Carbon border adjustment mechanism (CBAM) – authorising CBAM declarants

Response to public consultation by Elia Group:

As Transmission System Operator (TSO) for electricity, active in both Belgium and Germany, we would like to elaborate on the particular situation with which TSOs are confronted via the current CBAM regulation:

- With respect to **electricity,** we are a regulated entity responsible to built, maintain and operate the high-voltage grid in the interest of society in order to keep the lights on. Therefore we should not be perceived as an energy trader.. We assess that the CBAM declarant obligations for electricity would be a disproportionate measure for the TSO to comply with, especially considering the very limited volumes of electricity concerned. Please find attached the arguments provided bilaterally to the European Commission on 14 November 2024 on behalf of our European association, ENTSO-E.

- With respect to the **other commodity goods** in scope of CBAM, we would like to provide you with specific feedback regarding article 11 of the implementing act, subject to public consultation. Article 11 defines the conditions for financial and operational capacity but does not make any linkage with the requirements from the operators already in place. Considering the ambition of the EU Commission to reduce unnecessary administrative burden by 25% for the next legislative term, we do not see why TSOs should have to proof 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 Art 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)). A further simplification is needed to avoid unnecessary administrative burden.

We trust the new European Commission would be willing to take above and attached contribution into consideration.

In general terms, the given deadline for feedback was quite short while many legal questions remain and could not all be captured in this consultation. Therefore, we would highly appreciate providing further guidance with support from the European Association for TSOs to fully capture the societal role of TSOs, the complexity of the electricity market(s) and the regulatory requirements TSOs need to fulfill.

1. Role of TSOs and related activities under CBAM

A) Emergency Assistance Agreements – Background info

In the context of their electricity interconnectors with other countries, including third countries, (e.g., the UK), TSOs may need "services" from their counterpart (i.e., the TSO or TSOs in the other country) to address congestion or balancing issues. These services agreements are not contracted with market players, but they are negotiated bilaterally between two TSOs.

Emergency Assistance (EA) is an emergency mechanism, activated manually by System Operators to secure the electricity networkand with no market impact. EA mechanisms can be activated in various situations:

Nearby network congestion[1]	when a congestion appears in real-time or close to real-time in our security analysis and requires a reduction of exchanges on a particular interconnection, the EA can be activated on that cable to solve the constraint.
Real-time balancing	when the contribution of a TSO to the imbalance of a synchronous area[2] is too high, EA can be activated. The EA offers are cross-classified in price but price is not the only criteria. In terms of priority, first is the availability of the EA, then if EA activation could create congestion and finally the price of this activation.
Real-time margin calculation	if the production available in less than 15 minutes is insufficient to cope with a major incident, EA can be activated. The criteria to determine which EA will be activated is the same than for the previous point (availability, no creation of congestions if activated, price).

1. Role of TSOs and related activities under CBAM

A) Emergency Assistance Agreements – Background info

EA volumes are validated at the earliest on H-1, i.e. after the market closes. The Emergency Assistance mechanism is only activated during the TSO's operational window, i.e. during the neutralisation period for players, to give the market as much chance as possible to resolve the problem on its own. Such services are therefore used very close to real time and have an emergency nature and are therefore not intended to be auctioned, but only to react to a factual situation.

The availability of assistance deliveries, including from third countries, is not only important for ensuring the safe operation of national electricity systems, but also the EU's interconnected electricity system. Even though the amounts of electricity imported via this mechanism may be negligible compared to the volumes of electricity generated and consumed in the EU, they can prevent blackouts as they are provided in critical places at critical times.

In conclusion, EA Mechanism participates in inter-state solidarity in emergency situations where the safety of the electricity system and the public service mission of the TSOs are endangered.

1. Role of TSOs and related activities under CBAM

A) Emergency Assistance Agreements – exemption from the CBAM Regulation

Emergency Assistance Agreements should not fall under the scope of the CBAM Regulation:

1. (Technical) nominations

EA does not use nominations in the same way as market players, in this case TSOs make (technical) nominations. EA is not carried out via exchanges or market players and is operated directly by the TSO in the control rooms. The volume required for the EA is determined directly with the other TSO, after which it is compensated directly. The prices of the EA are described in agreements and defined bilaterally. This manoeuvre is therefore transparentfor market players (e.g. no intervention on capacity purchases).

2. No risk of carbon leakage

As per Article 1(1), the CBAM Regulation aims to prevent the risk of carbon leakage[3], thereby reducing global carbon emissions. The inclusion of electricity trade in CBAM is justified by the fact that generation of electricity produces a significant portion of anthropogeniccarbon dioxide, and there is a risk of carbon leakage. However, TSOs are not guided by economic considerationswhen providing EA, but by system safety circumstances in a first place. Indeed, the price of the EA offers is not the primary criterion for selecting them, since the availabilityof the EA is weighed first, followed by the risk of creating congestion with its activation. Exempting EA from the scope of the CBAM regulation would therefore not create a risk of carbon leakage, since TSOs do not base the selection of these offers on purely economic criteria. Furthermore, exempting EA from CBAM would not consist a risk for carbon leakage because EA is activated very sporadicallyand represents only limited use per year, in terms of frequency and volume of MWh.

3. Definition of "importation"

As per Article 2(1), the CBAM Regulation applies to the importation into the customs territory of the Union of certain goods originating in a third country. The definition of "importation" provided by Article 3(4) refers to the "*release for free circulation as provided for in Article 201 of Regulation (EU) No 952/2013*". Article 201 of the Regulation (EU) No 952/2013 says that "(…) *goods intended to be put on the Union market or intended for private use or consumption within the customs territory of the Union shall be placed under release for free circulation*".
This means that importation under the CBAM shall concern electricity intended to be put on the market or for private use or consumption. In the case of EA agreements, the exchange of electricity is not intendedto be put on the market, but above all serves to ensure the security of the electricity system in the EU.

4. Complex administrative process

The complex administrative process for CBAM clearing, especially the necessity to secure specific volumes of CBAM certificates in advance, is not feasible for urgent electricity exchanges. It is because their precise timing and volumes is known only very shortly in advance. If transmission system operators' assistance is not exempted from CBAM, it will most probablybe prevented in practice, as the process will pose too much regulatory risk for the engaged parties. Leaving CBAM unchanged in this regard could therefore increase the risk of blackouts in the interconnectedelectricity systems.

1. Role of TSOs and related activities under CBAM

B) Intended/unintended exchanges of energy under SAFA- Background info

Continental Europe Synchronous Area Framework Agreement (SAFA)

The scope of SAFA is to provide a legal framework for the operation of the interconnected grids by the TSOs of the Synchronous Area of Continental Europe[4] through compliance with the methodologies, conditions and values adopted in line with Article 6 of the System Operation Guideline (SO GL) and the Network Code on Electricity Emergency and Restoration (NC ER).

Also, the SAFA provides a legal framework for the settlement rules for the intended and unintended exchange of energy pursuant to Article 50(3) and Article 51(1) of Electricity Balancing Guideline (EB GL).

Due to the due to the physical nature of an interconnected network, there are unavoidably deviations between the intended/planned exchange and the actual physical flow. These deviations, which are indeed determined as the difference between the physical changes and the scheduled changes, are referred to as unintended exchange.

There are three different components of these deviations:

frequency containment process energy (FCP energy)	results from the activation of FCR across the synchronous area and it is an intended component
ramping period energy (RPE)	results from the application of ramps to the scheduled exchanges and it is also an intended component
third component, corresponding to the residual amount	is the actual unintended exchange

1. Role of TSOs and related activities under CBAM

B) Intended/unintended exchanges of energy under SAFA– exemption from the CBAM Regulation

Intended/unintended exchanges under SAFA should not fall under the scope of the CBAM Regulation:

1. Unintended and unplanned exchange

Regarding the third component of deviations between the intended/planned exchange and the actual physical flow in the interconnected network, this component is a residual amount, which comes from unintended and unplanned exchange. This specific component should be excluded from the scope of the CBAM Regulation since it is subject to the laws of physics rather than legal regulations.

2. No risk of carbon leakage

The argument already provided for the EA agreements is as well valid in the case of the exchange of energy under the SAFA

3. Definition of "importation"

The argument already provided for the EA agreements is as well valid in the case of the exchange of energy under the SAFA.
In particular, in the case of exchanges under SAFA, these are energy flows that no one has the intention to obtain as such, but simply happen as result of traffic in the Continental Europe Synchronous Area.

4. Complex administrative process

The argument already provided for the EA agreements is as well valid in the case of the exchange of energy under the SAFA

About Elia Group

One of Europe's top five TSOs

Elia Group is a key player in electricity transmission. We ensure that production and consumption are balanced around the clock, supplying 30 million end users with electricity. Through our subsidiaries in Belgium (Elia) and the north and east of Germany (50Hertz), we operate 19,460.5 km of high-voltage connections, meaning that we are one of Europe's top 5 transmission system operators. With a reliability level of 99.99%, we provide society with a robust power grid, which is important for socioeconomic prosperity. We also aspire to be a catalyst for a successful energy transition, helping to establish a reliable, sustainable and affordable energy system.

We are making the energy transition happen

By expanding international high-voltage connections and incorporating ever-increasing amounts of renewable energy into our grid, we are promoting both the integration of the European energy market and the decarbonisation of society. We also continuously optimise our operational systems and develop new market products so that new technologies and market parties can access our grid, thus further facilitating the energy transition.

In the interest of society

As a key player in the energy system, Elia Group is committed to working in the interest of society. We are responding to the rapid increase in renewable energy by constantly adapting our transmission grid. We also ensure that investments are made on time and within budget, with a maximum focus on safety. In carrying out our projects, we manage stakeholders proactively by establishing two-way communication channels between all relevant parties very early on in the development process. We also offer our expertise to different players across the sector in order to build the energy system of the future.

International focus

In addition to its activities as a transmission system operator, Elia Group provides consulting services to international customers through its subsidiary Elia Grid International. In recent years, the Group has launched new non-regulated activities such as re.alto - the first European marketplace for the exchange of energy data via standardised energy APIs - and WindGrid, a subsidiary which will continue to expand the Group's overseas activities, contributing to the development of offshore electricity grids in Europe and beyond.

The legal entity Elia Group is a listed company whose core shareholder is the municipal holding

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