



Mr Bruno Le Maire

Minister of the Economy, Finance and the Recovery
Ministry of the Economy, Finance and the Recovery
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By e-mail

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Dear Minister,

With the French Presidency progressing on some major legislative files, we would like to kindly present some of BusinessEurope's views on two important issues to be discussed at the next meeting of the Council of Economic and Finance Ministers (ECOFIN) on 15 March 2022.

Carbon Border Adjustment Mechanism (CBAM)

We understand that a compromise has been reached in COREPER regarding this important legislative proposal. Nevertheless, we would like to highlight what we consider key conditions for an effective CBAM.

Despite the challenging environment, European firms will continue to undertake efforts and do their utmost to upgrade their production processes, to help make the green transition happen. However, they will continue to face competitors who have to bear none or very little of their carbon costs, located in third countries with no plans to seriously regulate industrial emissions. In the face of energy prices rapidly increasing in the EU, we must avoid carbon costs being another area where European companies compete on an unequal footing.

The Carbon Border Adjustment Mechanism (CBAM) can be an effective way of protecting European industry against carbon leakage if this is done in a correct and well-balanced way. It could be a tool to level the playing field, whilst incentivising non-EU producers to reduce their emissions. However, the Commission's current CBAM proposal may not be enough to prevent carbon leakage. We are also concerned about certain proposals that will make the tool even less effective against this phenomenon. We therefore propose that the following main points are taken into consideration when negotiating the Council position on CBAM:

- **Phasing out free allowances.** Free allocation of ETS allowances for the sectors covered should not be reduced (below the benchmarks) until the CBAM has proven its ability to effectively prevent carbon leakage. Decisions about starting the phase-out and its speed should be conditional on regular, thorough assessments, and not start until 2030. Any start of the phasing out would first require solutions to a number of issues (e.g. effectively addressing carbon leakage in export markets, reinforcing the anti-circumvention tools), as indicated below.



- **Export support measures.** It is crucial that the export competitiveness of the European industry and the carbon leakage in non-EU markets is factored in when considering CBAM. The mechanism should consider a WTO-compliant measure to support exports by CBAM sectors. Otherwise, these sectors will not be able to compete when exporting outside Europe. Instead, non-EU producers will provide for those markets, resulting in a likely increase of global emissions. One such measure could be maintaining full free allocation for that part of the production which is destined for export. Following a similar logic, more attention should be paid to downstream sectors that will see costs increasing, both when producing for the European market as when exporting outside Europe.
- **Governance, implementation and enforcement.** Reinforcing provisions on these issues will be crucial to ensure the effectiveness of CBAM. We welcome the consensus being built around strengthening the governance, implementation and enforcement of the CBAM, notably with regard to circumvention provisions and the role of the central authority. In terms of circumvention, we welcome the increased attention being paid by many policymakers to resource shuffling.

Overall, we urge policymakers not to rush the negotiations on the proposal. These questions deserve careful consideration, as an effective CBAM will be key for a balanced Fit-for-55 package.

Minimum Corporate Tax (OECD Pillar Two)

As noted in our recent position paper¹ on the directive on the minimum corporate tax ('OECD Pillar Two'), a first priority should be to guarantee that the implementation at EU level is fully in line with the OECD agreement. While the current EU directive matches broadly with the current Model rules, we underline that the Model rules will be (and need to be) further developed at the OECD in the coming months. The implementation of the EU directive can only be successful if EU companies are not faced with differences between EU and OECD rules. It is essential that EU Member States incorporate the detailed technical rules, concerning the implementation and administration of the minimum tax, which will be agreed at the OECD in the following months, into the EU directive.

Another priority in the implementation of the EU directive should be the protection of European competitiveness: the OECD/Inclusive Framework agreement must not end up as an 'EU only' agreement, with the United States not implementing either (or both) Pillar One or Pillar Two a particular risk. If major trading partners of the EU do not join the global minimum tax in full, then this raises critical questions in particular about the feasibility, effectiveness and fairness of the minimum tax at EU level and increases the risk of legal uncertainty and double taxation. The EU must ensure that implementation of the directive limits as much as possible the danger of European companies being put at a competitive disadvantage. This will require in particular more safeguards to ensure that the 'backstop' mechanism - the Undertaxed Payments Rule (UTPR) - works efficiently.

¹ [BusinessEurope position paper on the directive on ensuring a minimum level of taxation for multinational groups within the EU \(February 2022\)](#)



We strongly call on you to take these elements into consideration when discussing the CBAM and the minimum corporate tax in Council. We remain at your disposal for further questions you may have.

Yours sincerely,

Markus J. Beyrer