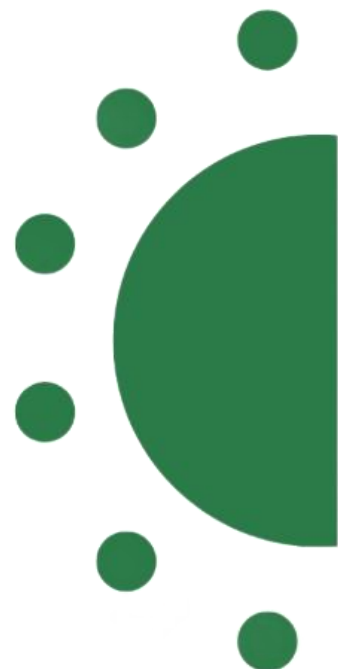


ERCST submission to the European Commission “Have Your Say” Feedback request

Draft Commission Implementing Regulation on the conversion of the carbon price paid in a third country into a reduction in CBAM certificates (Article 9, Regulation (EU) 2023/956)
— ref. Ares(2026)4841230

Andrei Marcu, Aaron Cosbey, Michael Mehling, Marco Sangiovanni, Helen Bevernage



The following comments set out ERCST's views on the strengths of the draft, the issues that in our view require clarification or strengthening, and a broader structural alternative for the Commission to consider.

- **The draft preserves the incentive for systemic carbon pricing.**

The draft only recognizes carbon prices paid under a genuine compliance mechanism: a carbon tax, levy, or fee, or a binding ETS that applies to all operators in the covered sectors without discrimination. Export-only arrangements, stand-alone offset purchases, and ad-hoc schemes designed to reduce CBAM exposure do not qualify. From the point of view of carbon leakage prevention this matters, as a sectoral compliance regime spreads the carbon cost across all production rather than only across the share exported to the EU, which keeps the average carbon-cost burden on foreign producers comparable to that of EU producers. It also preserves incentives for third-country regulators to introduce or strengthen their domestic carbon pricing regimes. Another perspective is that this shifts CBAM from a product-level to a sectoral-level approach—extending the purview of EU regulation to cover production that is not destined for EU consumers—and introduces non-environmental considerations into the mechanism.

- **Coverage tolerance of 5% is reasonable.**

Third-country carbon pricing systems will rarely match CBAM coverage exactly. ETSs and carbon taxes abroad cover different sectors, gases, and emission boundaries depending on national design choices. Without some allowance for these differences, even genuinely equivalent regimes could face partial recognition or sharp cliff effects. The 5% tolerance in Recital 7 of the draft, between the emissions covered by the third-country mechanism and those covered by CBAM, addresses this. It is a sensible operational concession, and a welcome and meaningful demonstration of a commitment to interoperability.

- **Article 6 credit recognition should not be overstated.**

The conditions attached to Article 6 use in this draft create clear limits on how much demand for international credits it can realistically generate. Market commentary suggesting otherwise — e.g. projections of a market pull effect for credits in excess of €3 billion¹ and theoretical annual demand of up to 17 Mt through 2040² — appears significantly overstated. Three conditions tightly constrain expected demand:

- **Not all (actually few) regimes accept them.** The crediting option is only available where the producer is under a binding domestic carbon price and that regime accepts Article 6 credits as

¹ Sebastian Manhart, *Breaking: New CBAM rules could supercharge demand for Article 6 credits*, LinkedIn / sebastianmanhart.com, 14 May 2026, available at <https://www.sebastianmanhart.com/post/breaking-new-cbam-rules-could-supercharge-demand-for-article-6-credits>. The post itself notes that "*the math is a bit more complex, as the cap is on reported emissions not levies, but this is directionally correct.*"

² Roy Manuell, *ANALYSIS: Potential EU CBAM-linked Article 6 demand could reach 17 Mt per year, as market questions "arbitrary" cap*, Carbon Pulse, 27 May 2026, available at <https://carbon-pulse.com/514961/>. The article itself notes that "*limitations imposed by Brussels mean that, at least in the near term, buying is likely to be a fraction of that potential volume.*"

a means of compliance. At present, only a limited number of jurisdictions meet both conditions³.

- **The price logic disfavors credits.** What the draft recognizes is the price paid for, not the emissions covered by credits. Offset credits are typically bought because they are cheaper than domestic allowances or direct compliance payment,⁴ so claiming a carbon price paid under Article 6 will yield a smaller CBAM deduction per ton than other forms of compliance. That is: there is no financial advantage to using them as a compliance instrument for the CBAM regime. At the same time, the procurement of Article 6 credits involves complexity, counterparty risk, reputational risk, administrative burden, registry requirements, corresponding adjustment evidence, and UNFCCC platform documentation requirements, all of which should further discourage their use relative to claiming a price paid via straightforward certificate purchases.
- **The 10% cap.** Annex I, section 3.3.4 limits international credits to 10% of the reported and confirmed emissions covered by the third-country mechanism. Anything above that gets a price of zero.

In light of these limitations, some caution is recommended to not raise market expectations regarding future demand for Article 6 credits created by the CBAM.

It should also be noted that the draft is the first place where Article 6 credits enter the EU climate policy architecture. Since the CBAM is designed as a companion to the EU ETS, the acceptance of Article 6 credits under the CBAM may raise questions about why they remain excluded from the EU ETS.

- **The price used for Article 6 credits raises transparency concerns.**

Annex I, section 3.5.4, requires the price actually paid for credits to be used in the calculation. This assumes that the price paid is known and documented. For Article 6 credits, that is a significant assumption. These are in many instances transacted over-the-counter, with limited public disclosure of the price terms. There is no market benchmark equivalent to an ETS auction price or a published exchange rate.

- **Credit pricing in related-party transactions creates a price-manipulation risk.**

The deduction depends on the price paid for credits, so buyers and sellers have a reason to overstate that price — especially when they are related parties, or when value can be passed back through side payments or bundled contracts. This is not a new type of risk: transfer pricing schemes, where entities within the same corporate group set internal transaction prices to serve a fiscal optimization purpose rather than reflect a genuine market exchange, present the same vulnerability.

- **Default values remain undefined, raising the possibility of an inverse incentive.**

³ See ERCST, *Introduction of International Credits in the EU Climate Change Framework* (May 2025), section 2.2. Current eligibility for Article 6 credits within compliance carbon pricing regimes is limited to a small number of jurisdictions, primarily Japan, the Republic of Korea, and Singapore.

⁴ This is the standard cost-containment rationale for offset use in compliance carbon pricing regimes. See La Hoz Theuer et al., *Offset Use Across Emissions Trading Systems* (Berlin: ICAP, 2023).

Under the proposed Implementing Act, the Commission must set default carbon prices, but their basis and structure are not yet known. Declarants using actual emissions data may choose between the price effectively paid and the default value; declarants using default emissions data must use the default carbon price. The actual-price track is also conditional on a carbon price report certified by an accredited independent person under Chapter IV of the draft Regulation, so the two options are not on equal evidentiary footing. If the default values are set too high for certain countries, this creates an incentive to overstate emissions, because the carbon price deducted scales with the attributed emissions figure. These dynamics risk blunting the incentive to minimize reported emissions.

- **The treatment of rebates, free allocation and revenue recycling is pragmatic but needs guardrails.**

The draft properly mandates that rebates and other forms of compensation have to be “taken into account”, and presumably deducted from the carbon price paid, to arrive at the carbon price effectively paid. It provides an illustrative list of such rebates and compensation: reduced tax rates, exempted emissions, free allowances, emissions below an intensity baseline under a baseline-and-credit system, refunds that compensate for the carbon price, including indirect cost compensation. Appropriately, it does not count genuine decarbonization subsidies financed from carbon-pricing revenue as support to be deducted from the carbon price paid, mirroring the EU ETS Innovation Fund (Article 8(2)).

The carve-out under Article 8(2) sets four cumulative conditions, the first of which is that all installations under the carbon price mechanism must be eligible for the subsidies regardless of the carbon price paid by each. These conditions help, but the line between genuine decarbonization support and disguised compensation is blurry, and several borderline cases will not be resolved by them: e.g. output-based subsidies that scale with production rather than abatement; support that is de facto limited to CBAM-exposed sectors; grants whose main effect is to offset operating costs; and revenue recycling whose formal objective is decarbonization but whose net effect is to cancel out the compliance burden. The real test should be whether the support preserves the marginal incentive created by the carbon price. Supplementary guidance, for example, a non-exhaustive list of qualifying and disqualifying cases, would help apply this consistently across third-country regimes.

- **The accreditation, certification, and verification burden is disproportionate across every layer of the regime.**

The price paid must be certified by an accredited independent person, and the certification-and-accreditation architecture is set out in detail across Recitals 25 to 37 and Articles 10 to 13, 17, 18, and 25 to 28. The cumulative effect is a heavy administrative load spread across the system: detailed reporting by operators, supervision and surveillance by national accreditation bodies, forward-planning reports from independent persons, and the Commission's own task of building default carbon prices for every trading partner with a carbon pricing regime. This is out of proportion to the size of the reduction of the CBAM compliance obligation most producers can realistically expect to claim. The likely result is that the facility will be underused.

A proportionate alternative would be to keep the regime in the present draft as the default, while allowing it to be replaced by bilateral agreements under Article 2(12) of the basic Regulation. Under such an agreement, the EU and the partner country would agree in advance on the formula for calculating the carbon price effectively paid in each covered sector, considering free allocation,

performance standards, and other cost-containment features specific to that regime, as well as other forms of available compensation and rebates. The partner government would take on three obligations: (i) notify the Commission of material changes to its carbon pricing regime; (ii) on request from any installation, provide a small set of standardized annual data points — total reported emissions, total compliance liability, and means of compliance — sufficient to apply the agreed formula; and on request, (iii) certify the level of any rebate or compensation granted to a given installation, including whether the support qualifies under Article 8(2) of the draft Regulation. This shifts the technical and evidentiary burden from individual installations, accredited certifiers, national accreditation bodies, and the Commission to a single government-to-government framework with each willing partner, greatly reducing compliance costs for the affected firms. It also resolves several of the concerns above through the same instrument: monitoring related-party credit pricing becomes easier once the host authority certifies the data; and the line between real decarbonization support and disguised compensation is drawn upfront in the agreed formula and rebate schedule rather than resolved case by case.