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Green Gas Trading on the CEGH GreenGas Platform –

Discussion Paper on Biogas Trading and Contract Design

1 Introduction

The Central European Gas Hub (**CEGH**) has launched the CEGH GreenGas Platform for trade and marketing of "green gases", i.e. primarily biogas (including biomethane) and hydrogen, as well as guarantees of origin (**GoOs**) for green gases in the European Union.

In its first phase the CEGH GreenGas Platform shall enable the trading of biogas within the meaning of Article 2 (28) Directive (EU) 2018/2011 on the promotion of the use of energy from renewable sources (**RED II**), i.e. gaseous fuels produced from biomass transported through the grid (including biomethane) and or the respective Biogas GoOs.

The CEGH GreenGas Platform shall offer trading opportunities for the following standardized trades:

- trade in GoOs for biogas (**Biogas GoOs**) only (without the underlying biogas);
- trade in Biogas GoOs and additionally the proof of transport ("mass balance"); and
- trade in Biogas GoOs, the proof of transport and the underlying biogas.

This trading opportunity shall be facilitated by a standardized trade agreement based on the current EFET market standard for trade in electricity and related certificates (for further details on the contract design see below point 5).

To launch discussion on the CEGH GreenGas Platform, this paper is restricted to the trade in biogas, including biomethane, and the related GoOs; it does not further investigate the trade in hydrogen, which shall be discussed at a later stage.

➔ We invite you to discuss and share your thoughts and needs regarding the trade in biogas and Biogas GoOs with us!

2 How does trade in GoOs operate?

GoOs are legal instruments created by Articles 2(12) and 19 of RED II, whereby a GoO is designed to serve as <u>proof that 1 MWh of energy</u> (electricity, biogas, hydrogen) that is issued and sold is <u>produced</u>

from renewable sources (wind, solar, water or, in the case of biogas, biomass that meets the sustainability requirements).[1]

A GoO is transferrable and, in principle, can be traded separately from the underlying energy, a mechanism known as "book & claim". A GoO can be transferred from seller to buyer in one of two ways:

- from a seller's account to a buyer's account on a registry, a process known as electronic transfer; or

- the cancellation of the GoOs by the seller on behalf of the buyer, whereby the buyer receives a cancellation statement demonstrating that the buyer is the sole beneficiary of such cancellation, a process known as transfer by cancellation statement.

A key component to guarantee the integrity of the GoO system is the prohibition of double counting, i.e. only the person who holds the GoOs in its own account or on whose behalf the GoOs have been cancelled has the right to claim the renewable attributes of the underlying biogas.[2] Once an end consumer cancels a GoO for its own benefit or after a seller cancels a GoO for benefit of the buyer, this GoO is permanently removed from circulation and cannot be claimed by any other participant.

The trade of GoOs between EU Member States is underpinned by obligation of each Member State to recognise GoOs issued by another Member State, unless the Member State has well-founded doubts about its accuracy, reliability or veracity.

Whilst not expressly foreseen by RED II, trade of GoOs between national registries is facilitated by the regulatory overlay of the Rules of the European Energy Certificate System (**EECS Rules**) developed by the Association of Issuing Bodies (**AIB**). These build on the rules set out in RED II, and most EU Member States are members of the AIB system. Cross-border trade of GoOs is carried out through the AIB Hub, which connects the participating national registries.

Regarding the cross-border trade of Biogas GoOs, there is at present no established and widely accepted system in place such as the AIB for renewable source electricity. The AIB aims to expand to Biogas GoOs, but due to limited engagement by some Member States, only limited progress has been achieved so far. The European Renewable Gas Registry (**ERGaR**) is a similar organisation to AIB and aims to enable cross-border transfer of Biogas GoO among its member registries, however the ERGaR system is not yet operational. These technical and regulatory constraints result in the cross-border trade in Biogas GoOs being restricted to transfer via transfer of cancellation statement, which prevents further trade and therefore has an impact on Biogas GoO trading possibilities and liquidity.

3 Voluntary and Regulated Markets

There is a voluntary and a regulated market for trade in biogas and Biogas GoOs, which have developed in parallel and coexist up to date. The term "voluntary market" designates that the market has developed based on private initiatives and the underlying rules are purely contractual. Contrary to the voluntary market, "regulated markets" are based on statutory law (in this case EU law and the laws of the Member States).

[1] The Austrian Renewable Expansion Act (*Erneuerbaren-Ausbau-Gesetz – EAG*) defines a guarantee of origin („*Herkunftsnachweis*") in sec 5(30) as follows: *"an electronic document that serves exclusively as proof to an end customer that a certain share or a certain amount of energy is produced from renewable sources"*.

[2] It shall be noted for the sake of completeness that this system functions fairly well but for instances in which Member States have not provided for a mutual exclusivity of biogas support schemes and biogas GoOs (by way of example: Germany is a best practice case in the sense that under German law a biogas facility which receives funds under a biogas support scheme may not receive GoOs).

3.1 Voluntary Market on International Level: Green House Gas Protocol

(a) Overview

The Green House Gas Protocol (**GHGP**) is the most widely used international standard by private and public entities to voluntary account for and report on their GHG emissions. The GHGP provides standards and tools for accounting and reporting GHG emissions associated with a company's direct and indirect GHG emissions.

When accounting for GHG emissions it is important to understand the three different scopes of GHG emissions:

- **Scope 1:** emissions are direct emissions generated by a company or facility, which may include company owned vehicles or any onsite power generation facilities.

- **Scope 2:** are indirect emissions associated with purchased electricity, steam, heating and/or cooling.

- **Scope 3:** emissions are also classified as indirect emissions but relate to emissions generated in the value chain (upstream and downstream) of the reporting company.

Biogas purchases may be used by a reporting company to offset and reduce its Scope 2 emissions.

(b) Upcoming Developments

Currently the existing corporate standards for the accounting for GHG emissions are under scrutiny and shall be updated following a global stakeholder survey. The GHGP Secretariat has not indicated what will be the scope of the update neither the expected timeline for this process to conclude.

3.2 Regulated Market on EU Level: RED II

(a) Overview

According to Article19 RED II, EU Member States have to provide for a system of GoOs for renewable energy, including biogas, for the purpose of demonstrating to final customers the share of energy from renewable sources within a supplier mix. Ultimately, suppliers are obliged by law to disclose to their final customers the share of biogas enabled by the GoO system.

The competent national issuing body issues the Biogas GoOs, e.g. in Austria E-Control, to the producer of biogas for each energy unit (MWh) injected into the grid and registered under the national Biogas GoOs scheme. The volume of biogas injected into the grid must match the volume of Biogas GoOs issued by the competent national body.

(b) Upcoming Developments

The EU Commission has proposed to recast RED II and to pass an amended RED III. The proposition includes, amongst others, a new Article 31a on the EU Database for liquid and gaseous renewable fuels and recycled carbon fuels. Economic operators shall be required to enter information on the transactions made and the sustainability characteristics of the fuels subject to those transactions into this new database in order to enable the tracing of liquid and gaseous renewable fuels and recycled carbon fuels.

To avoid any risk of double claims on the same renewable gas, if Biogas GoOs have been issued for any consignment of renewable gas, the Biogas GoOs have to be cancelled before the consignment of renewable gas can be registered in the EU database.

Apart from that, also Article 19 RED II on GoOs and the Article 25 to 31 RED II on national fuel quota obligations in the transport sector, sustainability and GHG emissions saving criteria and mass balance shall be partially amended.

The EU Commission has also proposed to recast the current Gas Directive 2009/73/EC and to pass a new Directive on common rules for the internal markets in renewable and natural gases and in hydrogen (**New Gas Directive**). The New Gas Directive shall amongst others include a new Article 8 on the Certification of renewable and low carbon fuels which sets out additional requirements for the certification of renewable gases, including biogas, in accordance with Article 29 and 30 RED II (i.e. requirements on the sustainability criteria and mass balance). The additional requirements essentially require economic operators to proof a certain threshold of GHG emissions savings.

This paper is written on the basis of the current EU legislation and the current GHGP Rules and does not yet take into account the upcoming changes pointed out above.

3.3 Regulated Market on Member States Level

The main EU law requirements regarding biogas and Biogas GoOs are set out in RED II which must be transposed into the national law of the Member States. While RED II defines the minimum harmonisation standard, Member States are at liberty to introduce additional requirements and obligations where permitted. Consequently, the EU biogas / Biogas GoO market is not fully harmonised. Thus, for every trade the national requirements of the jurisdictions involved have to be taken into account.

For example, Austria has transposed RED II largely by way of adoption of the new Renewables-Expansion-Act (*Erneuerbaren-Ausbau-Gesetz – EAG*). Sec 81 EAG transposes Article19 RED II and sets out the requirements for GoOs. In addition to the requirements in Sec 81 EAG, suppliers of end consumers have to provide for a gas labelling on their invoice in accordance with Sec 130 of the Austrian Gas Act (*Gaswirtschaftsgesetz 2011 – GWG 2011*) and the Austrian Gas Labelling Ordinance (*Gaskennzeichnungsverordnung – G-KenV*). Sec 130 GWG 2011 and the G-KenV in essence transpose RED II, but also stipulate additional mandatory requirements for the labelling of biogas.

National law based requirements such as the G-KenVO create additional demand for biogas GoOs and thus a more liquid market. However, at the same time, this additional layer of national regulations create a non-harmonized market and restrict trading opportunities. These requirements additionally have to be taken into account in the respective contractual provisions to ensure that any GoOs traded (possibly cross-border) are fit for the intended purpose and meet any given requirements under (additional) national rules.

4 Potential Business Cases for the Trade in Biogas and/or Biogas GoOs

There may be different incentives for market participants to trade in biogas and/or Biogas GoOs. Mainly such trades are driven by the following three reasons. All three types may include trades of Biogas GoOs with or without the underlying flow of biogas:

4.1 Case 1: Reduction of GHGP Scope 2 Emissions

According to the current GHGP requirements, biogas and/or Biogas GoOs purchases may be used by a reporting company to offset and reduce the emissions to be reported under Scope 2 of the GHGP. To do so, companies only need to proof the renewable origin of the biogas by way of recognised certificates such as Biogas GoOs that comply with the requirements of RED II as transposed into applicable national law.

The GHGP itself is silent on the questions whether biogas and/or Biogas GoOs additionally have to comply with the sustainability criteria set out in RED II. However, it is generally advisable to make the respective claim under the GHGP only in regards to biogas and/or Biogas GoOs which also meet the relevant sustainability criteria.

4.2 Case 2: Reduction of Reportable Emissions under the EU ETS System

Companies falling within the scope of Directive 2003/87/EC establishing the EU emissions trading system (**EU ETS**)[3] are obliged to monitor and report their greenhouse gas emissions in accordance with Commission Implementing Regulation (EU) 2018/2066 on the monitoring and reporting of greenhouse gas emissions pursuant to Directive 2003/87/EC (EU Monitoring and Reporting Regulation - **EU MRR**). Obliged entities under the EU ETS are required to procure and hold a specific number of EU emissions allowances (**EUA**) on an annual basis or otherwise face regulatory penalties.

For the purposes of monitoring and reporting within the EU ETS, the emission factor for biogas produced from biomass is counted as zero and thus effectively reduces the number of EUAs an entity is required to hold, subject to certain requirements.

Pursuant to Article 39 EU MRR the zero-rating of biogas emissions under the EU ETS System is subject to the fulfilment of the following conditions (see also Commission MRR Guidance Document No. 1 ("General Guidance for Installations"), point 6.3.7):

(a) **Biogas GoOs:** There is no double counting of the same biogas quantity, in particular the biogas purchased is not claimed to be used by anyone else including through a disclosure of a Biogas GoO. This is achieved by way of either transfer of the Biogas GoOs to the customer or the cancellation of the Biogas GoOs on behalf of the customer. The Biogas GoOs shall meet the criteria set out in Article 19 RED II (and the relevant national law transposing Article 19 RED II);

(b) **Evidence of Mass Balance:** The quantity of biogas used is determined from purchase records in accordance with Article 30 RED II (and the relevant national law transposing Article 30 RED II), i.e. evidence of an uninterrupted supply chain from the biogas producer to the purchaser of the biogas including an appropriate audit of the mass balance by voluntary sustainability certification schemes such as ISCC-EU;

(c) **Grid Connection:** The operator and the producer of the biogas are connected to the same gas grid;

(d) **Proof of sustainability:** The sustainability and GHG savings criteria laid down in Article 29 RED II (and the relevant national law transposing Article 29 RED II) are complied with; and

(e) **National Requirements under EU ETS:** Additionally, applicable national quality standards for the underlying biogas for trade in EUA within the EU ETS, if any, have to be met.

Further guidance from the Commission as to the application of these criteria regarding the accounting of biogas against the EU ETS quota is expected to be given in an updated version of MRR Guidance Document No. 3 ("Biomass issues in the EU ETS") which currently is only available in a pre-RED II version.

4.3 Case 3: Crediting against National Renewable Fuel Quotas in the Transport Sector

Articles 25 to 27 RED II require Member States to introduce an obligation on fuel suppliers to ensure that the share of renewable energy within the final consumption of energy in the transport sector is at least 14 % by 2030. Member states thus introduced mandatory quotas of fuel from renewable sources in order to meet this target.

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[3] Companies falling in the scope of the EU ETS system are listed in Annex 1 of the EU ETS Directive. These include primarily producers in carbon intensive industries like e.g. production of coke, manufacture of glass or ceramic products, production of paper as well as flights which depart from or arrive in the EU.

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Biogas may be credited against national renewable fuel quotas, if

- the requirements set out above in point 4.2 (a)-(d) are complied with; and
- the biogas complies with the quality standards and requirements such as quality of feedstock according to Annex 9 of RED II and carbon intensity set out in the national legislation regarding the renewable fuels quota transposing Articles 25 to 28 RED II.

In view of the proposed Article 31a RED II regarding the Union database for renewable fuels it remains to be seen how the trade in biogas for the purpose of crediting against national renewable fuels quotas will be affected. Given that the Biogas GoOs have to be cancelled before entry into the Union database, most likely renewable fuels entered into the Union database will not be traded afterwards.

5 Impact of the Different Cases on Contract Design

The different business cases as described above impact the design of a Biogas Trade Agreement (**Agreement**).

A standardized agreement should reflect not only the fundamentals of the transaction, i.e. delivery of the biogas and/or transfer of the Biogas GoOs, but also the additional requirements to be fulfilled for Case 1, Case 2 and Case 3 transactions respectively.

We are currently cooperating with the European Federation of Energy Traders (**EFET**) and plan to use the EFET Certificate Master Agreement (**EFET CMA**)[4] as a basis for the drafting of a customized Biogas Trade Agreement for trades on the CEGH GreenGas Platform.

The EFET CMA contains all of the necessary clauses for the trade in renewable energy certificates in general and needs only some amendments to be aligned with Biogas GoOs trading.

5.1 Typical Clauses for biogas GoO Trading for Case 1, Case 2 and Case 3

Typical clauses in the EFET CMA which will also be applicable to biogas GoO trading in general irrespective of the use for Case 1, Case 2 or Case 3 will include the following:

- **Obligation of transfer (delivery and acceptance) of the Biogas GoOs** from the seller to the buyer including the modalities of transfer. The modalities of transfer are either the electronic transfer of the certificates from the seller's account with the national GoO registry to the buyer's account, or the transfer of a cancellation statement issued by the national registry);
- **Obligation of delivery of the biogas** via the grid, if applicable;
- **Obligation of transfer of the evidence of mass balance** and the proof of sustainability, if applicable,
- **Details on the characteristics of the certificates** (such as energy source, production year, technology, issuing body) in accordance with RED II as transposed into applicable national law and the price per certificate;
- **Definition of transfer of title and risk in the certificates**;

4 The current version of the EFET CMA can be downloaded from the EFET website: https://www.efet.org/home/documents?id=42.

- Obligation to deliver the certificates **free and clear of any encumbrances**;

- **Consequences in case of ineffectiveness of a certificate** (obligation to replace ineffective certificates, obligation to pay damages); and

- **General contractual provisions** such as clauses on non-performance due to force majeure, remedies for failure to deliver or accept the certificates, term and termination rights (including calculation of termination amount), limitation of liability, details on invoicing and payment (including VAT and taxes), change in law, credit support and/or performance assurance, confidentiality, representation and warranties as well as governing law and arbitration.

As the EFET CMA is currently designed for trade in electricity certificates, some adaptations will be required. These adaptations will primarily include:

- **deletion of all references to the EECS because as the scope of the EECS** (at the time of writing) only encompasses renewable source electricity and not biogas;

- **replacement of definitions referring to electricity by definitions with reference to biogas**; and

- **adding the special requirements regarding the biogas** (e.g. mass balancing, proof of sustainability) into Annexes which shall be selected as applicable in line with the relevant transaction.

5.2 Additional Requirements for Cross-Border Transfer and Use of Biogas GoOs for Case 1

For Case 1 transactions, that is biogas and/or Biogas GoOs purchased for use in a voluntary scheme on an international scale such as the GHGP, the Agreement needs to cover the clauses listed above (*Typical Clauses for biogas GoO Trading for Case 1, Case 2 and Case 3*) as long as the transfer of biogas and/or Biogas GoOs occurs within one Member State.

In case of a cross-border transfer, i.e. Biogas GoOs issued by a national registry in one Member State shall be transferred to another Member State (with or without the underlying commodity), the following additional requirements have to be reflected in the Agreement:

- **the transfer must be carried out in accordance with the working rules of the national biogas registry of the buyer**; this might entail that the seller has to open an account with the buyer's national biogas registry; or

- **cancellation of the transferred Biogas GoOs in the national biogas registry of the seller is required.**

5.3 Additional Requirements for biogas GoO Trade for Case 2

In addition to the clauses listed above the Agreement must contain the seller's obligation to abide by the following criteria in accordance with EU MRR to the benefit of the buyer:

- the **seller must provide evidence of mass balance confirmed by an independent audit** such as ISCC-EU;

- the **seller must provide a proof of sustainability** confirming that the underlying biogas meets the sustainability criteria set out in the applicable national legislation transposing the criteria in Articles 29 and 30 RED II; and

- the **seller must confirm that the underlying biogas meets the quality criteria** set out in the applicable national legislation transposing the EU ETS Directive.

The Agreement must provide for a mechanism that allows the buyer **to terminate** the Agreement in case **one or more of these additional quality requirements is not met**.

5.4 Additional Requirements for the biogas GoO Trade for Case 3

In addition to the clauses listed above in points 5.3(a) and (b) the Agreement **must contain the seller's obligation to confirm that the underlying biogas meets the quality criteria required by applicable national legislation transposing Articles 25 to 27 RED II** in order for the buyer to be able to credit the biogas against the national renewable fuels quota.

Likewise, the agreement must provide for a mechanism that allows the buyer to terminate the Agreement in case one or more of these additional quality requirements is not met.

6 Impact on the Standardisation of biogas and/or Biogas GoOs Transactions

The regulatory framework for biogas also impacts risk allocation and contractual claims. In particular, the following instances are to be taken into account:

- damages are calculated in accordance with the costs of the regulatory system;
- Biogas GoOs may become ineffective for various reasons. In case the ineffectiveness of the Biogas GoOs is due to an omission of the seller, the contract should provide for the obligation to replace the ineffective Biogas GoOs; and
- both the voluntary and the regulatory framework for biogas are highly dynamic (see above point 3.1(b) and 3.2(b) on upcoming changes regarding the EU regulatory framework as well as the GHGP). **It is therefore important that the contract provides for clear rules in case of (legislative) changes that impact the trade in a significant manner.** This would usually be dealt with in a change in law clause.

7 Proposals for the Use of Standard Contracts for biogas and/or Biogas GoOs Trading on the CEGH GreenGas Platform

As the EFET CMA is already being used as a basis for Power and Biogas GoO transactions., the general clauses such as term and termination, limitation of liability, etc have become market standard. Moreover, market participants are familiar with the EFET style contract design.[5]

The EFET CMA is designed as a framework agreement and the conclusion of individual contracts between the parties. **In a first instance it seems more appropriate to draft the standard agreement as an individual contract.** However, at a later stage, if a need arises, it may be appropriate to offer a **Standard Framework Agreement together with forms for individual contracts to market participants who trade with each other on our CEGH GreenGas Platform on a regular basis.**

To start with, we suggest to design the Agreement as follows:

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[5] Apart from EFET, in our experience market participants also rely on the RECS Certificate Trade Agreement (**RECS CTA**) provided by RECs International. Like with the EFET CMA the RECS CTA is currently framed for the sale and purchase of electricity certificates and would therefore require relevant adaptations. The RECS CTA is a less detailed agreement than the EFET CMA and leaves more up to the discretion of the parties. Given our aim to provide our CEGH GreenGas Platform users with a standardized agreement with a very high degree of detail we tend to rely on the EFET CMA.

- the core of the Agreement will include the typical clauses for certificate trading based on the EFET CMA; and
- the specific requirements for Case 1, 2 and 3 transactions would be drafted into Annexes to the Agreement.

Market participants may thus rely on the Standard Agreement and choose the relevant Annex.

8 Questions & Answers

On the basis of the above outline, we kindly ask you to provide us with brief answers on the following questions. You answers will help us **to best align the design of the GreenGas Platform and the standard trading agreement** with your needs.

1. Please share with us your feedback on this "Discussion Paper". This will enable a better understanding of the current and future situation and the topics important for (cross-border) biogas and Biogas GoOs trading. In particular, we are interested in your recommendation for next steps and whether in your view the idea of an adjustment of the existing EFET CMA - to also cover biogas and/or Biogas GoOs respectively (see point 7) - is a value-add approach to contribute to market development.

2. Are you interested in the trade in (i) Biogas GoOs only (without the underlying commodity), (ii) Biogas GoOs plus mass balance or (iii) Biogas GoOs, mass balance and the underlying biogas? Please indicate also whether you intend to act as a producer, trader, supplier, end consumer and/or other participant.

3. What is the driver in your interest in the trade or consumption of Biogas GoOs (with or without mass balance and/or biogas)? Please indicate also whether one (or more) of the business cases outlined above in clause 4 apply to you.

4. Are you familiar with the trade or consumption of Biogas GoOs (with or without mass balance and/ or biogas)? If yes, how long have you been active on the market?

5. Are you aware of any national regulatory requirements in your country that need to be taken into account for the trade or consumption in Biogas GoOs (with or without the underlying biogas)?

6. What kind of documentation do you (or your business partners) require in addition to Biogas GoOs (if any, such as proof of sustainability or any other documentation required under a voluntary or mandatory scheme)?

7. Are you interested in cross-border trade of Biogas GoOs? If yes, which Member States would be involved?

Please share your answers to the above questions with us via e-mail to frederick.bernthaler@gashub.at until 18 October 2022.

Any other general feedback, insights, and questions from you are also welcome.

Vienna, 15 September 2022

DLA Piper on behalf of Central European Gas Hub AG