



EUROPEAN ALUMINIUM – FEEDBACK TO THE DRAFT IMPLEMENTING REGULATION ON THE ESTABLISHMENT OF THE CBAM REGISTRY

POSITION PAPER

Brussels, 26 November 2024

Introduction

European Aluminium welcomes the European Commission's [draft Implementing Regulation](#) on the establishment of the [CBAM](#) registry. However, the draft text raises several concerns regarding legal clarity, transparency, and operational coherence. This paper outlines critical issues in the draft Regulation and proposes recommendations to address them.

1. Responsibility for Communicating Decisions on Penalties

The phrasing in **Article 4(2)** is missing a preposition, without which it leads to the implication **that both the “competent authority” and the “person other than an authorised CBAM declarant (...)”** are responsible for communicating the decisions on penalties. The purpose of **Article 4(2)** should be to attach the responsibility for communicating the decisions on penalties solely to the competent authority and not to other entities, therefore it should be amended to reflect this.

Recommendation:

Amend **Article 4(2)** to assign sole responsibility for communicating the decisions on penalties to the competent authority. Suggested wording:

- *“The competent authority of the Member State of establishment of the authorised CBAM declarant, or of a person other than an authorised CBAM declarant...”*

This ensures alignment with **Article 26(4)** of CBAM Regulation (EU) 2023/956 and eliminates potential misinterpretations.

2. Legal Clarity in Article 10 – CBAM Operators Portal

a. **Scope of the Portal:** **Article 10** on ‘CBAM Operators Portal’ does not explicitly state that the portal is intended for operators of installations in third countries, potentially causing confusion.

Recommendation:

Clarify **Article 10** by explicitly specifying that the portal applies to operators of installations in third countries, ensuring consistency with the scope of Article 10 of the CBAM Regulation (EU) 2023/956.

b. Ambiguity in Data Registration: Article 10(2)(b) states that operators can register “*information on the goods produced by an installation,*” which could lead to the misinterpretation that operators will be allowed to register information on goods produced by installations other than their own.

Recommendation:

Revise the wording in **Article 10(2)(b)**, by replacing “*information on the goods produced by an installation*” with “*information on the goods produced by ~~an~~ its installation*”.

c. Voluntary Nature of the CBAM Operators Portal: The draft Regulation does not clarify whether the use of the CBAM Operators Portal is mandatory for operators.

Recommendation:

Explicitly state in **Article 10** that the use of the CBAM Operators Portal is voluntary, providing operators with flexibility in their compliance approaches.

3. Defining “Business Continuity Plan”

Article 16 on the ‘Temporary failure of the CBAM registry’ refers to a “*business continuity plan*”, laying down the means that must be followed by CBAM declarants and applicants in the event of a temporary failure of the CBAM registry. However, the article fails to provide further details or definitions nor is this tool referred to in the CBAM Regulation (EU) 2023/956, leaving stakeholders uninformed.

Recommendation:

For transparency purposes, and to guarantee an adequately informed public consultation process, **the Commission should provide further details about the “business continuity plan”**, either by defining it or by properly explaining what the business continuity plan will consist of in the legal text.

4. Balance Between Data Confidentiality, Data Sharing, and Transparency

Article 21 of the draft CBAM Registry Regulation addresses the confidentiality of information in the registry but introduces ambiguities. It allows CBAM declarants to access certain types of personal data but **lacks clarity on what constitutes “personal data” and the specific data accessible to different actors** in the CBAM ecosystem. Furthermore, the CBAM Registry **does not ensure the same level of transparency as the EU ETS Registry**, potentially undermining public accountability and scrutiny.

The **ETS Registry Regulation (2019/1122)** provides a robust example of transparency, offering public access to critical information such as contact details of installations, total emissions, and free allocations. This is based on the reference to **Directive 2003/4/EC** on public access to environmental information. In contrast, the **CBAM Registry framework largely designates all information as confidential, with limited data sharing and only an annual Commission report on the total aggregated emissions by CBAM goods.**

It should be considered that **Article 1(2) of the CBAM Regulation** describes CBAM as a framework that, in relation to the ETS, applies “*an equivalent set of rules to imports into the customs territory of the Union of the goods referred to in Article 2*” of the **CBAM Regulation**. Therefore, secondary legislation mandated by the

CBAM Regulation—such as the CBAM Registry Regulation—must follow this legal setting to the greatest extent possible by adequately mirroring ETS provisions such as those established in the **ETS Registry Regulation 2019/1122**.

Recommendations:

1. Clarify Definitions and Data Access

- Clearly define “*personal data*” in the CBAM context, specifying what information is accessible to authorised CBAM declarants, operators, and other actors.
- Provide detailed descriptions of the data types available within each of the five CBAM registry portals to avoid confusion.

2. Enhance Transparency

- Revise **Article 21 of the draft CBAM Registry Regulation** (and **Article 14 of the CBAM Regulation**) to align with the high transparency standards of the ETS Registry, by including a reference to **Directive 2003/4/EC** on public access to environmental information.
- Publish key information publicly, such as:
 - Contact details of CBAM declarants and third-country operators.
 - Total emissions and CBAM certificates for each declarant.

3. Ensure Legal and Operational Alignment

- Align **Article 21 of the draft CBAM Registry Regulation** with **Article 1(2) of the CBAM Regulation**, which mandates equivalency with the ETS framework. This entails mirroring ETS provisions such as those in Regulation 2019/1122, particularly on data access and transparency protocols.

5. Data Retention Period in Article 23 (1)

The data retention period of 10 years under **Article 23 (1)** exceeds the maximum of 5 years established in Implementing Regulation on CBAM reporting obligations during the transitional period (EU 2023/1773).

Recommendation:

Align the data retention period for the CBAM registry with the 5-year limit specified in **Article 38** of Regulation (EU) 2023/1773.

For further information:

- [Here](#) our answer to the European Commission study on the CBAM scope extension to downstream products (July 2024)
- [Here](#) our letter to DG TAXUD on CBAM double reporting and taxation concerns (February 2024)
- [Here](#) our position paper on the Draft Implementing Regulation on Reporting Obligations during the transitional period (July 2023)
- [Here](#) our memo on the methodology for indirect emissions in CBAM (May 2023)
- [Here](#) our Position Paper on why alumina should not be included in CBAM (November 2022)
- [Here](#) CRU External Study “Assessment of European Carbon Border Adjustment Mechanism Regulation” for European Aluminium (May 2022)
- [Here](#) our detailed position paper on the proposed CBAM (October 2021)
- [1 pager](#) on why a CBAM on indirect emission will increase global emissions (June 2022)
- [1 pager](#) on why indirect emissions in CBAM will harm European production (October 2021)
- [Here](#) our non-paper CBAM and excise duty tax design (February 2021)

For more information on European Aluminium’s work on CBAM, all papers, external studies and memos are available at the [“Climate & Energy Section”](#) on our Website under “CBAM”.

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