European Federation of Energy Traders
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EFET Legal Committee Meeting Q3/2022

19th September 2022
A&D List

Participants

1.	Flavia Grassi	AET
2.	Libuse Jeremiasova	Alpiq
3.	Andreas Zumbach	Axpo
4.	Eberhard Röhm-Malcotti	Axpo
5.	Marco Saalfrank	Axpo
6.	Daniel Cooke	CCI
7.	Gottfried Steiner	CEGH
8.	Frederick Bernthaler	CEGH
9.	Jan Michek	CEZ
10	Iveta Niemiec	CEZ
11	Caroline Sandfeld Gjørret	Danske Commodities
12	Jens Hedegaard	Danske Commodities
13	Andreas Gunst	DLA Piper (guest)
14	Michael Cieslarczyk	DLA Piper (guest)
15	Elisabeth Spieker	DLA Piper (guest)
16	Arben Kllokoqi	Energy Community
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	Mike Bostan	EFET
24	Sara Baldassarre	ENI
25	Natacha Irakoza	ENI
26	Veronica Gorbounova	ENI
27	Stephanie Behling	Engie
28	Benjamin Dargnies	Engie
29	Stephanie Behling	Engie

30	Astrid Wurm	Energie AG
31	Christoph Saenger	E.On
32	Jana Krautwurmova	EP Commodities
33	Matej Komora	EP Commodities
34	Justyna Pantelides	ESB
35	Ilya Merzlyakov	Ezpada
36	Tjaša Konjar	GEN-I
37	Marta Peñaranda Gonzalez Robatto	Ibedrola
38	Alma Rosana Bovia Sanchez	Ibedrola
39	Cristina Ludena	Ludena Consulting (guest)
40	Immy Renodeyn	Mercuria
41	Franck Vernier	MET
42	Janna Mörking	MVV Trading
43	Ulla Achleitner	OMV
44	Lindsay Luttermann	Orsted
45	Cristina Weide	PZEM
46	Marek Chmel	Repower
47	Thomas Bergmann	RWEST
48	Willem van Haersma Buma	Shell
49	Niels-Jakob Küttner	STEAG
50	Morgane Tidghi	Total
51	Raluca Dirjan	Total
52	Britta Woltering	Trianel
53	Oliver Frömmel	Uniper
54	Irene Fenyösy	Verbund
55	Fatima Semlal	Vitol
56	Inge Mannaerts	Vitol
57	Christina Weide	Wintershall Dea
58	Tanja Konjar	
59	Elisabeth Spiecker	

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 (16 May 2022), subject to no comments.

2. Update on EFET initiatives – Jan Haizmann, EFET

Jan Haizmann explained the various budget positions for the ongoing projects, namely:

- Most of the netting opinions (20+) have been instructed and are currently under review. As one of our largest cost items, this has a significant bearing on costs, and represents a significant increase relative to historic costs;
- Netting legislation in the Netherlands (influence the WHOA implementation) and Italy;
- Retainer for developing H2 Single Trade Agreement in cooperation with HyXchange;
- Support of advocacy work of Market Supervision Committee.

LC membership and fees: The EFET Board is currently considering an increase in EFET membership fees to reflect the inflation and to effectively enable Secretariat to deliver greater member value. The Board has equally agreed to merge associate and regular LC membership and charge a uniform fee. The changes are likely to come into force following the Annual General Meeting on 8th November this year.

3. Focus session on Energy Secity Act (EnSiG): Implementation and practical impact of EnSiG on gas trading contracts

John Usemann, Head of customer relations and contract management at Trading Hub Europe GmbH presented latest developments on EnSiG levy scheme.

The Gas Price Adjustment Ordinance pursuant to § 26 EnSiG on financial compensation through a netted price adjustment entered into force on August 9, 2022. The Ordinance grants financial compensation to gas importers who are directly affected by a significant reduction in the total gas import volume. This will be financed through the so-called netted price adjustment. The price adjustment will be netted over 18 months, starting on October 1, and will be limited to 2 years (until September 2024). Any losses born by gas importers until 1 October 2022 and after April 2024 will be on their own importers accounts.

The levy determined and published by THE for the first time on August 15, 2022. Twelve companies which registered as potential beneficiaries under the levy scheme by 13 August (34bn EUR).

Dr. Wolfgang von Rintelen, Managing Director EEX Exchange, General Counsel shared a view from the exchange perspective. EEX has a firm opinion on <u>non-applicability of the EnSiG on EEX-operated trades</u>. EEX asserts that all the contracts traded on the exchange (both financial and physical) are out of EnSiG's scope. This view has not been confirmed in the law where there is no express exemption provided for exchange trades.

Commodity traders and energy companies are currently confronted with high margin calls on their derivative portfolio as a result of significant market volatility. Pushing EUAs as fully recognized collateral is now driven by Market Supervision Committee in a larger advocacy campaign to mitigate liquidity demands. There is a need to continue to make the case for allowing clearing houses to receive non fully backed commercial bank guarantees and have EUAs recognized as eligible collateral by CCPs and regulators (eventually with a reasonable haircut).

Gerd Stuhlmacher, Partner, Luther Law Office, highlighted that the current EU Commission proposal on prices caps does not clarify whether the whole system should apply post-clearing (whether Member States could apply at settlement prices or after that), and that the market mechanism should not be affected. The system should become effective as of 1st December 2022.

EFET Secretariat procured a legal opinion from ReedSmith on enforceability of EnSiG and contractual implications from an English law perspective. Changing the underlying law would be one option.

Joachim Rahls, Chair of German Gas Task Force (GTFG) clarified applicability of mechanisms under sections 24 and 26 (upstream and downstream views).

Action:

- LC Secretariat to continue monitoring EnSiG developments and legal implementation issues.

4. Voluntary Carbon Market Standardization

Peter Werner, Senior Counsel, ISDA updated on the ISDA draft template for VCCs. The revised ISDA draft has been restructured to create a standalone set of VCC Transaction Provisions, which may be incorporated into a Confirmation. This approach means that if, as expected to be the case, the VCC Transaction Provisions are updated, parties can simply incorporate the latest version of the VCC Transaction Provisions without the need to amend their ISDA Master Agreement. The terms of the ISDA Master Agreement will continue to apply by, as is ordinarily the case, the Confirmation expressly being subject to it. The publication version of the 2022 ISDA Verified Carbon Credit Defs plus confirmation templates is expected for late November 2022.

IETA has recently published **a first Verified Emission Reduction Framework Agreement (VERPA) for Secondary Transactions**. Such agreement looks to cover many voluntary carbon standards; however, it is rather narrow in scope as it does not cover some key risk, including a limited definition of environmental attributes, ineffectiveness of carbon credits, permanence, and reversal events.

EFET workshop on Voluntary Carbon Reduction Schemes, hosted by DLA – 18 October 2022

Considering the need to incentivice a robust carbon market, the intention is to discuss the possibility of developing an EFET bridging legal document that addresses key market risks in order to provide for enhanced protection and certainty. Part of the workshop will feature a focus session to discuss EFET documentation, intended to assess to what extent an EFET documentation on the basis of ETS or CMA/EECS Appendix could align to IETA document or where it may make sense to deviate. LC members could also attend the first part of the workshop for further background.

Action:

- Interested members are invited to register with Aygul.

5. Overview of legal reforms relating to close-out netting

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.
- **Bulgaria:** we are in touch with the drafting committee of the Bulgarian parliament in terms of suggesting a carve-out for physically settled wholesale transactions.

6. Update of EFET Netting Opinions

Progress report on 2022 netting opinions update cycle: EFET LC Secretariat have instructed the update of 20 legal netting opinions over summer (2 more to follow for Moldova and Georgia). This cost position for EFET translates in circa 475k in LC annual budget. The collective LC decision was to cover both gas and power transactions in one netting opinion per each jurisdiction going forward (a novelty for the 2022 update cycle).

Action:

- LC members interested in a review process of netting opinions are invited to contact LC Secretariat.

7. CPPA standardisation (template version 2.0)

The LC is making a good progress with developing new CPPA template version 2.0, intended for physical settlement with optional annexes to be customised for specific projects and jurisdiction.

Building on the success achieved so far, our plan is to:

- Further engage in Southern and South-eastern Europe, to help in setting the market standard for PPA transactions.
- Engage with German stakeholders holding the pen for standardisation of PPAs for the German industry (organised by DENA).

Action:

- LC members are invited to share input on (a) priority PPA markets; (b) views on the need for a specific German PPA for the smaller and mid-sized businesses ("Mittelstand").

8. Hydrogen Certificate Trade Agreement

Further to LC call for expression of interest, EFET moved ahead to formalise our collaboration with HyXchange and set up a small working group with a focus on developing a Hydrogen Certificate Trade Agreement (a single transaction agreement/STA) to be used for the new Dutch national renewable source hydrogen guarantee of origin (GO) scheme. The intention is to use the EFET Certificate Master Agreement (CMA) as the basis and pair it back to a national scheme single trade based on the EFET wording and following the style of the PRISMA capacity contract.

The HyXchange Trading Group and the EFET Legal Committee have mandated DLA Piper to assist with this joint drafting initiative. A first strawman draft of the Dutch H2 Pilot GO STA (courtesy of Andreas Gunst, DLA) have been circulated for comments over the summer.

There are a few points to note and areas to be clarified, notably:

- Implications of the consultation draft of the RFNBO Delegated Act for unsupported H2 GO to be used in the Dutch Fuel Quota Scheme
- The Vertogas rule book regarding issuances, transfer and cancellation of the H2 GOs,(which we understand will be based on EECS rules which has been the basis for the strawman
- The Dutch draft law on the H2 Scheme is currently undergoing voting, and the draft would need to be aligned to adopted law
- The importance for market participants to take concepts from other compliance markets like the EU or UK ETS like suspension events, cost of carry, or EEP comparable compensation rules into the H2 GO STA.

On 5th July 2022, EFET hosted a workshop in collaboration with HyXchange and DLA Piper. This was intended as a broader "foundation" presentation to get members of the EFET LC and

HyXchange certificate pilot on the same page regarding the useability of H2 GOs in different hydrogen delivery and use scenarios.

9. Update Austrian Gas Market Documentation

The EFET Legal Committee endorsed the new Austrian VTP Appendix (Version 3.0, September 2022) and the Change Letter, alongside a summary note of the planned changes with effect from 1st October 2022. The LC expressed appreciation to Lynn Shaw of BP for steering this drafting initiative.

The old Version 2.0 of the Austrian VTP Appendix will remain available for use until 30th September 2022 only.

Action:

- The LC Secretariat to publish the new Austrian VTP Appendix, and to make available the respective Ratification Letter on the EDRS platform shortly.

10. Progress report from related EFET working groups

- Update from Market Supervision Committee – Mike Bostan

EU and national policy proposals tackling energy crisis in the attempt to address alleged insufficient market transparency.

Liquidity crisis management:

- EFET plea for liquidity support, leaked in the media – outcome: several MS set up liquidity programs (KfW – Germany, CZ, Nordics – FI, SE, DN, Switzerland); designed as measures of last resort, are strict in terms of conditions.
- Advocating for European scheme through ECB.
- Matching margining requirements: LEBA report, banks no longer extend credit lines for firms, one solution: advocating for use of non-collateralised bank guarantees and EUAs as a form of collateral;
- increase of the EMIR clearing threshold for energy commodities is gaining traction (ESMA from 3bln to 4bln); the helpful letter from European Commission and unhelpful response from ESMA; still work in progress; EMIR review scheduled for beginning of December 2022
- Price increase in gas and power/volatility: price caps; supervision of exchange markets; ongoing debate on an alternative benchmark to Dutch TTF based on transaction data (complimentary LNG benchmark); ACER's stepping up its role in ensuring post trade transparency;

Potential reforms of REMIT: on the agenda of the next REMIT forum (REMIT reform supported by European Commission, notably extension of market intergrity provisions)

Reform of EU ETS Directive (in cooperation with TF emissions): European Parliament proposal arguing in favour of only compliance buyers can participate in emissions market, which would essentially exclude financial counterparties (EFET is siding with European Commisison and Council).

- Credit & Collateral WG – Credit Manual on PPAs

The Credit & Collateral WG is advancing drafting of the EFET PPA Credit Manual on PPAs, intended to provide guidelines to EFET members for assessing and mitigating PPA credit risk. The completion of drafting and the external review is scheduled in q4 this year.

11. Focus session on biogas trading and standardization, hosted by CEGH with participation of DLA Piper (Vienna)

EFET has partnered with CEGH to support its GreenGas Platform project aimed at creating a liquid marketplace for trading in green gases (such as biogas and hydrogen) for the first time. EFET aims to facilitate trading by means of a standardised agreement on the basis of the EFET Certificate Master Agreement (EFET CMA), tailor-made for biogas and gas GO trading, which would enhance the conclusion of trades and foster the creation of a level playing field between market participants transacting in green gases.

It is important to define a contractual framework that fits trading of gas GOs (including sustainability criteria, proof or transport etc.) and related commodity transactions. It is discussed that at present there are no harmonized regimes all over Europe for biogas trading, but national regimes and separate registries. For this reason, the proposed and revised regulatory framework for renewable and low-carbon gases should help promote liquidity and investment with reliable price signals. In order to have a functioning common EU-wide GO system, it would be beneficial to go ahead with the implementation of the RED 2 (EU Renewable Energy Directive) and the outstanding implementation rules (e.g. Delegated Acts).

Action:

- EFET will continue to support CEGH initiative. The standardization effort in terms of contract design could help facilitate the traded market. Therefore, it is important to get as much feedback from market participants that could be used as basis for the development of a standard contract. LC members are invited to provide their feedback on the basis of the legal discussion paper.