Biogas Trading – Background to the Design of the EFET Biogas Certificate Trading Agreement

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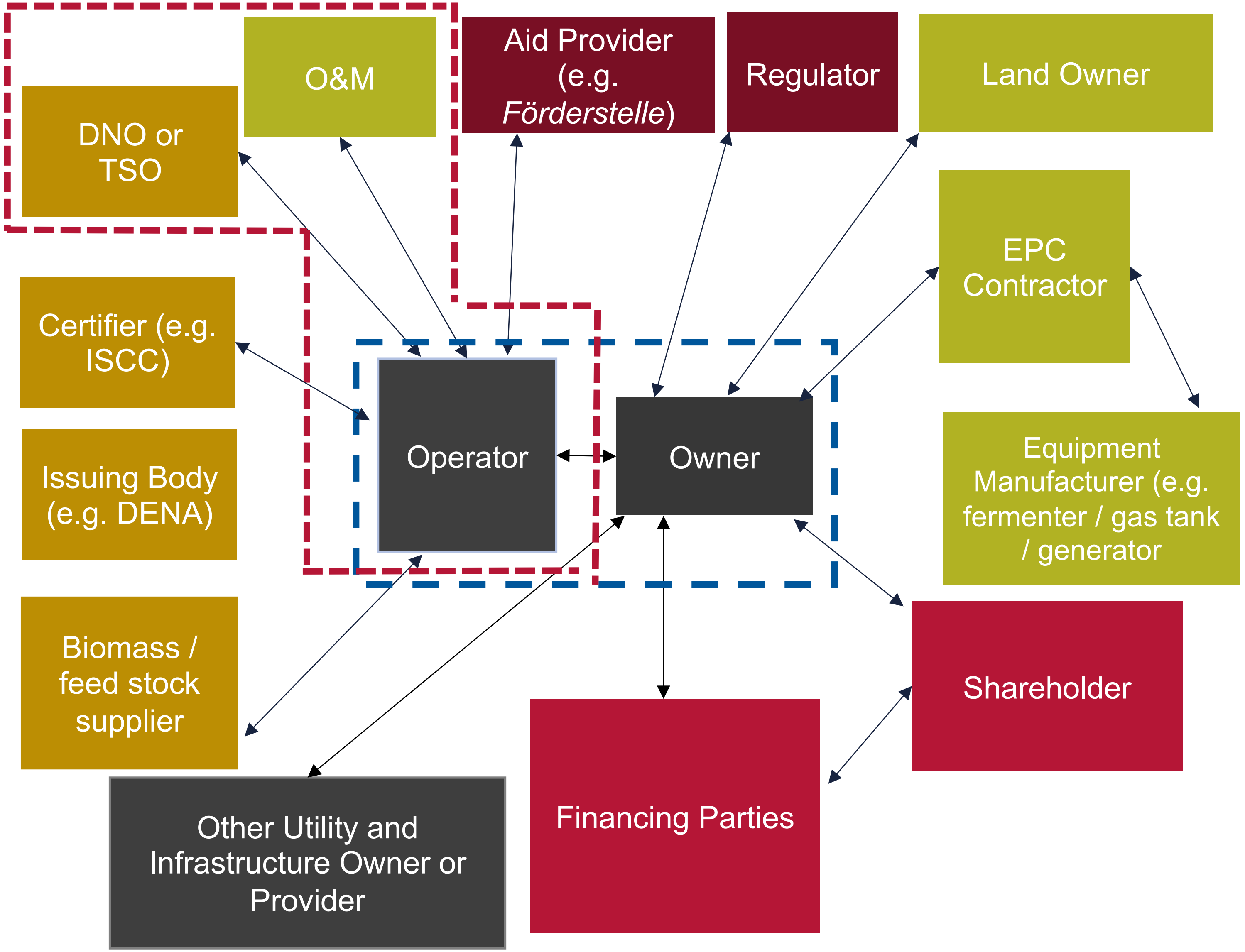
Biogas Projects and Bankability



Typical biogas project / bankability issues

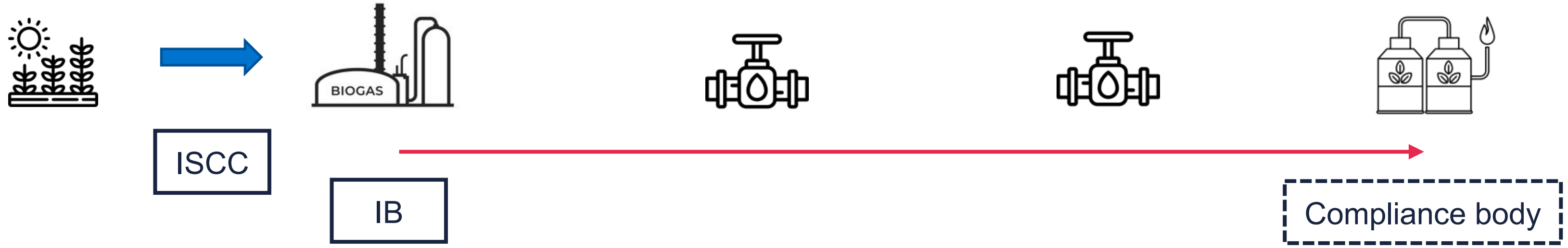
- Offtake pricing
  - Support scheme (feed-in; premium)
  - Other incentives (ETS or fuel quota exemptions, GHGP)
- Dependable and commercial long-term biomass / feedstock delivery
- Hightened exposure to force majeure events regarding feedstock
- Output volume variance
- Regulatory changes regarding sustainability criteria under RED II
- Connection delays and incompatible grid entry specifications
- Maturity of technology and extent of availability guarantees
- Common restrictions to operation under permitting
- Limits to credit support and insurance

Comparing and Contrasting Tracking of Environmental Attributes

Biofuel production

Entity such as ISCC verify biofuel produced against sustainability criteria of feedstock. Biofuel mass balanced in order for recognition by responsible compliance body.

Biomethane production



Entities such as ISCC certify biomethane produced against suitability criteria of feedstock. GoOs or PoS issued and transferred in registry or national or Union database to consumer and biomethane mass balanced to consumption point.

Renewable H_2 production

Power GoOs redeemed in respect of H_2 produced. Provided that criteria of Delegated Act are met, logged into Union database, and H_2 certificates issued and transferred to end consumer.

Case Study 1 – Cross-border Biogas GoOs for GHGP Scope 3 Emissions

- **Case:** GoOs from French biogas projects are used to reduce Scope 3 emissions for logistics activities in Germany
- **Issue**: Under what circumstances are biogas GoOs eligible for Scope 3 use in another country if not mass-balanced?
- **Challenges**:
  - Biogas GoOs currently tradable within France and exporting from France to other EU MS
  - Biogas GoOs not part of AIB, only national system – transferred cross-border by cancellation statement
  - National registry guidance currently requires an exit point to be specified in transfers to end-consumers, however this is understood to be out of date in light of EU RED II implementation requirements
  - Therefore, no requirements to trade or evidence underlying biogas flows nationally / cross border
  - More limited guidance on GHGP Scope 3 use of GoOs for biogas compared to use for GoOs for renewable sources electricity, e.g. RE 100 Technical Guidance, RECS Good Practice Guidelines
    - Analogous book and claim approach without mass-balancing for compliance?
    - Market boundary and grid connection position similar to that of electricity
    - Relevance of the regulatory boundary
  - Relevance of support scheme for additionality in Scope 3 emissions

Case Study 2 – Cross-border Biogas and Cumulative Subsidies

- **Case:** Use of Danish GoOs to comply with German Fuel Quota Obligations and received value of quota trading
- **Issue**: Under what circumstances would cumulative aid in different countries in breach of EU state aid rules?
- **Challenges**:
  - Support schemes for renewable energy generally have had territorial restrictions, justified by ECJ case law (e.g. *Preussenelektra, Alands Vindkraft, Essent* cases) with risks of cross-border cumulation of aid not materialising
  - New 2022 CEEAG Guidelines address various elements of aid including updated rules for biogas
  - Biogas produced in Denmark had a grant which consitutes state aid, cumulative to benefit under German scheme
  - Preussenelektra *at al* position of legal obligation for a private entity to purchase a particular commodity as not being state aid is still seen as bein upheld, as it does not involve “state resources“, however, purchase of quota by a public entity would bring it in scope
  - THG Quota trading is effectively designed as supplier obligation scheme and CEEAG require that supplier obligations need to take other aid received through mass-balancing into account to avoid overcompensation
  - CEEAG allow cumulation of aid in certain circumstances subject to limits – if German quota trade system was considered state aid the biogas producers would at current prices of around € 400 be overcompensated, and aid would have to be repaid
  - German Federal Emissions Protection Act and 37 Implementing Ordinance do not per se restrict use of biogas without
  - UBA position and requirements regarding information and mass balancing not always consistent

Case Study 3 – Cross-border Biogas for ETS Reduction

- **Case:** Use of Dutch biogas GoOs and mass-balanced gas to allow German industrial with own EU ETS covered installation to reduce allowance costs
- **Issue**: How accessory are gas and biogas GoO deliveries and what information needs to be provided?
- **Challenges**:
  - Pricing of gas and GoOs is driven by ability to use biogas as exemption under the EU ETS but additional requirements for biomass used for biogas generation have been under further refinement in RED II
  - German registry operator DENA has additional requirements for the acceptance of GoOs (*DENA Liefermodell*)
  - Quasi-coupling of GoOs and biogas through matching gas nominations at entry and exit poins including border interconnection points
  - EU Implementing Ordinance 2018/2066 sets certain requirements for biogas to be eligible to reduce ETS emissions and thus EU Allowance costs
    - Corresponding gas quantity needs to correspond in heat equivalent to an amount of biomethane fed into the natural gas network elsewhere and related upper and lower calorific value conversion
    - Evidence of a biomethane supply contract between ETS operator and biomethane supplier
    - RED II (and soon III) compliant mass balance system used for the entire transport of the gas
    - Evidence of the booking-out in certain registries or confirmation through independent auditing
  - Provision of additional information regarding sustainability, usually ISCC or Better Biomass
  - Now further requirements under MRR Guidance note 3

EAC Contracts

- EFET European Certificates Master Agreement and Appendix, together with Gas MA
- RECS International Single Transaction Agreement
- Individually drafted biogas EAC trade agreements or EAC sale and transfer provisions in gas supply agreements
- National standards
- Other EAC Agreements to draw on regarding biogas certificates:
  - ISDA US REC Part
  - IREC Master Trade Agreement
  - FIA ROCTMA

EAC Negotiation Points

- Nexus of mass-balancing of gas, required information and accessory nature of GoO delivery
- Divergence of produced and scheduled gas and related GoOs, time stamping
- Encumbrance loss
- Ineffectiveness and transfer of regulatory risk
- Evidentiary instrument or holder rights
- Separate Certification (e.g. ISCC) in addition to certificate (e.g. GoO), need for PoS and use of national or Union database
- Biogas production and EAC specific reps & warranties
- Replacement certificates and equivalence criteria
- M2M or cover purchase compensation in long SPAs

Structure of the EFET Biogas Certificate Agreement

- Part I - Commercial terms and elections
- Part II – Body of the STA, inlcuding:
  - Delivery and acceptance of certificates
  - Transfer, risk, no encumbrances
  - Remedies failure to deliver or accept
  - Ineffectiveness
  - FM
  - Change in law or standard
- Appendix 1 – Defined terms
- Appendix 2 – Voluntary Scheme
- Appendix 3 – EU ETS
- Appendix 4 – National Fuel Quota Scheme
- Appendix 5 – National Emissions Trading Scheme
- Appendix 6 – Physical Delivery and Acceptance of Biogas

Awards and recognition

Firm of the Year: Projects, Energy and Natural Resources
Legal 500 UK 2020

#2 global renewable energy legal advisor 2020
inspiratia 2020

Legal Adviser of the Year
International (Projects) Partnerships

Tier 1 Power / Renewables legal advisor for two consecutive years
Legal 500 UK 2020 and 2021

Energy Law Firm of the Year
The Best Lawyers in Australia 2021

Middle East and Africa Wind Project of the Year
IJ Global 2019 – for the Dumat Al Jandal IPP

Tier 2 in Industry Focus: Energy and Infrastructure
Legal 500 UK 2021

Natasha Luther-Jones and Peter Ihrfelt: most influential individuals in wind industry
A Word About Wind's Legal Power List 2020

Energy and Resources Law Firm of the Year
ALB Macallan Hong Kong Law Awards 2019

Insolvency and Restructuring Deal of the Year Award
Australiasian Law Awards 2019 – for Paladin Energy

21 lawyers recognized individually in the UK only
Legal 500 UK 2021

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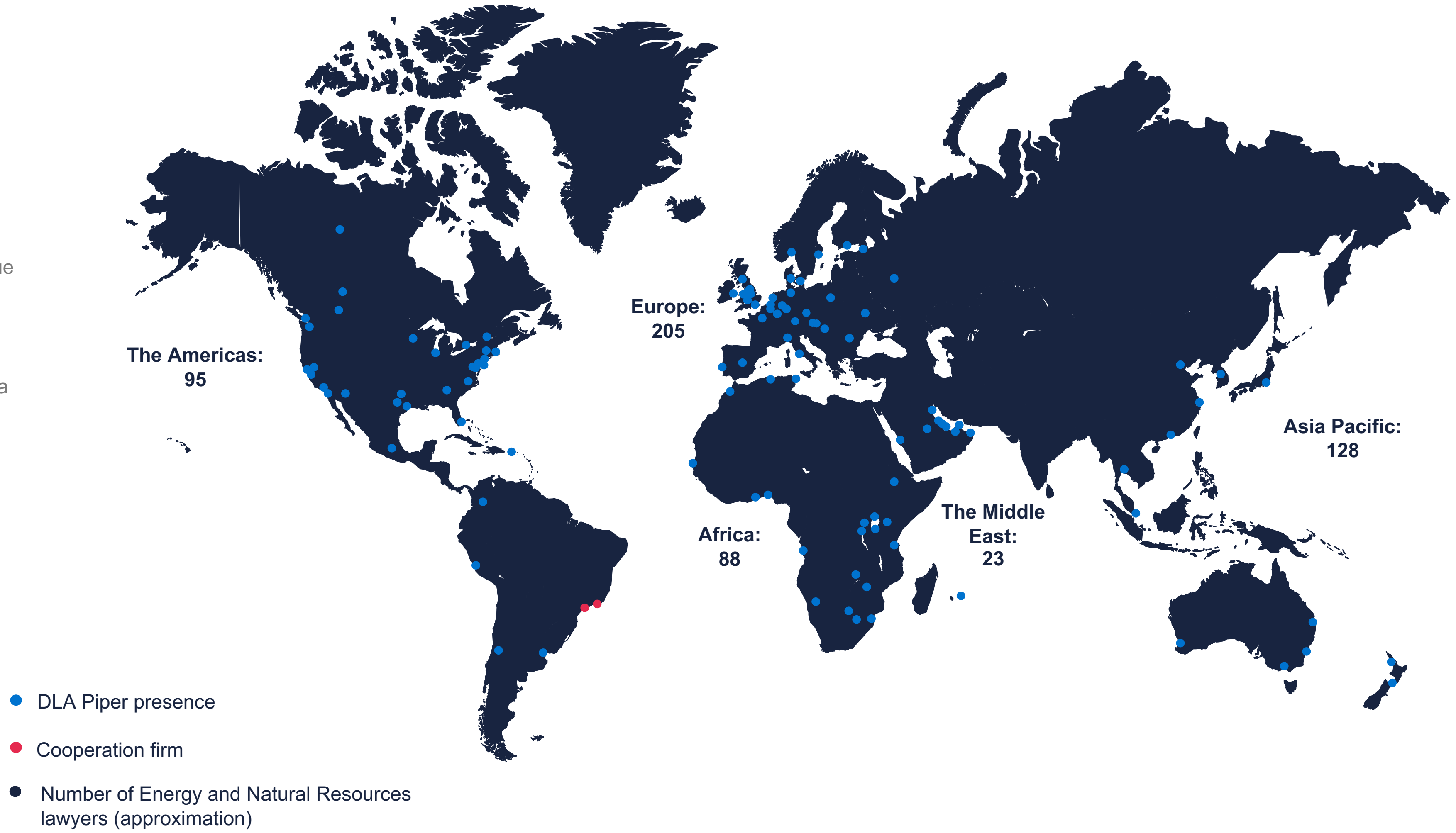

*Cooperation Firm

Thank you