Response to the EC consultation laying down rules as regards the conditions and procedures related to the status of authorised CBAM declarants

About us

The signatories manage a portfolio of cross-border electricity interconnectors between European Union (EU) Member States, Norway and GB. These assets facilitate the delivery of many billions of pounds of benefits to consumers through lower energy costs, reduced carbon emissions, enhanced security of supply and the integration of renewable forms of electricity generation.

We welcome the EC consultation on the Implementing Act on CBAM declarants' authorisation and the opportunity to respond to it.

The EU and the UK share similar commitments and ambitions for climate neutrality and mitigating climate change, each with its own legally binding target to achieve net zero emissions by 2050. The EU has committed to a legally binding target of at least a 55% reduction in greenhouse gas emissions by 2030 (relative to 1990 levels), whilst the UK has the target of reducing greenhouse gas emissions by at least a 68% by 2030 (relative to 1990 levels) with a view to increasing emission reductions to 81% by 2035. Furthermore, the UK has its own domestic emissions trading system (ETS), the scope and ambition of the UK ETS is broadly aligned with that of the EU. Reducing barriers to energy trade between the UK and the EU, and increasing cooperation between the UK, SEM-GB and continental Europe, as well as unlocking the potential of interconnections across the Channel, the North Sea, and the Irish Sea is vital to achieving net zero objectives for both sides.

In that context, **it is absolutely crucial that the design and implementation of the CBAM does not inadvertently create undue trade barriers and administrative burdens to efficient electricity exchange between the UK and its European partners.**

We would like to recommend the following improvements to the EC proposal for an implementing act for CBAM declarants:

1. **Simplify complex processes and reduce unnecessary administrative and financial obligations:**

The upcoming new Commission has made a commitment to simplify and streamline rules and its ambition is to reduce unnecessary administrative burden by 25% for the new legislative terms. The draft implementing act (IA) on authorising CBAM declarants is describing a complex process and reporting mechanisms with a number of administrative and financial requirements for market participants who will be subject to the CBAM requirements as future importers and declarants. The EC needs to ensure that the rules that will be put in place are not disproportionate and do not add administrative burdens on customers, especially for smaller companies or new entrants to the market.

Most notably, the IA on CBAM declarants in Article 11 puts in place further details on the application for authorisation of future declarants as well as a number of processes and requirements for financial and operational capacity proofs, etc.

In that context, it should be noted also that in particular Electricity Transmission System Operators and Interconnector TSOs are entities with a particular status when it comes to legal obligations for ensuring security of supply and efficient market operations at all times.

With respect to electricity, TSOs are responsible to keep the lights on and to facilitate markets but they are not as such market participants and should not be perceived as energy traders on the market since they do operate in specific circumstances, regulated by European and national legislation, in view of ensuring the balance of the grid and avoiding blackouts. There should not be a need for TSOs to have to prove their financial and operational capacity as described in Article 11 IA. TSOs already have to provide the proof of their financial capacity etc. according to Article 44 of Directive 2019/944 (Directive (EU) 2019/944 of the European Parliament and of the Council of 5 June 2019 on common rules for the internal market for electricity and amending Directive 2012/27/EU (recast)) and for GB Interconnectors respectively according to the GB Electricity Interconnector Standard Licence Conditions requirements. In the case where TSOs fall in scope of the CBAM obligations, there should be a process that ensures automatic recognition of these entities as CBAM declarants to avoid unnecessary administrative burden.

Article 11.3 of the IA stipulates that *'when examining the conditions referred to in paragraph 1 of this Article, the competent authority shall take into account the specific characteristics of the applicant, including the information on the estimated volume of imports provided by the applicant in accordance with Article 5(5), point (g), of Regulation (EU) 2023/956.'*

Article 5.5(g) of the CBAM Regulation sets out the requirements that inter alia, the application for an authorisation shall include the following information about the applicant: *'the estimated monetary value and volume of imports of goods into the customs territory of the Union by type of goods, for the calendar year during which the application is submitted, and for the following calendar year.'*

The issue with this requirement is whether market participants (especially new entry market participants) would be able to estimate import volumes for the next two years. Electricity trade is driven by the market and can vary day to day. In particular, the day ahead market can be volatile due to the dynamic nature of the grid and its components. Electricity demand can fluctuate significantly due to factors such as weather conditions, time of day, and economic activity, making it difficult to accurately forecast how much electricity will be needed. Similarly, the availability of electricity generation can change due to unexpected outages, maintenance schedules, or changes in renewable energy production (e.g., solar and wind generation being dependent on weather). Moreover, electricity trading is done via auctions (explicit auctions for capacity and energy auctions for electricity if they trade their energy volumes via power exchanges). This means the volumes of trade for each market participant can depend and vary based on the respective trading strategies and the market competition at the time of the auctions. All of the above would make it very difficult for market participants to estimate import volumes for future years. We would welcome further clarification on the frequency with which electricity importers are permitted to update their estimated values after submission.

Moreover, we would like to point out that the requirements in Article 5.5(f) of the CBAM Regulation as below could be potentially quite difficult to fulfil in certain cases, i.e. point '(f) regarding information necessary to demonstrate the applicant's financial and operational capacity to fulfil its obligations under this Regulation and, if decided by the competent authority on the basis of a risk assessment, supporting documents confirming that information, such as the profit and loss account and the balance sheet for up to the last three financial years for which the accounts were closed.'

The issue here is whether newer customers would be able to demonstrate the three-year financial statement obligations. Newly established companies may not have had three years of financial records to meet the legislative requirements. The guarantees will create a financial barrier to entry for smaller customers, on top of other fees and collateral requirements needed to trade electricity.

Further amendments of Articles 5.5 (f) and (g) to provide the necessary flexibility for all types of market participants in electricity markets would be beneficial as otherwise it would create additional barriers for market participants/customers (especially new market entries) to be able to set up as an authorised CBAM declarant.

2. **Provide timely clarification on the requirements for guarantees and CBAM certificates**

The CBAM Regulation asks the competent authority to require a guarantee if the CBAM declarant applicant was not established throughout the 2 financial years preceding the year when the application was submitted.

First, the guarantees could create a financial barrier to entry for smaller market participants, on top of other fees and collateral requirements needed to trade electricity. This could have potentially serious negative impacts on market liquidity. Particularly, Article 15(2) provides that the guarantee must cover the estimated obligation of CBAM certificates based on the imported goods. Given the nature of the electricity market, where volumes and prices can fluctuate significantly, the calculation of estimated obligations may not always align with actual import volumes. This could prevent new entry applicants into the market due to the provision of a guarantee and their role in covering estimated obligation of CBAM certificates, therefore creating another barrier to trade. Second, the EC is working on technical studies that should provide further clarity for third countries to apply the CBAM for electricity e.g. on electricity as a CBAM good, on the carbon price paid in third countries and on default values amongst others. However, according to the latest expert group meeting that took place in November 2024, these studies will come out very late in time and some might not even be finalised in time for the CBAM financial start (1 January 2026). The same applies with regards to implementing acts that have been postponed e.g. the implementing act on carbon price and price certificates (Q4/2025).

Because of uncertainties on how emissions will be taken into account for electricity, it will be challenging, if not impossible, for customers importing electricity to have clarity on how many CBAM certificates they will need to buy in advance and, in case they need a guarantee, to have this guarantee at a "level sufficient to cover the number of CBAM certificates (…) they would have to surrender" (Article 15 of the IA).

3. **Ensure that reporting requirements are fit for purpose for the electricity sector: netting of interconnectors capacities in different timeframes and scales should be allowed to avoid importers having to pay for CBAM on volumes that have not been physically delivered into the EU**

According to the GB Electricity Interconnector Standard Licence Conditions[1] (condition 11A(3)(a)), GB interconnectors are required to maximise their available interconnector capacity, which includes '*the netting of capacity of any power flow in the opposite direction over the interconnector.*'

[1] Electricity Interconnector Standard Licence Conditions 03 08 2021 (ofgem.gov.uk)

This means that during a given settlement period, customer requests to import electricity into an EU country from GB must be offset against customer requests to flow in the opposite direction.[2]

However, as per Article 8 of the (IA) on authorising CBAM declarants, and Article 5(4) of the CBAM Regulation, it is unclear whether an importer's CBAM liabilities will be based on the pre-netted position (i.e., all nominated flows on an interconnector that would export power into the EU) or the final net-position on the interconnector (i.e., only the power which is physically exported to EU Member States).

This creates significant issues that need to be resolved such as inter alia:

- If an importer's CBAM liabilities will be based on the pre-netted position (i.e., all nominated flows on an interconnector that would export power into the EU), this means that due to the way electricity trading and netting on interconnectors works, the importer may become liable for quantities of electricity imports which may not have been imported in the end due to real-time outcomes.
- Netting should be applied on the hourly resolution per market participant across the three timescales that are being traded on the interconnector in order to avoid importers having to pay for CBAM on the volumes that have not been physically delivered into EU due to changing positions prior to delivery.
- Article 8 of the IA should therefore be amended to clarify the conditions for netting of interconnector capacities and to clarify that only volumes after netting should be subject to CBAM reporting in order to avoid importers having to pay for CBAM on the volumes that have not been physically delivered into EU due to changing positions prior to delivery (See in the Annex a more detailed explanation).

Annex: In simple terms, how netting works in practice:

Customers can buy capacity on the interconnectors across 3 timeframes: Long-Term (auctions from 2 years ahead and up to a month/week before delivery), Day-Ahead (auctions on the day before delivery) and Intraday for within day delivery. Capacity is sold separately for each direction of a border (e.g.: BE to GB or GB to BE on the Nemo Link Interconnector).

After a customer has won capacity in an auction, they will have the option of nominating their capacity. If a customer buys capacity but then later decides not to nominate, there will be no physical flow as a result of the capacity sale for that particular customer. If they do wish to nominate, they can do so for their capacity they bought from different timeframes. Each timeframe has its own nomination deadlines and therefore there are separate nomination gates for Long-Term (LT), Day Ahead (DA) and Intraday (ID) process. For an example, a customer nominated 100 MW of their Long-Term capacity for direction BE à GB for a certain delivery hour of the day (this process takes place on the day before delivery), then on the delivery day, subsequently nominated 150MW of their Intraday capacity for direction GB à BE for the same hour. This would then result in a net position of 50 MW final nominations GB à BE for this customer. The customer would then need to ensure that they also

[2] For example, a request to flow 250MW from GB to FR would be offset against requests to flow electricity in the opposite direction during the same settlement period (100MW from FR to GB), determining the overall net-position and direction of the flow on the interconnector (net 150MW GB to FR direction).

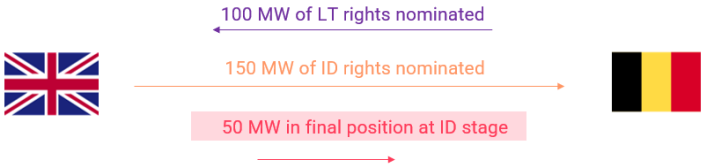
secured the electricity in both markets to deliver their final position that had been nominated on the Nemo Link interconnector.

As a result of the netting process, a customer should be subject to CBAM obligations for the 50MW of import from GB to BE only and not for the 150MW that they nominated for the intraday timeframe in the GB to BE direction due to the nominations in the opposite direction that they already made for the Long-Term timeframe.

EXAMPLE: Customer A nominates for the **same delivery hour** 09:00-10:00 CET day D in two different timeframes

- 100 MW of their Long-Term (LT) rights from BE to GB (at gate closure on day D-1) and
- 150 MW of their Intraday (ID) rights from GB to BE (at gate closure on day D),

→ results in their netted flow of 50 MW GB→BE as their final position (before losses applied).



We remain available for discussion in case of further questions. Please do not hesitate to contact Stela Nenova at <stela.nenova@nationalgrid.com>