resilience (dORA), and data protection (GDPR) regulations play an increasingly central role in regulatory compliance, placing the supply chain at the heart of compliance strategies ..... p. 180

Fatih Özdemir: wınner of the 2025 U.A.E Scholarshıp ..... p. 191

CONCLUDING REMARKS
Gabriele Donà ..... p. 194

FIRST REFLECTIONS ON THE CARBON BORDER ADJUSTMENT MECHANISM

FRANCESCO GARGANESE
POSTDOCTORAL RESEARCH FELLOW IN TAX LAW AT THE UNIVERSITY OF CAMPANIA "LUIGI VANVITELLI"

Introduction

Among the solutions adopted by the European Commission in 2021, to make EU policies suitable for reducing greenhouse gas emissions by at least 55% by 2030 compared to 1990 levels (so-called Fit for 55 package), the introduction of a carbon containment mechanism on imports deserves attention.

The Carbon Border Adjustment Mechanism (CBAM), introduced by EU Regulation 2023/956[92], aims to integrate the EU Emissions Trading System (EU ETS) with an instrument that can, on the one hand, reduce the risk that European policies aimed at containing polluting emissions could be compromised by the conduct of other countries operating under conditions of poor environmental regulation[93]. On the other hand, by introducing pecuniary obligation imposed on emissions related to imports, the CBAM also aims to ensure a level playing field between EU and non-EU companies, ensuring that the production of carbon-intensive goods does not move from the EU to third countries in order to benefit from less stringent environmental policies than European ones.

The CBAM mechanism is based on the obligation to purchase environmental certificates or, better, environmental certificates by economic operators who import carbon-intensive products into Europe and, therefore, implements, in a similar way to what happens in the EU ETS, an imposed pecuniary obligation that discourages the import of goods whose production causes pollution.

EU Regulation 2023/956, establishing the CBAM, concerns, in particular, imports from countries outside the European Economic Area (EEA) and Switzerland of goods produced by carbon-intensive and electricity-intensive industries[94]. This mechanism, currently being tested, will be applied gradually

---

92 See REGULATION (EU) 2023/956 of the European Parliament and of the Council of the European Union of 10 May 2023 establishing a Carbon Border Adjustment Mechanism.

93 See Regulation (EU) 2023/956, recital 8, according to which "*Although the Union has significantly reduced its domestic greenhouse gas emissions, greenhouse gas emissions embodied in imports to the Union have increased, thus undermining the Union's efforts to reduce its global greenhouse gas emissions footprint*".

94 The CBAM mechanism applies to carbon emissions emitted during the manufacturing of certain goods in non-EU countries. In particular, subject to specific exclusions, it applies to goods falling under the Combined Nomenclature ("CN") codes listed in Annex I to EU Regulation 956/2023, including: cement, aluminous cement, cement clinker; other kaolin clays; fertilizers, including ammonia, nitric acid, sulphonic acids; agglomerated and

and, initially, only to a selected number of goods such as iron and steel, cement, fertilizers, aluminum and electricity generation.
From an operational perspective, the Regulation provides for two distinct phases of implementation of the CBAM. A first phase, aimed merely at the analysis of technical data (from 1 October 2023 to 31 December 2025), in which the mechanism will not be applied to imported products, but only information will be acquired on the quantities of high-carbon impact products transited into the EU, including the assessment of embodied emissions. In this data analysis phase, the authorization activity of the entities obliged to use the mechanism (CBAM declarants) will be started. A second phase of implementation of the mechanism (from 1 January 2026) will allow it to enter into operation definitively, coexisting until 31 December 2033 with the application of the EU ETS mechanism and then replacing it[95]. This is because, it should be reiterated, the CBAM mechanism is closely linked to the CO2 emission trading system and tends to strengthen its effects in the long term, preventing the positive environmental effects of the EU ETS from being neutralised by the conduct of economic operators located outside the EU.

The CBAM operating system

The CBAM system establishes that certain goods produced in non-EU territories with a high carbon intensity can be imported into the territory of the European Union only by a specifically authorised person (so-called CBAM declarant), following the presentation of a specific administrative request, which will be released by the competent Authority only if specific criteria are met and subject to the granting of specific guarantees.
The customs authorities of the various EU countries therefore allow the importation of goods only by a person who is recognised as an authorised CBAM declarant.
The mechanism is based on the requirement of certifications, which the declarant must purchase, in order to import into the EU the goods falling within the scope of the CBAM. The purchase of the certificates will take place upon payment of a price corresponding to that which would have been paid if the same goods had been produced within the EU.

---

concentrated iron ores; certain ferroalloys; screws, bolts, nuts, augers, screw hooks, rivets, cotter pins, split pins, washers (including spring washers) and similar articles of iron and steel; other articles of iron or steel; structures and parts of structures of aluminium; certain tanks, cisterns, vats, containers of aluminium; strands, cables, braids and the like of aluminium, not electrically insulated; other articles of aluminium; hydrogen; electric energy.

95 See Regulation (EU) 2023/956, recital 12, according to which "*The CBAM aims to replace those existing mechanisms by addressing the risk of carbon leakage differently, in particular by ensuring an equivalent carbon price for imports and domestic products*".

The economic operator must then return the same certificates to the competent national authorities in proportion to the value of the emissions corresponding to the imported goods[96]. In other words, the greater the volume of products imported into the European Union with a high polluting impact due to the emissions produced, the greater the number of certificates that the importing entity must purchase and then return to the administrative authorities. Furthermore, compliance obligations with the competent administrative authorities are foreseen in terms of registration, authorization and annual declaration of the emissions incorporated in the imported goods.
Failure to comply with the formal and substantive obligations set forth by European regulation will result in the imposition of administrative sanctions.

Legal nature of the CBAM

The CBAM mechanism is in the experimental phase, as it has not yet actually come into operation. At the same time, there is no adequate legal analysis of the mechanism, which will probably be completed in the coming years.
Nonetheless, according to the definition proposed by the legal literature to date, «The CBAM presents itself as a multifunctional instrument, aimed at mitigating climate change, neutralising the competitive commercial advantages for polluting entities, strengthening climate leadership, and finding resources for public finances »[97].

Indeed, the "multifunctional" nature, aimed at ensuring a positive effect in terms of environmental protection, preventing the relocation of European economic operators outside the EU territory, and at the same time finding financial resources to be allocated to the financing of public expenditure, emerges in the discipline of EU Regulation 2023/956.
From this point of view, the CBAM system presents analogies with the EU ETS system. However, in the CBAM, unlike the EU ETS, the importing entity does not have a number of quotas initially granted free of charge, cannot sell certificates exceeding the value requirements of the imported goods, nor can it purchase them on the market from other operators. Furthermore, the quantity of certificates to be purchased and returned depends exclusively on the volume of imported products[98].

---

96 See Regulation (EU) 2023/956, recital 45, according to which "*The CBAM should be based on a declaration system whereby an authorised CBAM declarant, who could represent more than one importer, would submit an annual declaration of emissions embodied in goods imported into the customs territory of the Union and would return a number of CBAM certificates corresponding to the declared emissions. The first CBAM declaration, for the calendar year 2026, should be submitted by 31 May 2027*".

97 See L. Del Federico, *First reflections on the tax profiles of the Carbon Border Adjustment Mechanism*, in *Riv. Dir. Fin. Sc. Fin.,* 2023, page. 427.

98 See Regulation (EU) 2023/956, recital 21, according to which "*While the EU ETS sets*

From another perspective, unlike the EU ETS system, for which the amount of the imposed capital obligation is never predeterminable from the outset, being dependent on free market negotiations (exchange between supply and demand), in the CBAM mechanism, the determination of the obligation is established in a legal manner. The CBAM application system in fact establishes by law that the amount that must be paid for imports of products with a polluting impact is equal to the average of the closing prices of EU ETS allowances on the auction platform in accordance with the procedures set out in Regulation (EU) No. 1031/2010 for each calendar week[99].

In light of these arguments, by causing a decrease in the economic operator's assets, which is in no way avoidable by the latter, the obligation imposed by the CBAM mechanism seems to take on the characteristics of a tax obligation. In particular, the capital obligation imposed by the CBAM seems to take on a tax nature similar to the carbon tax, with the difference that the former would only weigh on imports.

Having clarified the above, it is now necessary to understand whether, in the multifunctional profile of the CBAM, the environmental or tax purpose prevails.

Based on the content of EU Regulation 2023/956, it seems possible to state that the environmental purpose prevails over the tax one: the latter assumes a secondary function even compared to the commercial one aimed at preventing the relocation of companies to non-EU territories.

The destination of the revenue arising from the application of the CBAM also seems to confirm this theoretical approach.

In particular, from the preparatory work for the regulation of the mechanism in question, it emerged that, in a first phase, until 2027, the EU Member States will retain for themselves 25% of the amount collected, to cover the related management costs. Instead, the remaining 75% of the revenue, obtained with the application of the CBAM, should be allocated to the European Union budget to mainly address the debt arising from the spending policies implemented to deal with the health emergency during the pandemic and consequently relaunch the continent's economy. This last purpose confirms the partly tax nature (financing of public spending) of the capital obligation imposed with the CBAM.

---

the total number of allowances issued (cap) for greenhouse gas emissions from activities falling within its scope and allows for trading of allowances (cap-and-trade system), the CBAM should not set quantitative limits on imports so that trade flows are not restricted".

99 See Regulation (EU) 2023/956, art. 21 according to which the Commission shall publish the average price on its website, or in any other appropriate manner, on the first working day of the following calendar week.

Concluding remarks

The legal nature of the obligation imposed by the CBAM and the functionality of the related mechanism cannot yet be fully described.

In fact, as observed in the doctrine, to have a complete assessment of the system, it will be necessary to wait for the implementation of the regulatory framework and that of the national implementing legislation. In particular, it will be necessary to overcome the first transitional phase of mere monitoring and also wait for Regulation 2023/956 to pass the scrutiny of the Court of Justice and avoid possible censures by the World Trade Organization (WTO)[100].

At the current stage, which we could define as embryonic, the patrimonial obligation imposed by the CBAM, due to its applicative and structural connotations, seems to also assume a fiscal nature as it is characterized by the ability to determine the contribution to public expenses of economic operators who pollute with their conduct. In particular, if we wanted to identify a category of taxes to which the pecuniary obligation imposed by the CBAM seems to be attributable, we could invoke that of environmental taxes, as taxes justified by the "polluter pays" principle. There is no doubt, in fact, that the obligation imposed by the CBAM arises from a conduct that impacts the environment and that, as such, must fall as a cost on the subject who determines the pollution with his own actions.

Finally, it seems appropriate to highlight a particular aspect. As structured, the application mechanism of the CBAM aims not to alter the balance of certain production markets with a high polluting impact, precisely by trying to prevent the relocation of certain companies to non-EU territory, except however to be able to affect the balance of the same markets.

In fact, distorting effects on competition could arise as the importing entities, who will be required to fulfil the formal and substantial obligations imposed by the CBAM, in relation to the carbon related to the imported goods produced, will pay a sort of additional tax compared to the ordinary customs tax[101].

All this could also have a negative impact on European economic operators who could suffer an increase in fees on supplies from non-EU territories with inevitable repercussions on final consumers.

The story, therefore, is still to be written.

---

[100] See L. Del Federico, First reflections, page 438.

[101] Precisely for this reason, as observed in the doctrine (see L. Del Federico, *op. cit.,* page 438), the non-EU countries most affected by the scope of application of the CBAM (e.g. Russia, Ukraine, China and Turkey) will probably tend to oppose its full introduction before the WTO as a duty, or other equivalent measure, as a mechanism that could severely penalise their exports.