Energy Traders Europe Legal Committee Meeting

07 March 2024, Paris

Day 1: Meeting Agenda

1. Opening and approval of the A&D list from the previous Legal Committee meeting held in Düsseldorf, 14 & 15 December 2023 – Michaela Duve, energy traders Europe

2. Board highlights and governance framework:
- Introduction to new colleagues in the Legal Committee
- Report from the last board meeting with a particular focus on restructing the board compostion from 2024 – Mark Simmons, TotalEngie Gas & Power
- Updated Terms of Reference of the Legal Committee – Michaela Duve, energy traders europe
- Endorsement: Terms of Reference and inital budget allocation 2024
- Progress report: changes in the standardisation section on the public wesbite – Sonia Auguscik, energy traders Europe

3. Update from the Legal Opinions Review Working Group – Sonia Auguscik, energy traders Europe

4. Overview of developments regarding Russian-related trade restrictions – Ray Shio Ho, Reed Smith

Introduction of new colleagues in the LC

Michaela Duve, Chair Legal Committe, energy traders europe

New colleague: Róisín Campbell

- Start date: 5 February 2024 (internship),
- LLM Energy and Climate Law at the University of Groningen,
- Studies of international Relations and Pre-LLM course at the University of Groningen;
- Nationality: IR

New colleague: Dagmara Dragan

- Start Date: 4 March 2024
- PhD in law, Dissertation: Legal nature of grid codes in the energy sector,
- Work experience in legal practices (energy and competition law team, focus gas)
- Master in law at Adam Mickiewicz University in Poznan, Poland,
- Nationality: PL

REORGANISATION OF WORKING GROUPS

LC Secretariat	EFET documents development and maintenance	Support and Cross Committee Cooperation	Contract Digitalisation
Michaela	LNG & Natural Gas	Hydrogen and related certificates - Roisin -	Biogas and related certificates - Dagmara -
Sonia	Legal Opinion Review - Dagmara -	PPA Standardisation & Electricity	
	WG Trading Compliance - Sonia -	WG Credit & Collateral - Roisin -	

Any questions?

Oversight Committee
Board Composition

Mark Simmons, Total Engie Gas & Power,
Member of the Board and Chair of the Oversight Committee

Board Composition

- Following the ACM, the OC has focused on updating the board composition bye-laws

Objectives:

- Increased membership requires more representation of member companiesGiven Energy Traders Europe‘s core belief in open and transparent markets, the majority of board seats should be elected
- Space for co-opting member representatives who strengthen board or improve member diversity
- Only representatives of Energy Traders Europe can be elected or co-opted
- Max 1 person per Energy Traders Europe member
- 3 to 20 board members (as defined in Articles of Association)

Elected members (max 15)

- Elected terms of 3 years
- From 2024 AGM limited to a max of 3 terms
- Any previous terms served are not counted
- 5 board seats to be contested each year from Nov 2025
- Those elected in Nov 2023 to serve their full 2-year terms
- Transition elections in Nov 2024 (10 seats, by number of votes, top 5 get 3-year terms, next 5 get 2-year terms)

<table>
<tr><th></th><th></th><th>1 Year</th><th>2 Year</th><th>3 Year</th><th>End of Term</th></tr>
<tr><td rowspan="2">Current rules</td><td>Nov 22</td><td>7</td><td></td><td></td><td>2024</td></tr>
<tr><td>Nov 23</td><td colspan="2">5</td><td></td><td>2025</td></tr>
<tr><td rowspan="2">Transition rules</td><td rowspan="2">Nov 24</td><td colspan="3">5</td><td>2027</td></tr>
<tr><td colspan="2">5</td><td></td><td>2026</td></tr>
<tr><td rowspan="3">New rules</td><td>Nov 25</td><td colspan="3">5</td><td>2028</td></tr>
<tr><td>Nov 26</td><td colspan="3">5</td><td>2029</td></tr>
<tr><td>Nov 27</td><td colspan="3">5</td><td>2030</td></tr>
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Co-opted Members (max 5)

- Only members representatives are eligible
- Chosen by elected board members
- Co-opted terms of 1 year until next AGM if appointed mid-year
- With voting rights

Next Steps

- Update the by-laws to incorporate new rules

Revised Terms of Reference

Michaela Duve, Chair Legal Committe, energy traders europe

Recap revision process

- First draft of revised terms circulated prior to Q4/2023 LC meeting, Düsseldorf;
- Deadline for comments 19.01.2024;
- 6 member companies commented within the deadline;
- Redline and cleaner version with remaining points circulated: 21.02.2024

Specific matters

- No of emails per member: changed from 2 to 3;
- Revision period: annually;
- Meetings per year: 4;
- Expression of interest: annual survey and discussion during Q4 LC meeting, decisive for initial budget allocation.

Pending aspect: Minimum participation for votes

- Relevant for:
  - Election of Chair /Vice-Chair (if applicable)
  - Endorsement of documents (in person and electronically).

Pending aspect: Minimum participation for votes (2)

- decision is adopted if at least X%* of LC members participated in the electronic voting <u>and</u>
- if the simple majority of those participants vote in favour,
- Only yes and no votes are considered.

*rounded up or down to the next whole person according to mathematical principles.

Pending aspect: Minimum participation for votes (3)

- Three proposals:
  - LC Sec: 10% = 7 members;
  - 1 M: 30% = 21 members;
  - 1 M: 50% = 35 members;
- Decision: www.menti.com
- 1 vote per member.

Any questions?

Endorsement

Terms of Reference, version 2024; and

Initial budget allocation as presented in Q4/2023 LC meeting

Thank you for your support!

Finalised Terms of Reference will be circulated next week and be available in the member section of the website.

Changes to standard documentation on the public website

Progress report by Sonia Auguscik, energy traders europe

Recap: new website in 2024

- The project started in 2023, the goal is to create a completely rebuilt, more user-friendly website.
- Features of the new website :
  - improved connectivity between the member section and public domain,
  - robust search functionality,
  - better organised presentation of netting opinions and standard agreements.
- Website testing: some of the secretariat staff and member representatives.

Standardisation section – document organisation and accessibility

- Review of documents - corrections, removal of outdated files
- Consistent naming convention - improved searchability
- General Agreements pinned to the top of the page
- Categorising documents (appendices, guidance notes) by country

Standardisation section – new menu architecture

- Standard form contracts, gas & power
- Master Netting Agreements
- Renewable Certificates and Emissions Trading Documentation
- Specific contracts
- Amendments to Master Documentation
- Power Purchase Agreement
- Associated documents & services

Update from the Legal Opinions Review Working Group

Progress report by Sonia Auguscik, energy traders europe

Revised instruction letter (December 2023) – key changes

- Focus on energy traders, not regulated financial institutions - but the opinion still needs to meet regulatory requirements.
- Reviewed list of transaction types – better fit to the EFET documentation.
- Updated legal opinion summary template, colour-coded tables for types of counterparties and types of transactions, separate annex for recommended wording.
- Reviewed list of documents and restructuring: core documents, natural gas / electricity and other products.
- More precise wording for green certificates, question about mixed portfolio and the effect on close-out netting enforceability.

Opinion updates for priority jurisdictions identified in 2023 – status

- England & Wales (Reed Smith)
- Finland (Roschier)
- Liechtenstein (Gasser Partner)
- Netherlands (Clifford Chance)
- Norway (Advokatfirmaet Thommessen)
- Sweden (Roschier)

Condition: compliance with our instruction letter.
Opinion for US (New York) not yet instructed - approach to be discussed.

Other developments and updates

- Updated overview of the legal opinions – published on our website.
- Proposed EU Directive harmonising certain aspects of insolvency law – in coordination with the Market Supervision Committee, position paper in progress.
- Expected review of the MNA/CPMA instruction letter, and an update of these opinions for priority jurisdictions.

Legal Committee Meeting - Sanctions Update: Russia / Ukraine

By Ray-Shio Ho, Senior Associate

7 March 2024

ReedSmith

Driving progress
through partnership

2023 / 2024 Relevant U.S. Russia Sanctions

Blocking Sanctions

On individuals and entities including:

- Many Russian financial institutions are now designated
- LNG related designations
  - Arctic LNG 2 related designations
  - FSU SAAM and FSU KORYAK designations
  - LLC Novatek Murmansk
  - Azoria Shipping Company, Elixon Shipping Company, Glorina Shipping Company
- Designations on alleged actors involved in price cap evasion activities

Trade Restrictions

- G7 Price Cap Regime

2023 / 2024 Relevant UK Russia Sanctions

Asset Freeze

- Financial institutions
- Arctic LNG 2 LLC
- Board members of various key Russian companies within the energy sector
- Designations on alleged actors involved in price cap evasion activities

Trade Restrictions

- G7 Price Cap Regime
- Legal services restrictions on Russian companies

Other Developments – "Control Test"

- Mints & ors v PJSC National Bank Trust & anor [2023] EWCA 1332
- Litasco SA v Der Mond Oil & Gas Africa SA & another [2023] EWHC 2866 (Comm)
- FCDO statement

2023 / 2024 Relevant EU Russia Sanctions

- Asset Freeze
- Various financial institutions
- Trade Restrictions
- G7 Price Cap Regime
- Article 3eb - Port / Lock access ban
- Article 3q - Notification of vessel sales
- Notably – nothing on Russian LNG

§7(a) Trade Restriction Clause

1. Definition of Trade Restriction

- For purposes of the Agreement, "Trade Restriction" means any law, regulation, decree, ordinance or legally binding order, rule or requirement of the United Nations or under the laws of the European Union, any EU Member State, [*insert elections of other regimes*] relating to trade sanctions, trade embargoes and other foreign trade controls, export controls, non-proliferation, anti-terrorism and similar laws.

§7(a) Trade Restriction Clause

2. Release from Delivery, Acceptance and Payment Obligations

- If a Trade Restriction: (i) is directly applicable to a Party; and (ii) fully or partially prevents this Party (the "Trade Affected Party") from performing or procuring the performance of any obligation otherwise required by this Agreement including, without limitation, its obligations to: (a) deliver, accept, sell or purchase Natural Gas or pay or receive monies under one or more Individual Contracts to, from, or through an Entity; or (b) engage in any other acts under the Agreement (each an "Affected Obligation"), because this would constitute a violation of, be inconsistent with, or expose the Trade Affected Party to a punitive measure under such Trade Restriction, and provided that the Trade Affected Party can legally bind itself under the national laws of the place of the Trade Affected Party's incorporation, registration, or establishment to comply with such Trade Restriction (such Trade Restriction being an "Applicable Trade Restriction"), then, without prejudice to § 7(a).6 (Long Term Trade Restriction Limit), no breach or default of this Agreement on the part of the Trade Affected Party as a result of the Applicable Trade Restriction shall be deemed to have occurred and, subject to § 7(a).5 (Accrued Amounts), it shall be released (and not merely suspended) from those Affected Obligations but only for the period of time and to the extent that such Applicable Trade Restriction prevents its performance…

§7(a) Trade Restriction Clause

3. Notification and Mitigation of Applicable Trade Restriction

- …The Trade Restricted Party and the Trade Affected Party shall, to the extent permissible under any Applicable Trade Restriction: (i) use all commercially reasonable efforts to mitigate and overcome the effects of the Applicable Trade Restriction, which shall however not include an obligation to procure a licence to perform; and (ii) during the continuation of the Applicable Trade Restriction, provide the other Party with reasonable bona fide updates, when, and if available, of the extent and expected duration of its inability to perform such Individual Contract(s).

4. Effects of Applicable Trade Restriction on Trade Restricted Party

- In the event, and to the extent, that a Trade Affected Party's delivery obligations are released due to an Applicable Trade Restriction (and if delivery and acceptance have not yet been performed), subject to § 7(a).5 (Accrued Amounts), the Trade Restricted Party's corresponding acceptance and payment obligations shall also be released. In the event, and to the extent that the Trade Affected Party's acceptance or payment obligations are released due to an Applicable Trade Restriction, the Trade Restricted Party's corresponding delivery obligations shall also be released.

§7(a) Trade Restriction Clause

Relevant Clause:	§7(a) Non-Performance Due to Trade Restriction • Directly applicable to a Party • Only applies where Trade Restriction fully or partially prevents Trade Affected Party from performing or procuring performance of obligation otherwise required by the Agreement
Limitations of Provision:	• Problems making problems in the currency specified in the Individual Contract (e.g. bank refusing to process payment or suspending payment process)? • Not engaged if there is no obligation to be performed (e.g. no delivery or payment obligation) • Uncertainty in sanctions application (or interpretation) / self-sanctioning measures

Questions?

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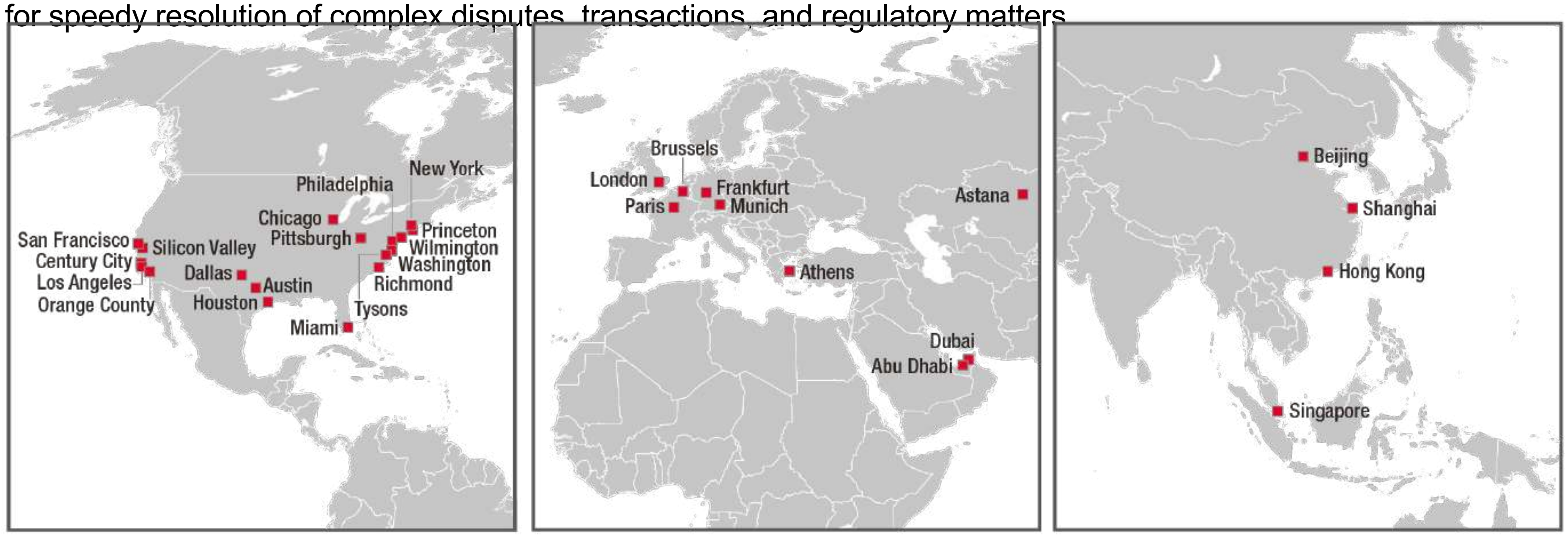

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Thank you!