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Eurometaux position paper on the draft Implementing Regulation on the CBAM registry

Outline

This paper provides the position and main recommendations of the non-ferrous metals industry **on the Commission's draft Implementing Regulation on the CBAM registry**.

We welcome the Commission's initiative to set up the framework for the establishment of an electronic database to manage a variety of CBAM-related elements, such as CBAM declarations and accredited CBAM verifiers – the 'CBAM registry'. This position paper identifies certain inconsistencies in the draft text establishing the CBAM registry while providing respective solutions for the issues identified.

Main concerns

We have pinpointed certain elements of the draft Implementing Regulation that could benefit from refinement and present the following recommendations to enhance its effectiveness and comprehension:

1. Responsibility for communicating decisions on penalties

- **Article 4(2)** states the following:
"The competent authority of the Member State of establishment of the authorised CBAM declarant, or a person other than an authorised CBAM declarant introducing goods into the customs territory of the Union in the cases described in Article 26(2) of the Regulation (EU) 2023/956, shall communicate the decisions on penalties linked to enforcement and penalties to the Commission by electronic systems developed at national level."
- 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 prevent misinterpretations** and ensure enforcement mechanisms operate as predicted in Article 26(4) of the CBAM Regulation (EU) 2023/956. One solution would be to add the preposition "of" before "a person other than an authorised CBAM declarant (...)":
 - *"The competent authority of the Member State of establishment of the authorised CBAM declarant, or of a person other than an authorised CBAM declarant (...)"*



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2. Legal clarity in Article 10

a. **Article 10** on 'CBAM Operators Portal' provides a detailed description of one of the components of the broader CBAM registry, namely, the portal used by and for operators of installations in third countries. However, the wording across Article 10 does not clearly specify that the portal addressed is meant for **operators of installations in third countries**, possibly leading to confusion in the legal text.

➤ **Recommendation:** Amend Article 10 to explicitly refer to operators of installations in third countries, ensuring consistency with the scope of Article 10 of the CBAM Regulation (EU) 2023/956.

b. **Article 10(2)** identifies three actions operators of installations can conduct within the CBAM Operators Portal, and **point (b)** of that article suggests operators can register "*information on the goods produced by an installation*". The wording in point (b) is ambiguous and can lead to the interpretation that operators will be allowed to **register information on goods produced by installations other than their own**

➤ **Recommendation:** Revise Article 10(2), point (b), by replacing "*information on the goods produced by an installation*" with "*information on the goods produced by ~~an~~ its installation*".

3. Defining "business continuity plan"

- **Article 16** on the 'Temporary failure of the CBAM registry' refers to a "*business continuity plan*" that lays down the means that must be followed by CBAM declarants and applicants in the event of a temporary failure of the CBAM registry. However, **no information has been shared with CBAM stakeholders regarding this "business continuity plan"**, nor is this tool referred to in the CBAM Regulation (EU) 2023/956.

➤ **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. Unclear balance between data confidentiality and data sharing

- **Article 21** on the 'Limitation of data access, data processing and confidentiality' notes that all information in the CBAM registry shall be considered confidential, while at the same time stating that CBAM declarants will be able to access different types of personal data in the CBAM registry. The wording in Article 21 should **clarify the type of information** the different actors within the CBAM ecosystem (e.g. CBAM declarants) **will have access to** and under **which of the five portals composing the CBAM registry**. Moreover, the implementing Regulation should strive to **mirror the ETS framework where possible** (e.g. ETS Registry Regulation 2019/1122).

➤ **Recommendation:** Adjust Article 21 in order to **provide more clarity regarding data confidentiality, access, and data sharing protocols**, while describing the different pieces of information that compose the concept of "personal data".

➤ Furthermore, 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*



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*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 Registry Regulation 2019/1122.*

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Intransparency of the CBAM Registry vs. ETS Registry

The public consultation on the draft Regulation on CBAM Registry offers the opportunity for a first reflection on the design and functioning of the electronic infrastructure required for the implementation of the instrument. While preserving the confidentiality of business sensitive information, a high degree of transparency of the CBAM Registry is indispensable for public scrutiny and input, which can lead to more robust and well-considered policies.

Against this background, the signatories of this paper would like to highlight their serious concerns about the expected level of intransparency of the CBAM Registry, especially when compared with the EU ETS Registry. This is due to combination of the provisions of the draft CBAM Registry Regulation as well as those of the basic CBAM Regulation 2023/956.

According to the current CBAM legal framework (in particular article 21 of the draft CBAM Registry Regulation and article 14 of the basic CBAM Regulation 2023/956), de facto all information in the CBAM Registry will be deemed as confidential. The Commission would publish only an annual report on total aggregated emissions by CBAM good.

On the contrary, the EU ETS Registry Regulation 389/2013 (Annex IX) provides public access to most of the relevant information included in the registry, such as contact details of European installations as well as details on total emissions and free allocation for each installation. This high level of transparency is linked to the explicit reference of recital 28 of the ETS Registry Regulation to Directive 2003/4/EC on public access to environmental information. Instead, no reference to the same legislation is included in the Draft CBAM Registry Regulation.

Against this background, the signatories urge EU institutions to revise the draft CBAM Registry Regulation as well as reviewing the relevant provisions of the basic CBAM Regulation in the context of the 2025 revision in order to ensure that the CBAM registry is as transparent as the EU ETS Registry. For instance, such consistency requires that contact details of CBAM declarants and third country operators as well as total emissions and total available CBAM certificates for each of them are made publicly accessible.

Annex: legal references

Article 14 of the basic CBAM [Regulation 2023/956](#)

1. The Commission shall establish a CBAM registry of authorised CBAM declarants in the form of a standardised electronic database containing the data regarding the CBAM certificates of those authorised CBAM declarants. The Commission shall make the information in the CBAM registry available automatically and in real time to customs authorities and competent authorities.
2. The CBAM registry referred to in paragraph 1 shall contain accounts with information about each authorised CBAM declarant, in particular:
 - (a) the name, address and contact information of the authorised CBAM declarant;
 - (b) the EORI number of the authorised CBAM declarant;
 - (c) the CBAM account number;
 - (d) the identification number, the sale price, the date of sale, and the date of surrender, repurchase or cancellation of CBAM certificates for each authorised CBAM declarant.
3. The CBAM registry shall contain, in a separate section of the registry, the information about the operators and installations in third countries registered in accordance with Article 10(2).
4. The information in the CBAM registry referred to in paragraphs 2 and 3 shall be confidential, with the exception of the names, addresses and contact information of the operators and the location of installations in third countries. An operator may choose not to have its name, address and contact information made accessible to the public. The public information in the CBAM registry shall be made accessible by the Commission in an interoperable format.
5. The Commission shall publish, on a yearly basis, for each of the goods listed in Annex I, the aggregated emissions embedded in the imported goods.
6. The Commission shall adopt implementing acts concerning the infrastructure and specific processes and procedures of the CBAM registry, including the risk analysis referred to in Article 15, the electronic databases containing the information referred to in paragraphs 2 and 3 of this Article, the data of the accounts in the CBAM registry referred to in Article 16, the transmission to the CBAM registry of the information on the sale, repurchase and cancellation of CBAM certificates referred to in Article 20, and the cross-check of information referred to in Article 25(3). Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 29(2).

Article 21 of the draft CBAM Registry Regulation

Article 21

Limitation of data access, data processing and confidentiality

1. All information held in the CBAM registry shall be considered confidential.

The authorised CBAM declarants and applicants may access personal data registered in the CBAM registry after their registration in the registry.
2. The operators may access their personal data registered in the CBAM registry after their registration in the registry. Authorised CBAM declarants may access personal data registered by operators in the CBAM registry or otherwise processed those data, where authorisation in that respect was granted by the operators.
3. The Commission and the competent authorities may access and otherwise process the personal data and other data from Customs Import Declarations for goods not listed in Annex I to Regulation (EU) 2023/956 in accordance with Articles 15, 19 and 27 of Regulation (EU) 2023/956.

The Commission and the competent authorities may access and otherwise process the data from the EORI system, in accordance with Articles 15, 19 and 27 of Regulation (EU) 2023/956.

Recital 6 of the [ETS Registry Regulation 389/2013](#)

- (6) The Union Registry should contain the accounts in which the processes and operations needed to apply the provisions of Directive 2003/87/EC should be registered. Each account should be created in accordance with standardised procedures to ensure the integrity of the registries system and public access to information held in this system. Allowances should be issued in the Union Registry.

Recital 28 of the [ETS Registry Regulation 389/2013](#)

- (28) In accordance with Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC ⁽¹⁾ and Decision 13/CMP.1, specific reports should be made public on a regular basis to ensure that the public has access to information held within the integrated system of registries, subject to certain confidentiality requirements.

[Directive 2003/4/EC](#) on public access to environmental information (mentioned in recital 28 above)

Annex IX of [ETS Registry Regulation 389/2013](#)

ANNEX XIV

Reporting requirements of the central administrator (Article 109)

I. UNION REGISTRY INFORMATION RELATED TO THE UNION EMISSIONS TRADING SCHEME

Information available to the public

1. The EUTL shall display on the public website of the EUTL the following information for each account:
 - (a) all information indicated as to be 'displayed on the EUTL public website' in Tables III-I of Annex III, Table VI-I of Annex VI, and Table VII-I of Annex VII. This information shall be updated every 24 hours;
 - (b) allowances allocated to individual account holders pursuant to Article 43 and Article 44. This information shall be updated every 24 hours;
 - (c) the status of the account in accordance with Article 10(1). This information shall be updated every 24 hours;
 - (d) the number of allowances surrendered in accordance with Article 67.
 - (e) the verified emissions figure, along with its corrections for the installation related to the operator holding account for year X shall be displayed from 1 April onwards of year (X+1);
 - (f) a symbol and a statement indicating whether the installation or aircraft operator related to the operator holding account surrendered a number of allowances by 30 April that is at least equal to all its emissions in all past years. The symbols and the statements to be displayed are set out in Table XIV-I. The symbol shall be updated on 1 May and, except for the addition of a * in cases described under row 5 of Table XIV-I, it shall not change until the next 1 May.

Table XIV-I

Compliance statements

Row No.	Compliance status figure according to Article 34	Verified emissions are recorded for last complete year?	Symbol	Statement
			to be displayed on the EUTL public website	
1	0 or any positive number	Yes	A	'The number of allowances surrendered by 30 April is greater than or equal to verified emissions'
2	any negative number	Yes	B	'The number of allowances surrendered by 30 April is lower than verified emissions'
3	any number	No	C	'Verified emissions for preceding year were not entered until 30 April'
4	any number	No (because the allowance surrender process and/or verified emissions update process being suspended for the Member State's registry)	X	'Entering verified emissions and/or surrendering was impossible until 30 April due to the allowance surrender process and/or verified emissions update process being suspended for the Member State's registry'
5	any number	Yes or No (but subsequently updated by the competent authority)	* [added to the initial symbol]	'Verified emissions were estimated or corrected by the competent authority.'

2. The EUTL shall display on the public website of the EUTL the following general information, and shall update it every 24 hours:
 - (a) the national allocation table of each Member State, including indications of any changes made to the table in accordance with Article 52;

- (b) the national aviation allocation table of each Member State, including indications of any changes made to the table in accordance with Article 55;
 - (c) the international credit entitlement table of each Member State;
 - (d) the total number of allowances, ERUs and CERs held in the Union Registry in all user accounts on the previous day;
 - (e) a listing of the types of Kyoto units other than CERs and ERUs that can be held in user accounts in KP registries administered by a particular national administrator in accordance with Annex I;
 - (f) up-to-date information regarding the eligibility of international credits pursuant to Articles 11a and 11b of Directive 2003/87/EC, Article 58 of this Regulation and any measure adopted pursuant to Article 11a(9) of Directive 2003/87/EC;
 - (g) the fees charged by national administrators in accordance with Article 111.
3. The EUTL shall display on its public website the following general information, on 30 April of each year:
- (a) the sum of verified emissions by Member State entered for the preceding calendar year as a percentage of the sum of verified emissions of the year before that year;
 - (b) the percentage share belonging to accounts administered by a particular Member State in the number and volume of all allowance and Kyoto unit transfer transactions in the preceding calendar year;
 - (c) the percentage share belonging to accounts administered by a particular Member State in the number and volume of all allowance and Kyoto unit transfer transactions in the preceding calendar year between accounts administered by different Member States.
4. The EUTL shall display on the public website of the EUTL the following information about each completed transaction recorded by the EUTL by 30 April of a given year on 1 May three years later.
- (a) account holder name and Account identifier of the transferring account;
 - (b) account holder name and Account identifier of the acquiring account;
 - (c) the amount of allowances or Kyoto units involved in the transaction, without unique unit identification code of the allowances and the unique numeric value of the unit serial number of the Kyoto units;
 - (d) transaction identification code;
 - (e) date and time at which the transaction was completed (in Central European Time);
 - (f) type of the transaction.

Information available to the public

7. The central administrator shall make publicly available the following information for each account and update it within 24 hours when relevant:
- (a) all information indicated as to be 'displayed on the EUTL public website' in Table III-I of Annex III;
 - (b) Annual Emission Allocations as determined pursuant to Article 3(2) of Decision No 406/2009/EC and any further adjustment pursuant to Article 10 of Decision No 406/2009/EC;
 - (c) the status of each ESD Compliance Account in accordance with Article 10;
 - (d) the total number of ERUs, CERs, tCERs and ICERs used pursuant to Article 81;
 - (e) the relevant greenhouse gas emissions data pursuant to Article 77;
 - (f) the compliance status figure pursuant to Article 79 for each ESD Compliance Account as follows:
 - (i) A for compliance,
 - (ii) I for noncompliance;
 - (g) the quantity of greenhouse gas emissions introduced pursuant to Article 80;
 - (h) the following information about each completed transaction recorded by the EUTL:
 - (i) account holder name and account holder ID of the transferring account;
 - (ii) account holder name and account holder ID of the acquiring account;
 - (iii) the amount of AEAs or credit entitlement involved in the transaction, without unique unit identification code of the AEA;
 - (iv) transaction identification code;
 - (v) date and time at which the transaction was completed (in Central European Time);
 - (vi) type of the transaction.