EFET European Federation of Energy Traders

EFET Legal Committee Meeting
21 September 2023, London

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DAY 1: MEETING AGENDA

1. Opening and introduction to agenda; approval of the A&D list from the previous Legal Committee meeting held in Amsterdam (1 - 2 June 2023) – Michaela Duve, EFET
2. Report from the EFET board meeting and update on the EFET initiatives – Mark Copley, EFET
3. EU carbon border adjustment mechanism (CBAM) and its implications for energy traders – Maria Popova, EFET; Richard Stokes, EDF Trading & Peter McIntyre, EDF Trading
4. EFET Templates Development and Maintenance WG – reports on various initiatives
   - Review of the EFET General Agreements: presentation of the survey results, discussion and next steps – Michaela Duve, EFET
   - AVB Appendix: drafting approach and discussion – Aygul Adamson, EFET and Cristina Ludena, CFLudena
   - Termination of the Zeebrugge Appendix: published bilateral change letter and open EDRS ratification – Aygul Adamson, EFET
   - Update of the EMIR Risk Mitigation Technique Agreement – Sonia Auguscik, EFET

1. Welcome and introduction, approval of the A&D list

Opening by Michaela Duve, EFET

2. EFET board meeting and update on the EFET initiatives

Report by Mark Copley, EFET

3. CBAM – implications for energy traders

Presentation by Maria Popova, EFET; Richard Stokes and Peter McIntyre, EDF Trading

EU CBAM - overview

- **Part of the Fit-for-55 package**

- **Stated objectives:**
  - Address carbon leakage
  - Remove the need for carbon leakage measures under the EU ETS
  - Promote decarbonisation in third countries

- **Scope:** includes **electricity** and **hydrogen**, in addition to other sectors such as iron and steel, cement, fertilisers, and aluminium

EU CBAM - overview

- **Transitional period (October 2023 – December 2025)**
    - Registration requirement
    - Requirement to report imported volumes and associated emissions
- **Full implementation (from January 2026 onwards)**
    - Requirement to submit declarations of embedded emissions in imported goods and surrender CBAM certificates corresponding to those emissions

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Adoption and implementation timeline

16/17 May 2023
CBAM publication in the EU OJ/ Entry into force

17 August 2023
Implementing Regulation with rules for the transitional period and additional guidance published

NOW

1 October 2023
Start of CBAM transitional period (reporting requirements only)

31 January 2024
First reports due, covering Q4 2023

1 January 2026
Full CBAM starts applying (requirement to declare embedded emissions and surrender corresponding CBAM certificates)

31 May 2027
Deadline for declaring embedded emissions and surrendering corresponding CBAM certificates for the year 2026

Who?

- **Importer** - the person lodging a customs declaration; the person to whom capacity is allocated for import and who nominates that capacity

Market participant or indirect customs representative

Competent authority in the Member State where the customs declaration has been lodged

Registration in CBAM Registry as CBAM declarant

What?

- Report/ declare **imports**, measured per border for time periods no longer than one hour; no deduction of export or transit in the same hour possible

- Report/ declare **embedded emissions**
  - default values (CBAM Annex IV, 4.2)
  - actual emissions (criteria apply – CBAM Annex IV, 5)

- Surrender **CBAM certificates** (following applicable deductions, e.g., to account for carbon price paid in country of origin)

- Provide copies of **verification reports** issued by accredited verifiers

When?

- **Transitional period:** reporting of embedded emissions with quarterly reports due a month after the end of each quarter, starting with 31 January 2024 for Q4 2023 and ending on 31 January 2026 for Q4 2025

- **Full implementation:** declaration of embedded emissions and surrender of corresponding CBAM certificates by 31 May of each year, starting in 2027

Available exemptions

- **Full exemption (Art 2(6)):**
  For countries that are either part of the EU ETS (e.g., Norway) or that have an ETS system linked to the EU ETS (e.g., Switzerland)

- **Exemption for electricity imports only (Art. 2(7)):**
  For countries with electricity markets integrated with the EU market through market coupling (potentially - the Energy Community Contracting Parties)
  - Requirements for the exemption include setting up an ETS for electricity by 2030 with a price equivalent to the EU ETS; implementing into domestic legislation EU legislation on electricity markets, renewables, competition and the environment

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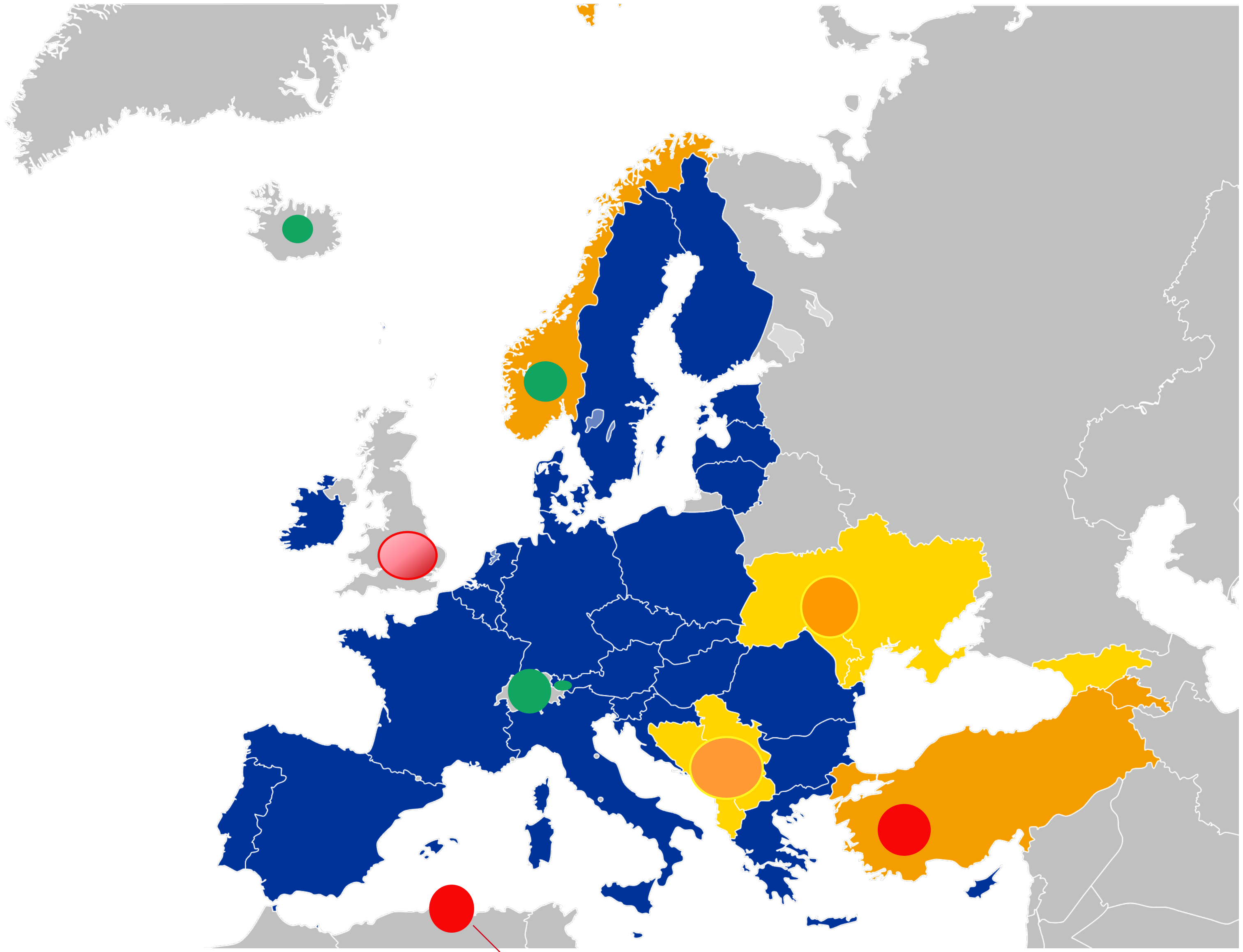
- Also available: Possibility for an **agreement** taking into account the carbon pricing regime of a third country for the purposes of Art. 9 (Art. 2(12))

Implications for EU neighbours



- Exempted via EU ETS participation / linking
- Exemption for electricity imports only <u>may</u> apply
- Full application

Implications for energy traders

Our focus is on electricity imports

- General issues

  - Increased administrative burden
  - Increased transaction costs
  - Increased uncertainty and difficulty of predicting costs

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Electricity imports from the UK

- As things stand at the moment: full application
- Alternatives to full application:
  - Exemption following linking of UK and EU ETSs
  - Market coupling exemption
  - Bilateral agreement taking into account the UK carbon pricing regime for the purposes of Art. 9
- Current state of discussions: all options on the table, no clear direction

Key issue:

- Requirement to present documentation on CO_2 price paid in country of origin to obtain a CBAM discount -> risk of having to pay twice a CO_2 price (for renewable electricity – having to pay a CO_2 price)

Electricity imports from the Energy Community Contracting Parties

- Alternatives to full application:
  - Market coupling exemption
- Complexity of implementing CBAM in the case of market coupling
  -> risk that the Commission may decide to take a country out of market coupling
- Current state of discussions: ongoing; high degree of uncertainty around meeting the conditions for an exemption in the set timelines

Key issues:

- Uncertainty around progress with further market integration
- Risk of fragmentation of the WB6 markets

Transitional period – some open issues

- For non-EU importers – would a separate indirect customs representative be needed for each border, or can a central one be used?
- When the interconnector operator submits customs declarations on behalf of an importer (e.g., NL), would that be a problem for CBAM reporting by an authorised declarant?
- For indirect customs representatives – what is their liability? Are they protected sufficiently under existing commercial contracts?
- What would be the methodology for calculating default values and what values will apply as of the start of the transitional period?
- How are imported volumes to be determined? Final DA+ID nominations? How about accounting for actual flows following interconnector netting and accounting for technical losses?
- How shall electricity originating in the EU and transiting through a third country to be imported back into the EU be treated?

Post- transitional period – prospects for exemptions and accounting for CO_2 price paid (or not due)

- Exemptions for the Energy Community Contracting Parties?
- Exemption or bilateral agreement for the UK?
- How to provide documentation on CO_2 price paid in a third country to claim a CBAM discount when electricity is traded on anonymised exchanges and traded multiple times before being exported (also considering that some of it would be from renewable sources)?

Other open issues

- Implementation with respect to GB-NO border?
- Implementation with respect to GB-SEM border?
- Impact on renewables growth in third countries?
- Impact on offshore hybrid assets in the North Seas?

Next steps and planned EFET actions

- UK
  - Continuing bilateral discussions with the DESNZ and the Commission to ensure the prompt adoption of one of the three options for a meaningful way forward
- Energy Community
  - Continuing discussions with the Commission
  - Engaging with local authorities to highlight the risks and explain the importance of meeting the requirements for an exemption
  - Collaborating with the Energy Community Secretariat to highlight the risks to further market integration
- Transitional period
  - Clarifying remaining implementation questions with the Commission asap

Useful sources of information

- The Commission website, which includes all relevant documentation: Carbon Border Adjustment Mechanism (europa.eu)

- Webinar on CBAM implementation for electricity only – 28 September; registration required, see here

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Questions, comments, concerns?

4. EFET Templates Development and Maintenance WG

- Review of the EFET General Agreements: presentation of the survey results, discussion and next steps – Michaela Duve, EFET
- AVB Appendix: drafting approach and discussion – Aygul Adamson, EFET and Cristina Ludena, CFLudena
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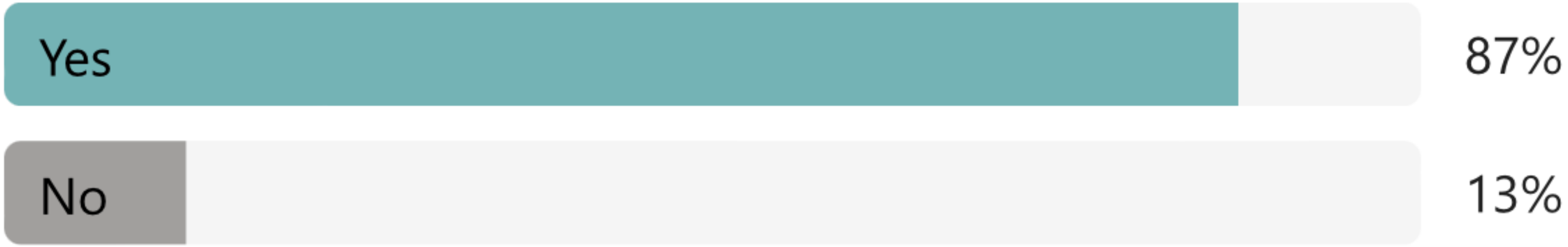
Revision of the General Agreements – Result Poll

Report by Michaela Duve, EFET

Q1: Does the Member Companies support the need for a revision of the General Agreements?

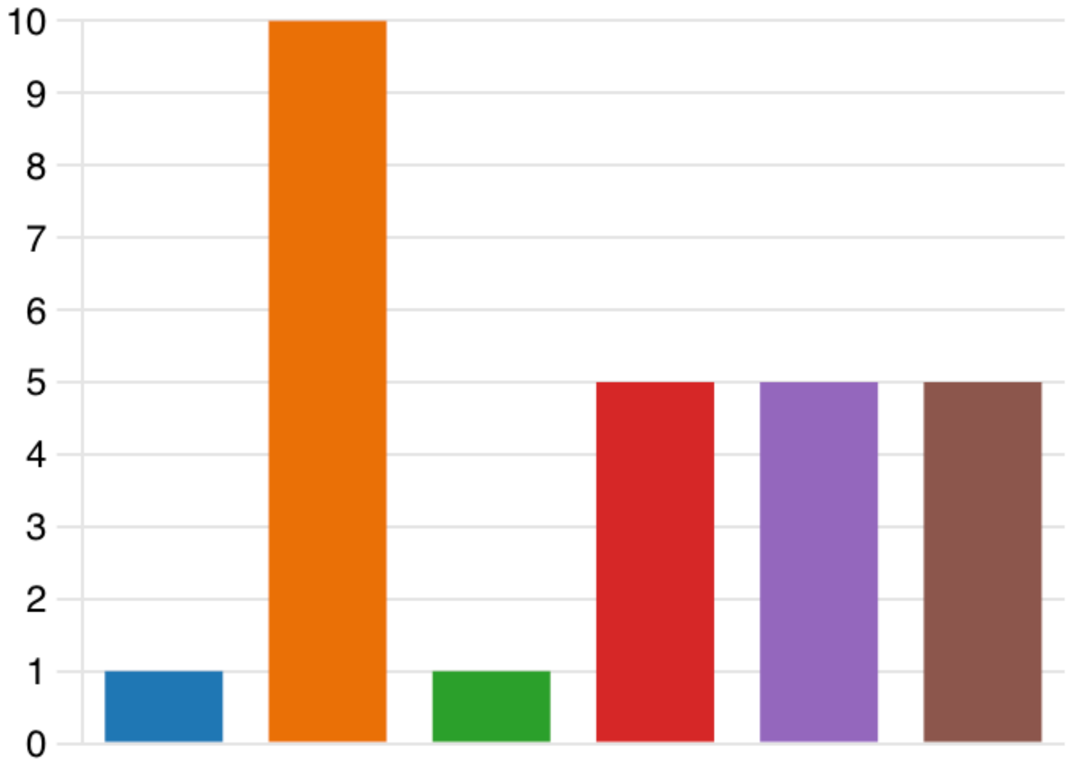


Q2: Please indicate the scope of the revision of the General Arrangements

XS: Incorporation of amendments published by EFET (e.g. VAT, Trade Restriction, IBOR) and correction of spelling errors (e.g. EFET Power: TWN definition).
S: Everything under XS plus certain clauses that are established in the market (e.g. set-off clause, Default under Specified Transaction, Change of Control).
M: Everything under S plus clarification when payment is made, development of some additional clauses (multi-branch, agency, §15.4 - default Fallback Mechanism)
L: Everything under M plus development of compliance clauses (e.g. AML, ABC, EGS, GDPR) or placeholders for corresponding clauses, development of a floating price convention, review of §15 in the light of the MCM)
XL: Everything under L plus revision of all other clauses of the General Agreements in respect of which requests for change have been formulated by member companies.
Other

Results

- XS: Incorporation of amendmen... 1
- S: Everything under XS plus cert... 10
- M: Everything under S plus clarif... 1
- L: Everything under M plus deve... 5
- XL: Everything under L plus revis... 5
- Sonstiges 5



Q3: Several clauses of the Electricity and Gas General Agreements deviate from each other. In the past, working groups have confirmed these divergences. Are Members in favour of reconsidering the alignment of the General Agreements?

Yes	16
No	3
Abstain	8

Q4: Should the EFET LC Secretariat support the implementation of the revised templates by publishing a Ratification Letter and/or an Change Letter?

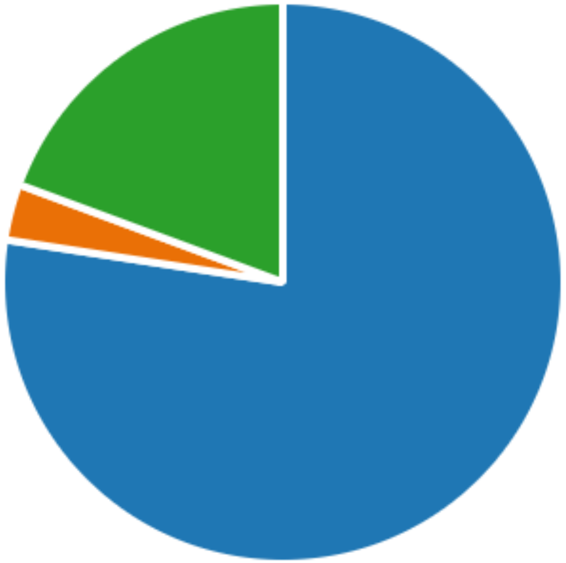
Yes	5
No	7
Maybe	6
To be decided later	13

Q5: Does the Member Companies support the revision of the Credit Support Annex to the EFET General Agreement?

Yes	15
No	16

Q6: Would Member Companies support the development of an EFET library of example clauses?

Yes	24
No	1
Maybe	6



Next steps

Members allocated immediate three (3) tasks

Invitation to all members of WG Templates Development and Maintenance for the second meeting in early October;

Structure of work and time frame possible set-up of Task Forces

AVB Appendix: drafting approach and discussion

Report by Aygul Adamson, EFET and Cristina Ludena, CFLudena

AVB Appendix for Spain

- EFET currently covers only PVB and TVB
- IGG (Iberian Gas Group) members approached on their willingness to use EFET documentation for AVB trading instead of *Acuerdo Marco*
- Membership survey on drafting options over summer: clear preference for standalone EFET AVB Appendix
- Draft circulated for comments to dedicated Task Force (23.08-20.09) – focus points:
  - *Remedies for Failure to Deliver or Accept the Contract Quantity*
  - *Payment cycle for AVB transactions*
- Comments from Endesa, CCI, ENI and RWE
- Next steps: circulation of revised draft, completion of drafting subject to final feedback and LC endorsement

Regulatory Update – New Regulation relevant to AVB

- **CNMC Access Circular 8/2019 (23 December 2019)**

- **CNMC Balancing Circular 2/2020 (9 January 2020)**

  - **CNMC Resolution 1 July 2020 approving the methodology for calculating daily imbalance rates and the procedure for settling user imbalances as well as balancing actions and management of imbalances by the technical manager of the system, amended on 24 Mar 2022**

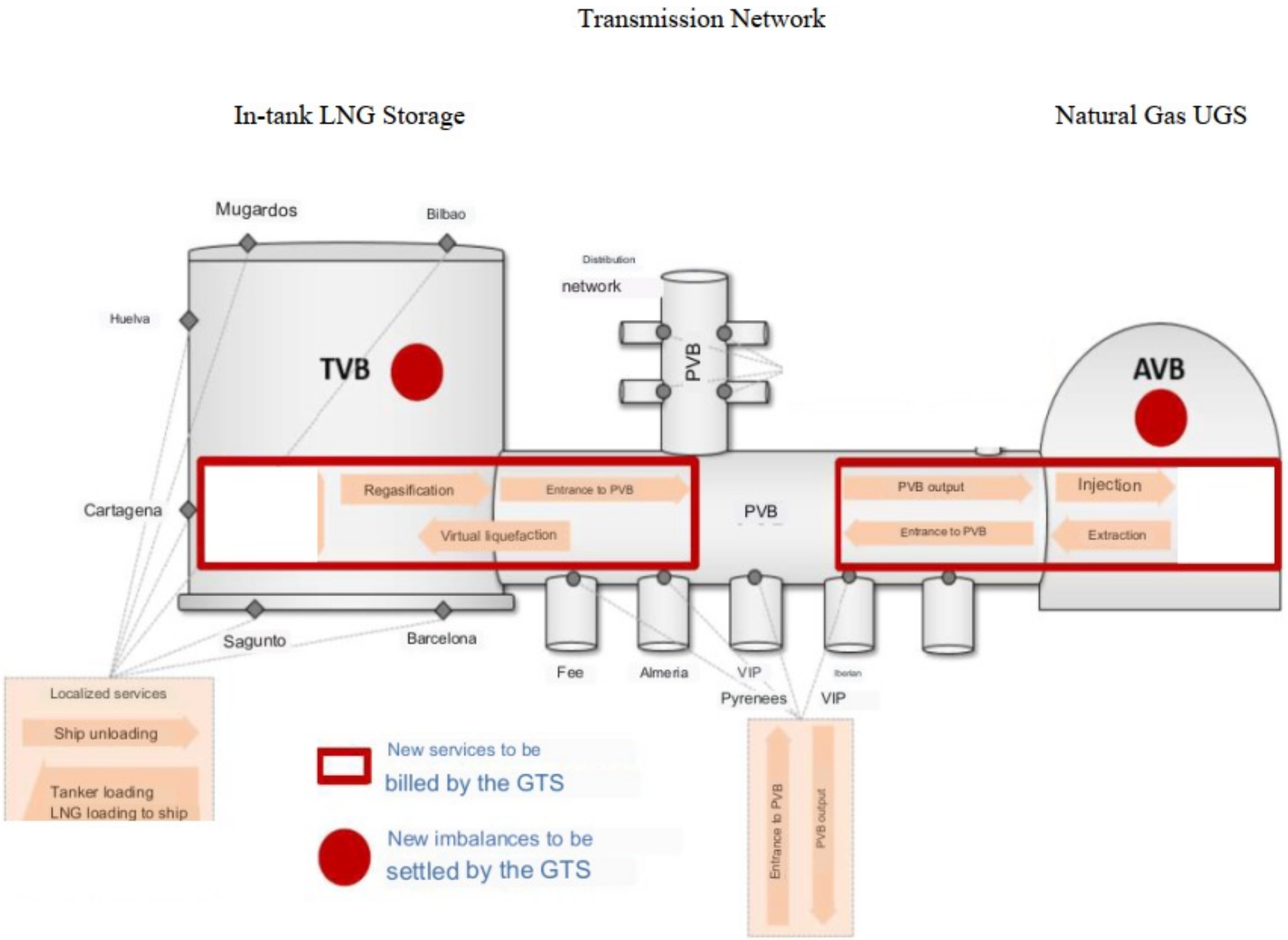
  - **CNMC Resolution 10 November 2022 approving the NGTS (Rules for Technical Management of the System) pertaining to programming, nominations, allocations, balancing, the management and use of international connections and self-consumption.**

Regulatory Update – Spanish Gas System

Source- Enagas

Regulatory Update – TVB / PVB / AVB

Source- Enagas



Regulatory Update – New Regulation

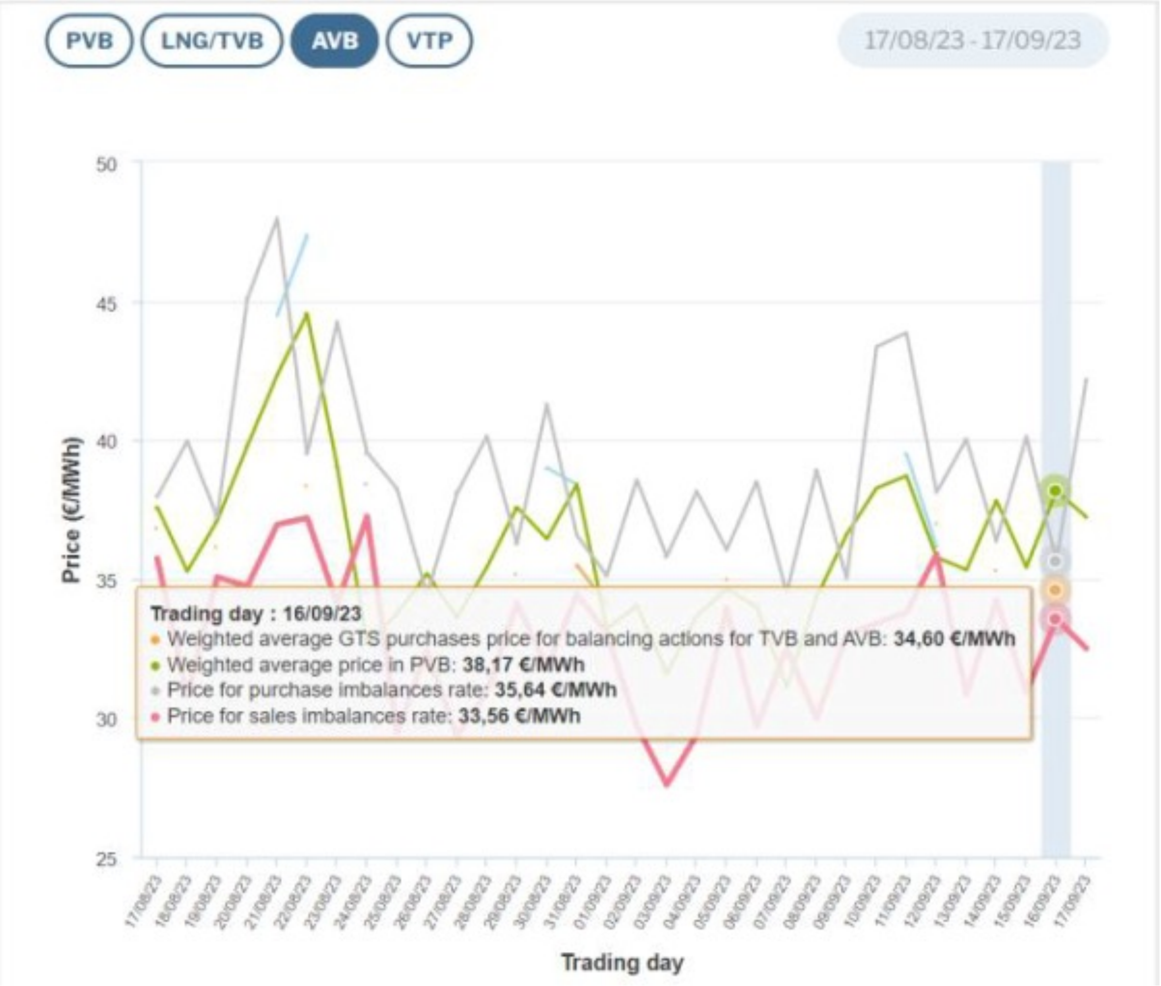
- Geopolitical events occurring since end of 2021:
  - reduction of pipeline gas import from Algeria to Spain to 23.9% (traditionally accounted for more of 50% of Spanish imports)
  - Ukranian war and cut-off of Russian gas supply (but not LNG supply)
- EU Regulation (UE)2022/1032 mandate that USG storage use should reach 80% in 2022 and 90% in 2023.
- There is more need to store product for Spain own consumption but also to export gas/LNG to the rest of EU (last year pipeline export via France reached a record high of 35 TWh and LNG reexport 25 TWh to DE/IT).
- Volume of USG utilisation has gone up to more than 80% in 2022 to a record 99% in July 2023, when it has typically been half that volume in prior years.

AVB Appendix– AVB alike PVB

- ✓ title transfers at a virtual trading point inside a virtual balancing area
- ✓ similar rules as PVB/TVB transactions (“lesser rule” does not apply)
- ✓ standardized platform-based daily balancing price calculation, broadly based on:
  - (i) I - weighted average price of Enagas buys/sales, as applicable, of AVB imbalance volumes at balancing platform (+-haircut), or,

    II - in the absence of actual sales/buys by Enagas, the PVB daily weighted average price (+-haircut),
  - (ii) plus, the value of the applicable tariffs required to withdraw the excess NG, if positive imbalance, or the tariff required to inject the shortfall natural gas from PVB to AVB, if negative imbalance;
- ✓ daily correction of imbalance position to zero at end of gas day
- ✓ negligible physical risk
- ✓ no off-spec issues

Appendix– AVB Imbalance price Source: www.mibgas.es



Regulatory Update – Imbalances at AVB since 1 October 2020

Negative imbalances

1. TVB imbalance buy price <u>with correction of negative inventory to "0"</u>

Positive imbalances

1. TVB imbalance sell price <u>with correction of positive inventory to "0"</u>
2. "new capacity contract", if capacity available, at the then applicable storage tariff multiplied by two!

2. Clause 8.1.6 and 8.1.7 in Annex 1- Defined Terms

“Negative Imbalance Price “and “Positive Imbalance Price” cross refer to article 8.7 of the Balancing Circular 2/2020, as amended

Exception:

For positive imbalances, the regulation provides that if there is capacity available at AVB, there will be a new capacity contract created in respect of, some or all, the imbalance excess volume, depending on capacity available.

“new capacity contract” is flexibility, hence it is discarded for purpose of calculating the applicable imbalance charges so that the same formula applies to any party to an standard EFET AVB Appendix, as applicable.

1. Clause 7: Invoicing and Payment

DUE DATE

AVB gas consists of discrete single deliveries with significant contract quantity, market standard payment period is shorter

Two options:

1) Option A, M+1 pipeline natural gas payment terms and

2) Option B, 10 Business Days after delivery

with Option B being the default option

1. Clause 7: Invoicing and Payment (continued)

NO CROSS- PRODUCT PAYMENT NETTING

- Natural gas at AVB is same commodity as EFET's pipeline natural gas but stored in UGS
- No legal need of cross-product payment netting election as payments due on the same date, same currency, across EFET and AVB transactions will be netted pursuant to section 13 of the EFET

Termination of the Zeebrugge Appendix

Report by Aygul Adamson, EFET

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Progress Report

- Merger of the ZTP Physical point with the ZTP Notional point => ZTP Trading Services (new merged single point)
- EFET will cease to publish Zeebrugge Appendix (version 1.0, December 2017) with effect from 1 October 2023
- (i) Change Letter to terminate the existing Appendices and move Zeebrugge Hub trades to the General Agreement level ; (ii) Equivalent ERDS Ratification Letter (both available as of 05.09.2023)
- Impact on pricing of legacy trades with the delivery post 1 October 2023 based on the Zeebrugge Hub Price → no need for replacement / interim prices (in coordination with LEBA/ Griffin)

Update of the EMIR Risk Mitigation Technique Agreement

Report by Sonia Auguscik, EFET

- **EMIR REFIT (Regulation EU 2019/834)** - do we need to revise the EFET standard?
- Updated EFET EMIR RMTA - modifications in §3 of the Election Sheet (counterparty status)
- EFET Templates Development & Maintenance Working Group – **comments by September 22, 2023**
- Do you have any questions? Let us know if you want a Q&A session