

EDPS Formal comments on a draft Commission Implementing Regulation laying down rules for the application of Regulation (EU) 2023/956 of the European Parliament and of the Council as regards the CBAM registry

THE EUROPEAN DATA PROTECTION SUPERVISOR,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of individuals with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC ('EUDPR')¹, and in particular Article 42(1) thereof,

HAS ADOPTED THE FOLLOWING FORMAL COMMENTS:

1. Introduction and background

1. On 8 November 2024, the European Commission consulted the EDPS on a draft Commission Implementing Regulation laying down rules for the application of Regulation (EU) 2023/956² of the European Parliament and of the Council as regards the CBAM registry ('the draft Implementing Regulation').
2. Regulation (EU) 2023/956 requires the Commission to establish, at Union level, a standardised and secure electronic database for CBAM certificates management, CBAM declarations, applications to become authorised CBAM declarants, and a registration of operators of installations ('operators'), and for providing access, case handling and confidentiality, in particular confidential information provided by operators³.
3. The objective of the draft Implementing Regulation is to lay down the rules for application of the CBAM registry, concerning the infrastructure and specific processes and procedures of the CBAM registry.
4. The present formal comments of the EDPS are issued in response to a consultation by the European Commission pursuant to Article 42(1) of EUDPR. The EDPS welcomes the reference to this consultation in recital 16 of the draft Implementing Regulation.

¹ OJ L 295, 21.11.2018, p. 39.

² Regulation (EU) 2023/956 of the European Parliament and of the Council of 10 May 2023 establishing a carbon border adjustment mechanism, OJ L 130, 16.5.2023, p. 52–104.

³ Recital (1) of the draft Implementing Regulation. See also Article 14 of Regulation (EU) 2023/956.

5. These formal comments do not preclude any additional comments by the EDPS in the future, in particular if further issues are identified or new information becomes available, for example as a result of the adoption of other related implementing or delegated acts⁴.
6. Furthermore, these formal comments are without prejudice to any future action that may be taken by the EDPS in the exercise of his powers pursuant to Article 58 of the EUDPR and are limited to the provisions of the draft Implementing Regulation that are relevant from a data protection perspective.

2. Comments

2.1. Purpose of the processing and the categories of personal data

7. The EDPS welcomes that the draft Implementing Regulation clearly specifies the purpose of personal data processing⁵. In particular, Article 18 of the draft Implementing Regulation specifies the purposes for which, personal data registered in the CBAM registry and the components of electronic systems developed at national level, may be processed by the competent authorities and the Commission.
8. Article 14(2) of Regulation (EU) 2023/956⁶ specifies which categories of data shall be included in the CBAM registry. In addition, the draft implementing regulation provides for interoperability with customs systems with the aim of ensuring an accurate assessment of the CBAM obligations and of supporting the performance of risk analysis, circumvention monitoring, including investigation arising from Articles 15, 19 and 27 of Regulation (EU) 2023/956⁷.

2.2. Roles and responsibilities of the Commission and the competent authorities

9. Article 19 of the draft Implementing Regulation specifies that the Commission would be the controller for:

⁴ In case of other implementing or delegated acts with an impact on the protection of individuals' rights and freedoms with regard to the processing of personal data, the EDPS would like to remind that he needs to be consulted on those acts as well. The same applies in case of future amendments that would introduce new or modify existing provisions that directly or indirectly concern the processing of personal data.

⁵ Pursuant to the purpose limitation principle, personal data should only be collected for specified, explicit, and legitimate purposes and not further processed in a manner that is incompatible with those purposes (Article 5(1)(b) of the GDPR).

⁶ Article 14(2) of Regulation (EU) 2023/956 provides that '*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.'

⁷ See Article 5 and recitals (4) and (7)-(10) of the draft implementing regulation. The Annex to the draft Implementing Regulation further specifies the data that may be exchanged with the Economic Operators Registration and Identification (EORI).

- a) the management of the CBAM registry,
 - b) the processing of personal data registered in the CBAM Operators Portal and
 - c) the use, validation and retrieving of EORI or other data for the purpose of the risk analysis and circumvention monitoring, including investigation, as provided for in Articles 15, 19 and 27 of Regulation (EU) 2023/956.
10. Furthermore, the same article specifies that the competent authority shall be the controller for the personal data processing to take decisions on the granting and revocation of authorisations of CBAM declarants in accordance with Regulation (EU) 2023/956 and the processing of personal data for the access management of declarants established within their Member State in accordance with Articles 8 and 13 of the draft Implementing Regulation.
11. Article 20 of the draft Implementing Regulation specifies that when a controller receives a data subject request that does not fall under its responsibility, it should forward that request promptly and at the latest within 3 calendar days from the receipt to the responsible controller. The EDPS positively notes this clarification provided in the draft Implementing Regulation, which could serve to facilitate the exercise of the data subjects' rights.
12. However, the EDPS notes that the wording of Recital 13 (by virtue of its reference to Article 26 GDPR and Article 28 EUDPR) indicates that the Commission and competent authorities should be considered joint controllers, whereas the enacting terms draft Implementing Regulation do not make any reference to joint controllership. Furthermore, the same recital specifies that the Commission provides the technical and organisational solutions for the CBAM registry on behalf of the Member States and as such it processes data on their behalf, acting as a data processor in the meaning of Article 4(8) of the Regulation (EU) 2018/1725. However, this is also not reflected in the enacting terms of the draft Implementing Regulation.
13. In order to ensure a clear allocation of roles and responsibilities for the CBAM registry and related processing activities, the EDPS recommends introducing the necessary amendments in order to ensure that the enacting terms and recitals are fully aligned with one another.

2.3. Data security

14. The draft Implementing Regulation refers to the technical and organisational measures that should be implemented by the Commission and by the competent authorities⁸. In particular, the measures should be designed to:
- a) ensure the security, integrity, confidentiality, availability and continuity of the personal data processed,

⁸ Article 22(1) and (2) of the draft Implementing Regulation.

- b) protect against any unauthorised or unlawful processing, alteration, loss, use, disclosure of, or access to any personal data in their possession,
 - c) restrict disclosure or access to personal data to anyone other than the intended recipients.
15. The same article provides a general requirement for the Commission and the competent authorities to notify each other about a personal data breach and provide assistance in case of critical security incidents.
16. As appropriate technical and organizational measures are crucial to ensure the security of personal data, the EDPS welcomes these provisions of the draft Implementing Regulation.

2.4. Data storage

17. The draft Implementing Regulation specifies that competent authorities and the Commission shall only retain personal data as necessary to achieve the purposes listed in Article 18, and for a maximum of 10 years from the registering of the personal data in the CBAM registry⁹.
18. In line with the storage limitation principle¹⁰, personal data should be kept in a form which permits the identification of data subjects for no longer than necessary for the purposes for which personal data are processed. The EDPS welcomes that the draft Implementing Regulation recalls this principle¹¹ and additionally provides for a maximum storage duration for personal data in the CBAM registry. The EDPS recommends, however, to further explain (e.g., by way of a recital), why a maximum storage period of 10 years would be necessary to achieve the envisaged purposes (in particular as Article 23(2) of the draft Implementing Regulation explicitly envisages the possibility of longer storage duration in cases where an appeal has been lodged or where court proceedings have begun involving data stored in the CBAM registry).

Brussels,

⁹ Article 23 and Recital 13 of the draft Implementing Regulation.

¹⁰ Article 5(1) (e) of the GDPR.

¹¹ See also Recital 13 of the draft Implementing Regulation.