Ministry of Justice of the Republic of Slovenia
Civil Law Directorate
Mr Miha Verčko Director
General
Sent by e-mail to: gp.mp@gov.si and mojca.lobnik@gov.si

Ministry of Finance of the Republic of Slovenia
Financial System Directorate
Ms Urška Cvelbar Director-
General
Sent by e-mail to: urska.cvelbar@gov.si

Amsterdam, 13 September 2023

Predlog zakona o spremembah in dopolnitvah ZFPPIPP (ZFPPIPP-H) predstavlja tveganje nejasnosti glede izvršljivosti dogovorov o izravnavi in finančnih zavarovanj – pismo podpore dopisu organizacije ISDA

Dear Mr Vrečko and Mrs Cvelbar,

The European Federation of Energy Traders ("**EFET**") is writing to you regarding the draft law on amendments and additions to the Law on Financial Transactions, Insolvency Proceedings and Compulsory Winding-up ("**FFPPIPP-H**")[1] , referring to the letter dated 6 September 2023 addressed to you by the International Swaps and Derivatives Association, Inc. ("**ISDA**").[2]

As you know, EFET is an organisation that represents the interests of energy traders in Europe and works to build confidence in electricity and gas markets. EFET aims to promote and facilitate energy trading in Europe and therefore advocates open, competitive and transparent energy markets. EFET plays a key role in the development of regulations, standards and good practices in energy markets. In addition to its activities in the field of energy regulation and the promotion of competition in the energy sector, EFET also develops standardised contracts for electricity and gas trading on the wholesale market.

[1] EPA 764-IX, as available on the website of the National Assembly of the Republic of Slovenia.
[2] Entitled: "The *proposed amendments to the ICAPF pose a risk to the enforceability of netting agreements and financial collateral*".

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The Framework Agreements, known as EFET General Agreements,[3] , together with additional or supplementary documentation (as available to users on our website - www.efet.org), provide a user-friendly mechanism for energy trading, with standardised contractual provisions for individual arrangements for the purchase, sale, delivery and take-up of electricity, thereby reducing transaction costs in the wholesale electricity and/or natural gas markets. The above documentation includes, inter alia, a *close-out netting* arrangement as a means of settling the parties' mutual obligations in the event of termination of the contractual relationship. Netting arrangements between parties to sales contracts significantly reduce credit risk and other related costs and risks. The availability of this instrument for (credit) risk management is crucial in the tight conditions in the financial and energy markets, which - among others - Slovenian energy traders are facing.

In light of the above, EFET shares the concerns raised by ISDA in its letter on the proposed MIFID- H and stresses that clarity on the enforceability of netting and financial collateral arrangements should also be ensured in insolvency proceedings. The same applies, mutatis mutandis, to the enforceability of financial collateral arrangements.

The legislator has already recognised the importance of balancing agreements for Slovenian energy traders and has made an important contribution to their competitiveness and efficiency by amending the ZFPPIPP-E by adopting a new Article 24b of the ZFPPIPP.[4] For essentially the same reasons that led to the adoption of Article 24b of the ZFPPIPP (and Articles 24a, 164a, 264a and 483 of the ZFPPIPP), the following clarifications should - in order to avoid misinterpretations of the relevant provisions in potential disputes - also be made in the context of the adoption of the ZFPPIPP-H:

- The explicit exemption of netting agreements from the provisions on the suspension of individual enforcement proceedings and the prohibition on repudiation of key contracts (proposed new Article 24c of the ICAPF), as allowed to Member States by the Restructuring Directive[5] in Article 7(6);

- Explicitly stipulate that the provision of Article 483 of the ICAPF shall also apply to the proposed insolvency proceedings;

[3] EFET General Agreement concerning the Delivery and Acceptance of Electricity, version 2.1(a), dated 21.9.2007 and EFET General Agreement concerning the Delivery and Acceptance of Natural Gas, version 2.0(a), dated 11.5.2007.
[4] Cf. Bill on Amendments and Additions to the Act on Financial Management, Insolvency Proceedings and Compulsory Winding-up (ZFPPIPP-E), EPA 1135-VI.
[5] Directive (EU) 2019/1023 of the European Parliament and of the Council of 20 June 2019 on a framework for preventive restructuring, debt relief and prohibitions of activities and measures to increase the effectiveness of restructuring, insolvency and debt relief proceedings and amending Directive (EU) 2017/1132 (the "**Restructuring Directive**").

- Make it clear that the transposed provisions of the Restructuring Directive do not apply to financial collateral.

Uncertainty regarding the enforceability of balancing agreements, which - especially in view of the possibility of different interpretations - is introduced by the current proposal of the ZFPPIPP-H, could mean for Slovenian energy traders the risk of being treated as risky partners by foreign business partners, thus forcing them to enter into transactions on less favourable terms.

We kindly ask that the relevant issues be addressed as

soon as possible. We are, of course, at your disposal for

any discussion or questions you may have. Yours

sincerely,

Michaela Duve
Chair of the EFET Legal Committee