EFET European Federation of Energy Traders
SO YOU CAN RELY ON THE MARKET

EFET Legal Committee Meeting Q2/2022

16th May 2022

Draft A&D List

Participants

1.	Flavia Grassi	AET
2.	Libuse Jeremiasova	Alpiq
3.	Carola Vernimmen	Alpiq
4.	Andreas Zumbach	Axpo
5.	Anne Godde	Axpo
6.	Vincent Buyse	Axpo
7.	Fedor Matezky	Centrica
8.	Katrin Mueller	Bayerngas
9.	Virginie Sur	BP
10	Thomas Raundahl	Danske Commodities
11	Ann-Britt Roesen	Danske Commodities
12	Andreas Gunst	DLA Piper (guest)
13	Michael Cieslarczyk	DLA Piper (guest)
14	Thilo Streit	DLA Piper (guest)
15	Michaela Duve	Duve Legal Consulting (guest)
16	Peggy Morrison	EDFT
17	Jan Haizmann	EFET (Chair)
18	Aygul Avtakhova	EFET
19	Sonia Auguscik	EFET
20	Mariana Liakopoulou	EFET
21	Doug Wood	EFET Gas Committee Chair
22	Pawel Lont	EFET
23	Ash Hofman	EDF Trading
24	Kelina Kantzou	ENI
25	Natacha Irakoza	ENI
26	Veronica Gorbounova	ENI
27	Adeline Tirel	Engie
28	Aude Dalle	Engie
29	Lea Basquin	Engie
30	Mathias Flecke-Broeer	EnBW
31	Christoph Saenger	E.On
32	Jana Krautwurmova	EP Commodities
33	Matej Komora	EP Commodities
34	Peter Law	Equinor
35	Justyna Pantelides	ESB
36	Roisin McArdle	ESB
37	Katrin Fritz	ExxonMobil
38	Andrew Miller	ExxonMobil
39	Daniel Hain	Ezpada
40	Ilya Merzlyakov	Ezpada
41	Maren Lahl	Freepoint Commodities
42	Tamara Zajdela	GEN-I
43	Maja Stanisic	GEN-I
44	Ick Jackson	Griffin (guest)
45	Tatiana Hominal	Gunvor
46	Maxim Bragin	Gunvor
47	Claudia Sechel	Gunvor
48	Nina Glas	HSE
49	Bert den Ouden	HyXchange
50	Albert Vreeman	HyXchange
51	Cristina Ludena	Ludena Consulting (guest)
52	Immy Renodeyn	Mercuria
53	Zoltan Grmela	MFGK Austria
54	Nimisha Kanabar	Morgan Stanley
55	Janna Mörking	MVV Trading
56	Ulla Achleitner	OMV
57	Lindsay Luttermann	Orsted
58	Cristina Weide	PZEM
59	Brett Hillis	ReedSmith
60	Simone Goligorsky	ReedSmith
61	Marek Chmel	Repower
62	Caroline Zimmerman	Repower
63	Thomas Bergmann	RWEST
64	Karl-Peter Horstmann	RWEST, MSC Chair
65	Judith Asiama	RWEST
66	Maria O'Brien	Shell

67	Joshi Tirupa	Trafigura
68	Raluca Dirjan	Total
69	Rodica Buda	Total
70	Steven Banks	Trailstone
71	Britta Woltering	Trianel
72	Oliver Frömmel	Uniper
73	Irene Fenyösy	Verbund
74	Fatima Semlal	Vitol
75	Sylvia Scharfenberg	Vattenfall
76	Safina Gregoor	Vattenfall

EFET
European Federation of Energy Traders

EFET Legal Committee Meeting

1. Approval of the last A&D list

The LC members approved the A&D list from the last Legal Committee (LC) online meeting (22 February 2022), subject to no comments.

2. LC budget allocation for various projects – Jan Haizmann, EFET

Jan Haizmann explained the various budget positions for the ongoing projects and the respective adjustments made compared to February 2022 LC meeting figures, namely:

Budget positions (status May 2022)- subject to approval by LC:

- Netting opinions 450.000 EUR
- German opinion on EnSiG 40.000 EUR
- Sanctions (budget placeholder) 30.000 EUR
- Further work on the EFET standard CPPA, version 2.0 25.000 EUR
- Hydrogen contract (joint initiative with HyXchange) 15.000 EUR
- Model Agreements for VCM 30.000 EUR
- Dutch advocacy re WHOA proceedings 30.000 EUR
- Advocacy for Italian netting 15.000 EUR
- Further work with Market Supervision Committee 30.000 EUR (tbc)

Budget line	February 2022	May 2022
downward adjustment for the CPPA work	30.000 EUR	25.000 EUR
upward adjustment for Italian netting	10.000 EUR	15.000 EUR
downward adjustment for H2 contract	25.000 EUR	15.000 EUR

Put on hold due to other priorities/developments: standardisation initiatives in Ukraine; legal opinion on CMA (Certificate Master Agreement); biogas template. Expenditure for sanctions work expected to be increased due to increased costs related to EnSiG.

Decision:
- The LC members approved the above proposal for 2022 cost positions without reservations.

3. New instruction letter for 2022 netting opinions update

The LC Secretariat is due to proceed with instructing the first 2022 update cycle of the EFET netting opinions, which covers 22 jurisdictions:

- Germany and the Netherlands are currently put on hold due to the ongoing legislative developments (EnSiG in Germany; WHOA in the Netherlands);

- tenders to be conducted for a suitable law firm in Spain, Belgium, Poland, Romania;
- "package deals" to be evaluated factoring in the quality of the legal analysis and membership feedback (Wolf Theiss; Schoenherr)
- LC Secretariat to instruct for the first time ("cutdown") netting opinions for Moldova and Georgia in view of market developments and requests from regulators.

Decision:

- The LC members endorsed a combined EFET Legal Opinion Instruction Letter (both for power and gas) with the enlarged scope of the existing EFET templates.

Actions:

- Those LC members, who would like to contribute to the review process, are invited to contact Aygul.

4. EFET-HyXchange Single Trade Agreement - Bert den Ouden, HyXchange Project Director; Andreas Gunst, Partner, DLA Piper

HyXchange is running a certificate pilot already for 3 months period, pending the "legal start" of the Dutch GoOs (currently scheduled in the Senate for final approval). Certificates are tradeable, completely independent of the commodity. The GoOs (also RES electrcity) are restricted to the Netherlands, unlike H2 GoOs mandated by the European Commission in the Delegated Act.

The products scope includes unsubsidised green GoOs (transferable into Dutch HBE) and subsidised H2 GoOs (not transferable into HBE). The joint standardisation initiative with EFET Hydrogen STA aims to create a contract tradable bilaterally, single trade agreement, based on EFET standard CMA modified for H2. HyXchange and EFET foresee a transitory phase of this agreement in the first instance, to be moved later on into RFNBO/Union Registry type certification. Possible future steps could include automation, price index of GoOs, application of the model to EU RED II H2 certificates.

Action:

- First draft will be circulated on 1st June. Interested LC members are invited to contact Aygul.

5. Voluntary Carbon Market Standardisation Initiative: EFET GA Appendix for VERs

EFET has reached out to IETA and ISDA to coordinate the work on the development of secondary contractual document (as was the case with the EUA documentation); each of the industry associations have essentially set up independent work streams led by Linklaters. VCM are entirely voluntary schemes; the certificates are purely evidentiary instruments. Following initial discussion, EFET Secretariat decided to wait for the outcome of the discussion for the non-contingent delivery of carbon credits on the primary level, scheduled for finalisation in q3 2022.

EFET could advance drafting quickly on its side, modelling EFET documentation in a way that would allow to trade these certificates on the secondary market, without being linked to upstream transactions. Once IETA first draft consolidates on the project side (the primary document) , EFET, ISDA and IETA may have discussions with some common themes.

Action:

- Interested LC members are invited to contact Aygul.

6. Update on MSC priorities - Karl-Peter Horstmann, Chair of Market Supervision Committee

Increase clearing thresholds under EMIR: EU/UK offers the lowest clearing threshold applicable to the largest set of entities, products and activities worldwide. This exposes companies to the risk of exceeding the EMIR clearing threshold of €3 billion for commodities, meaning obligation to post bilateral margins (collateralisation) for all uncleared OTC derivative transactions; and mandatory clearing obligation for all OTC commodity derivatives.

Increase in initial margin for cleared deals: MSC is seeking to achieve an industry position to improve margining practices, including liquidity management, improving transparency/ predictability/responsiveness, clearing/collateralisation, possible solutions etc. The workstream's output includes responses to public institutions consultations (IOSCO, DG FISMA, ESMA); educational workshops for policymakers; advocacy outreach to major clearing houses/banks.

Action:

- Members are invited to contact LC Secretariat to raise related issues and concerns, or in order to express their interest in joining the MSC workstream(s).

7. New sanctions in respect of the Republic of Belarus: update on latest developments – Brett Hillis, Simone Goligorsky, Reed Smith; Michael Cieslarczyk, DLA Piper.

US: see presentation slides for an updated list of entities subject to new US Russia sanctions. New restriction includes vessel ban on Russian-affiliated ships from US ports. Energy restrictions entail complete US ban on the import of crude oil, petroleum, petroleum fuels, oils and products of their distillation.

UK: the asset freeze has been extended to certain additional Russian banks. Financial restrictions have been extended to cover companies and individuals from purchasing commodities such as iron and steel, import tariffs have been introduced on certain products originating from Russia (platinum, palladium). The UK has introduced a ban on Russian oil. The extension of blocking sanctions intended to cover oligarchs with connections to Russian regime, also operating in shipping space.

EU: proposal of the phase-out of Russian oil imports widely discussed. Prohibition on the purchase of certain goods originating from Russia (coal and other fossil fuels, iron, steel products etc). SK, HU, CZ are expected to be granted exemptions in view of their energy dependency on Russia.

Germany:

- Trusteeship of Gazprom Germania by BNetZA:
    - Comfort letter issued by BNetzA in relation to Gazprom Germania;
    - amendments to EnSiG (Energy Security Law 1975) are under preparation to prepare expropriation of Gazprom Germania and related entities;
    - Once Energy Security Act 1975 is enacted after meeting of Bundesrat on 20th May, this will change the legal basis of trusteeship.

- EnSiG (Energy Security Act):
    - Amendment of EnSiG intended to cater for gas supply crisis as a result of sudden supply disruptions.
    - A cause of concern is price variation clause in case of sharply reduced gas supply, allowing adaptation of price adjustment alongside trade delivery chain. EEX statement indicates non-applicability for financial instruments (not confirmed by German government).
    - Non-applicability for OTC contracts within scope of para 104 Insolvency Act mentioned in the reasoning of EnSiG. Further clarification required.
    - Primary advocacy is pursued through EFET-Deutschland.

Polish Sanctions Act:

- creates a national list of persons and entities subject to sanctions;
- introduces additional, Poland-specific, restrictive measures;
- imposes a national embargo on coal from the territory of Russia and Belarus;
- provides for administrative and criminal liability for non-compliance with the national and EU sanctions.

Russian counter-sanctions:

- Russian decree on the rouble payments No 172 of March 31, 2022:
    - EU non-paper and FAQ by European Commission of 21 April do not give precise guidance, raising potential risk of EU sanctions breach;
    - According to Russian side, circa 20 companies are setting up bank accounts with Gazprombank to follow new payment procedures.

- Russia adopted Decree No 252 of 3 May 2022 "On retaliatory special economic measures" to sanction Gazprom Germania and related assets.

Decision:

- LC Secretariat will continue monitoring the sanctions developments with the aim to help the sector avoid the worst outcomes that could arise from EnSiG.

EFET
European Federation of Energy Traders

8. Progress Report on EFET-LEBA Credit Automation Project – Nick Jackson, COO, Griffin Markets

A joint initiative between EFET and LEBA to create a fully automated, real-time and error-free credit processing system is now nearing the go-live. The pilot project - which was set up a number of years ago with the intention to reducing credit processing time and reducing error rates through automation – has now reached a point where RWE is able to export credit automatically for itself and all its DMA clients into the Trayport system. The work undertaken by Griffin and RWE has been handed over to the EFET credit working group and a standard, supported by EFET, open to all.

As a result of this, Trayport Limited has begun development work to enable all brokers to input electronically xml formatted credit into the Trayport trading system. This work is expected to be complete by the end of the summer.

Under the new system, the format for credit lists is standardised and submitted electronically in an xml format. The design of the schema also creates certainty around dates and eliminates the scope for ambiguity which exists in the current manual process.

Action:

- Help and guidance with the development of xml, which has been jointly developed by EFET and Griffin, is available to market participants who are interested in joining the project.

9. Review of the EFET standard CPPA: progress report

Members of the Legal Task Force on CPPA standardisation are currently working on a draft for a revised CPPA standard, supported by DLA Piper. Key suggestions include: a) keeping the scope exclusively for physical settlement; b) developing optional annexes with highly negotiated provisions which can be fully customised by the parties for a specific project and jurisdiction. There is an ongoing survey in relation to the specific provisions of the CPPA standard and the proposed new structure for the revised CPPA template (version 2.0).

Given the growing interest in the CPPA markets in the South-Eastern Europe, the LC Secretariat instructed the Guidance Notes for the Romanian PPA market, translation of the standard CPPA into Croatian and Bulgarian languages. The Legal Guidance and translations are already available on the EFET website for the following markets: Italy, France, Germany, Spain, Poland.

The work plan for 2022 includes:

- continuing to work on the EFET standard CPPA version 2.0, seeking alignment with the Credit & Collateral WG (release scheduled for summer 2022);
- preparing the national materials for the PPA markets in the South-Eastern Europe (translations and guidance notes);
- promoting the EFET standard CPPA in industry circles across Europe.

Actions:
- DLA Piper to prepare the revised version of the CPPA standard, version 2.0, to be updated in line with the last task force discussion.
- Draft Guidance Notes for the Romanian PPA market and for the Bulgarian PPA market are available for review. Any interested members are invited to contact Sonia.

10. Update from Carbon Neutrality Strategy Group – Mariana Liakopoulou, EFET

CNSG issued written reactions to amendments to the EU ETS Directive proposed by the ENVI Committee of the European Parliament, which would limit participation in the EU ETS market to compliance entities and financial intermediaries consequently purchasing allowances on their behalf. The joint initiative was co-signed with IETA, Europex and Eurelectric, disseminated to all MEPs ahead of their vote on 17th May.

On VCMs, CNSG submitted feedback on Commission's roadmap for proposed regulatory framework for certification of carbon removals, calling for (a) strict harmonisation of the rules at EU level, following identification of approved national methodologies at the level of national emissions authorities; (b) technology neutral certification scheme; (c) eventual incorporation of an EU offered certification scheme into the compulsory scope of the EU ETS, following careful observation of methodologies developed in the VCM markets. EU Commission is expected to come forward with a proposal for a regulatory framework in q4 2022.

Certification of low-carbon gases: number of inconsistencies emerged through intelligence from the European Commission and European Parliament on what qualifies as a Union database compliance certificate. EU Commission verbally confirmed to CNSG that updating GoOs sustainability info in the context of national scheme or database will qualify them for the Union database.

Actions:
- LC members interested in the topic areas of CNSG, please contact Mariana (m.liakopoulou@efet.org)

11. OTC market in Georgia – use of EFET GA Power

The Georgian regulator GNERC is part way through a project to liberalise the Georgian market, backed up by the Energy Community Secretariat. Their desire is to adapt the EFET general agreement and use it as a basis for trading rules in that market. EFET engaged in discussions with GNERC and the Energy Community, emphasising that changes to the EFET agreement require consultation with external legal advisors qualified in Gerogian law and follow a rigorous process overseen by the EFET Legal Committee.

Decision:
- With members' consent, LC Secretariat to allocate 10.000 EUR for this line of standardisation work.

EFET

European Federation of Energy Traders

12. Support for reforms of netting legislation

Building on considerable experience in assisting numerous legislators in similar cases, the LC members are pressing on to achieve statutory recognition of close-out netting for physical commodity trades in the Netherlands, Italy and Slovakia.

- **The Netherlands:** EFET together with Energie Nederland are jointly pursuing the opportunity to introduce a carve-out for energy wholesale agreements to avoid the negative effect of the WHOA Act on the wholesale energy market, higher collateralisation of trades and energy prices in the Netherlands.
- **Italy:** We continue to work towards prolonging the carve-out in Italian Insolvency law beyond the current phase out for the netting-carve-out, scheduled for 31 December 2022.
- **Slovakia:** EFET in cooperation with ISDA backed up the initiative of the Slovak energy companies aimed at broadening the scope of the current Slovak close-out netting legislation and offered its assistance to the Slovak authorities in discussing these issues further.

Action:
- Interested members are invited to contact LC Secretariat and share intelligence on legislative developments, where possible.

13. Next LC meeting: September 2022 (tbc)

*   *   *

Budget allocation

▪ Netting opinions	450.000 EUR
▪ German opinion on EnSiG	40.000 EUR
▪ Sanctions (budget placeholder)	30.000 EUR
▪ Further work on the EFET standard CPPA, version 2.0	25.000 EUR
▪ Hydrogen contract (joint initiative with HyXchange)	15.000 EUR
▪ Model Agreements for VCM	30.000 EUR
▪ Dutch advocacy re WHOA proceedings	30.000 EUR
▪ Advocacy for Italian netting	15.000 EUR
▪ Further work with Market Supervision Committee	30.000 EUR (tbc)
▪ Georgian OTC market – use of EFET GA Power	10.000 EUR