



EUROPEAN ALUMINIUM – FEEDBACK TO THE DRAFT IMPLEMENTING REGULATION FOR THE STATUS OF AUTHORISED CBAM DECLARANT

POSITION PAPER

Brussels, 25 November 2024

Introduction

This position paper aims to provide feedback on the European Commission's [draft Implementing Regulation](#) on conditions and procedures related to the status of authorised [CBAM](#) (Carbon Border Adjustment Mechanism) declarants. While we support the overarching goals of the regulation, we believe there are several areas that need clarification or adjustment to ensure a transparent, fair, and efficient process for applicants. The following points highlight our key concerns and recommendations.

1. Definitions of "Expert" and "Third-Party" Conclusions (Article 4(2))

Article 4(2) refers to “expert conclusions” and “third-party conclusions,” but neither term is defined in the draft text nor in the CBAM Regulation. This creates ambiguity around which entities can provide these conclusions and how they will be evaluated by the competent authorities.

Recommendation: We recommend adding a recital or further clarifying in the legal text the entities that may qualify as experts or third parties for the purposes of these conclusions. This would provide greater clarity and ensure a more transparent authorisation process.

2. Deadlines for Assessing Applications (Articles 4, 5, and 6)

The deadlines for assessing applications for authorised CBAM declarant status are complex and interconnected. Several provisions within Articles 4, 5, and 6 affect these timelines, creating potential confusion for applicants:

- Article 4(1) sets a 120-calendar day deadline for the assessment.
- Article 5(2) allows for an extension of up to 30 days if additional information is required.
- Article 5(3) states that the overall assessment must not exceed 180 days.
- Article 6(2) and (3) provide a 30-day period for applicants to submit observations following a negative decision.

There is a lack of clarity in the relationship between these derogations and the deadlines for applicants.

Recommendation: We recommend clarifying the interaction between these deadlines in the legal text. Applicants, especially importers or indirect customs representatives, should have a clear understanding of the

application process, particularly given the tight timeline before the definitive period commences. Clear guidance on how extensions and additional information requests affect the overall timeline is essential.

3. Period for Submitting Observations to a Negative Decision (Article 6)

Article 6(3) gives competent authorities the discretion to determine the length of the period for submitting observations to a negative decision, with a maximum of 30 calendar days. This flexibility could lead to extremely short timeframes for applicants, potentially disadvantaging them.

Recommendation: We recommend amending Article 6(3) to establish a minimum period for submitting observations, with a range between 15 and 30 calendar days. This would ensure that applicants have a reasonable amount of time to respond, fostering fairness in the process.

4. Conditions for Financial and Operational Capacity (Article 11)

Article 11 outlines the financial and operational capacity criteria that applicants must meet to obtain authorised CBAM declarant status. However, for importers who already hold the Authorised Economic Operator (AEO) status, the requirements for demonstrating financial and operational capacity seem redundant, as AEO status already implies robust financial and operational assessments.

Recommendation: We recommend exempting importers with AEO status from demonstrating additional financial and operational capacity. Alternatively, the AEO status should be explicitly recognised as one of the primary factors in the assessment of these conditions, streamlining the process for qualified operators.

5. Provision of a Guarantee (Article 14)

Article 14 requires applicants to provide a guarantee, as specified in Article 17(5) of the CBAM Regulation. Importers who hold AEO status may already be subject to rigorous financial requirements, making the provision of a guarantee redundant or unnecessarily burdensome.

Recommendation: We recommend exempting AEO-certified importers from providing a guarantee or, at the very least, reducing the required guarantee amount for these operators. This would reduce administrative burdens for trusted economic operators while maintaining the integrity of the CBAM system.

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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