

NOVEMBER 2024

Eurometaux position paper on the draft Implementing Regulation on conditions and procedures related to the status of authorised CBAM declarant

Outline

This paper provides the position and main recommendations of the non-ferrous metals industry **on the Commission's draft Implementing Regulation on the conditions and procedures related to the status of authorised CBAM declarant**.

We support the Commission's goal of clarifying the criteria and processes required to become an authorised CBAM declarant, granting further rules and guiding details for both applicants and the relevant Competent Authorities. In this context, this position paper addresses the shortcomings of the draft text currently under public consultation, providing suggestions to improve the text's clarity and increase procedural certainty.

Main concerns

We identified some aspects of the draft Implementing Regulation that could be fine-tuned and thus provide the recommendations below:

1. Article 4(2) Definitions

In **Article 4(2), points (a) and (b)**, respectively, refer to "expert conclusions" and "third party conclusions", noting that conclusions by these entities may be considered by the relevant Competent Authorities to check if the criteria described in Article 17(2) of the CBAM Regulation are met. However, these terms are not defined in the draft text, nor in the CBAM Regulation.

- **Recommendation:** Give an indication of which entities can be categorised to fit within the concepts of "expert" and "third party" conclusions (e.g. by adding a new recital) to provide greater clarity and a more transparent authorisation process.

2. Deadlines for assessing applications

Several Articles in the draft text intertwine and ultimately impact the deadlines imposed on the Competent Authorities for assessing applications for authorised CBAM states:

- **Article 4(1)** states Competent Authorities are granted up to 120 calendar days to assess applications for authorised CBAM declarant status.
- **Article 5(2)** enables Competent Authorities to extend the deadlines set in Article 4(1) by up to 30 calendar days if they intend to request more information from the applicant.



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- **Article 5(3)** notes that the assessment of an application for authorised CBAM declarant status where additional information is requested by the Competent Authority to the applicant cannot exceed 180 days from the date of reception of the application.
 - **Article 6(2) and (3)**, respectively state that Competent Authorities aiming to submit a negative decision to an application, must communicate to the applicant the reasons for refusing and provide a period of up to 30 calendar days for the applicant to submit observations.
- **Recommendation:** Clarify in the legal text the relationship between the derogations for extending the deadlines in order to provide more clarity for applicants. **Importers or indirect customs representatives applying for authorised CBAM status should have a clear understanding of the application process**, particularly considering the tight timeline until the effective start of the definitive period.

3. Period for submitting observations to a negative decision

The provisions in **Article 6(2) and (3)** provide the Competent Authority with the freedom to set up any length for the period in which the applicant can submit its observations to the Competent Authority's communication on its intention to refuse granting status of authorised CBAM declarant, with a maximum of 30 calendar days. The current draft legal framework is unfair for applicants, considering that if a minimum threshold is not clearly spelled out in the legal text, the Competent Authorities will be allowed to set up extremely short periods for submitting observations, leading to a highly disfavourable scenario for applicants. Hence, the Competent Authority should also be bound by a minimum threshold for the period it sets up for the applicant's observations.

- **Recommendation:** Amend the legal text in Article 6(3) to **set up a minimum threshold for the period granted by the Competent Authority to the applicant for the latter to submit its observations** (e.g. between 15 and 30 calendar days).

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