

COMMISSION IMPLEMENTING REGULATION (EU) .../... of XXX laying down rules for the application of Regulation (EU) 2023/956 of the European Parliament and of the Council as regards the conditions and procedures related to the status of authorized CBAM declarant

Recital (Reasons for the adoption of the Implementing Regulation), paragraph (11)

Clarification is needed as to whether the consultation procedure should always be mandatory for all competent authorities of all Member States, or whether it will depend on the assessment of the competent authority which will address other competent authorities from other Member States (similarly to Customs Decisions).

We propose that the competent authority initiate the consultation procedure if and only with those Member States where the applicant performs activities. The mandatory consultation of all applications across the EU will be very time-consuming and administratively demanding for MS due to the number of all subjects.

General comment on the Implementing Regulation (carrying out operations in the CBAM registry)

It is not clear enough from the entire draft of the Implementing Regulation which operations are carried out in the CBAM registry and which operations are carried out in procedures under national law and are only registered in the CBAM registry. In view of the objective and purpose of the implementing regulation, we are in favour to address the need for as many acts as possible to be carried out (not only factually, but also legally) directly in the CBAM registry (i.e. to proceed on the basis of EU legislation, de facto excluding national legislation). We recommend that this area be properly clarified (also in the recital of the Implementing Regulation), for details see comments on individual articles. **We consider this comment to be substantial.**

Article 1 (1)

In the sentence “Procedures for an application to become an authorised CBAM declarant (“application”) should be carried out through the CBAM registry in electronic form”, we propose to replace “should be” by “shall”. Indeed, the Implementing Regulation establishes (shall establish) mandatory procedures, not recommended procedures, which the competent authority may or may not make use of.

Article 1 (3)

If the applicant is a legal person established in a third country, it would be appropriate, for the purposes of screening and limitation of proceedings in more than one Member State, to indicate all the countries where, according to Article 5 (31) (b) of Regulation 952/2013, the applicant is established (permanent establishments may be established in more than one EU Member State).

Article 2 (1)

We consider it necessary to add that adjustments to the submitted application must also be made through the CBAM registry. Based on the CBAM Regulation it is mandatory to submit (only) an application for authorisation through the CBAM Registry. The proposed addition aims at obliging the applicant to make adjustments to the submitted application exclusively in the CBAM registry.

Article 2 (4)

We would like to add or clarify whether the deadline is extended legally only by registration in the CBAM register or by procedures under national law (in this case, the Czech Republic would issue a formalised resolution/decision that will be registered in the CBAM register).

Article 2 (5)

We would like to request to add or clarify whether the application will be (de jure) rejected directly through the CBAM registry (e.g. by recording the rejection) or through procedures under national legislation.

Article 3

Article 3 is also intended to address the consequences of the withdrawal of an application by (legally) terminating the procedure/matters for granting the authorisation status of an authorised CBAM declarant and only recording this in the CBAM registry by the competent authority. If this were not the case, the competent authority would have to proceed according to national legislation (in the Czech Republic, this would mean that the competent authority would issue a decision to discontinue proceedings due to the withdrawal of the application and register this in the CBAM register).

Article 4

A deadline of 120 days is set for the evaluation/assessment of the application. There is no deadline for issuing an authorisation (final decision). We recommend clarifying the wording if the intention was to set a deadline for issuing a decision.

Article 4 (3)

We recommend clarifying how the documentation of the assessment of compliance with the established criteria will be carried out. Will this documentation be carried out in the CBAM registry or in accordance with procedures under national law?

Article 4 (4)

We request to add or clarify whether the rejection of the decision will be issued and delivered (de jure) directly via the CBAM registry (e.g. by recording the rejection) or whether the national should be followed with the decision only be recorded in the CBAM registry. For example, it is suggested that the competent authority informs the applicant without delay, but it is not addressed how (whether through the CBAM registry).

Article 5 (1)

Is the request for additional information to be made through the CBAM registry? If so, the text of the draft of the Implementing Regulation needs to be added.

Article 5 (2)

How should the competent authority inform the applicant of the extension of the deadline, through the CBAM registry (e.g. by recording) or through procedures under national law?

Article 6 (1)

We request to add or clarify whether the right to be heard (i.e. informing the applicant) will be provided through the CBAM registry or whether national legislation should be followed.

Article 6 (4)

We request to add or clarify whether the final decision will be issued directly through the CBAM registry or whether national legislation should be followed (in which case the final decision would only be recorded in the registry).

Article 7 (1)

We consider it necessary to add paragraph 1 stating that the decision on the application is delivered on the date on which the competent authority issues/registers the decision in the CBAM registry. Otherwise, national legislation must be followed.

Article 10 (1) point (a)
Definition of infringements of anti-market abuse rules is not clear. We propose a more detailed explanation of what these rules mean.
Article 10 (4)
We do not agree with the proposed rule that a competent authority shall not retain the criminal record or any similar document after a decision has been taken. The proposed rule appears to us to be inconsistent with the rules on file keeping and the obligation to document the entire procedure, e.g. for the purposes of judicial review. <u>We consider this comment to be substantial.</u>
Article 12
We propose that the competent authority initiate the consultation procedure only if and only with those Member States where the applicant carries out activities. The mandatory consultation of all applications across the EU will be very time-consuming and administratively demanding for MS due to the number of all entities. <u>We consider this comment to be substantial.</u>
Article 12 (2) points (b), (c) and (d)
These facts can and should be verified directly by the competent authority in the CBAM registry, as this is a pan-European interface and the data are objectively available. We therefore recommend deleting points (b), (c) and (d) without replacement, as this would be a bureaucratic and uneconomical procedure. <u>We consider this comment to be substantial.</u>
Article 13 (2) and (3)
Given the scope of the conditions examined by the consulted State (with reference to Article 12 (4)) and the length of the examination of the application (120 days), the deadlines of 5 and 15 days seem very short to us. We request longer deadlines. In addition, please note that in the customs decision area, the time limit for replying to the consultation procedure is set to 45 days. <u>We consider this comment to be substantial.</u>
Article 13 (4) point (c)
There is an obvious mistake because item c) is not a self-standing case for extending the deadline. It should probably be part of item b).
Article 15 (4)
Will the competent authority request adjustment of the guarantee through the CBAM register, or by procedures according to national legislation?
Article 16
It should be specified whether a Member State should notify the Commission every time other form of guarantee than bank guarantee is accepted (even though this form of guarantee has already been notified by this Member State) or only if a new form of guarantee is accepted in the Member State for the first time. Do we consider it necessary to clarify whether the competent authority should, in principle, notify on a one-off basis that it systematically accepts forms of guarantee other than those referred to in Article 17(5) of the Regulation (in the Czech Republic, this will be the possibility of depositing a sum of money into the account of a customs office), or should every individual case in which a different form of guarantee is accepted be notified? <u>We consider this comment to be substantial.</u>
Article 17 (2)
Should the decision to adjust the amount of the guarantee be issued in the CBAM registry or procedures according to national legislation?
Article 17 (3)

Will the request and the decision to extend the deadline be submitted/implemented through the CBAM registry or through procedures according to national legislation?
Article 18 We consider it necessary to clarify whether the decision granting the status is issued in the CBAM registry or whether it should only be available there (to be recorded/registered there once issued).
Article 20 (1) How will the competent authority communicate to the authorised declarant the conclusions of the reassessment, through the CBAM registry or procedures according to national legislation?
Article 22 (1) A decision to revoke an authorisation is only recorded in the CBAM registry or issued directly through the CBAM registry?
Article 22 (7) and Article 23 (7) We would like clarification in which cases a person holding a revoked authorisation may be unable to submit the declaration. We understand from the wording of the draft of implementing regulation that even a person holding a revoked authorisation still has access to the CBAM register and can therefore submit a CBAM declaration. So what does it mean that the person is unable to do so and that the CBAM declaration shall be submitted by the competent authority? For example, in the EU ETS, the operator of an installation has to submit an annual emissions report even after its emission permit has been revoked, and the competent authority only produces a conservative estimate of emissions if the operator fails to do so.
Article 22 (7) and Article 23 (9) We recommend using the conjunction “or” instead of “and” because the paragraphs are supposed to be used alternatively not cumulatively.
Article 22 (8) and Article 23 (8) Competent authority shall establish a CBAM declaration upon receiving the information referred to in paragraph 7 of Article 23 (quantity of goods imported from importer). What happens if the person holding a revoked authorisation does not provide this information to the competent authority? Can the competent authority establish a CBAM declaration without information from the person holding a revoked authorisation and only on the basis of e.g. import data from customs declarations and default values?
Article 25 (2) How will immediate cancellation be reported, through the CBAM registry or through procedures under national legislation?
Article 26 We do not understand why consultation is needed when a competent authority decides to revoke an authorisation. We ask for an explanation.
Article 27 Is the decision on the appeal in the CBAM registry only to be registered/recorded, or is it issued directly through the CBAM registry?
Article 29 (2)

According to article 29 the regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union and it shall apply from 31 December 2024. These dates are not realistic because the direction should be agreed on by MS on December 12th which means that it cannot be published before that date. It would mean that the regulation should apply before being in force.

Annex

We are of the opinion that the scope of the request is missing and needs to be defined.