EFET NATURAL GAS OPINION

BELGIUM

4 September 2020

Stibbe

CONTENTS

ANNEXES

To: European Federation of Energy Traders ("EFET")

INTRODUCTION AND SCOPE

(A) *Purpose* – EFET has requested our legal opinion regarding certain matters of Belgian law related to the enforceability of close-out netting provisions of the EFET General Agreement Concerning the Delivery and Acceptance of Natural Gas (the **EFET General Agreement**), the validity and enforceability of collateral provided under the EFET Credit Support Annex to the EFET General Agreement (the **EFET Credit Support Annex**) and other related issues as listed in your questionnaire. In Sections 2 to 10 below, we have copied each question asked by EFET in *blue italics*, and set out our legal opinion in respect thereof immediately below each question.

(B) *Documents considered* – For purposes of this legal opinion, we have considered the documents listed in Annex 14.

(C) *Assumptions* – This legal opinion is subject to, and made on the basis of, the general assumptions set out in Annex 2. For purposes of certain specific opinions, we have made specific additional assumptions as set out in Annex 3.

(D) *Addressees and reliance* – This legal opinion is addressed to EFET for the sole benefit of EFET and its members. This legal opinion may not be relied upon by, or disclosed to, any other person or legal entity without our prior written approval. EFET members may make a copy of this legal opinion available to its appropriate regulatory authorities. We do not accept any liability under or in connection with this legal opinion to any person other than EFET and its members.

(E) *Limitations* – This legal opinion is further subject to the limitations set out in Annex 8.

EXECUTIVE SUMMARY

This executive summary does not form part of our opinion and is given for convenience purposes only.

In broad terms, the EFET General Agreement and its close-out netting provisions are effective and enforceable under the laws of Belgium, and the latter remain effective despite the insolvency of a party.

1. In particular: “close-out netting” as envisaged by §§ 10.3, 10.4 *combined with* §11 of the EFET General Agreement as they apply to the Agreements and the Individual Contracts, qualify for protection of their enforceability under the Article 14 Safe Harbour (see section 2.1, page 4-6 and Annex 6).

   Situations may occur where the protection for close-out and/or netting under the Article 14 Safe Harbour would potentially not be available or would only be available if certain additional conditions are met, for example:

   (i) situations where the termination does not actually aim at achieving a netting arrangement, for instance because there is only one outstanding Individual Contract at the time of close, or because all outstanding Individual Contracts each give rise to a Settlement Amount owing from the same Party to the other (see Annex 6, section 1.3, page 37-38);

   (ii) judicial reorganisation proceedings, if the transactions do not meet certain additional conditions (see section 2.1, page 4-5 and Annex 6, section 1.6, page 39-40);

   (iii) certain recovery or resolution measures against certain types of financial institutions such as credit institutions, stockbroking firms, financial holding companies, mixed holding companies and mixed financial holding companies (see section 2.1, page 5-6 and Annex 6, section 1.6, page 39-40);

   (iv) in respect of public law entities that enjoy immunity from enforcement (see Annex 6, section 2, page 40-41); and

   (v) in respect of certain pension funds (see Annex 6, section 1.4, page 38).

2. Both Automatic Termination and non-Automatic Termination are, in principle, enforceable under the same conditions (see section 2.1, page 3-7).

3. There are, with the exception of the judicial reorganization proceedings where some limited reservations apply, in principle no restrictions in the Article 14 Safe Harbour on the types of underlying claims or debts being netted. All types of transactions within the scope of this legal opinion (as listed in Annex 5) are in principle eligible for the Article 14 Safe Harbour (see Annex 6, section 1.5, page 38).

4. Subject to 1. above, the provisions in §11 of the EFET General Agreement providing for the netting of all positive and negative Settlement Amounts in determining the Termination Amount are, in principle, enforceable (see section 2.1, page 7).

OPINIONS

2. ENFORCEABILITY OF CLOSE-OUT NETTING

A general description of limitations applicable to close-out netting in certain cases, and especially in case of the Article 14 Safe Harbour, is set out in Annex 6.

2.1. Winding-up, Insolvency or Attachment

This Section 2.1 (*Winding-up, Insolvency or Attachment*) is subject to additional specific assumptions set out in Annex 3.

A short overview of the relevant insolvency proceedings, laws and terminology applicable to Party A is set out in Annex 7.

When rendering your opinion on the enforceability of close-out netting in the context of an insolvency proceeding, you should discuss whether the termination of the Agreement, the calculation of the Termination Amount or its payment is voidable, challengeable or in any way deletable by a liquidator, receiver or third party or the court. In particular, please clarify whether or not there is a distinction in time with respect to a creditor's rights between: (a) the filing of proceedings seeking a judgment of insolvency; (b) a bankruptcy court recognizing the filing of proceedings seeking a judgment of insolvency; (c) the date on which a bankruptcy court determines a party first becomes insolvent; and (d) any other stage of the proceedings where a creditor's rights may be affected. We are also interested in whether the insolvency law provides for a "safe harbor" for certain contract types and/or entities and whether the contract types listed in Annex 5 and which of the entities listed in Annex 4 would benefit from such provision.

(a) Automatic Termination

(aa) Would you recommend to elect Automatic Termination to apply upon a Material Reason described in § 10.5(c) of the EFET General Agreement or upon other events not specified therein?

There are no compelling legal reasons to choose one over the other (i.e. to elect Automatic Termination or not). Both Automatic Termination and non-Automatic Termination are in principle enforceable, including in case of insolvency proceedings in respect of a party, subject to the same reservations set out in paragraph (bb) below.

In respect of non-Automatic Termination, there is an additional consideration due to a restriction on non-automatic dissolutions with retroactive effect of contracts for the sale of goods. However, this restriction is in our view not relevant to the EFET General Agreement and Individual Contracts thereunder (as discussed in paragraph (b)(bb) below). This additional consideration is therefore not compelling to choose Automatic Termination instead of non-Automatic Termination.

> *If yes, would it be necessary or recommendable to modify the scope of Automatic Termination (e.g., by (i) deleting or modifying some of the events listed in §10.5(c) which would trigger the termination and/or (ii) adding other Material Reasons upon the occurrence of which Automatic Termination should also apply and/or (iii) by limiting those insolvency events specified in §10.5(c) which would trigger the Automatic Termination) or to specify, or to refrain from specifying, a certain grace period as contemplated in §10.5(c)(iv) of the EFET General Agreement?*

We do not recommend modifying the scope of Automatic Termination.

> *If you are recommending that a grace period be made applicable in respect of §10.5(c)(iv), what, in your best estimation is the minimum reasonable period of time required by a party*

whose creditor(s) have instituted an unsubstantiable or otherwise clearly frivolous involuntary bankruptcy proceeding against it in the insolvency courts of your jurisdiction to have that proceeding dismissed or otherwise terminated? If you are recommending that Automatic Termination be made applicable in respect of parties subject to the insolvency laws of your jurisdiction, what is the optimal timing for that Automatic Termination to take effect? Please supply specific language for purposes of customizing §10.4 of the EFET General Agreement to implement your recommendation and the optimal termination timing

We consider a grace period of 14 calendar days in respect of §10.5(c)(iv) to be reasonable and customary in transactions with Belgian counterparties.

We do not recommend any other grace period in respect of the Material Reasons listed in §10.5(c).

(bb) Assuming you recommend Automatic Termination to apply, are the provisions of the EFET General Agreement terminating the EFET General Agreement (including all Individual Contracts) upon the occurrence of a Material Reason described in § 10.5(c) of the EFET General Agreement (adjusted as necessary pursuant to the laws of your jurisdiction) enforceable under the laws of Belgium or is there a risk that the automatic termination could be challenged by a liquidator, receiver or third party?

The provisions of the EFET General Agreement terminating the EFET General Agreement (including all Individual Contracts) upon the occurrence of a Material Reason described in § 10.5(c) of the EFET General Agreement are enforceable under the laws of Belgium, including in case of bankruptcy and judicial reorganisation, except in the circumstances set out below and set out in Annex 6.

Judicial reorganisation. Our opinion with respect to the enforceability of these termination provisions in case of a judicial reorganisation procedure is based on our assessment that these termination provisions benefit from Article 14 Safe Harbour (see Annex 6).

In any other case, the EFET General Agreement (including Individual Contracts) can in principle not be terminated solely on the grounds of the fact that the other party has petitioned for or has been admitted to judicial reorganisation proceedings (Article XX.56 of the Economic Law Code). Although this is not explicitly provided by law, it is understood that the same restriction applies for any step taken as part of such judicial reorganisation procedure (including the approval of a reorganisation plan and a court sanctioned transfer of business). However, termination of a contract due to an actual default of the debtor would still be allowed, even after the petition or admission to judicial reorganisation proceedings by the debtor, except in the circumstances set out below:

- if the relevant actual default has occurred prior to the admission to judicial reorganisation proceedings of the debtor, then such actual default can only serve as grounds for termination during the judicial reorganisation proceedings if (i) the creditor has sent a notice of default to the debtor after the admission to judicial reorganisation proceedings, and (ii) such default has not been remedied by the debtor within 15 days following such notice (Article XX.56, §1, par. 2 Economic Law Code); and

- the creditor may not terminate the contract based on the debtor's "actual default", if the debtor has notified the creditor that it has unilaterally suspended performance of its contractual obligations during the general suspension period determined by the court, provided that such suspension is reasonably required for the reorganisation of the debtor (Article XX.56, §2, par. 4 Economic Law Code).

For these purposes, an "actual default" should be understood as a failure by the debtor to comply with its obligations, such as a Failure to Deliver or a Accept the Contract Quantity referred to in §8 of the EFET General Agreement, or a failure to pay any amount due. The occurrence of certain facts or circumstances that are contractually designated as an (event of) default but do not constitute an actual failure to comply with obligations under the EFET General Agreement or an Individual Agreement (such as the Material Reasons listed in §10.5(b) and (c) of the EFET General Agreement), would not constitute an "actual default" for these purposes.

Recovery and resolution measures in respect of credit institutions, stockbroking firms and their subsidiaries. The EFET General Agreement (including Individual Contracts) cannot be terminated solely on the grounds of the fact that recovery or resolution measures have been applied (as described in Annex 7) (Article 287, §1 Credit Institutions Act).

This restriction applies if Party A is a Belgian credit institution, stockbroking firm or other institution that is subject to Belgian recovery or resolution measures under the Credit Institutions Act (see Annex 7), and their subsidiaries.

This restriction does not restrict termination of the EFET General Agreement (including Individual Contracts) upon an "actual default" of the relevant credit institution, such as a Failure to Deliver or a Accept the Contract Quantity referred to in §8 of the EFET General Agreement, or a failure to pay any amount due, or upon (petition for) bankruptcy proceedings in respect of the relevant credit institution.

This restriction is explicitly designated as an "overriding mandatory provision" referred to in Article 9(1) of the Rome I Regulation (see Section 8), so that it may be applied by the Belgian courts irrespective of the governing law of the EFET General Agreement (Article 287, §3 Credit Institutions Act).[2]

Additionally, the resolution authority may suspend any close-out, termination and netting rights that a party may have against the institutions that may be subject to Belgian resolution measures under the Credit Institutions Act, for a period starting at the time of publication of the decision of the resolution authority, until midnight of the day following the publication (Article 280 Credit Institutions Act). Such suspension does not apply to such agreements with systems or operators of systems designated for purposes of the Settlement Finality Directive (98/26/EG), central counterparties or central banks.

Lastly the mandatory transfer ordered by the resolution authority cannot result in any changes to provisions of agreements in relation to transferred activities, or terminate said agreements, nor authorize any party to terminate them unilaterally, to suspend the execution thereof, to proceed to set-off of claims or debts resulting therefrom or to invoke resolution clauses or acceleration clauses unless because of an act or omission by the credit institution/stockbroking firm prior to the transfer or by the transferee following the transfer.[1] This restriction does not apply to a termination upon (petition for) actual bankruptcy proceedings in respect of the credit institution or stockbroking firm undertaking.

Mandatory transfer of insurance and reinsurance undertakings. In case Article 14 Safe Harbour (see Annex 6) does not apply, if Party A is a Belgian insurance or reinsurance undertaking, the EFET General Agreement (including Individual Contracts) cannot be terminated solely on the grounds of the fact that a mandatory transfer measure (referred to in Annex 7) has been taken in respect of an insurance or reinsurance undertaking (Article 522 Insurance Supervision Act).

This restriction does not apply to a termination upon (petition for) actual bankruptcy proceedings in respect of the (re)insurance undertaking.

Contrary to the similar provision in relation to credit institutions discussed above, the Insurance Supervision Act does not explicitly specify if this restriction is an "overriding mandatory provision" referred to in Article 9(1) of the Rome I Regulation (see Section 8). However, based on the conditions for the application of the relevant measures (i.e. "*circumstances that threaten the stability of the Belgian or international financial system*"), we consider it most likely that this restriction will be considered as

[1] Article 270 Credit Institutions Act.

a "overriding mandatory provision", so that it may be applied by the Belgian courts irrespective of the governing law of the EFET General Agreement.

(b) Assuming you recommend not to elect Automatic Termination (as defined in § 10.4 of the EFET General Agreement) upon the occurrence of an event described in § 10.5(c) of the EFET General Agreement:

As set out in our response to question (a)(aa) above, there are no compelling legal reasons to choose one over the other (i.e. to elect Automatic Termination or not). If Automatic Termination is not elected:

(aa) would it be necessary or recommendable to modify the scope of termination (e.g., by (i) deleting or modifying some of the events listed in § 10.5(c) which would permit the Terminating Party to terminate and/or (ii) adding other Material Reasons upon the occurrence of which it should be entitled to terminate)?

No.

(bb) are the provisions of the EFET General Agreement permitting the Terminating Party to terminate the Agreement (including all Individual Contracts) upon the occurrence of a Material Reason described in § 10.5(c) of the EFET General Agreement (adjusted as necessary pursuant to the laws of your jurisdiction) enforceable under the laws of Belgium or is there a risk that (i) the entering into the EFET General Agreement, (ii) the entering into Individual Contracts thereunder or (iii) the termination by notice itself could be challenged by a liquidator, receiver or third party?

The provisions of the EFET General Agreement permitting the Terminating Party to terminate the EFET General Agreement (including all Individual Contracts) by notice upon the occurrence of a Material Reason described in § 10.5(c) of the EFET General Agreement are enforceable under the laws of Belgium, including in case of bankruptcy and judicial reorganisation, with the reservation set out under question (a)(bb) above with respect to the enforceability of such provisions in case of judicial reorganisation proceedings, recovery or resolution measures under the Credit Institution Act, and mandatory transfers of insurance or reinsurance undertakings under the Insurance Supervision Act.

We note that, in principle, an optional (non-automatic) right for the seller to dissolve (*i.e.* terminate with retroactive effect) a contract for the sale of goods, would no longer be enforceable under Belgian law after the bankruptcy of the purchaser if the goods sold have already been delivered but the price remains unpaid, based on Article 20, 5° of the Mortgage Act. This restriction would in principle apply to Individual Contracts for Delivery and Acceptance of and Payment for Natural Gas entered into in accordance with §4 of the General Agreement, or resulting from the exercise of an Option in accordance with §5 of the General Agreement, as they would constitute contracts for the sale of goods.

- In our view, Article 20, 5° of the Mortgage Act should be understood as a restriction on a retroactive dissolution of the sale allowing the seller to directly repossess the goods sold out of the bankrupt estate, and not as a general restriction on contractual termination provisions aimed at settlement of final claims without retroactive effect or repossession of goods sold. The termination provisions under §10 of the EFET General Agreement do not result in a dissolution with retroactive effect of the Individual Contracts, but rather a termination of the Individual Contracts effective as from effective as from the Early Termination Date (see §10.3(b), 3rd sentence of the EFET General Agreement). <u>Therefore, in our opinion, the termination provisions set out in §10.3 to §10.5 of the EFET General Agreement are not restricted by Article 20, 5° of the Mortgage Act.</u>

- Even if the restriction of Article 20,5° of the Mortgage Act would apply to the non-automatic termination provisions of §10.3 to §10.5 of the EFET General Agreement, these non-automatic provisions would still be enforceable pursuant to Article 14 Safe Harbour, except in the theoretical case where the Article 14 Safe Harbour would not apply (see Annex 6).

(c) Are the provisions in §11 of the EFET General Agreement providing for the netting of all positive and negative Settlement Amounts in determining the Termination Amount enforceable under the laws of Belgium or is there a risk that such determination could be challenged by a liquidator, receiver or third party?

The provisions in §11 of the EFET General Agreement providing for the netting of all positive and negative Settlement Amounts in determining the Termination Amount are enforceable under the laws of Belgium, assuming that the relevant termination (close-out) provision is also enforceable (see question (a)(bb) above and Annex 6), and subject to the following additional reservations:

Post-insolvency transactions. The calculation of a single Termination Amount may not include transactions entered into after the commencement of the Insolvency Proceedings.

Abnormal transactions. Abnormal transactions entered into in the knowledge that the transaction would prejudice the creditors of a party are voidable in the subsequent bankruptcy of that party (Article XX.114 Economic Law Code). None of the provisions of the EFET General Agreement in itself appears to us as "abnormal" for the purposes of this rule of bankruptcy law, but the assessment of the abnormal character of a contractual arrangement may be affected by the factual circumstances of a particular case.

Transactions at an undervalue. Transactions entered into by a party during the suspect period prior to the declaration of bankruptcy of that party are voidable if they entail a significant undervalue (Article XX.111, 1° Economic Law Code; see Annex 7). None of the provisions of the EFET General Agreement in itself appears to us as entailing a significant undervalue for the purposes of this rule of bankruptcy law, but the assessment of this question may be affected by the factual circumstances of a particular case and in particular by the arm's length character of the transactions entered into under the Individual Contracts.

Temporary suspension in respect of credit institutions, stockbroking firms and their subsidiaries. The resolution authority may suspend any close-out, termination and netting rights that a party may have against the institutions that may be subject to Belgian recovery or resolution measures under the Credit Institutions Act, for a period starting at the time of publication of the decision of the resolution authority, until midnight of the day following the publication (Article 280 Credit Institutions Act). Such suspension does not apply to such agreements with systems or operators of systems designated for purposes of the Settlement Finality Directive (98/26/EG), central counterparties or central banks.

(d) Do the laws of Belgium recognize that the close-out netting provisions in §§10 to 11 of the EFET General Agreement apply to all Individual Contracts or could it be challenged by a liquidator, receiver or third party? Would we need the single agreement concept in order to preserve the enforceability of the termination right and the ability to calculate a net amount? If the single agreement concept is particularly important in your jurisdiction, please elaborate in a detailed and circumstantiated manner on whether or not, and if so, the degree to which, provisions allowing or providing for the termination of some Individual Contracts but not all Individual Contracts under the EFET General Agreement might impact termination and close out rights generally, as well as subsequent rights to terminate Individual Contracts remaining under the EFET General Agreement following a previous Partial Close-Out.

The "single agreement" concept is not relevant in this respect where – in most cases – such enforceability will be based on the Article 14 Safe Harbour. The argument that different transactions form a “single agreement” would only be relevant where this safe harbour provision would not apply. Even then the “single agreement” concept is not useful as such. It could merely be an indication that different Individual Contracts are closely connected (see Annex 6).

In principle, it would be possible to amend the termination provisions of the EFET General Agreement so that only certain Individual Contracts could be terminated at the option of the non-defaulting party. These amended provisions would be enforceable subject to the same reservations as mentioned in questions (a)(bb) and (c) above. The non-defaulting party's choice may however increase the risk that the termination will be regarded as not aiming at achieving netting, for instance if that party terminates only those Individual Contracts that give rise to a Settlement Amount owing in the same direction. An approach where all Individual Contracts would be terminated further reduces the (limited) likelihood that it could be argued, based on the absence of a mutual claim, that a particular termination is not be aimed at an actual set-off.

(e) Is the insolvent counterparty obligation to pay the amount of any compensation claim in Euro, USD or GBP (as agreed between the parties in the Election Sheet) enforceable under the laws of Belgium or could the calculation in a foreign currency be challenged by a liquidator, receiver or third party?

Claims may be filed in Insolvency Proceedings in any currency in which they are denominated. In the case of a bankruptcy or a liquidation, an unsecured net claim filed in a foreign currency will be converted by operation of law (as applied by the insolvency official in administering the insolvency), for the purposes of measuring *pro rata* distributions between creditors, at the rate of exchange prevailing on the date of commencement of the Insolvency Proceedings or, if applicable, at the rate set by agreement between the parties.

The enforceability in Belgium of monetary claims is not limited to claims denominated in euro. Judgments from the Belgian courts ordering the payment of a sum of money, however, may only be expressed in euro or in the currency of an OECD member state (Article 3 of the Law of 30 December 1885). Claims denominated in another currency will be converted into euro by the courts.

(f) Please specify, if and as applicable, the degree to which termination and close-out rights in case of opening of insolvency proceedings, against a party based in your jurisdiction are dependent upon, or otherwise affected by, the status of one or more of the concerned parties falling within a particular category of classification of entity. Specifically, do these rights differ as the result of a party being a financial institution, ordinary corporate entity or any other categorization or regulatory or legal status?

Specific restrictions apply with respect to credit institutions, stockbroking firms (*beursvennootschappen / sociétés de bourse*), certain (financial) holding companies and (re)insurance undertakings, as set out in questions (a)(bb)(c) above and Annex 6.

2.2. Non-insolvency related Material Reasons

Please discuss the issues outlined above under d), e) and f)

- Termination (close-out) and netting provisions governed by non-Belgian law will be recognized in Belgium outside of insolvency proceedings, subject to the general reservations on enforceability of non-Belgian law provisions set out in Section 5 and 8 below.
- Calculation of the Termination Amount in a foreign currency will be recognized in Belgium, provided that judgements from the Belgian courts ordering the payment of a sum of money, however, may only be expressed in euro or in the currency of an OECD member state (Article 3 of the Law of 30 December 1885). Claims denominated in another currency will be converted into euro by the courts.
- There are no specific restrictions based on the status of one or more of the concerned parties that fall within the scope of this legal opinion. Please note that recovery and resolution measures in respect of credit institutions, stockbroking firms and certain (financial) holding companies,

and mandatory transfer measures in respect of (re)insurance undertakings, are strictly speaking not “insolvency proceedings”, but are nevertheless discussed in Section 2.1 above and not repeated in this Section.

(g) Are the rights of the Terminating Party to terminate and close-out the EFET General Agreement enforceable in accordance with the terms of the EFET General Agreement, irrespective of the insolvency of Party A?

The termination and close-out rights of the terminating party are effective as a matter of Belgian law and would be enforceable on the insolvency of Party A if Belgian law applied in those circumstances, enforceable subject to the same reservations as mentioned in questions (a)(b) and (c) above.

3. MULTIBRANCH PARTIES

3.1. Belgian Multibranch Party

This Section 3.1 (*Belgian Multibranch Party*) is subject to additional specific assumptions set out in Annex 3.

(h) Would there be any change in your conclusions reached under 2.1 above based upon the fact that Party A has conducted business under the EFET General Agreement on a multibranch basis prior to its insolvency?

No.

(i) Would the EFET General Agreement be treated as a single unified agreement by the Belgian receiver under the laws of Belgium, regardless of the treatment of the EFET General Agreement or Individual Contracts by an insolvency official in a country where close-out netting may be unenforceable?

The "single agreement" concept would only be relevant to the extent described in Section 2.1 above and Annex 6 of this opinion. Whether in the particular circumstances where the interrelationship between different Individual Contracts would still be relevant, the treatment in other jurisdictions would have an impact on a Belgian insolvency official will depend on the substance of the underlying reasons for such treatment (*i.e*. would he challenge the “close connection” or not?).

3.2. Foreign Multibranch Party

This Section 3.2 (*Foreign Multibranch Party*) is subject to additional specific assumptions set out in Annex 3.

(j) Would there be separate proceedings in Belgium with respect to the assets and liabilities of the Belgium Branch upon the start of the insolvency proceeding for Party F in Country H? Or would the relevant authorities in Belgium defer to the proceedings in Country H, so that the assets and liabilities of the Belgium Branch would be handled as part of the proceedings for Party F in Country H? Could local creditors of the Belgium Branch initiate separate proceedings in Belgium even if the relevant authorities in Belgium did not do so?

The courts of Belgium may open secondary (or "territorial") insolvency proceedings if, and only if, the relevant foreign entity has an establishment in Belgium (save in the case of credit institutions and insurance undertakings, which may only be subject to insolvency proceedings in their home jurisdiction).

Creditors of the Belgian branch, or creditors resident in this jurisdiction, may initiate legal proceedings with a view to the opening of territorial insolvency proceedings. The local courts have no discretion in that case as to whether it is appropriate to open territorial proceedings in addition to, or before, the home jurisdiction's main proceedings.

Creditors are not entitled to apply for judicial reorganisation proceedings, save in certain limited circumstances.

The effect of territorial insolvency proceedings opened in this jurisdiction is restricted to the assets of the insolvent party situated in the territory of this jurisdiction.

Note that in the absence of particular criterion in the relevant legislation or in case law the determination of the situation of a contract as a whole is not free from doubt due to its intangible nature. The right to receive payment should however, based on Article 2 g) of the EU Insolvency Regulation, be deemed to be located in the jurisdiction where the debtor of the payment has its centre of main interests.

If no territorial insolvency proceedings are opened in this jurisdiction, the courts of this jurisdiction will recognise the effects of the insolvency proceedings opened in the insolvent party's home jurisdiction, also in relation to the assets and liabilities of the Belgian branch. These effects will also be recognised, when territorial insolvency proceedings have been opened in this jurisdiction, in relation to any assets situated outside this jurisdiction (the situation of assets does not depend for these purposes on whether they are allocable to the business of the Belgian branch, but on certain objective tests such as the physical location of tangible property or the place of principal establishment of the debtor of a claim).

(k) If there were separate proceedings in Belgium with respect to the assets and liabilities of the Belgium Branch, would the receiver or liquidator in Belgium and the Belgian courts, based on the facts above, include Party F´s position under the EFET General Agreement, in whole or in part, among the assets of the Belgium Branch and, if so, would the receiver or liquidator and the Belgian courts recognize the close-out netting provisions of the EFET General Agreement in accordance with their terms? The most significant problem arising would be if a Belgian receiver, liquidator or court considering a single EFET General Agreement were to require a counterparty of the Belgium Branch of Party F to pay the mark-to-market value of Individual Contracts entered into with the Belgium Branch to the liquidator or receiver of the Belgium Branch, while at the same time forcing the counterparty to claim in the proceedings in Country H for its net value from other Individual Contracts with Party F under the same EFET General Agreement. In considering this issue, please assume that close-out netting under the EFET General Agreement would be enforced in accordance with its terms in the proceedings for Party F in Country H.

Although to date there is no reported case law on this issue, in our view

- the insolvency official in charge of territorial insolvency proceedings in respect of a Belgian branch, and the Belgian courts, will be bound to give effect to the close-out and netting provisions of the EFET General Agreement in the manner indicated above, without distinction between those Individual Contracts that are allocable to the Belgian branch and those that are not;

- the laws of the jurisdiction of opening of the main insolvency proceedings may have an impact on these provisions, as to which please see Annex 7 below.

The Termination Amount resulting from that process, if payable to Party F, will be part of the assets to be collected and distributed by the Belgian insolvency official if, and only if, the counterparty by which this Termination Amount is payable has the centre of its main interests Belgium. In the case of a company or legal entity, the place of the registered office shall be presumed to be the centre of its main interests in the absence of proof to the contrary. A mere branch will not suffice.

(l) Please consider your answer to your question assuming instead that Party F has no branch located in Belgium, but has assets in Belgium.

The EU Insolvency Regulation does not provide for jurisdiction when there are only assets but not an establishment in a member country. The existence of assets in Belgium, in the absence of an establishment, is insufficient to permit the opening of insolvency proceedings (other than attachments limited to such assets) in this jurisdiction.

4. COLLATERAL

This Section 3 (*Collateral*) is subject to additional specific assumptions set out in Annex 3.

(m) Under the laws of Belgium, what law governs the transfer of ownership in the various forms of Eligible Credit Support deliverable under the EFET Credit Support Annex?

According to article §3.2 of the EFET Credit Support Annex, Eligible Credit Support can be provided by either (i) transferring cash to the account of Party B or (ii) providing a letter of credit. Alternatively, we assume that the credit support will be provided by issuing a parent company guarantee.

With regard to Letters of Credit and Parent Company Guarantees, there is no "transfer of ownership" properly speaking and the question does not arise. The Letter of Credit or Parent Company Guarantee will be governed by the chosen law or, in the absence of express choice, by the law of the place of central administration of the issuing bank or parent (or, if the Letter of Credit is issued through a branch of that bank or parent company, the law of the location of the relevant branch).

With regard to cash, the governing law in respect of the relationship between the Parties will be the law chosen by them to govern the EFET General Agreement and the EFET Credit Support Annex, provided that the courts may also have regard to the law of the place of the payment. The question whether the transfer of cash may be voidable in an insolvency of the transferor will be governed by the law of the insolvency proceedings.

(n) Would the laws of Belgium characterize each transfer of collateral as effecting an unconditional transfer of ownership in the assets transferred? Is there any risk that any such transfer would be re-characterized as creating a security interest? If so, is there any way to minimize such risk? What would be the consequences of such a re-characterization?

With regard to Letters of Credit and Parent Company Guarantees, there is no "transfer of ownership" properly speaking and the question of re-characterisation does not arise.

The transfer of cash by way of collateral is explicitly recognised and protected under Belgian law as effecting an unconditional transfer of ownership (Article 12 of the Financial Collateral Act). Such protection would apply both to the original transfer of cash collateral and subsequent transfers by way of margin provision. Article 12 of the Financial Collateral Act does not apply to agreements entered into with natural persons.

(o) Assuming that Party B receives absolute ownership in the collateral, will it need to take any action thereafter to ensure that its title therein continues?

Under the laws of Belgium no further actions are necessary. Please note however that Party B may be obliged to take certain actions under its own governing law.

Are there any requirements in Belgium necessary or advisable, including any filing, registration, notification, stamping, notarisation or any other action or the obtaining of any governmental, judicial, regulatory or other order, consent or approval?

Assuming that ownership is provided by way of a transfer of the cash to an account of Party B, the substantive laws of Belgium do not impose any such action or requirement (other than, of course, actual transfer of the cash to the control of Party B or a third party (other than the transferor) acting for Party B's account).

Are there any other procedures that must be followed or consents or other governmental or regulatory approvals that must be obtained or established, to enforce, or continue such ownership interest?

If ownership is provided by way of assigning the rights under a bank account held in another party's name acting for the account of Party B, the rules of conflict of laws of Belgium provide that the perfection of an assignment of, or security over, a claim is governed by the law of the place of principal establishment of the assignor or provider of security. The provision of cash collateral may arguably be subject to these rules of conflict, and it is therefore advisable to comply with the perfection requirements, if any, imposed by the law of the jurisdiction of the principal establishment of Party A if other than Belgium.

If Party A's principal establishment would be in Belgium, Belgian law would require a written assignment or security agreement and notice thereof being given to the bank with whom such account is held. There are no specific formalities relating to such notice. It is recommended to obtain the acknowledgement of such notice from the relevant bank to avoid any discussion upon enforcement. Without such notice the assignment or security may still be workable, but will not be effective against the bank and in exceptional circumstance not against certain third parties.

(p) What is the effect, if any, under the laws of Belgium of the right to substitute collateral pursuant to § 6 of the EFET Credit Support Annex?

In the absence of an Insolvency Proceeding, an exchange of Eligible Credit Support pursuant to § 6 of the EFET Credit Support Annex is a contractual right only and would not affect our opinions set out above.

Does the presence or absence of consent to substitution by Party B have any bearing on this question?

The presence of consent has no bearing on the question, provided this does not in such circumstances prevent the actual delivery and exchange of the substitute collateral.

(q) Party B's right in relation to the transferred collateral upon termination of the relevant master agreement will be governed by § 11 of the EFET General Agreement together with §11 of the EFET Credit Support Annex. Assuming that § 11 of the EFET General Agreement is valid and enforceable in Belgium insofar as it relates to the determination of a net amount payable by either Party on the termination of Individual Contracts, is § 11 of the EFET Credit Support Annex also valid to the extent that it provides for the value of the collateral provided and not yet transferred to be included in the calculation of a net amount payable under § 11 of the EFET General Agreement as "other amounts payable"?

Yes.

We read §11 of the EFET Credit Support Annex as meaning that the value of collateral is included in the calculation of the Termination Amount as an amount that must be returned by the holder of collateral to the other party that transferred the collateral initially. We do not read this provision as meaning that the value of collateral not yet transferred to a Party must be included in the calculation; however, assuming that the value of that collateral would be included in the calculation both as an amount payable by the Transferor (because the Transferor still has an obligation to transfer that collateral) and as an amount payable by the Transferee (who must return that collateral), this provision would also be valid.

(r) Are the rights of Party B enforceable in accordance with the terms of the EFET General Agreement and the EFET Credit Support Annex, irrespective of the insolvency of Party A?

Insolvency Proceedings in respect of Party A will not affect the rights of Party B in respect of the Letters of Credit or the cash collateral provided under an EFET Credit Support Annex, subject to the general restrictions on close-out netting in case of Insolvency Proceedings set out in Section 2.1.

(s) Will Party A (or its receiver or other similar official) be able to recover any transfer of collateral provided to Party B during a certain "suspect period" preceding the date of the insolvency? If so, how long before the insolvency does the suspect period begin?

Please see Annex 7 for a discussion of "suspect periods". Suspect period rules apply only in the case of a bankruptcy; there are no rules of that type in the case of other forms of Belgian Insolvency Proceedings.

If such a period exists, does the substitution of collateral by a counterparty during this period invalidate an otherwise valid transfer, assuming the substitute assets are of no greater value than the assets they are replacing? Is the transfer of additional collateral pursuant to the mark-to-market provisions of the EFET Credit Support Annex during the suspect period subject to avoidance, either because it was considered to relate to an antecedent or pre-existing obligation or for some other reason?

Eligible Credit Support that consists in Letters of Credit or Parent Company Guarantees issued by a third-party credit institution or parent company of the Transferor cannot be recovered by an insolvency official of the Transferor.

The initial provision of Eligible Credit Support that consists in cash may be voidable, upon the bankruptcy of the Transferor, in the following circumstances:

- If it is provided during the suspect period as security for pre-existing transactions. It will not be voidable on this ground, however, if it is provided during the suspect period but pursuant to an undertaking to do so that was entered into prior to the suspect period with a view to ensuring, during the life of one or more transactions, a balance between the respective obligations of the parties. Eligible Credit Support delivered pursuant to §3.1 of the EFET Credit Support Annex should in principle satisfy this condition and therefore be immune against avoidance on this ground, but the assessment of this question may be affected by the factual circumstances of a particular case; further, the question may be debatable where the obligation to provide Eligible Credit Support is not triggered by changes in the marked-to-market value of the underlying transactions, but rather by changes in the rating of a party or similar events.
- If it constitutes an abnormal transaction entered into in the knowledge that the transaction would prejudice the creditors of the Transferor. The delivery of cash collateral pursuant to the provisions of the EFET Credit Support Annex does not in itself appear to us as "abnormal" for the purposes of this rule of bankruptcy law, but the assessment of the abnormal character of such an arrangement may be affected by the factual circumstances of a particular case.
- If it is provided during the suspect period and entails a significant undervalue for the Transferor. The delivery of cash collateral pursuant to the provisions of the EFET Credit Support Annex does not in itself appear to us as entailing a significant undervalue for the purposes of this rule of bankruptcy law, but the assessment of this question may be affected by the factual circumstances of a particular case.
- If it is provided during the suspect period and the Transferee at the time knew that the Transferor was already in a situation of cessation of payments, unless it is provided pursuant to an undertaking to do so that was entered into prior to the suspect period with a view to ensuring, during the life of one or more transactions, a balance between the respective obligations of the parties. Eligible Credit Support delivered pursuant to §3.1 of the EFET Credit Support Annex should in principle satisfy this condition and therefore be immune against avoidance on this ground, but the assessment of this question may be affected by the factual circumstances of a particular case. Further, the question may be debatable where the obligation to provide Eligible Credit Support is not triggered by changes in the marked-to-market value of the underlying

transactions, but rather by changes in the credit rating of a party by a rating agency or similar events.

The return of Eligible Credit Support in the form of cash made by the Transferee during the suspect period prior to its bankruptcy may arguably be avoided if the Transferor knew at the time that the Transferee was already in a situation of cessation of payments. The Financial Collateral Act made this ground of voidness inapplicable to the provision of top-up collateral, but seems not to have made it inapplicable to the return of collateral.

The substitution of Eligible Credit Support during the suspect period will generally under Belgian insolvency laws not invalidate an otherwise valid transfer, assuming that the exchanged assets are of no greater value than the assets that they are replacing and that there is no time gap between the restitution of the "old" assets and the delivery of the "new" assets. Although there has not been any case law on this topic since the entry into force of the Financial Collateral Act in 2005, the concept of immediate substitution is part of general insolvency laws and has previously been interpreted very strictly, so a couple of days time lapse would introduce a risk of challenge. In the absence of case law there are authoritative legal scholars that argue that the conditions of immediateness of the substitution do not apply to the substitution assets, such as cash, that are subject to the Financial Collateral Act.

(t) Is the EFET Credit Support Annex in an appropriate form to create the intended outright transfer of ownership in the collateral to Party B? Are there any other requirements to be observed in Belgium in order to ensure validity of such transfer in each type of Eligible Credit Support created by Party A under the EFET Credit Support Annex? For example, are there any other requirements such as those mentioned under (o) above?

Yes. There are no other relevant requirements, save as indicated above in question (o).

(u) Do you have other specific recommendations on the subject of collateral that EFET and its members need to be aware of? If yes, please provide detailed answer.

No.

5. GENERAL ENFORCEABILITY

(v) Is the EFET General Agreement and any of the mentioned Annexes (including the EFET Credit Support Annex) enforceable under the laws of Belgium in accordance with its own terms? We would like you to specifically discuss, in a detailed and circumstantiated manner the provisions on (i) non-performance due to Force Majeure (§ 7 of the EFET General Agreement), (ii) remedies for non-performance (§ 8 of the EFET General Agreement) and (iii) limitation of liability (§ 12 of the EFET General Agreement) and any other provisions which in your opinion need to be commented on according to the law of Belgium, including whether these provisions could and/or need to be further 'expanded' and/or 'strengthened' under the laws of your jurisdiction. We are especially interested in provisions that you may believe, for example infringe upon the ordre public in Belgium and that may be challenged by the courts in Belgium irrespective of the laws that governs the EFET General Agreement.

As a matter of Belgian law the EFET General Agreement is materially enforceable in accordance with its terms subject to Section, 1, 2, 3 and 7 (and the qualifications made in Annex 9).

In Section 7, reference is made to the concepts of overriding mandatory rules *(lois de police / bepalingen van bijzonder dwingend recht)* or rules of international public policy which can impact the enforceability of an agreement governed by non-Belgian law. These rules are not conclusively set out by statute, based on case law and we are at present not aware of any such rule relevant for the Agreements, other than the reservations referred to elsewhere in this opinion. Notwithstanding, we have identified the following provisions of the ETEF General Agreement which have, in our opinion, a slightly higher likelihood of being impacted by Belgian law:

Force majeure

Force majeure provisions such as §7 (*Non-Performance Due to Force Majeure*) of the EFET General Agreement are in principle valid and enforceable under Belgian law. The definition of "Force Majeure" may be further expanded in the Election Sheet, provided that:

- Fraud by the Claiming Party itself cannot be a valid Force Majeure event;
- The expanded Force Majeure event should not be so wide as to fully and finally exonerate the Claiming Party for any non-compliance with its main obligations (e.g. the obligation as seller to deliver natural gas, or the obligation as purchaser to accept delivery and pay the purchase price), irrespective of any external element causing such non-compliance, as this would effectively recharacterise the obligation into a non-binding statement of intent.

The definition of "Force Majeure" may also be reduced or abolished altogether (*i.e.* specifying that there are no Force Majeure events).

Limitation of liability

- §§12.2 and 12.3 will constitute a limitation of liability, and are valid in principle. Sub-paragraph (a) of §12.3 refers to "indirect or consequential Damages". The Belgian Civil Code provides that liability extends to all losses that are "an immediate and direct consequence of the breach of the contract". Case law, however, interprets this as meaning a "necessary, albeit indirect, consequence"; in other words the criterion is a binary test whether the losses would have arisen in the absence of the breach, and is not about how distant the connection is between the breach and the loss. The concept of "consequential damages", for its part, is not known under Belgian law. The outcome of the interpretation of the words "indirect or consequential Damages" by the Belgian courts is as a result not entirely predictable. However, the practical impact of such unclarity will be limited in the present case because items typically deemed to be included in such concept, i.e. loss of profit, goodwill, business opportunity or anticipated saving are already expressly excluded.

- The limitation of liability contained in §§ 12.2 and 12.3 will not apply to losses that arise from "defects" in the natural gas delivered, unless these defects were absolutely undetectable.

- §12.4 provides that "nothing in this Agreement operates to exclude or limit a Party's liability for (a) intentional default; (b) fraud; or (c) personal injury or death […]". It is likely that the Belgian courts would interpret this as meaning also that "nothing in this Agreement operates to exclude or limit a Party's liability for gross negligence".

The limitations and exclusions set out in § 12 of the EFET General Agreement could be expanded and strengthened under Belgian law. To that end we would suggest to amend § 12.2 as follows: "[...] a Party and its employees, officers, contractors and/or agents, shall not be liable to the other Party for any loss, cost, expense or damages ("**Damages**"), incurred by the other Party under or in connection with the Agreement, even if such Damages are due to the gross negligence of any of them or to the intentional default or fraud of the employees, officers, contractors and/or agents of a Party, except only where such Damages are due to the ~~gross negligence,~~ intentional default or fraud of a Party itself ~~or its employees, officers, contractors and/or agents used by such Party in performing its obligations under the Agreement~~".

(w) Please indicate any recommendations you have and which you are of the opinion EFET and its members need to be made aware of regarding the general enforceability, from a legal stand point, of the EFET General Agreement and its Credit Support Annex.

None in addition to the matters referred to in this Section 4.

6. CONFIRMATION PRACTICES

This Section 6 subject to additional specific assumptions set out in Annex 3.

We would like you to distinguish between (1) the formal requirements and procedure in the formation of a legally binding and enforceable Individual Contract and its inclusion in the EFET General Agreement and (2) the formal requirements a Confirmation should comply with under the laws of Belgium in order to be sufficient for all purposes to evidence a binding Individual Contract and its inclusion in the EFET General Agreement.

6.1. Binding Individual Contract

(x) Does the formation of a legally binding and enforceable Individual Contract require any formal act (e.g., execution in writing, signature, registration or notarization) under the laws of your jurisdiction?

Any form of evidence is in principle admissible under Belgian law and there is generally no requirement that obligations be documented in writing or in any particular form. In practice, however, Belgian courts tend to give much more credibility to written evidence. There is no signature requirement, but as a matter of fact a signature on a written document facilitates evidence of the authenticity of the document and of the identity (and hence the powers, as the case may be) of the person who concluded the transaction on behalf of the party concerned.

(y) At what point in time does an Individual Contract agreed upon orally become legally binding or enforceable under the laws of your jurisdiction?

A binding contract comes into existence between the parties as soon as they have exchanged an expression of their agreement on the essential terms of the contract, irrespective of whether that exchange is oral or in writing. An Individual Contract which is first agreed upon orally and later confirmed in writing will thus be binding as from the time of the oral agreement.

(z) Does failure to object to incorrect terms in a received Confirmation constitute "acceptance" of those terms per the laws of your jurisdiction ? If so, is there a relevant time period per the laws of your jurisdiction that could potentially override the governing law of the EFET General Agreement, and permit the parties to object still ?

Under Belgian law, parties are free to agree between them procedures in respect of verification, objections and tacit acceptance or rejection of or to a contract confirmation sent by either of them to the other. The provisions of §3.3 of the EFET General Agreement are thus valid under Belgian law.

We note, however, that §3.3 requires a party to send any notice of objection or rejection without delay, but does not expressly state that, in the absence of such notice within a certain period, the confirmation is deemed accepted. In this case, Belgian law would not consider the mere non-objection as a "tacit acceptance" of the Confirmation. Other facts and circumstances would be required to corroborate the "tacit acceptance" by the party having received the Confirmation. The most common type of such facts and circumstances used to corroborate tacit acceptance, is that the receiving party has started performing the agreement (i.e. the Individual Contract) in accordance with the terms of the relevant document (i.e. the Confirmation). However, other facts and circumstances, including e-mails and letters and past practice of the relevant parties may also be used, both to corroborate or to dispute such tacit acceptance. It is up to the party invoking the binding nature of the Individual Contract to prove acceptance of the Confirmation and to provide evidence of facts and circumstances corroborating such acceptance.

A party that has sent a Confirmation but has not received an explicit acceptance of this Confirmation, can improve its position by clearly and explicitly referring to the Confirmation on an invoice sent to the other party in relation to the relevant Individual Contract. To the extent that the invoice is explicitly or implicitly accepted, the relevant Confirmation will also be deemed to have been accepted. An invoice will be deemed to have been tacitly accepted upon payment of the invoice, unless the debtor has clearly objected to the reference to the Confirmation at the latest at the time of paying the invoice. Once the party that has sent the Confirmation can prove that it has sent an invoice with a clear reference to the Confirmation and that the invoice has been paid, the Confirmation will be deemed accepted (including any further performance specified in the Confirmation that is not yet invoiced) unless the other party proves that it had timely objected to the invoice or the Confirmation.

§3.3 of the EFET General Agreement requires a party receiving a Confirmation to object "without delay". Belgian law does not prescribe further details as to the length of time allowed by these words. It is most likely that Belgian courts will interpret "undue delay" as a "reasonable" delay, again taking into account facts and circumstances of the matter, including past practice between the parties, general market practice, and the speed of the negotiation process and conduct of parties generally.

In order to avoid any ambiguity with respect to tacit acceptance and/or the meaning of "without delay", it can be considered to add the following sentence in §3.3 of the EFET General Agreement between the first and second sentence:

> "*If the Party receiving a Confirmation has not so notified the other Party [without undue delay]/[within specify period], the Party receiving that Confirmation will be deemed to have accepted and be bound by the terms specified in the Confirmation.*"

(aa) Is the reference to the relevant EFET General Agreement made in the relevant written confirmation exchanged (post trade) between the parties sufficient for the inclusion of the Individual Contract in the EFET General Agreement?

Under Belgian law, this is theoretically up to the interpretation of the courts, however, we are of the opinion that any reasonable court applying Belgian law would deem the reference sufficient. Furthermore, the EFET General Agreement provides that it "governs all transactions the Parties shall enter into for the purchase, sale, delivery and acceptance of Natural Gas […]" (§1.1). It is therefore not necessary that the parties to the EFET General Agreement, when they subsequently enter into Individual Contracts, make express reference to the EFET General Agreement; the EFET General Agreement will govern either way, as long as the Parties do not agree to the contrary.

6.2. Means of evidence

(bb) Assumed there is a dispute with respect to the existence or the terms and conditions of an-Individual Contract, would any or all of the following be eligible for rendering or otherwise properly introducing evidence of the agreed terms of the Individual Contract in front of a court in your jurisdiction: a (i) taped recording, (ii) witness' statement, (iii) e-mail or other electronic message or transaction entry system, and/or (iv) facsimile? Are there any local requirements or other considerations that are relevant to each form of evidence?

Taped recording

A taped verbal agreement is in principle admissible. In practice, a court may be inclined to deny credibility to a taped verbal agreement unless there is already between the parties a course of dealing that justifies the practice of entering into verbal agreements and tape recording the relevant conversations, or a written agreement providing for this possibility (such as §23.1 of the EFET General Agreement).

The recording of a telephone conversation as evidence of a commercial transaction is expressly permitted by law, subject to conditions. The participants involved in the conversation must be informed prior to the commencement of the tape recording of the fact of the recording, of its purpose, and of the length of time during which the record will be stored. The recording must be erased immediately at the end of the time period during which the transaction is capable of being legally disputed[2].

In the case of a business conversation between individuals acting for their respective enterprises, which is being recorded by a system installed by either enterprise (i.e. the recorder is not operated by the individual participant), the individual involved has to be informed as well.[3]

Recordings made on the basis of §23.1 of the EFET General Agreement may nevertheless not be admissible in evidence, because the information required by law is not fully provided. We would recommend to adapt §23.1 as follows:

Recording Telephone Conversations: "*Each Party is entitled to record telephone conversations held in connection with the Agreement and to use the same ~~as evidence~~ for the purposes of ascertaining the existence and terms of Individual Contracts and of bringing evidence thereof. Each Party may retain such records until the time when any possible legal challenge to the relevant Individual Contract will be time barred. Each Party waives any further notice of such recording and acknowledges that is has provided its officers and employees with all necessary information, and obtained from them all necessary consents ~~of its officers and employees to~~, in respect of such recording*".

Witnesses

Hearing witnesses is admissible in commercial matters at the discretion of the courts.

E-mail or other electronic message or transaction entry system

An e-mail or other electronic message or transaction entry system is admissible in evidence. Of course, practical difficulties may arise if the other party to a dispute alleges that the print-out of that confirmation submitted to the court is not genuine, or that the electronic communication never took place. Usage of certified "electronic signatures", which have the same evidentiary value as manuscript signatures, can alleviate these difficulties.

Parties are free to agree between them any procedures in respect of the automated conclusion or verification of transactions. If a process of automated transaction confirmation is operated in accordance with a prior agreement (entered into in a "traditional" form) between the parties, such as EFET's Electronic Confirmation Agreement, then such process and the resulting transactions will be formally binding between them. In the absence of such a prior agreement, it is uncertain whether electronic confirmation matching would by itself create or evidence binding transactions.

Facsimile

Facsimiles are admissible in evidence as well but, again, practical difficulties may arise if the other party to a dispute alleges that the facsimile submitted to the court is not genuine.

[2] Law of 13 June 2005 on electronic communications, Art. 128. Similar requirements apply to certain regulated institutions in certain circumstances under article 27bis, §8 of Financial Supervision Act and article 76 of the Delegated Regulation.

[3] Please note that specific rules apply to camera recording.

7. CORE PROVISIONS

Please base your opinion on the additional assumptions outlined under Part C.I.1 and C.II and discuss in detail the following:

(cc) Would any of the selections contemplated by the EFET General Agreement or any of the mentioned Annexes (including the EFET Credit Support Annex) change the substance of your conclusions reached under Section 1. (Enforceability of Close-out Netting) above? As far as the EFET Credit Support Annex is concerned, you should in particular discuss the effect of electing to allow substitution with or without consent.

The elections contemplated by the EFET General Agreement and the EFET Credit Support Annex are not of such a nature as to modify the substance of our conclusions.

(dd) Considering your conclusions reached under Section 1 (Enforceability of Close-out Netting) above, what are the provisions of the EFET General Agreement that you regard as so essential that a material alteration thereof could affect the conclusions reached in that Part C.I or C.II (each such provision a "Core Provision")? We believe that the following provisions are Core Provisions: § 1, § 10.3(a), the second sentence of § 10.3(b), § 10.3(d), § 10.5(c)(iv), § 11 and the related definitions contained Annex 1 to the EFET General Agreement.

This opinion is given on the basis of the EFET General Agreement as reviewed by us, and amendments made to the EFET General Agreement could have an impact on this opinion. The most important provisions of the Agreements for the purposes of this opinion are §1, § 10.3(a), the second sentence of §10.3(b), §10.3(d), §10.5(c)(iv), §11, §10.5(c)(ii) and the related definitions in Annex 1 to the EFET General Agreement.

(ee) Would the inclusion of the General Agreement in the EFET Cross Product Payment Netting Agreement, the Master Netting Agreement or in the CPMA Cross-Product Master Agreement (as amended by the EFET/IECA Commodities Schedule to the Cross-Product Master Agreement) change the substance of your conclusions reached under Part C.I or C.II?

The subject matter of this opinion is the EFET General Agreement. We confirm, however, that the inclusion of the EFET General Agreement under the broader netting provisions of the CPMA and the Master Netting Agreement is not of such a nature as to modify the substance of our conclusions above.

8. GOVERNING LAW, ARBITRATION AND JURISDICTION

(ff) Would the Parties' agreement on the governing law, submission to arbitration or jurisdiction (§ 22 of the EFET General Agreement) be upheld in Belgium, and what would be the consequences if it were not?

As to choice of law and jurisdiction, yes. We have summarised, in Annex 10, the overall principles that apply with regard to choice of law and jurisdiction.

As to arbitration, Belgium is a party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 10 June 1958. Arbitration clauses are upheld, and arbitral awards are enforced, in accordance with that Convention or, if the Convention would not apply to the particular case, Articles 1719 et seq. of the Judicial Code.

If the Parties' agreement on the governing law, submission to arbitration or jurisdiction would not be upheld by a Belgian court, general principles of international private law (absent any choice of law, forum or arbitration clause) as laid down, amongst others, in the Belgian Private International Law Code, the Brussels I Regulation, the Rome I Regulation and the Rome II Regulation will apply.

9. REGULATORY REGIME

gg) Are there any exchange control laws or license requirements (under, e.g., any banking, securities trading or energy law) that may affect the enforceability of the relevant EFET General Agreement or the Individual Contracts?

Exchange control

The currency and foreign exchange control regime prevailing in Belgium essentially consists of requiring the provision of information to the central bank, for the purposes of balance of payment and other statistics. Usually the information is collected and supplied by the financial institutions through which international payments are made. This regime has no meaningful effect on the EFET General Agreement or the Individual Contracts.

Licensing requirements

The entering into Individual Contracts under the EFET General Agreement in Belgium might – under certain prerequisites – constitute an investment service or activity according to the Investment Firm Act. In this respect, the general principles are that any person who intends to perform an investment service or activity with respect to a financial instrument in Belgium must be validly licensed or exempt from authorization.

Investment Services and Activities

Article 2, 1° of the Investment Firm Act, contains a full list of investment services and activities which can be found back in Annex 11.

On the basis of a plain EFET-based transactional structure, such buying and selling of natural gas would usually amount to the investment activity of *dealing on own account* within the meaning of the Investment Firm Act. Depending on the concrete factual circumstances and arrangements between the parties, transactions under an EFET General Agreement could constitute the investment services and activities of *reception and transmission of orders, execution of orders on behalf of clients, dealing on own account, portfolio management* or, if subject to specific advice, *investment advice.*

The licensing obligation is triggered if and when the respective services or activities are performed in relation to a financial instrument and no exemption applies.

Article 2, 1° of the Financial Supervision Act contains a full list of financial instruments.

As natural gas constitutes a commodity, gas transactions under an ETEF General Agreement would – if they are financial instruments – most likely constitute one of the following financial instruments:[4]

- Options, futures, swaps, forwards and any other derivative contracts relating to commodities that must be settled in cash or may be settled in cash at the option of one of the parties other than by reason of default or other termination event;
- Options, futures, swaps, and any other derivative contract relating to commodities that can be physically settled provided that they are traded on a regulated market, a MTF, or an OTF, except for wholesale energy products traded on an OTF that must be physically settled;[5] or

[4] See on this also ESMA Guidelines on the application of C6 and C7 of Annex 1 of MiFID II.
[5] See for more details: article 5 and 6 of the Delegated Regulation.

- Options, futures, swaps, forwards and any other derivative contracts relating to commodities, that can be physically settled not otherwise mentioned in point ii. above and not being for commercial purposes, which have the characteristics of other derivative financial instruments.[6]

Whether or not a natural gas transaction under an EFET General Agreement constitutes a financial instrument therefore depends on:

- *Whether it is delivered on a spot or forward basis*: transactions under the EFET General Agreement which are settled within two days after its execution (spot contract) are out of scope of the forward definition and consequently out of scope of financial instruments relating to forward products.[7]

- *The place of its execution*: with a view on the place of execution, transactions executed at a regulated market and at an MTF are in scope, irrespective of whether they are settled in cash or on a physical basis. Transactions for wholesale energy products[8] traded on an OTF and which must be physically settled are, however, out of scope.

- *Whether it is cash or physically settled*: all cash-settled forward transactions are in scope. A contract such as the EFET General Agreement which requires delivery of natural gas is generally viewed as made for physical settlement.[9] However, an assessment should be made based on the concrete factual circumstances and arrangements between the parties to determine whether or not the contract complies with the conditions for physical settlement set out in article 5 of the Delegated Regulation.[10] In general, if the intention of the parties is to perform a physical settlement and the contract makes physical settlement possible the transaction will not be deemed cash-settled.

  Notwithstanding, individual agreements made for the physical delivery of natural gas might still be deemed a financial instrument if the derivative contract is not entered into for commercial purpose and meets the criteria of other derivative financial instruments. These criteria are further detailed in article 7 of the Delegated Regulation and include standardized contracts equivalent to contracts traded on a regulated market, MTF, OTF or equivalent third country trading venues.

If a transaction under the ETEF General Agreement is deemed an investment service or activity in relation to a financial instrument the party performing this service or activity must in general be authorized in Belgium as investment firm or credit institution if no exemption applies. A full list of exemptions can be found back in article 4 of the Investment Firm Act. The exemptions which are in our view are most likely to apply when executing transactions under the ETEF General Agreement are the following two.

Exempted are:

A. persons providing investment services exclusively for their parent undertakings, for their subsidiaries or for other subsidiaries of their parent undertakings;

[6] See for more details article 7 of the Delegated Regulation.
[7] The differentiation between spot and forward products is determined by article 7(2) of the Delegated Regulation.
[8] As defined in point (4) of Article 2 of Regulation (EU) No 1227/2011.
[9] See the assumption of physical settlement annex 2 and for more details on the type of transactions under Annex 5.
[10] "[…] a wholesale energy product must be physically settled where all the following conditions are satisfied (a) it contains provisions which ensure that parties to the contract have proportionate arrangements in place to be able to make or take delivery of the underlying commodity; a balancing agreement with the Transmission System Operator in the area of electricity and gas shall be considered a proportionate arrangement where the parties to the agreement have to ensure physical delivery of electricity or gas. (b) it establishes unconditional, unrestricted and enforceable obligations of the parties to the contract to deliver and take delivery of the underlying commodity; (c) it does not allow either party to replace physical delivery with cash settlement; (d) the obligations under the contract cannot be offset against obligations from other contracts between the parties concerned, without prejudice to the rights of the parties to the contract, to net their cash payment obligations. […]".

B. persons

i. dealing on own account, including market makers, in commodity derivatives or emission allowances or derivatives thereof, excluding persons who deal on own account when executing client orders; or

ii. providing investment services, other than dealing on own account, in commodity derivatives or emission allowances or derivatives thereof to the customers or suppliers of their main business;

provided that:

- for each of those cases individually and on an aggregate basis this is an ancillary activity to their main business, when considered on a group basis, and that main business is not the provision of investment services or Credit Institutions Activities, or acting as a market-maker in relation to commodity derivatives,
- those persons do not apply a high-frequency algorithmic trading technique; and
- those persons notify annually the FSMA that they make use of this exemption and upon request report to the FSMA the basis on which they consider that their activity under points (i) and (ii) is ancillary to their main business.[11]

The determination of whether an activity can be considered being ancillary to the main business has to be done in accordance with the methodology set out in the regulatory technical standards[12] and ESMA publications.[13]

Energy Regulations

The Belgian energy regulation (ignoring for the purposes of this opinion regulations relating to product safety, environment and similar matters, or production, transportation and storage of gas) does not require a licence for mere natural gas trading, without physically supplying end users.

However, in case of a supply to end users of natural gas a supply licence is required. This can both be a federal or a regional licence.

A federal licence is required in case of an gas supply to end consumers, intermediaries or distribution grid operators connected to the gas transport grid.[14] The licence is granted by the federal minister for energy, after advice of the federal energy regulator, CREG. The CREG has clarified in its Manual of 1 September 2013 for drafting an application for a federal supply licence[15] that the supply of natural gas from one intermediary to another intermediary (i.e. trading only) is not subject to a federal supply licence.

A regional licence is required in Flanders for the supply of natural gas via the distribution grid or the local transportation grid to end consumers[16]; in Wallonia for the supply of natural gas to end

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[11] For the form of such notification, see: https://www.fsma.be/sites/default/files/public/sitecore/media%20library/Files/fsmafiles/circ/nl/2017/fsma_2017_22_nl.pdf

[12] Commission Delegated Regulation (EU) 2017/592 of 1 December 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the criteria to establish when an activity is considered to be ancillary to the main business.

[13] ESMA Opinion on ancillary activity – market size calculation – update for the year 2018; ESMA Questions and Answers On MiFID II and MiFIR commodity derivatives topics.

[14] Art. 15/3 Gas Act of 12 April 1965 and Royal Decree of 12 June 2001 regarding licenses and rules of conduct applicable to suppliers and intermediaries.

[15] Manual of 1 September 2013 for drafting an application for a federal supply licence, p. 5-6, available from: http://www.creg.info/pdf/Faq/GebruiksaanwijzingLeveringsvergunningen.pdf.

[16] Art. 4.3.1 Flemish Energy Decree of 8 May 2009

consumers[17]; and in Brussels Capital Region for the supply of natural gas to end consumers[5]. The licences are granted, respectively by the Flemish energy regulator (VREG), the Walloon minister for energy, or the Brussels Government.

Furthermore, traders and intermediaries are subject to certain information obligations, such as:

A. Under article 9 of REMIT market participants (i.e. any person, including transmission system operators, who enters into transactions, including the placing of orders to trade, in one or more wholesale energy markets) are required to register with the national regulatory authority of Member State in which they are established or resident (art. 9). REMIT has been further implemented by the Belgian federal Act of 8 May 2014 amending the Electricity and the Gas Act by introducing certain definitions of REMIT and by granting certain investigative powers to the NRA. Furthermore, there is the Commission Implementing Regulation No 1348/2014 "on data reporting implementing Article 8(2) and Article 8(6) of Regulation (EU) No 1227/2011 *of* the European Parliament and of the Council on wholesale energy market integrity and transparency", which is binding in its entirety and directly applicable in all Member States (cf. art. 288 TFEU).

B. The Gas Act requires that the following persons communicate the *following* information towards the federal authorities, including the federal energy regulator (CREG) and the Belgian competition authority, and the EU Commission:

    a. Natural gas suppliers and wholesale trading companies are required to keep the relevant information with respect to all of their transactions with regard to natural gas supply contracts or) natural gas derivatives with large customers and the gas transmission system operator, as the operators of gas storage and LNG installations, available for a period of five years. The data shall include details on the characteristics of the concerning transactions such as duration, delivery, payment rules, quantities, execution data, execution times, and prices (art. 15/4quater Gas Act). The confidential and commercially sensitive nature of the data will be safeguarded.

    b. The CREG may also request all necessary information from market actors, including trading companies, to carry out its activities as energy regulator (art. 15/16 Gas Act). Such request must be motivated. The CREG may also verify the accounting of the market actor. If the market actor refuses to transfer the information, the CREG has the right to verify the information and the accounting in the offices of the market actor, and to take copies.

Impact on enforceability

Whether the lack of required licence would lead to the unenforceability of the EFET General Agreement or the Individual Contracts, to the extent that they relate to a licensable activity, is debatable. Case law is contradictory, and the legal doctrine is not conclusive.[18]

Article 86*ter*, 4° of the Financial Supervision Act states that a court can declare null and void any agreement in the framework of the offering or provision of investment services and activities entered into by an unauthorized service provider. The references to "offering or provision" and "service provider" could imply that ETEF General Agreements entered into by an authorized party are not threatened in case of the investment activity "dealing on own account". However, this interpretation is

[17] Art. 30 of the Walloon Gas Decree of 19 December 2002.

[5] Art. 15 Brussels Electricity Order of 1 April 2004.

[18] In support of the unenforceability: civ. Antwerp, 12 December 2007, RW, 2007-2008, p. 1510 and RDCB, 2009, p. 59; contra: civ. Ghent, 4 février 2002, NjW, 2002, p. 503; note J. Richelle under civ. Antwerp, 12 December 2007, RDCB, 2009, p. 59. See also M. Tison, "The civil law effects of MiFID in a comparative law perspective", Financial Law Institute, Working Paper Series.

uncertain and, even in case such interpretation is followed by a Belgian court, a counterparty could still try to fall back on common Belgian law to obtain the nullity of such agreement.

10. OTHER PROVISIONS

hh) If you have other recommendations that you would like EFET members to consider (for example to fully optimize the EFET General Agreement for a specific purpose such as to support limited trading between two entities both organized and doing business solely in your jurisdiction), then these types of suggestions may, but need not, be appended as an Annex to the end of your final opinion letter.

We have no recommendations to improve the enforceability of the EFET General Agreement under Belgian law other than those already mentioned in this opinion (as indicated on page 17 and page 20).

* * *

Yours sincerely,

Frederik Vandendriessche Permanent representative of Advocatenkantoor Frederik Vandendriessche BV Partner	Wouter Ghijsels Permanent representative of Wouter Ghijsels Advocaat BV Partner

ANNEX 1

DEFINITIONS

Definitions used in the EFET General Agreement and the EFET Credit Support Annex have the same meaning in this opinion.

Agreements means the agreements listed in Annex 14 (*List of Agreements*).

Article 14 Safe Harbour means Article 14 of the Financial Collateral Act.

BRRD means the Directive 2014/59/EU of 15 May 2014 establishing the framework for the recovery and resolution of credit institutions and stockbroking firms.

Brussels I Regulation means the Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

Civil Code means the Belgian civil code (*Burgerlijk Wetboek / Code Civil*) of 21 March 1804, as amended from time to time.

Concours means every situation where the mandatory *pari passu* ranking of unsecured creditors applies.

CPMA means the Cross-Product Master Agreement (Version February 2000) as amended by the EFET/IECA Commodities Schedule to the Cross-Product Master Agreement (Version 1.0, published 23 June 2003).

Credit Institutions Act means the Act of 25 April 2014 on the status and supervision of credit institutions.

Delegated Regulation means Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive.

Derivatives Decree means Royal Decree of 7 November 2011.

Economic Law Code means the law of 28 February 2013.

EFET means the European Federation of Energy Traders.

EFET Credit Support Annex means the EFET Credit Support Annex to the EFET General Agreement (version 2.0/May, 2010).

EFET General Agreement means the EFET General Agreement Concerning the Delivery and Acceptance of Natural Gas (Version 2.0(a), published 11 May 2007);

Gas Act means the Act of 12 April 1965 on the organisation of the gas market.

EU Insolvency Regulation means Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings.

Finality Act means Article 3 of the Act of 28 April 1999 implementing Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems.

Financial Collateral Act means the Belgian Act of 15 December 2004 on financial collateral (*Wet van 15 december 2004 betreffende financiële zekerheden / Loi du 15 décembre 2004 relative aux sûretés financières*).

Financial Collateral Directive means Directive (EU) 2002/47 of 6 June 2002 on financial collateral arrangements.

Financial Supervision Act means the act of 2 August 2002 on the supervision of the financial markets and financial instruments.

Individual Contracts are the contracts listed in Annex 5 (*Types of Individual Contracts*)

Insurance Control Act means the Act of 13 March 2016 on the status and supervision of insurance and re-insurance companies.

Investment Firm Act is the Act of 25 October 2016 on the access to the investment services business and on the statute and supervision of asset management companies and investment advice companies.

Insolvency Proceedings has the meaning given to it in Annex 7.

Judicial Code means the Belgian judicial code (*Gerechtelijk Wetboek / Code Judiciaire*) of 10 October 1967, as amended from time to time.

Mobilisation Act means the Act of 3 August 2012 regarding various measures facilitating the mobilisation of claims in the financial sector.

Mortgage Act means Title XVIII of Book III of the Civil Code.

NBB Act means the Act of 22 February 1989 on the organisation and status of the National Bank of Belgium.

Party means a Party to an Agreement.

Pensions Institutions Act means the Act of 27 October 2006 on the supervision of pension institutions.

Qualifying Transactions means the types of derivatives or other financial transactions that are covered by the terms of the Royal Decree of 7 November 2011.

REMIT means Regulation (EU) 1227/2011 on wholesale energy market integrity and transparency.

Rome I Regulation means Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations.

Rome II Regulation means Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations.

UCITS Act means the Act of 3 August 2012 on certain collective investment institutions.

ANNEX 2

GENERAL ASSUMPTIONS

For purposes of giving this legal opinion, we have made the following general assumptions:

1. Two counterparties enter into the EFET General Agreement and at least one of the counterparties is incorporated or organized or has its centre of main interest in Belgium (**Party A**).

2. Party A is a corporation, financial institution or other entity as further described in Annex 4.

3. The relevant EFET General Agreement is governed by the laws of Germany or England and Wales.

4. Each EFET General Agreement and any of the Agreements (including the EFET Credit Support Annex) is enforceable under the laws of any jurisdiction for purposes of private international law (other than the laws of Belgium) and each counterparty is duly incorporated, validly existing and has duly authorized, executed and delivered, and has the capacity to enter into, each document.

5. On the basis of the terms and conditions of the EFET General Agreement and other relevant factors, and acting in a manner consistent with the intentions stated in the EFET General Agreement, the counterparties over time enter into a number of Individual Contracts which include all of the Individual Contracts described in Annex 5.

6. The Individual Contracts provide for the physical delivery of commodities, certificates or emission rights in exchange for cash, however, some of them may also provide for cash settlement.

7. That each Party holds and complies with all regulatory licences or other requirements applicable in connection with its entry into and exercise of its rights and performance of its obligations under the EFET General Agreement and all relevant Agreements and Individual Contracts.

8. That there is no other agreement, instrument or other arrangement between or affecting the Parties to the EFET General Agreement which conflicts with, overrides, modifies or supersedes the EFET General Agreement.

9. That the EFET General Agreement and all Agreements and Individual Contracts are entered into prior to the commencement of any Insolvency Proceedings in respect of either Party.

10. That the EFET General Agreement and all Agreements and Individual Contracts entered into have been at the relevant time entered into for bona fide commercial reasons within the corporate purpose and interest of each of the Parties thereto, at arms' length terms conditions and without any fraudulent intent.

11. No Party had or should have had, actual notice or understanding that the applicable conditions of any bankruptcy, composition, rehabilitation (e.g. administration, receivership or voluntary arrangement) or other insolvency proceeding were met in respect of the other Party at the time at which the EFET General Agreement and all Agreements and Individual Contracts were entered into.

ANNEX 3

SPECIFIC ASSUMPTIONS

For purposes of giving certain specific opinions as referred to below, we have made the following specific assumptions (in addition to the general assumptions set out in Annex 2 above):

1. For purposes of our legal opinions set out in Section 2.1:

   (a) The relevant EFET General Agreement is governed by any law (including English or German law or the laws of Belgium).

   (b) After entering into the Individual Contracts and prior to the maturity thereof, Party A becomes the subject of a voluntary or involuntary case under the insolvency laws of your jurisdiction and, subsequent to the commencement of the insolvency, either Party A or an insolvency official seeks to assume the confirmations representing profitable Individual Contracts for the insolvent counterparty.

2. For purposes of our legal opinions set out in Section 3.1:

   (a) Party A has entered into Individual Contracts under the EFET General Agreement through offices in Belgium as well as through one or more branches located abroad. After entering into these Individual Contracts and prior to the maturity thereof, Party A becomes the subject of a voluntary or involuntary proceeding under the insolvency laws of Belgium.

3. For purposes of our legal opinions set out in Section 3.2:

   (a) A corporation, a bank, an investment services provider, an insurance company, an investment fund management company or any other similar financial institution ("Party F") incorporated, organized or having its centre of main interest in a country ("Country H") other than Belgium has entered under the EFET General Agreement into Individual Contracts both through its home office and through one or more branches located in other countries including in each case a branch of Party F located in and subject to the laws of Belgium (the **Belgian Branch**).

   (b) After entering into these Individual Contracts and prior to the maturity thereof, Party F becomes the subject of voluntary or involuntary proceedings under the insolvency laws of Country H.

4. For purposes of our legal opinions set out in Section 4:

   (a) Although it is a bilateral form in that it contemplates that each party may be required to post collateral to the other, we assume that (i) Party A is at all times Transferor under the EFET Credit Support Annex and (ii) that the collateral is owned by Party A or that Party A is authorized and empowered to transfer ownership in the collateral.

   (b) The counterparties agree that Eligible Credit Support will include cash and Letters of Credit. Cash is denominated in a freely convertible currency and is held in an account under the control of Party B maintained in the jurisdiction of the relevant currency.

5. For purposes of our legal opinions set out in Section 5:

(a) As far as the Confirmation Practice is concerned, when entering into an Individual Contract, the counterparties in each case (i) make oral reference to the EFET General Agreement when concluding the relevant Individual Contract over the phone or (ii) refer to the EFET General Agreement when subsequently exchanging confirmations or similar electronic, written or non-verbal means of entering into or confirming Individual Contracts (in whichever form, including telex, fax, SWIFT or other means of electronic transmission).

(b) Parties may or may not (i) use the EFET Electronic Confirmation Matching System (EFET eCM) to electronically match and exchange Confirmations or (ii) enter into the EFET Electronic Confirmation Agreement

(c) The parties to the EFET General Agreement are enterprises within the meaning of article I.1.1° of the Economic Law Code being one of the following organisations:

(i) any natural person who carries out a professional activity on a self-employed basis;

(ii) any legal person (*rechtspersoon / personne morale*); or

(iii) any other organisation without legal personality.

The following entities are not considered to be enterprises:

(i) any organisation without legal personality that does not have a distribution purpose and that does not in fact make distributions to its members or persons exercising decisive influence on the policy of the organisation

(ii) any public body that does not offer goods or services on the market

(iii) the Federal State, the regions, the communities, the provinces, the townships and similar entities.

6. For purposes of our legal opinions set out in Section 6:

(a) The relevant EFET General Agreement is governed by any law (including English or German law or the laws of Belgium).

(b) After entering into the Individual Contracts and prior to the maturity thereof, Party A becomes the subject of a voluntary or involuntary case under the insolvency laws of your jurisdiction and, subsequent to the commencement of the insolvency, either Party A or an insolvency official seeks to assume the confirmations representing profitable Individual Contracts for the insolvent counterparty.

(c) Party A has entered into Individual Contracts under the EFET General Agreement through offices in Belgium as well as through one or more branches located abroad. After entering into these Individual Contracts and prior to the maturity thereof, Party A becomes the subject of a voluntary or involuntary proceeding under the insolvency laws of Belgium.

(d) A corporation, a bank, an investment services provider, an insurance company, an investment fund management company or any other similar financial institution ("Party F") incorporated, organized or having its centre of main interest in a country ("Country H") other than Belgium has entered under the EFET General Agreement into Individual

Contracts both through its home office and through one or more branches located in other countries including in each case a branch of Party F located in and subject to the laws of Belgium (the “Belgium Branch”).

(e) After entering into these Individual Contracts and prior to the maturity thereof, Party F becomes the subject of voluntary or involuntary proceedings under the insolvency laws of Country H.

7. For purposes of our legal opinions set out in Section 7:

(a) The relevant EFET General Agreement is governed by the laws of a jurisdiction other than Belgium (including English or German law).

ANNEX 4

TYPES OF COUNTERPARTIES

The present opinion is solely given in respect of the following counterparties:

1. Corporations (e.g., limited liability companies or stock corporations)
2. Partnerships (e.g., general or limited partnerships)
3. Banks/Credit Institutions
4. Investment Services Provider/Investment Firms
5. Insurance Companies
6. Investment Fund Management Companies
7. Municipalities or Counties
8. Associations of Local Government
9. Publicly-owned Corporations

ANNEX 5

TRANSACTIONS UNDER THE EFET GENERAL AGREEMENT

Commodity Forward. A transaction in which one party agrees to purchase a specified quantity of a Commodity at a future date at an agreed price and the other party agrees to pay a price for the same quantity to be set on a specified date in the future. The payment calculation is based on the quantity of the Commodity and is settled based, among other things, on the difference between the agreed forward price and the prevailing market price at the time of settlement.

Commodity Option. A transaction in which one party grants to the other party (in consideration for a premium payment) the right, but not the obligation, to purchase (in the case of a call) or sell (in the case of a put) a specified quantity of a Commodity at a specified strike price. The option can be settled either by physically delivering the quantity of the Commodity in exchange for the strike price or by cash settling the option, in which case the seller of the option would pay to the buyer the difference between the market price of that quantity of the Commodity on the exercise date and the strike price.

Commodity Swap. A transaction in which one party pays periodic amounts of a given currency based on a fixed price and the other party pays periodic amounts of the same currency based on the price of a Commodity or an exchange-traded futures contract on a Commodity (e.g., the EEX EU Carbon Future); all calculations are based on a notional quantity of the commodity.

Physical Commodity Transaction. A transaction which provides for the purchase of an amount of a Commodity at a fixed or floating price for actual delivery on one or more dates.

Commodity means natural gas, emissions allowances, certificates or capacity rights.

ANNEX 6

GENERAL DESCRIPTION OF ENFORCEABILITY OF CLOSE-OUT AND NETTING PROVISIONS

This Annex 6 contains a general general description of limitations in Belgian law applicable to enforceability of netting and related close-out provisions.

1. ARTICLE 14 SAFE HARBOUR

1.1. Safe harbour

Article 14 of the Financial Collateral Act (the **Article 14 Safe Harbour**) provides that netting agreements as well early termination provisions aimed to achieve set-off or novation (*i.e.* close-out provisions) are enforceable vis-à-vis third parties notwithstanding the occurrence of an Insolvency Proceeding in respect of one of the parties.[19]

The date of maturity, the object or the currency in which the obligations are denominated, are irrelevant for the purpose of the Article 14 Safe Harbour. Contrary to statutory set-off, no “close connection” between the claims is required to effect post-insolvency netting (by way of novation or set-off) under the Article 14 Safe Harbour.

1.2. Scope: netting agreements

For purposes of the Article 14 Safe Harbour, netting agreements are defined as:

(a) novation agreements (no further definition of a "novation agreement" is given, but it is understood to refer to bilateral or multilateral agreements pursuant to which two or more debts between two or more parties are deemed to be extinct and replaced by a new net debt if certain conditions are met, so that only a “net” position remains);

(b) bilateral or multilateral set-off agreements (no further definition of "set-off agreements" is given, although this is understood to refer to the general civil law concept of set-off pursuant to which the mutual debts between two parties are extinct up to the common amount upon such amounts becoming due or being deemed to be due.

§10.3(b) of the EFET General Agreement constitutes a novation agreement and therefore a "netting agreement" for purposes of the Article 14 Safe Harbour.

1.3. Scope: close-out provisions "aimed at netting"

For purposes of the Article 14 Safe Harbour, close-out provisions are described as early termination provisions aimed to achieve set-off or novation. The termination provisions set out in §10 of the EFET General Agreement are linked to the provisions in §10.3(b) and §11 of the EFET General Agreement relating to the calculation of a single net amount, thus qualifying as a "close-out provision" for purposes of the Article 14 Safe Harbour.

In certain specific factual circumstances, however, there may be an argument that a termination made under §10 of EFET General Agreement does not actually aim at achieving a netting arrangement. The legislative history of the law of 31 January 2009 on the continuity of enterprises mentions that an effective netting might be required in order for Article 14 Safe Harbour to be applicable. Indeed in legal doctrine the argument has been made by authoritative scholars and practitioners that a useful use of

[19] The Financial Collateral Act does not contain a strict definition of the concepts of “set-off”, “netting” or “close-out netting”. “Set-off” is generally given the meaning of the general civil law concept: the mutual debts between two parties are extinct up to the common amount upon such amounts becoming due or being deemed to be due. “Netting agreements” comprise (i) contractual set-off provisions and (ii) novation mechanisms.

close-out provisions in these circumstances must always be combined with an actual netting of amounts. The fact that structurally and intentionally the close-out provisions were included to allow for netting would, according to those authors, not suffice if the close-out does in fact not lead to an actual netting of mutual claims. The underlying concern seems to be that in the absence of actual netting early termination provisions could be used to avoid the consequences of an insolvency proceeding. This absence of effective netting may occur for instance because there is only one outstanding Individual Contract at the time, or because all outstanding Individual Contracts each give rise to a Settlement Amount owing from the same Party to the other.

In our opinion, the better analysis should be that the presence of both close-out provisions and netting provisions should in all circumstances (except manifest abuse) be sufficient provided the contract(s) and relationship between the parties are of a type where it is reasonable to expect that actual netting may occur, i.e. where netting would be a normal feature of the contract and the relationship. It would for such contracts be illogical if the effectiveness of a close-out provision would depend on the "coincidence" whether or not based on the calculations following close-out there would or would not be an actual netting. At least as far as judicial reorganisations are concerned there is the additional argument that since changes to the Financial Collateral Act, the conditions for the effectiveness of close-out provisions have been further refined to avoid as much as possible an adverse impact on the chances for success of a judicial reorganisation. Those more detailed rules provide that financial transactions effected under typical market/ master agreements would not be subject to the additional requirements/limitations. It would not be in line with the typical operation of the close-out and netting provisions of such agreements to require that they would only be effective if and to the extent the result of the close-out would entail an actual netting.

1.4. Scope: eligible counterparties

All counterparties within the scope of this legal opinion (as listed in Annex 4) are in principle eligible for the Article 14 Safe Harbour, with limited exceptions related to judicial reorganisation proceedings, recovery or resolution measures under the Credit Institution Act, and mandatory transfers of insurance or reinsurance undertakings under the Insurance Supervision Act, as described below.

Additionally, in the absence of authoritative case law it is not certain to what extent the set-off rights set out in the EFET General Agreement would be enforceable in case the counterparty is an institution for occupational retirement provision within the meaning of the Pension Institutions Act and would become subject to liquidation (as provided for in article 42 of the Pensions Institutions Act) or a measure for redress (*herstelmaatregel / mesure de redressement)* (in particular, but without limitation, as provided for in article 121 of the Pensions Institutions Act). The better view should be that the consequences of such liquidation should be overridden by the Article 14 Safe Harbour. Such conclusion is in line with the analysis made in recent publications as to the applications of similar, but not identical provisions applicable to Belgian insurance companies. The analysis for measures of redress should be the same, except where article 121 of the Pensions Institutions Act would apply because of its particular terms ("*niet vatbaar voor beslag* / *insaisissable*").

1.5. Scope: eligible transactions

There are in principle no restrictions in the Article 14 Safe Harbour on the types of underlying claims or debts being netted. All types of transactions within the scope of this legal opinion (as listed in Annex 5) are in principle eligible for the Article 14 Safe Harbour.

In case of judicial reorganization proceedings, the Article 14 Safe Harbour will only apply to a more limited set of transactions, as described below.

1.6. Application of the Article 14 Safe Harbour in case of Insolvency Proceedings

(a) *Bankruptcy.* The Article 14 Safe Harbour would make close-out netting effective in case of bankruptcy proceedings.

The Financial Collateral Act also makes various rules of bankruptcy law in relation to voidable preferences inapplicable to netting agreements: the rules providing for the voidness of payments of unmatured debts made during the suspect period, and of transactions made or payments received during the suspect period by a party in the knowledge that the other party was already in a situation of cessation of payments, do not apply to close-out and netting agreements and to payments made pursuant thereto.

(b) *Liquidation.* The Article 14 Safe Harbour would make close-out netting effective in case of liquidation proceedings.

(c) *Attachment.* The Article 14 Safe Harbour would make close-out netting effective in case of attachment.

(d) *Judicial reorganisation proceedings.* In case of judicial reorganisation proceedings, close-out netting under the Article 14 Safe Harbour may only be effected if one of the following conditions is met:

(i) both the debtor and the creditor are a "public or financial legal person", as defined by the Financial Collateral Act (see for a list Annex 12); or

(ii) the defaulting counterparty has actually defaulted on its payment towards the counterparty that wants to apply the set-off;

(iii) the close-out netting is required for the enforcement of a pledge on financial instruments, a transfer of property by way of security or a repo-agreement; or

(iv) the close-out netting is agreed in relation to at least one of the types of derivatives or other financial transactions that are covered by the terms of the Derivatives Decree. Such transactions shall be referred to as "Qualifying Transactions". An analytical summary of such Derivatives Decree is included in Annex 13 to this letter.

Furthermore, netting is also possible under Article 14 Safe Harbour if it takes place without invoking early termination ("close-out").

If none of items (i) to (iii) would apply, the applicability of (iv) would require that the transactions are Qualifying Transactions <u>and</u> that the parties have agreed to apply certain standard market/master agreements (the list does not include the EFET General Agreement) or "any similar framework agreement that is used by credit institutions in the Belgian market".

In the absence of case law, nor any regulatory guidance, in our opinion, all types of transactions as described in Annex 5 would qualify as Qualifying Transactions.

There is neither case law, nor any regulatory guidance as to the exact scope of the terms "any similar framework agreement that is used by credit institutions in the Belgian market" as used in the Derivatives Decree. In our opinion one would at least need to show a precedent of a market practice or a minimum of use by Belgian credit institutions or by foreign credit institutions in the Belgian market practice or with Belgian counterparties.

(e) *Recovery or resolution measures taken by the Government in relation to an insurance company, a clearing and settlement institution (or equivalent institution).* In case of any of these measures close-out netting under the Article 14 Safe Harbour may only be effected if one of the additional conditions set out in (d) above is met.

(f) *Recovery or resolution measures in respect of a credit institution or a stockbroking firm*. See Section 2.1 above.

(g) *Resolution measures in respect of financial holding companies, mixed holding companies and mixed financial holding companies*. Similar resolution measures as for credit institutions may in certain circumstances also be applied to financial holding companies, mixed holding companies and mixed financial holding companies.

(h) *Recovery or resolution* measures *in respect of other financial institutions*. In case of any of these measures close-out would be enforceable based on the Article 14 Safe Harbour.[20]

In any case, set-off after the occurrence of a Concours between a claim which already existed in seed before the Concours and a claim which did not already exist in seed before the Concours is not possible.[21]

2. IMPACT OF IMMUNITY

Pursuant to article 1412bis, §1 of the Judicial Code the assets belonging to the Belgian State, the Regions, the Communities, the provinces, the municipalities, the institutions of public utility and, in general, all public law legal entities *(publiekrechtelijke rechtspersonen / personnes de droit public)* enjoy immunity from enforcement *(uitvoeringsimmuniteit / immunité d'exécution),* except for those assets (i) which have been duly designated by its owner as being eligible for enforcement, in accordance with article 1412bis, §2, 1° of the Judicial Code, or (ii) which, in the absence of such designation or in case the realisation of the designated assets would not suffice to satisfy all creditors, in accordance with article 1412bis, §2, 2° of the Judicial Code, are beyond any doubt of no use to perform the tasks of such entity, or to guarantee the continuity of the public service; in the absence of clear case law, it is uncertain if such immunity of enforcement can be waived in respect of assets other than those referred to under (i) and (ii).

Some legal writers have considered that immunity from enforcement also applies to the right of set-off because an effective set-off would have the same effect as an enforcement. Also the question could arise whether article 1293, 3° of the Belgian Civil Code, would not prevent set-off where a counterparty enjoys immunity from enforcement and it would on that basis not be allowed for creditors to attach (*beslag / saisie*) the claim of the counterparty which is to be set-off. Such opinions have, however, not been confirmed by any reported decision of the Belgian Supreme Court.

In our opinion the better view is that such immunity should not prevent the enforceability of the set-off provisions set out in the EFET General Agreement. Such conclusion is based on the following considerations:

(a) there are authoritative legal writers that have argued, rightly in our opinion, that it may be possible to make the analysis that the application of statutory set-off equals enforcement of a claim, but that the same cannot be said for contractual set-off (such as provided in the EFET General Agreement) because this is the mere performance of valid terms of a contract;

[20] Before November 2011 there was an argument that close-out and netting would in any event not be effective upon the implementation of a recovery or resolution measure because the latter measures should be deemed to overrule Article 14 of the Financial Collateral Act. To date that uncertainty has been resolved because the express provisions excluding close-out as introduced into the Financial Collateral Act only apply to specifically named entities. Any other interpretation would also mean that the Belgian rules would conflict with the terms of the Financial Collateral Directive, as it applies to date.

[21] See also article 14 of the Financial Collateral Act and XX.55 of the Economic Law Code.

(b) contractual set-off such as provided in the EFET General Agreement is intended to procure that in case of (early) termination only one net amount is payable by either one of the parties; strong arguments exist to state that only such "net balance" could be the subject matter of attachment or prohibition of attachment (*i.e.* immunity from enforcement), i.e. that the immunity could not prevent set-off between mutual claims that would take place to arrive at the "net balance".

3. IMPACT OF ASSIGNMENT OF UNDERLYING RIGHTS

The Mobilisation Act aims to limit the rights of credit institutions and certain financial institutions to invoke set-off rights in case their counterparties have transferred or pledged a claim owed by the credit institution or financial institution. Article 6 § 1 of the Mobilisation Act provides that once a transfer or pledge of a claim against a credit institution or financial institution related to certain services referred to in article 4 of the Credit Institutions Act has been notified to or acknowledged by the institution, it is no longer entitled to invoke statutory or contractual set-off with the transferred or pledged claim in case the conditions for set-off are only satisfied after such notification or acknowledgement. The new rule overrides the Article 14 Safe Harbour, which provides that for agreements that include netting provisions, the transfer (or pledging) by one of the parties will not prevent the other party from invoking set-off between a debt owed by the other party to the transferor and the claim that has been transferred (pledged) by the transferor. Article 6, §§4 and 5 of the Mobilisation Act provide for certain exemptions to the limitation on set-off included in Article 6, §1 of the Mobilisation Act. The exemptions are, however, not drafted in a sufficiently broad manner to also cover the netting provisions as they apply to the Individual Contracts as set forth in the EFET General Agreement. The limitation on set-off included in article 6, §1 of the Mobilisation Act could hence potentially have an impact on the possibility to operate netting arrangements in respect of claims such as provided for under the EFET General Agreement.

ANNEX 7

SHORT OVERVIEW OF
INSOLVENCY PROCEEDINGS, LAWS AND TERMINOLOGY

This Annex 7 contains a short overview of the most relevant insolvency proceedings, laws and terminology applicable to Party A, and whether there is publicly available information that would confirm any of the procedural steps or other solvency related facts (e.g., financial statements, corporate actions, etc.).

1. INSOLVENCY PROCEEDINGS IN BELGIUM

The only bankruptcy, composition, rehabilitation or other insolvency or reorganisation procedures to which a Party could be subject under the laws of Belgium, and which are relevant for the purposes of this opinion, are:

(a) bankruptcy (*faillite / faillissement)* under Title VI of Book XX of the Code of Economic Law;

(b) judicial reorganisation *(réorganisation judiciaire / gerechtelijke reorganisatie)* under the under Title V of Book XX of the Code of Economic Law [22];

(c) voluntary or judicial liquidation *(liquidation / vereffening)* under the Belgian Code of Companies and Associations or, in respect of institutions for occupational retirement provision, voluntary or judicial liquidation *(liquidation / vereffening),* imposition of a stabilisation or recovery plan, or appointment of provisional managers under the law of 27 October 2006[23]; a liquidation does not necessarily means that the entity concerned is insolvent properly speaking, but the liquidation proceedings trigger the applicability of many rules of insolvency law *(concours des créanciers / samenloop van schuldeisers);*

(d) recovery measures (*mesures de redressement / herstelmaatregelen*) and resolution measures (*afwikkeling / résolution*) envisaged for credit institutions and stockbroking firms under the Credit Institutions Act;

(e) recovery measures for investment fund management companies as envisaged in Part 3, Book 2, Title 4 of the UCITS Act;

(f) recovery or resolution measures for (re)insurance companies envisaged in the Insurance Control Act;

(g) recovery measures for portfolio management and investment advice companies envisaged in the Investment Firm Act;

(h) recovery measures for central counterparties, clearing and settlement institutions and equivalent institutions, central securities depositories and deposit banks envisaged in Chapter 4/2 of the NBB Act; and

(i) attachment *(saisie-arrêt / beslag onder derden)* under the Judicial Code; an attachment does not necessarily mean that the entity concerned is generally insolvent, but the

[22] Judicial reorganisation proceedings cannot be opened in respect of credit institutions, insurance and reinsurance undertakings, investment firms, management companies of collective investment undertakings, institutions for occupational retirement provision, central counterparties, clearing and settlement institutions, central securities depositories and any supporting organizations thereto, custodian banks, as well as financial holdings and mixed financial holdings.

[23] Law of 27 October 2006 on the supervision of institutions for occupational retirement provision, Art. 35 *et seq.*

attachment proceedings trigger the applicability of many rules of insolvency law *(concours des créanciers / samenloop van schuldeisers).*

The above are together called **Insolvency Proceedings**. Generally speaking, the territorial scope of bankruptcy and judicial reorganisation proceedings catches entities that have the centre of their main interests (main proceedings) or an establishment (secondary or territorial proceedings) in Belgium. Attachments may apply to the assets of any entity, where such assets are located in Belgium.

The opening of Insolvency Proceedings generally gives rise to official publication, albeit with some delay, in the *Annexes au Moniteur belge / Bijlagen tot het Belgisch Staatsblad* or in the *Moniteur belge / Belgisch Staatsblad.* Attachments are not published but must be notified to a central registry, where these notifications are available for inspection by lawyers and bailiffs when in charge of legal proceedings against the relevant party.

Certain entities may benefit from immunities against enforcement by creditors and from Insolvency Proceedings; in particular, immunities are generally available to central or local authorities, and may be available to other entities organised under public law.

2. MAIN EFFECTS OF INSOLVENCY PROCEEDINGS

2.1. Bankruptcy

(a) *Cessation of activities and appointment of a bankruptcy trustee.* The declaration of bankruptcy normally results in the immediate cessation of the activities of the entity concerned; the court may, however, order a temporary continuation of the activities. A bankruptcy trustee (curateur / curator) is appointed and the powers of the members of management are terminated as from the day on which the court declares the bankruptcy.

(b) *Current contracts*. The declaration of bankruptcy does not by itself cause the termination of current contracts to which the bankrupt entity was a party, except if such automatic termination was agreed upon or for so-called purely personal agreements ("intuitu personae"). Termination clauses triggered by the bankruptcy are generally valid. In the absence of such a clause or an intuitu personae characterisation, the bankruptcy trustee must decide whether to let existing contracts continue. His decision must be guided by the best interest of the bankrupt estate. The solvent party may require the bankruptcy trustee to decide whether he wishes to continue the contract or not. Failing a decision within 15 days as from the date on which the bankruptcy trustee is formally invited to take a decision, the contract is deemed automatically terminated. In case of termination of the contract by the bankruptcy trustee or due to a timely decisions of the latter, indemnities payable by the bankrupt entity normally have the same priority as claims of any other ordinary, unsecured creditors.

(c) *Enforcement of claims and security*. Unsecured creditors and creditors with a preferential claim (statutory lien) on all the movable assets cannot take enforcement steps any more as from the bankruptcy order. It is the exclusive role of the bankruptcy trustee to sell the assets and distribute the proceeds between the creditors. Secured creditors must suffer a temporary suspension of their right to enforce security for a period set by the court, which is usually about one to two months after the date of the bankruptcy. The court may order the suspension of enforcement for a period of up to one year from the date of bankruptcy if this is considered to be in the interests of the bankrupt estate (for example, if individual enforcement by a secured creditor would prejudice the possibility of selling the business as a whole in going concern), provided that the bankruptcy trustee has a reasonable expectation that a sale of the assets may subsequently be effected without prejudicing the interests of the secured creditors. These suspension measures do not affect security regulated by the Financial Collateral Act, i.e. collateral in the form of securities or cash.

(d) *Close-out, netting and set-off*. See Annex 1Part A2 and Annex 6.

(e) *Super-preference after failed reorganisation*. If a judicial reorganisation procedure is followed by a bankruptcy, and provided that there is a link between the termination of the judicial reorganisation and the opening of the bankruptcy proceedings, debts incurred during the judicial reorganisation procedure and that are related to the performance of contracts (including contracts envisaged under the Agreements) during the judicial reorganisation procedure are considered to be debts of the bankrupt estate (boedelschulden / dettes de la masse), meaning that these will be paid out in the bankruptcy before unsecured creditors or creditors with only a general preference..

(f) *Voidable preferences/claw back rules*. When declaring the bankruptcy or in a later judgment, the court will determine the date when the debtor ceased to pay its debts. The period between that date of cessation of payment and the date of bankruptcy is the so-called "suspect period". This period may have a duration of up to six months before the declaration of bankruptcy, or more if the bankrupt entity was already in liquidation before its bankruptcy. The date of cessation of payments will in principle be the date of the bankruptcy order, unless there are particular circumstances that justify to set such date as having occurred earlier.

The following types of transactions made during the suspect period must mandatorily be declared ineffective by the court if this is demanded:

(v) transactions involving the disposal of assets for free (without consideration) or that entail a significant undervalue (the law reads "if the value of what was given by the bankrupt party notably exceeds the value of the consideration received by it");

(vi) payments of debts not yet due and payable and payments of debts due and payable where such payment is otherwise then by way of cash or trade paper; and

(vii) new security provided for pre-existing debts.

Transactions made or payments received by a party during the suspect period, in the knowledge that the other party was already in a situation of cessation of payments, may be declared ineffective if such transaction is found to have been detrimental to the other creditors.

So-called "fraudulent transactions", *i.e.* abnormal transactions entered into in the knowledge that the transaction would prejudice the creditors of a party, are also ineffective in the subsequent bankruptcy of that party. This is so even if the transaction dates back from before the suspect period.

2.2. Judicial reorganisation

(a) *Conditions and process.* A judicial reorganisation may be granted if the survival of a business is under threat. This procedure remains available even if the company meets all conditions to be declared bankrupt. The judicial reorganisation process starts at the initiative of the debtor entity, which files an application with the commercial court. The debtor will normally remain "in possession" throughout the process, *i.e.* current management remains in place and continues to run the business. The court however retains the power to displace management, and to appoint a provisional manager, in cases of fraud or gross incompetence.

The debtor may opt between three types of reorganisation: (i) an amicable agreement *(i.e.* an arrangement made with a limited number of creditors and with their individual consent, which we will not further discuss in this opinion), (ii) a collective agreement, or (iii) a transfer of business.

Switching from one type of reorganisation process to another is possible during the proceedings in certain circumstances and subject to certain conditions.

A <u>collective agreement</u> is essentially a debt restructuring plan. It encompasses two phases: a suspension phase (for maximum six months, or very exceptionally 18 months) and an execution phase (for a maximum period of 5 years).

During the suspension phase:

(i) a moratorium will apply suspending enforcement actions (see below);

(ii) the debtor must draw up a reorganisation plan involving a description of the restructuring and a description of each creditor's rights following such restructuring. This restructuring may consist of different measures such as a debt write-off, modification of payment terms, interest waivers, the transfer of all or part of the company's business or the conversion of debt into equity;

(iii) this plan can only affect claims “in the suspension” (*i.e.* originated prior to the judgment opening the judicial reorganisation procedure);

(iv) Claims originated after the judgement will not be affected by the suspension (except the prohibition to file for bankruptcy) nor the terms of the reorganisation plan.

(v) such restructuring plan will be submitted to a vote at a meeting of creditors and will only be adopted if (i) the majority of creditors attending the meeting and (ii) the majority in value of the total claims (in principal amount), vote in favour of such plan. Such vote has to take place within the suspension phase.

If the plan is adopted by the meeting of creditors, and if the court approves the reorganisation plan, the plan will be binding on all creditors (including those which did not attend the creditors’ meeting mentioned above) and the moratorium mentioned above will end. The execution phase of the plan has a maximum duration of five years, the exact duration to be determined in the approved reorganisation plan.

A <u>transfer of business</u> consists in a sale of all or part of the debtor's assets and activities, as a going concern. The transfer must be carried out by a judicial representative appointed and supervised by the court. The proceeds of the sale are distributed among the creditors in accordance with their priority.

(b) *Current contracts, grace period and contractual walkaway.* The reorganisation proceedings do not and may not cause the termination of current contracts to which the insolvent entity was a party: termination clauses triggered by the occurrence of reorganisation proceedings are unenforceable.

The debtor who applies for reorganisation automatically benefits from a 15 day grace period to cure previous breaches of contract that occurred prior to the start of the judicial reorganisation proceedings. During this time, the other party cannot terminate the contract because of that breach.

Also, the debtor who applies for reorganisation may opt to stop performing its obligations under current contracts (other than employment contracts) if such is necessary for the purposes of the reorganisation plan or for the transfer of the business. Damages for breach of contract will be due (and will be subject to whatever rescheduling or forgiveness measures that may be provided for by the reorganisation plan), but the claiming party will not be able any more to obtain injunctions ordering performance in kind of the contract.

(c) *Enforcement of claims and security.* Upon a positive decision of the court to open a judicial reorganisation procedure, the court will grant a moratorium for a period of up to 6 months (this moratorium may be extended, but the total period may not exceed 1 year – in exceptional circumstances, the period can be extended by another 6 months to a total of 18 months).

During this moratorium period:

(i) the debtor is granted protection against claims from creditors originated prior to the judgment opening the judicial reorganisation procedure ('claims in the suspension').

(ii) no bankruptcy proceedings can be opened.

(iii) no means of enforcement against any of the assets of the company can be used or pursued.

(iv) no assets can be seized to secure claims in the suspension.

The prohibition on enforcement also excludes the enforcement of actual security interests (e.g. a pledge or mortgage) or creditors benefitting from a statutory lien (*voorrecht / privilège*), except for:

(i) a specific pledge over claims; however, where claims are merely pledged by way of a pledge over the business (*pand handelszaak / gage sur fonds de commerce*) the prohibition would apply;

(ii) security interests over a bank account or financial instruments created under the Financial Collateral Act.

After approval of the reorganisation plan, enforcement rights are fully available again, but the claims will only be enforceable in accordance with their rescheduled or restructured terms as they result from the approved reorganisation plan.

(d) *Risk of discriminatory treatment and subordination.* During the moratorium phase of the reorganisation, pre-existing claims cannot be enforced, but the debtor may still voluntarily pay those claims but only if such payment is required for the continuity of the business. Also, the reorganisation plan itself may differentiate between categories of creditors, and may impose harsher rescheduling or forgiveness terms on certain creditors compared to others, if such differentiation is reasonably justified, based on objective criteria and not disproportional to the objectives of the judicial reorganisation proceedings (i.e. safeguard the continuity of the business). In principle, all creditors must receive at least 20% of their claim and certain creditors benefit from a stronger protection.

New liabilities that arise during the reorganisation proceedings (trade suppliers, fresh money advanced by lenders, etc.) will be considered debts of the insolvent estate if the reorganisation fails and ends in a bankruptcy or liquidation. A reorganisation process that lasts for any significant period of time therefore entails the risk of subordinating the old creditors to new operational expenses/debts.

(e) *Voidable preferences.* There is no "suspect period" in the case of judicial reorganisation proceedings, and there are no voidable preferences/claw-back rules.

2.3. Liquidation

Depending on the particular circumstance, a voluntary liquidation can be used, in the case of an insolvency, as an alternative to bankruptcy proceedings, but only if a significant majority of creditors maintain their confidence in the company and its liquidator(s) and the proper handling of the liquidation by the liquidator in accordance with the applicable laws is not successfully challenged by a significant creditor in court (in which case a new liquidator could be appointed and prior liquidation decisions may be challenged). The liquidation process is less closely supervised by the court than the other two types of proceedings.

Creditors in principle lose their enforcement rights in a liquidation, save to the extent that (i) they have the benefit of security or of a lien over specific assets or (ii) they can demonstrate that the enforcement would not prejudice other creditors or the proper course of the liquidation.

2.4. Recovery and resolution measures

Belgian law includes recovery and/or resolution proceedings for Belgian law includes recovery and/or resolution proceedings for each of the following types of financial institutions: (a) credit institutions and stockbroking firms, (b) insurance companies, (c) portfolio management and investment advice companies, (d) investment funds management companies, (e) clearing and settlement institutions (or equivalent institutions, including central counterparties), (f) reinsurance companies, and (g) financial holding companies and mixed financial holding companies..

(a) Credit Institutions and stockbroking firms

The Credit Institutions Act includes the recovery (*mesures de redressement / herstelmaatregelen*) and resolution measures (*mesures de resolution / afwikkelingsmaatregelen*) included in the BRRD, including the bail-in instrument.

These measures include a range of powers to enforce the operation of credit institutions stockbroking firms in accordance with the prudential requirements set out in the Credit Institutions Act and directly applicable EU legislation, including the power for the supervisory authority to suspend certain activities and contracts and powers for the resolution authority to require and implement the sale of the institution, to establish a bridge institution or to separate certain assets.

Such measures may interfere with ongoing contracts, e.g. because the obligations to perform contracts may be suspended or because termination clauses triggered by the adoption of these measures are unenforceable. The Credit Institutions Act, however, also contains provisions to limit the impact on certain types of transactions, including structured finance transactions, financial collateral and netting agreements.

(b) (Re)Insurance companies

Measures that may apply to Belgian insurance companies include the power for the supervisory authority to suspend certain activities and contracts and powers for the Belgian Government to require and implement the sale of the institution or the transfer of assets and liabilities or business lines.

(c) Portfolio management and investment advice companies

Measures that may apply to Belgian portfolio management and investment advice companies include the power for the supervisory authority to suspend certain activities and contracts.

(d) Investment fund management companies

Measures that may apply to Belgian investment fund management companies include the power for the supervisory authority to suspend certain activities and contracts.

(e) Central counterparties, clearing and settlement institutions and equivalent institutions, central securities depositories and deposit banks

To date, no particular recovery measures (*mesures de redressement / herstelmaatregelen*) have yet been enacted, but the Government has the power to enact them by way of implementing legislation (*arrêté royal / koninklijk besluit*). The Government also has the power for certain institutions (in particular central depositories) to require and implement the sale of the institution or the transfer of assets and liabilities or business lines.

(f) Financial holding companies, mixed holding companies and mixed financial holding companies

As from 1 January 2016 the Credit Institutions Act also provides for these companies similar rules as those applicable to credit institutions

2.5. Attachments

Attachments can be made fairly easily, often without prior authorisation from the court (the attachment is then merely conservatory *(conservatoire / bewarend*).

2.6. Timing of the Insolvency Proceedings

The general procedural aspects of Insolvency Proceedings are described above. As to timing of the proceedings, more specifically:

(a) *Bankruptcy.* A bankruptcy is effective at zero hour on the date when the court issues the judgment declaring the bankruptcy. There are some relevant exceptions to this "zero hour rule": a netting agreement is valid if entered into before the actual time of a declaration of bankruptcy, or later as long as the solvent party was legitimately unaware of this declaration at the time when entering into the agreement;

Bankruptcy proceedings are initiated by the bankrupt party's own application, or by summons of a creditor or the public prosecutor. The time of the application or the summons has no relevant effect for the purposes of this opinion. In the infrequent cases when the court appoints a provisional administrator in the anticipation of a possible declaration of bankruptcy, some effects of the bankruptcy will already arise from the time of the appointment.

(b) *Reorganisation proceedings.* The timing and sequence of reorganisation proceedings are described above. Reorganisation proceedings are normally initiated by the insolvent party's own application, except that in a limited number of circumstances the public prosecutor's office, a creditor or any third party having a valid interest may request the court to order the transfer of the business of the debtors. Such circumstances *inter alia* include in particular situations where the reorganisation plan is not accepted, is withdrawn or the court refuses to open reorganisation proceedings.

(c) *Liquidation.* A voluntary liquidation will arise from a decision made by the general meeting of shareholders (or equivalent body) of the entity concerned, a judgment of the court, or (rarely) the expiry of the limited period of time for which the company was incorporated. There is some uncertainty as to the time when the effects of a liquidation arise: actual time of the decision, zero hour on the day of the decision, day of official publication of the liquidation, or 16 days after the publication. In practice the liquidator will want to impose the effects as from the decision.

The time of initiation of court proceedings seeking a liquidation has no relevant effect for the purposes of this opinion.

(d) *Recovery and resolution measures.* Recovery measures typically become effective immediately for the institution in respect of which the measures are taken. The effect towards third parties of recovery or resolution measures differs depending on the precise type of measure that is taken. In relation to limitations on activities (suspension or other) these would become effective against third parties as from publication in the *Moniteur belge / Belgisch Staatsblad*. For measures that relate to the resolution of a credit institution or the disposal of the institution or its assets, effectiveness against third parties will typically become effective when a court judgment that validates the decision and such judgment is published in the *Moniteur belge / Belgisch Staatsblad.*

(e) *Attachments.* An attachment takes effect at the time when the bailiff gives official notification, to the third-party debtor, of the attachment of the debt it owes to the party against which the attachment is made.

The time of initiation of legal proceedings seeking authorisation to proceed with an attachment (this authorisation is often unnecessary anyway) has no relevant effect for the purposes of this opinion.

2.7. Effect of foreign (possibly) secondary insolvency proceedings

The question whether current contracts may be closed out upon or by reason of the Insolvency Proceedings is governed by the law of the jurisdiction of opening of Insolvency Proceedings. The question whether set-off may be invoked in Insolvency Proceedings is governed by various combinations of the law of the jurisdiction of opening of Insolvency Proceedings, the law that governs the claim of the insolvent debtor, and the law that governs the netting agreement between the parties.

If a Party is subject to main bankruptcy or reorganisation proceedings or to liquidation proceedings in Belgium (because it has the centre of its main interests in Belgium) and to secondary insolvency proceedings in a foreign jurisdiction (because it has an establishment in that foreign jurisdiction, unless it is a credit institution or an insurance undertaking), there may be a possibility that the Belgian courts would give effect to the foreign insolvency laws, to the extent that such laws regulate the right to close out certain contracts (for instance by allowing the liquidator in charge of these secondary proceedings to "cherry pick" which transactions to close out or to continue) and that these contracts are deemed situated in that foreign jurisdiction. Although the determination of the situation of a contract is not free from doubt, there can be an argument that it is situated in the jurisdiction where the counterparty to the insolvent Party has the centre of its main interests.

If a Party is subject to secondary bankruptcy or reorganisation proceedings in Belgium, the enforceability of close-out netting provisions may be affected by the laws of the jurisdiction of opening of the main proceedings, in particular to the extent that the contract would be deemed to be located in that foreign jurisdiction.

ANNEX 8

LIMITATIONS OF THIS LEGAL OPINION

The present opinion is subject to the following limitations:

(a) the present opinion is confined to and given solely on the basis of Belgian law as it exists at the date hereof and has been interpreted in published case law of the Belgian courts as at the date hereof. We do not express any opinion on the rules of or promulgated under any treaty or by any treaty organization, other than European Union law provisions having direct effect; we equally do not express any opinion on the laws of any jurisdiction other than Belgium;

(b) we do not express any opinion on matters of fact, accounting, taxation, economic sanctions, competition law or compliance with Regulation (EU) 596/2014 on market abuse;

(c) this opinion relates solely to the Agreements in the form examined by us. We have not considered the effect of any elections that may be made by the Parties under the Agreements, other than those elections made in a form expressly set out in full in the model Agreements examined by us (and ignoring, for the avoidance of doubt, the effect of elections marked as "specify" in those model Agreements);

(d) we do not express any opinion with respect to the accuracy, completeness or any other aspect of any representation and/or warranty granted by any of the parties pursuant to or in connection with the Agreements, which we have assumed, for the purposes of our opinion, to be accurate and complete;

(e) we do not express or imply any opinion on insolvency or similar proceedings in other countries than Belgium;

(f) we have not considered any Individual Contract and do not express any opinion thereon;

(g) we do not express any opinion as to a Party's tax liability under the Agreements or any Individual Contract;

(h) the present opinion speaks as of its date. There is no intention on our part to amend or update this opinion in the event of any changes after the date hereof in any Belgian or EU laws or regulations relevant to this opinion, nor to notify the beneficiary of this opinion of any change in Belgian or EU law or its application after the date of this opinion;

(i) our opinion is based upon the express words of the Agreements as they would be interpreted under Belgian law, and takes no account of how such words would be interpreted under, or the effect of, any other law which may govern the Agreements. In this opinion Belgian legal concepts are expressed in English terms and not in their original “Belgian” terms (i.e. in the French or the Dutch language). The English terms should only be construed as referring to Belgian legal concepts in accordance with Belgian law and not as referring to concepts as they may exist under the laws of other jurisdictions.

(j) as Belgian lawyers we are not qualified to fully assess the true meaning and purport of the terms of any agreements that are governed by foreign laws other than Belgian law and the obligations of the parties under these agreements. Our review has therefore been limited to the terms of such agreements as they appear to us on their face.

(k) this legal opinion is issued by Stibbe as a legal entity (Stibbe SCRL/CVBA). Stibbe is exclusively responsible for the services provided by its lawyers and its personnel. No person other than Stibbe has or will have any responsibility for the services provided by them on behalf of Stibbe, including in the framework of this legal opinion; and

(l) this opinion may only be relied upon on the express condition that any issues of the interpretation or liability arising hereunder will be governed by Belgian law and/or be brought before a court in Belgium.

ANNEX 9

QUALIFICATIONS

For purposes of giving certain specific opinions the term “enforceable” means that the obligations assumed by the relevant party under the EFET General Agreement are of a type which Belgian Law generally recognises and enforces; it does not mean that these obligations will necessarily be enforced in all circumstances in accordance with their terms. In particular this opinion is subject to the qualifications listed below.

1. The enforcement in Belgium of the EFET General Agreement is subject to any limitations arising from bankruptcy, insolvency, liquidation, moratorium, reorganisation and other laws of general application relating to or affecting the rights of creditors (this qualification is, in respect of Belgian law, not applicable to Section 1 to 3).

2. The enforcement in Belgium of the EFET General Agreement may be limited by general principles of equity and good faith, fraud, misrepresentation, duress, error, abuse of right, good faith, *exceptio non adimpleti contractus* and counterclaim.

3. Belgian courts may imply terms into an agreement.

4. Failure to exercise a right may operate as a waiver of that right.

5. Provisions awarding contractual damages may not be fully enforced if they are deemed to constitute a private penalty, *i.e.* if they exceed the damages which, at the time of entry into an agreement, could have been foreseen by the parties as a result of a default under such agreement. It is therefore uncertain whether provisions providing for the payment of damages exceeding the statutory limit are fully enforceable in Belgium (article 1231 of the Belgian Civil Code);

6. Prescription or limitation periods (within which suits, actions or proceedings may be brought).

7. Periods of grace for the performance of its obligations may be granted by the courts of Belgium to a debtor who has acted in good faith.

8. The enforcement in Belgium of the Agreements and of foreign judgments will be subject to Belgian rules of procedure, including, for the avoidance of doubt, rules on immunity.

9. With regards to the enforcement by legal proceedings of any claims for payment of sums of money, a registration duty (in general 3%) is due, if the sum of money which the debtor is ordered to pay by one or more judgment(s) rendered or rendered enforceable by a Belgian court exceeds in aggregate Euro 12,500. The registration duty is due by the debtor, but the creditor is jointly liable up to a maximum amount of half of the amount he recovers from the debtor. An exemption from such registration duty applies in respect of exequaturs of judgments rendered by courts of states which are bound by the Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

10. Article 1154 of the Belgian Civil Code provides that a creditor may not claim interest on overdue interest unless:

    (a) the overdue interest has accrued over a period of at least one year; and

    (b) the interest has formally been claimed by the creditor, or the debtor has agreed to pay it, after such period has passed.

11. Provisions limiting, releasing, exculpating or exempting a party from, or requiring indemnification of another party for, liability for its own action or inaction, to the extent that the action or inaction involves wilful negligence or misconduct, fraud or unlawful conduct may be unenforceable.

12. Belgian courts may decline to give effect to a contractual provision stipulating that the invalidity of any contractual provision of an agreement will not invalidate any other provision thereof, if such court finds that the invalid provision in question is an essential provision of that agreement.

13. In Belgium, remedies such as specific performance and injunction may not be available.

14. Any provision requiring a Party to indemnify another in relation to legal costs may not be enforced by a Belgian court if contrary to an order made by the court or in respect of the costs of unsuccessful litigation brought before the Belgian courts.

15. Commodity transactions that provide for cash settlement may give rise to arguments as to whether they fall under the prohibition of wagers and bets set out in Article 1965 of the Belgian Civil Code; if they do, these transactions would be unenforceable (however, the courts have become extremely reluctant to interfere, on the grounds of Article 1965 of the Belgian Civil Code, in transactions of types commonly dealt with in the financial markets).

ANNEX 10

GOVERNING LAW AND JURISDICTION

Governing Law

A governing law clause is legal, valid and binding and will be recognised and given effect to by the courts of Belgium in accordance with and subject to the conditions specified in Article 3 of the Rome I Regulation, and in accordance with and subject to the conditions specified in Article 14 of the Rome II Regulation.

However:

1. the choice of the laws shall not prevent a Belgian Court to give effect to (i) any overriding provisions of Belgian international public policy (*ordre public international / international openbare orde*) and any overriding mandatory provisions (*lois de police* / *bepalingen van bijzonder dwingend recht*) of Belgian law in accordance with and subject to the conditions specified in Articles 21 and 9 of the Rome I Regulation, and is, moreover, subject (ii) – at the discretion of the Belgian Courts – to the application of mandatory provisions of the law of the country where the obligations arising out of the contract have to be or have been performed, in so far as those overriding mandatory provisions render the performance of the contract unlawful (in considering whether to give effect to those provisions, regard shall be had to their nature and purpose and to the consequences of their application or non-application);

2. the choice of law for any non-contractual obligation arising out of or in connection with the EFET General Agreement shall not prevent a Belgian Court to give effect to any overriding provisions of Belgian international public policy and any overriding mandatory provisions of Belgian law in accordance with and subject to the conditions specified in Articles 26 and 16 of the Rome II Regulation;

3. where all the elements relevant to a situation were, at the time the choice of law was made, connected with one particular country, the courts will apply the rules of law of that country which cannot be derogated from by contract (*dispositions impératives / bepalingen van dwingend recht*).

Jurisdiction

A contractual clause of jurisdiction is legal, valid and binding and will be recognised and given effect to by the courts of Belgium in accordance with and subject to the conditions specified in Article 23 of the Brussels I Regulation (if a court of a European Member State is appointed as the competent court).[24]

However:

1. the Belgian courts retain jurisdiction for provisional, including protective, measures as may be available under Belgian law, even if other courts are competent as to the substance of the matter, in accordance with and subject to the conditions specified in Article 31 of the Brussels I Regulation;

2. the taking of concurrent proceedings in more than one jurisdiction in which the Brussels I Regulation is applicable may be precluded under the provisions of the said Regulation;

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24 Subject to the exclusive grounds for jurisdiction listed in Article 22 of the Brussels I Regulation.

3. The courts may refuse to give effect to a contractual choice of jurisdiction if they expect that a foreign judgment rendered pursuant thereto will not be capable of recognition or enforcement in Belgium.[25]

[25] PIL Code, Art. 7. This denial of jurisdiction clauses is not possible in cases where the Brussels I Regulation applies; see Art. 23.3 of that Regulation.

ANNEX 11

INVESTMENT SERVICES AND ACTIVITIES

In accordance with article 2, 1° of the Investment Firm Act, the following is understood under investment services and activities:

1. Reception and transmission of orders in relation to one or more financial instruments;
2. Execution of orders on behalf of clients;
3. Dealing on own account;
4. Portfolio management;
5. Investment advice;
6. Underwriting of financial instruments and/or placing of financial instruments on a firm commitment basis;
7. Placing of financial instruments without a firm commitment basis;
8. Operation of an MTF; and
9. Operation of an OTF.

ANNEX 12

LIST OF PUBLIC OR FINANCIAL INSTITUTIONS

The following list is an analytical summary of the institutions that qualify as a "public or financial institution" under the Financial Collateral Law.

(a) a credit institution as defined in the Credit Institutions Act;

(b) an investment firm as defined in the Investment Firm Act;

(c) an insurance company as defined in the Insurance Control Act;

(d) an investment fund management company of a UCITS as defined in the UCITS Act;

(e) a UCITS as defined in the UCITS Act;

(f) a central counterparty, a settlement entity or a clearing house as defined in the Finality Act;

(g) a "Financial Institution", defined as a company that is not a credit institution and whose main activity is acquiring stakes or performing one or more of the activities meant in points 2 to 12 and 15 of the list in Article 4 of the Credit Institutions Act , such as:

    (i) mortgage companies as defined in the Economic Law Code;

    (ii) a company that provides consumer credits as defined in the Economic Law Code;

    (iii) a leasing company as defined in the Belgian Royal Decree on Leasing of 10 November 1967;

    (iv) a payment institution or an institution for electronic money as defined in the Belgian Payment Institutions Act of 21 December 2009.

(h) a Belgian or foreign intermediary who acts in his own name but for the account of beneficiaries of security interests;

(i) a government institution (excluding companies with a government guarantee), including institutions in the public sector in relation to the management of the public debt and institutions in the public sector authorised to hold accounts for their customers;

(j) the National Bank of Belgium, the European Central Bank, the Bank for International Settlements, a multilateral development bank as defined in Directive 2006/48/EG;

(k) any other foreign legal person who in its country of origin belongs to one of the categories defined in article 1.2 a) to d) of the Financial Collateral Directive.

ANNEX 13

LIST OF QUALIFYING TRANSACTIONS

This annex is an analytical summary of the financial transactions that are exempt from the limitation on close-out and netting agreements ("Qualifying Transactions").

For the purposes of this annex, the following terms shall have the following meanings:

"Central Counterparty"	:	has the meaning given to it in the Finality Law.
"Certain Reference Value"	:	means a rate, quotation, yield, price, measure, quantity, compensation or index of, or in relation to: (a) interest rates or currencies; (b) credit risk; (c) Financial Instruments, Money Market Instruments or Derivatives; (d) emission permits or energy certificates; (e) base materials, bulk products, agrarian products or precious metals; (f) energy; (g) transport, delivery, distribution or the use of any asset, storage, transmission or transport capacity; (h) any other asset, rights or obligations of financial, commercial or economic value; (i) climate variables or other geological, ecological or other physical variables; (j) actuarial data, indices, inflation percentages; (k) data in relation to broadband telecommunication; and/or (l) any other economic, financial, commercial or monetary statistics or data.
"Clearinghouse"		has the meaning given to it in the Finality Act.

"Derivatives"	Means all options, forwards, futures, swaps, financial contracts for difference in relation to a Certain Reference Value, and every combination thereof and any other type of derivate contract in the broadest sense, irrespective of whether these contracts: (a) are concluded between parties (OTC) or are traded on a regulated market and or an MTF; (b) are settled in cash or by physical delivery of goods, Financial Instruments or any other value; or (c) are settled through a Clearinghouse, a Central Counterparty or a System or directly between parties or their representatives.
"Financial Instruments"	has the meaning given to it in article 2, 31° of the Financial Supervision Act, irrelevant of whether they are freely transferable.
"Money Market Instruments"	means the financial instruments listed in article 2, 32° of the Financial Supervision Act, irrespective of whether they are freely transferable.
"System"	has the meaning given to it in the Finality Act.

The following transactions are exempt from the limitation on close-out and netting agreements, as set out in Annex 6:

A. provided that one of the conditions as set out below met:

   (a) Derivatives

   (b) the purchase, sale, loan or delivery of Financial Instruments, Money Market Instruments, units of UCITS', derivatives, emission permits, energy certificates or similar instruments; and

   (c) the spot purchase or sale of currencies ("fx spot");

B. loans and advances granted in relation to or for the purpose of the settlement of transactions in Derivatives, Financial Instruments or Money Market Instruments;

C. guarantees, personal securities and letters of credit to secure of Derivatives or other financial transactions as set out in paragraph A., (a), (b) or (c) and B.; and

D. any obligation that arises in relation to the settlement, transfer instructions or netting of any transaction as set out in paragraph A., B. and C.

The conditions referred to in A. are:

the parties to such transaction are using:

(a) an ISDA Master Agreement, a Rahmenvertrag für Finanztermingeschäfte, a European Master Agreement for Financial Transactions, a Global Master Securities Lending Agreement, or a Global Master Repurchase Agreement;

(b) any similar framework agreement that is used by credit institutions in the Belgian market; or

(c) a regulation or contractual framework developed by a regulated market, an MTF, a clearing house, a central counterparty or a system as defined in the Finality Law; or

the transaction is of a type that is eligible:

(i) for trading on a Belgian or foreign regulated market or MTF or

(ii) for settlement through a Clearinghouse, Central Counterparty or a System.

ANNEX 14

LIST OF AGREEMENTS

1. EFET General Agreement Concerning the Delivery and Acceptance of Natural Gas (Version 2.0(a), published 11 May 2007);

2. EFET General Agreement Concerning the Delivery and Acceptance of Natural Gas (Version 2.0, published 6 January 2003);

3. EFET Credit Support Annex to the General Agreement (Version 2.0, published May 2010);

4. EFET Credit Support Annex to the General Agreement (Version 1.0, published 5 April 2002);

5. EFET Allowances Appendix (Gas) ("Phase IV (Gas) Appendix") to General Agreement Concerning the Delivery and Acceptance of Gas Version 2.0 (a)/May 11, 2007 (Version 4.0/February 28, 2018);

6. EFET Amendment Letter to the Allowances Appendix (Version 3.0/April 3 2012);

7. EFET Allowances Appendix (Gas) to the EFET General Agreement Concerning the Delivery and Acceptance of Natural Gas (Version 3.0, published 3 April 2012);

8. EFET Allowances Appendix (Gas) to the General Agreement Concerning the Delivery and Acceptance of Natural Gas (Version 2.0, published 17 July 2008);

9. EFET Amendment Letter to the Allowances Appendix Version 2.0 (Version 2.0, published 3 April 2012);

10. EFET Allowances Appendix (Gas) to the General Agreement Concerning the Delivery and Acceptance of Natural Gas (Version 1.0, published March 2006);

11. EFET VAT Annex for use with the EFET General Agreement Concerning the Delivery and Acceptance of Natural Gas (Version 1.0, published 30 November 2006);

12. EFET VAT Agreement for use with the EFET General Agreement Concerning the Delivery and Acceptance of Natural Gas (Version 1.0, published 20 November 2005);

13. EFET Sample Amendment Agreement to § 14 (VAT and Taxes), the definition of "Other Tax" and "Zero-Rated" in Annex 1, and the Election Sheet to the EFET General Agreement Concerning the Delivery and Acceptance of Natural Gas (Version 1.0, published July 2007);

14. EFET Sample Amendment Agreement to § 8 (Remedies for Failure to Deliver and Accept the Contract Quantity) of the EFET General Agreement Concerning the Delivery and Acceptance of Natural Gas (Version 1.0, published October 2005);

15. EFET IBP Appendix to the EFET General Agreement Concerning the Delivery and Acceptance of Natural Gas 2.0(a) (Version 1.0/4 December 2017);

16. EFET PVB Appendix Version 1.0 to the EFET General Agreement Concerning the Delivery and Acceptance of Natural Gas 2.0(a) (Version 1.0, published 19 September 2016);

17. EFET PSV Appendix to the EFET General Agreement Concerning the Delivery and Acceptance of Natural Gas (Version 1.0, published January 2007);

18. EFET Italian Gas Appendix to the General Agreement Concerning the Delivery and Acceptance of Natural Gas (Version 1.0, published 24 June 2004);

19. Austrian VTP Appendix to the EFET General Agreement concerning the Delivery and Acceptance of Natural Gas 2.0(a) (Version 2.0, published 20 September 2013);

20. EFET TTF Appendix to the EFET General Agreement Concerning the Delivery and Acceptance of Natural Gas (Version 4.0, published 26 May 2014);

21. EFET TTF Appendix to the EFET General Agreement Concerning the Delivery and Acceptance of Natural Gas (Version 3.0, published April 2011);

22. EFET TTF Appendix to the EFET General Agreement Concerning the Delivery and Acceptance of Natural Gas (Version 2.0, published on 14 July 2006);

23. EFET TTF Appendix Guidance Notes (Version 2.0, published 20 September 2006);

24. EFET TTF Appendix to the EFET General Agreement Concerning the Delivery and Acceptance of Natural Gas (Version 1.0, published on 1 June 2004);

25. EFET PEG Appendix to the EFET General Agreement Concerning the Delivery and Acceptance of Natural Gas (Version 4.0/October 2018);

26. EFET PEG Appendix to the EFET General Agreement Concerning the Delivery and Acceptance of Natural Gas (Version 3.0, published 30 March 2015);

27. EFET PEG Appendix to the EFET General Agreement Concerning the Delivery and Acceptance of Natural Gas (Version 2.0, published 31 March 2008);

28. EFET PEG Appendix to the EFET General Agreement Concerning the Delivery and Acceptance of Natural Gas (Version 1.0, published 15 December 2004);

29. EFET ZBT 2004 Appendix to the EFET General Agreement Concerning the Delivery and Acceptance of Natural Gas (Version 1.0, published June 2006);

30. EFET ZBT 2012 Appendix to the EFET General Agreement Concerning the Delivery and Acceptance of Natural Gas (Version 2.0, published 19 April 2013);

31. EFET Zeebrugge Appendix to the EFET General Agreement Concerning the Delivery and Acceptance of Natural Gas (Version 1.0 4 December 2017);

32. EFET UK 6:6 Beach Appendix to the EFET General Agreement Concerning the Delivery and Acceptance of Natural Gas (Version 1.0, published 2016);

33. EFET UK 5:5 Beach Appendix to the EFET General Agreement Concerning the Delivery and Acceptance of Natural Gas (Version 1.0, published 7 September 2015);

34. EFET UK Beach Appendix to the EFET General Agreement Concerning the Delivery and Acceptance of Natural Gas (Version 1.0, published 19 April 2013);

35. EFET NBP Appendix to the EFET General Agreement Concerning the Delivery and Acceptance of Natural Gas (Version 2.0, published 7 September 2015);

36. EFET NBP Appendix to the EFET General Agreement Concerning the Delivery and Acceptance of Natural Gas (Version 1.0, published December 2006);

37. EFET GasPool Appendix to the EFET General Agreement Concerning the Delivery and Acceptance of Natural Gas Version 2.0/January 6, 2003 and Version 2.0(a)/May 11, 2007 (Version 1.1(a), published 1 March 2012);

38. EFET GasPool Appendix to the EFET General Agreement Concerning the Delivery and Acceptance of Natural Gas Version 2.0/January 6, 2003 and Version 2.0(a)/May 11, 2007, replacing earlier the GUD Appendix (Version 2.0, published 31 December 2008), which itself replaced the BEB Appendix (Version 1.0, published September 2007), (Version 1.1, published 19 May 2010);

39. GUD Appendix (Version 2.0, published 31 December 2008), which itself replaced the outdated BEB Appendix (Version 1.0, published September 2007);

40. EFET ITAB Appendix (Version 1.0, published 1 December 2009);

41. EFET ITAB Appendix Guidance Notes (published 20 January 2010);

42. EFET Gas Capacity Appendix (Fluxys/GRTgaz) (Version 1.0, published 31 December 2008);

43. EFET Polish VP Appendix to the General Agreement Concerning the Delivery and Acceptance of Natural Gas (version 1.0, published 14 December 2013);

44. EFET Individual PRISMA Gas Capacity Contract (version 2.0, published 15 October 2014);

45. EFET Individual PRISMA Gas Capacity Contract (version 1.0, published 7 May 2014);

46. Guidance Notes for the Individual PRISMA Gas Capacity Contract (published 14 May 2014); and

47. Change Letter to amend § 14 (VAT and Taxes) of the EFET General Agreement Concerning the Delivery and Acceptance of Natural Gas (Version 1.0, published 16 December 2013).

For purposes of Section 5 (*Confirmation practices*) only:

1. EFET Electronic Confirmation Agreement (published 28 June 2005);

2. Confirmation of Allowance Transactions (including AEUA, EUA, Eligible Kyoto Unit Transactions) (Fixed Price, Third Compliance Period (Phase 3) and Fixed Price, Second Compliance Period (Phase 2) to the Allowances Appendix to the EFET General Agreement Concerning the Delivery and Acceptance of Natural Gas (Version 2.0, published 3 April 2012); and

3. Confirmation of Allowance Transactions (including EUA, CER & ERU Transactions) to the Allowances Appendix to the EFET Power Master Agreement or to the EFET Gas Master Agreement (Version 1.0, 6 March 2008).

For purposes of Section 6 (*Core provisions*) only:

1. EFET Cross Product Payment Netting Agreement (Version 1, published 20 October 2005);

2. EFET Master Netting Agreement (Version 1.0, published June 2010);

3. CPMA Cross-Product Master Agreement (Version 1.0, published 16 February 2000) as amended by the EFET/IECA Commodities Schedule to the Cross-Product Master Agreement (Version 1.0, published 23 June 2003);

4. EFET Cross-Product Credit Support Annex to the CPMA Cross-Product Master Agreement (Version 1.0, published 23 June 2003); and

5. EFET Credit Support Annex to the Master Netting Agreement (Version 1.0 published February 2011).