Energy Traders Europe Legal Committee Meeting

08 March 2024, Paris

Day 2: Meeting Agenda

- Update report Fit for 55 - Peter Zaman, HFW law firm
- Supply chain obligations and due diligence: need for standard contract wording? – Anaïs Suso and Magali Lucas, Engie and Guido Kleve and Michael Cieslarczyk, DLA Piper
- Market Supervision Committee: follow-up report on the provisional agreement reached for EMIR 3.0 – Anya Bissessur, Statkraft, Chair of the EMIR WG
- Update EMIR Risk Mitigation Techniques Agreement – Sonia Auguscik, energy traders europe
- Update from Legal Committee Working Groups – Sonia Auguscik and Michaela Duve, energy traders europe
- Update reports from other energy traders europe Committees
- AOB, date and venue of next Legal Committee meeting

HFW

Update on EU ETS

Prepared for
Energy Traders Europe

8 March 2024

Peter Zaman
Partner

OUR INTERNATIONAL REACH

WHY CHOOSE HFW?

With more than 500 lawyers working across Asia, Australia, the Middle East, Europe and the Americas, we provide a global and seamless service 24 hours a day. We are dynamic, entrepreneurial and leaders in our specialist areas.

We are unapologetically, true sector experts. Clients come to us because of our deep industry expertise, and our ability to talk their language. We think about the commercial solution first, and then underpin our advice with a solid foundation of legal expertise.

Global reach

We have scaled ourselves to be big enough to provide the right level of support and resource globally, while remaining flexible enough to adjust to our clients' needs and maintain a collaborative and personal approach.

AGENDA

- Impact of Directive 2023/959 on the shipping industry
- Delayed transposition of Directive 2023/959 (EU ETS amendments) into national law
- Updates to other industry-standard EUA trading documentation
- Q&A

DIRECTIVE 2023/959

BACKGROUND

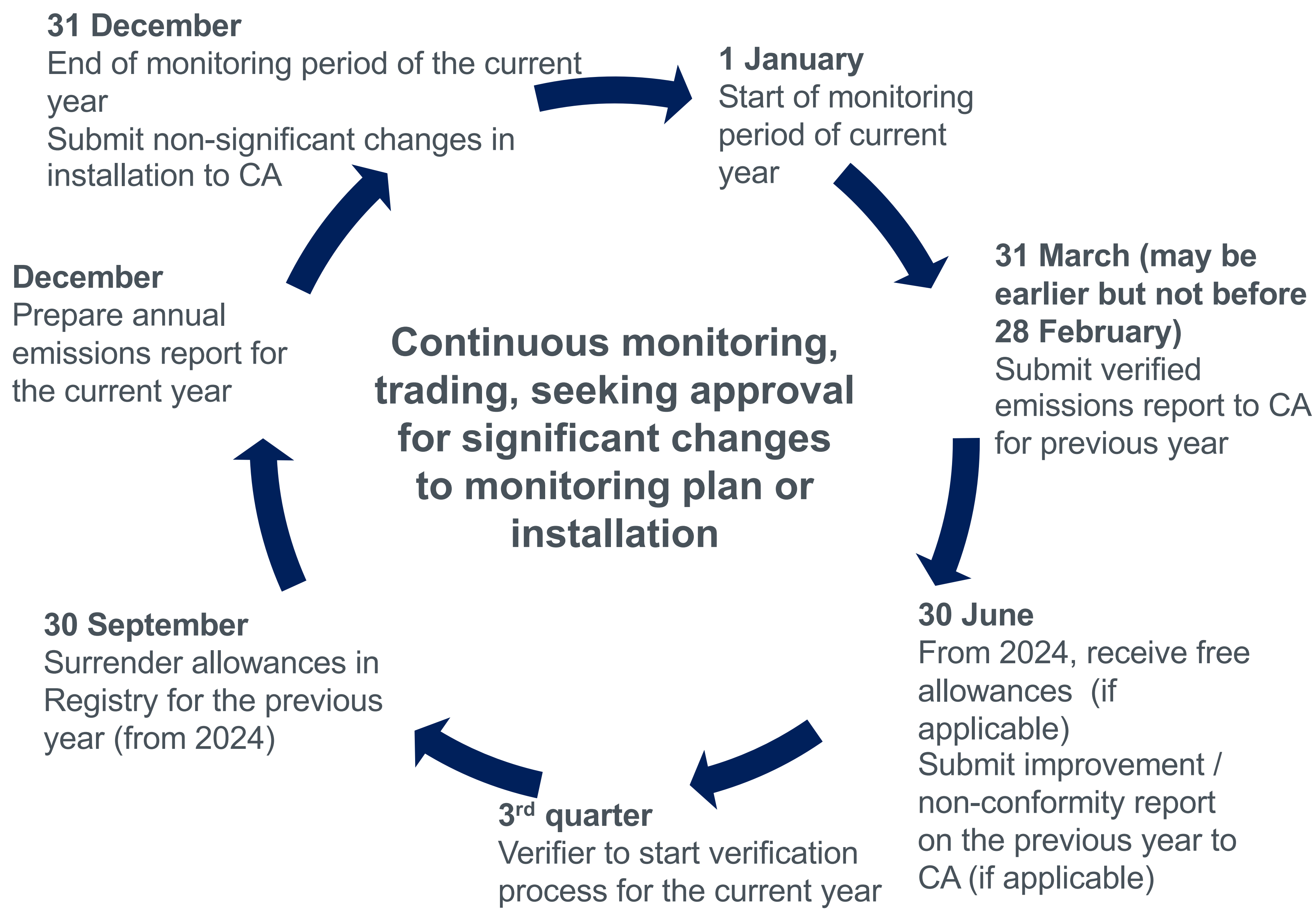
What is Directive 2023/959?

- An EU Directive amending Directive 2003/87/EC, which establishes the EU ETS
- Intended to reduce net greenhouse gas emissions by at least 55% by 2030 compared to 1990 levels
- Entered into force on 5 June 2023

What are the new provisions for the EU ETS?

- Extension to emissions from maritime transport (between 2024 and 2026)
- Faster reduction of emissions allowances in the system and gradual phasing-out of free allowances for some sectors
- Introduction of the EU ETS 2 (release for consumption of fuels for the building, road transport and small industry sectors) from 2027 (with MRV to start in 2025)
- Increase of funding for the modernisation fund and the innovation fund
- Revision of the market stability reserve

EU ETS COMPLIANCE CYCLE



EU ETS AND SHIPPING

How does the EU ETS apply to shipping?

- Extension of EU ETS to *maritime transport*
- Practical operation:
  - Emissions each calendar year monitored in accordance with MRV Regulation
  - Submit a verified report of emissions
  - Once data verified, obligation to surrender EUAs to cover emissions for the relevant compliance period
- 'Shipping company'-centric

Gradual inclusion (from 2024 onwards)

2025	40% of 2024 emissions reported to be covered by emission allowances
2026	70% of 2025 emissions reported
2027 onwards	100% of emissions reported

OTHER IMPORTANT ELEMENTS

Elements

- **Type of Vessels**:
  - **From 2024**: cargo and passenger ships of or above 5000 gross tonnage (GT)
  - **From 2027**: offshore ships of or above 5000 GT.
- **Scope of Voyages**: Remains the same, although 300NM rule application to certain Non-EU containership ports (for now, 2 ports - East Port Said in Egypt and Tanger Med in Morocco named in implementing regulations)
- **Scope of GHGs**: CO_2; CH_4 and N_2O to be included in MRV from 2024 and in EU ETS from 2026

Scheme/Mechanism Matters

- No free allocation for shipping
- Date of EUA surrender – changed from April to September.
- Failure to surrender EUAs - fiscal penalty (€100 p/mt + inflation index) plus balance make up

RESPONSIBILITY UNDER THE EU ETS FOR SHIPPING

GENERAL (INCLUDING REGULATORY) ISSUES

For Compliance

(i.e. EUA surrender)

For Costs

(i.e. payment for EUA costs)

For Compliance (i.e. EUA surrender)	For Costs (i.e. payment for EUA costs)	GENERAL (INCLUDING REGULATORY) ISSUES
1. Who is the 'shipping company' under the Directive? 2. How does a 'shipping company' get appointed? 3. What are the obligations of a 'shipping company' under the Directive? 4. How does the obligations of a 'shipping company' under the Directive interact with the MRV Regulation?	1. Who has the 'ultimate' 'cost' obligation under the Directive, and are there privity concerns? 2. How does the 'shipping company' claim its compliance costs? **Practical Issues for Transactions:** 1. What are these 'costs' – EUAs or cash, freq. of payment, quantification and reconciliation of information? 2. How do intermediaries (charterers, bareboat charterers, parent cos) manage the 'compliance costs' that are ultimately paid to the 'shipping company'?	1. If intermediaries wish to procure EUAs, how do they open Union Registry Accounts? 2. Are there any EMIR or other regulatory issues associated with transacting in EUAs? 3. How do EUA transactions (generally) work, e.g., how does title/rights to EUAs pass? How do you mitigate counterparty risk? 4. How does one procure EUAs?

	For Compliance (i.e. EUA surrender)
1. Who is the 'shipping company' under the Directive? **2. How does a 'shipping company' get appointed?** 3. What are the obligations of a 'shipping company' under the Directive? 4. How does the obligations of a 'shipping company' under the Directive interact with the MRV Regulation?	• **Compliance under the EU ETS** → 'Shipping Company' (Article 3(w)) *"The shipowner **or** any other organisation or person, such as the manager or the bareboat charterer that has assumed the responsibility for the operation of the ship from the shipowner and that, on assuming such responsibility, has agreed to take over all the duties and responsibilities imposed by the International Management Code for the Safe Operation of Ships and for Pollution Prevention, set out in Annex I to Regulation (EC) No 336/2006 of the European Parliament and of the Council."* • Under an implementing regulation adopted by the European Commission for the maritime sector, Shipowner will be the shipping company / compliance entity by default. • Technical Managers / Bareboat charterers / person who has assumed responsibility for a vessel under the ISM Code can become the shipping company / compliance entity only if they produce a document signed by (i) the shipowner and (ii) the Technical Managers / Bareboat charterers, which amongst other things, clearly indicates "*that it has been duly mandated by the shipowner to comply with the ETS obligations…*"

For Compliance (i.e. EUA surrender)	
1. Who is the 'shipping company' under the Directive? 2. How does a 'shipping company' get appointed? **3. What are the obligations of a 'shipping company' under the Directive?** **4. How does the obligations of a 'shipping company' under the Directive interact with the MRV Regulation?**	• **Implications of failure to comply with its surrender obligations:** • If a vessel has failed to comply* for **two or more consecutive reporting periods**, the Member State's port of entry's authority may issue **an expulsion order**: • Notified to, e.g., all other Member States and the flag state • All Member States (except flag's Member State) shall **refuse entry of all vessels under shipping company's responsibility** until the company fulfils its surrender obligations • **If vessel flies Member State flag:** • Can be **detained** by a Member State when entering into a Member State port • May issue detention order • **Excess emissions penalty (EUR 100) on top of surrendering requisite EUAs**

*Similar impact in respect of MRV (monitoring and verification) obligations except that only the relevant vessel can be detained and not all ships under the management of the shipping company

For Costs (i.e. payment for EUA costs)	
1. Who has the 'ultimate' 'cost' obligation under the Directive, and are there privity concerns? **2. How a 'shipping company' claims its compliance costs**	• **Transfer of EU ETS costs liability – Article 3gc** • *"Member States shall take the necessary measures to ensure that when the ultimate responsibility for the purchase of the fuel, or the operation of the ship, or both, is assumed by an entity other than the shipping company pursuant to a contractual arrangement, the shipping company is entitled to reimbursement from that entity for the costs arising from the surrender of allowances.* *'Operation of the ship' for the purposes of this Article means determining the cargo carried or the route and the speed of the ship. The shipping company shall remain the entity responsible for surrendering allowances as required under Articles 3gb and 12 and for overall compliance with the provisions of national law transposing this Directive. Member States shall ensure that shipping companies under their responsibility comply with the obligations to surrender allowances under Articles 3gb and 12, notwithstanding the entitlement of such shipping companies to be reimbursed by the commercial operators for the costs arising from the surrender."* ○ Member States to facilitate statutory entitlement of the Shipping Company to claim EU ETS costs by providing for *"necessary measures"* under national law. ○ These measures are currently "*known-unknowns*".
1. What are these 'costs' – EUAs or cash, freq. of payment, quantification and reconciliation of information? 2. How do charterers manage the 'compliance costs' that are ultimately paid to the 'shipping company'? 3. How do charterers pass on these costs to cargo owners? 4. What about existing charterparties and sale contracts?	

DELAYED TRANSPOSITION OF DIRECTIVE 2023/959 INTO NATIONAL LAW

Delayed Transposition

- EU Directives, unlike Regulations and Decisions, are not directly applicable in Member States and must be transposed into national legislation
- Deadline for transposition by Member States into national law was 31 December 2023 (to apply from 1 January 2024): Art 3
- As of 25 January 2024, 26 Member States (Belgium, Bulgaria, Czechia, Germany, Estonia, Ireland, Greece, Spain, France, Croatia, Italy, Cyprus, Latvia, Lithuania, Luxembourg, Hungary, Malta, Netherlands, Austria, Poland, Portugal, Romania, Slovenia, Slovakia, Finland and Sweden) have not communicated full transposition
- EU Commission has issued an infringement decision
- Caselaw from the Court of Justice of the European Union (CJEU) establishes that individuals may invoke untransposed Directives if (a) the directive has not been transposed into national law or has been transposed incorrectly; and (b) the provisions of the directive are imperative and sufficiently clear and precise. It is generally very unlikely for a Member State to enforce a provision of national law that is directly contradicted by a Directive.

DIRECTIVE 2023/959

Legal and Practical Effects of Delayed Transposition

Compliance Time Period Changes	Infrastructural Changes Provided for in amendments to Regulation 2019/1122 (Registry Regulation)					Supply / Demand of EUAs		Regulatory Matters
Surrender Deadline	Allowance Types	EUTL References	Transaction Limits	Registry Fees	Different Holding Account Types	Payment Dates and Longstop Dates	Re-visiting EEP	MIFID II

DIRECTIVE 2023/959

Legal and Practical Effects of Delayed Transposition

Surrender Deadline

- Deadline for compliance entities to surrender allowances has been moved from 30 April to 30 September: Art 12(3)
- Deadline for Member States to issue free allowances also moved from 28 February to 30 June: Articles 3d(1a) and 11
- Changes take effect from 2024
- Member States are unlikely to enforce the earlier deadlines in their unamended national legislation as it would directly contradict Directive 2023/959 and the adjustment to the deadlines was intended to mitigate their administrative burdens (Recital 66 Directive 2023/959)
- Delay in transposition unlikely to have a material impact on compliance entities

DIRECTIVE 2023/959

Legal and Practical Effects of Delayed Transposition

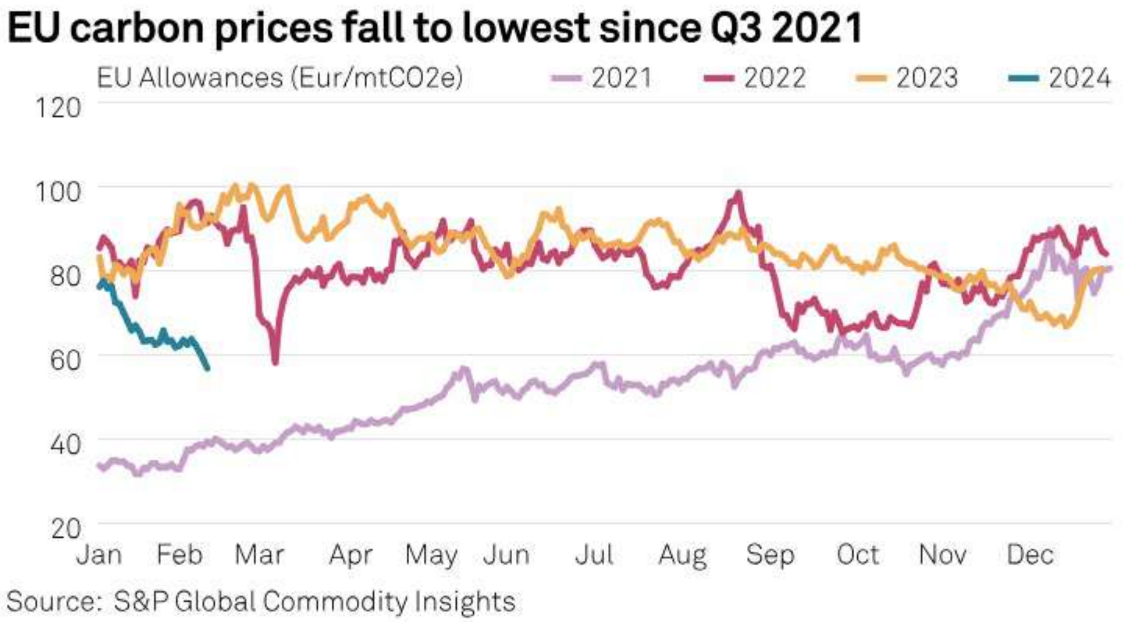
Infrastructural Changes	• Delayed transposition has limited effect • Amendments to Regulation 2019/1122 (Registry Regulation) are directly applicable in Member States and allow national administrators to accommodate infrastructural changes • In the short term, the main changes relate to: ➢ Formal removal of EUTL ➢ new account types (e.g. Maritime Operator Holding Accounts (MOHA)); ➢ (reasonable) registry fees; and ➢ transaction limits • Changes relating to EU ETS 2 (e.g. regulated entity holding accounts, regulated entity allowances etc) are more relevant in the longer term since MRV only commences in 2025 and surrender obligations only apply from 2028 (in respect of 2027 emissions)

DIRECTIVE 2023/959

Legal and Practical Effects of Delayed Transposition

Supply / Demand of EUAs

- Delayed transposition has limited effect
- Inclusion of shipping from 1 January 2024 and phase out of free allocation for aviation from 1 January 2026: Articles 3d and 3ga
- Increase in linear reduction factor from 2.2% to 4.3% after 2024 and 4.4% from 2028: Article 9
- Above changes may lead to reduction in supply and rise in EUA price over the medium to long term
- However, in the short-term, EUA prices have slumped to a 28-month low of EUR 56.52 on 13 Feb 2024



DIRECTIVE 2023/959

Legal and Practical Effects of Delayed Transposition

Regulatory Matters

- EUAs are classified as financial instruments under MIFID II (Annex I, Section C)
- The provision of investment services and activities (including dealing on own account) in respect of EUAs is a regulated activity unless an exemption applies
- There is an exemption for operators with compliance obligations under Directive 2003/87/EC who do not:(Art 2)
  - execute client orders;
  - apply a high-frequency algorithmic trading technique;
  - perform any investment activity other than dealing on own account
- Does delayed transposition mean that shipping companies are not able to rely on the exemption when transacting in EUAs?
- Probably depends on interpretation of "*compliance obligations*".

UPDATES TO OTHER INDUSTRY-STANDARD EUA TRADING DOCUMENTATION

UPDATES TO OTHER EUA DOCUMENTATION

ISDA

- 30 April 2021: Last version (version 7) published
- 2023: Updates to cater to Fit for 55 legislative amendments, linkage between the EU ETS and Swiss ETS and updated 2021 ISDA Interest Rate Derivatives Definitions
- 5 February 2024:Pre-publication version circulated to ISDA members; official publication expected soon

- Once the ISDA amendments come into force, there will be a significant disconnect between the EFET and ISDA EU ETS documentation
- Query how members will be able to trade EFET and ISDA terms on a back-to-back basis then

UPDATES TO OTHER EUA DOCUMENTATION

ISDA

Compliance Time Period Changes

Infrastructural Changes

Linkages with other ETS

Surrender Deadline

Allowance Types

EUTL References

Transaction Limits

Allowance Types

Linking Agreements

Surrender Deadline

Q&A

KEY CONTACTS

Peter Zaman
Partner

Singapore
+65 6411 5305
peter.zaman@hfw.com

More than 20 years of practicing as a transactional lawyer in the UK, EU and, most recently, in Asia has left Peter with a broad base of experience which allows his practice to be multi-faceted. He has practiced as a partner for 12 years and regularly draws on his experience to help guide, support and collaborate with his clients to enable them achieve their commercial objectives.

Peter firmly applies the mantras “variety is the spice of life” and “there is no such thing as bad experience” to embrace work opportunities as they present themselves for his clients. The breadth of his practice covers transactional and regulatory work in respect of commodity products and derivatives, derivatives and structured products and carbon finance.

He is a recognised name in the commodity, climate finance and derivatives markets and is familiar name in the legal directories including Chambers and Partners UK and Global, Legal 500 UK, Who’s Who Legal: Environment, PLC’s WhichLawyer, London Super Lawyers List for Energy and Natural Resources and, most recently, the 2018 Winner of the Client Choice Awards for Singapore Derivatives.

His clients include industry leading names who are commodity merchants, miners, utilities, investment banks, multilateral development institutions, corporates and fund managers.

THANK YOU

FRENCH LAW ON DUTY OF VIGILANCE & CONSEQUENCES FOR ENGIE

Ethics, Compliance & Privacy Direction

EFET Legal Committee meeting

March 8th 2024

RESTREINT | INTERNE | SECRET

THE FRENCH DUTY OF VIGILANCE LAW AND ITS CONSEQUENCES FOR ENGIE

In 2017 : creation of a new legal obligation to establish, implement and publish a vigilance plan

- Content of the plan: reasonable vigilance measures to identify and prevent serious **human rights, health and safety and environmental** violations.
- Perimeter of the plan : **activities of the company, of its direct and indirect subsidiaries, and of its suppliers & subcontractors (established relationship)**

Legal issues for ENGIE SA:

- Deployment across all the Group's activities
- Evidence of the effectiveness of the approach: identification and management of risks at the operational level

Risk mapping	Risk management actions
Regular assessment of subsidiaries and suppliers	Alert mechanism
Monitoring and performance systems	

French law: the first but not the last

Current initiatives: in Germany, Switzerland, the Netherlands ... And especially at the level of the European Union

LEGAL LIABILITY

An extraterritorial scope of application

Enforcement
Injunction, potentially under periodic penalty payment

In case a company fails to comply with the vigilance obligations (even in the absence of harm)

Remediation
Civil liability

Condition 1: failure to comply with vigilance obligations

Condition 2 : harm consisting in severe impact(s) on human rights, fundamental freedoms, health and safety and the environment

Condition 3: harm could have been prevented had the company complied with the obligations

Reputation
Possible publication of the civil liability decision

SANCTIONS

For more details see art. L.225-102-4 and L. 225-102-5 Commercial Code

LITIGATION IN FRANCE

TOTALENERGIES

Oil Projects in Uganda
(Oct. 2019)

By NGOs
Local communities rights/land & environment

Order of February 28, 2023, inadmissibility

Liability action on compensation on June 27, 2023

TOTALENERGIES

Climat Change
(Jan. 2020)

By NGOs & local authorities
Climate change

Decision of inadmissibility July 2023
(appeal announced)

EDF

Wind Farm Project in Mexico
(Oct. 2020)

By NGOs
Local communities rights

Order of November 30, 2021, inadmissibility
(appeal pending)

CASINO

Beef Sourcing from Brazil
(Mar. 2021)

By NGOs
Deforestation, land grabbing, local communities rights

VEOLIA

Water Management - Chile
(Jun. 2021)

By NGOs
H&S – right to clean water

Decision of inadmissibility - Jun. 1, 2023
(appeal announced by NGOs)

LA POSTE

Subcontracting of activities
(Dec. 2021)

By Unions
Working conditions

Conviction of La Poste
5 Dec 2023

ROCHER

Activities in Turkey
(Mar. 2022)

By Employees, Unions & NGOs
Freedom of association
Workers rights, gender discrimination

IDEMIA

Supply of Data Equipment - Kenya
(Jul. 2022)

By NGOs
Data privacy

Successful mediation

DANONE

Plastic reduction Strategy
(Jan. 2023)

By NGOs
Plastic pollution

BNP PARIBAS

Financing of actors linked to deforestation
(Feb. 2023)

By NGOs
Deforestation, land grabbing, local communities rights

BNP PARIBAS

Financing - Fossil Fuels
(Feb. 2023)

By NGOs
Climate change

TOTALENERGIES

Commercial Relations - Yemen
(Feb. 2023)

By NGOs
Torture in a factory in Yemen

ENGIE's VIGILANCE PLAN

4 APPROACHES OF VIGILANCE

HUMAN RIGHTS APPROACH	ENVIRONMENTAL & SOCIETAL APPROACH	HEALTH-SAFETY-SECURITY APPROACH	PROCUREMENT APPROACH
Human rights policy	CSR policy	Health and safety policy and security policy	Procurement Charter
Ethics, Compliance & Privacy Department	**Corporate Social Responsibility Department**	**Health & Safety and Security Departments**	**Procurement Department**

IDENTIFICATION AND RISK MANAGEMENT RELATED TO NEW ACTIVITIES

ASSESSMENT OF SUBSIDIARIES, SUPPLIERS, SUBCONTRACTORS

ALERT MECHANISM AND COLLECTION

MONITORING OF THE IMPLEMENTATION OF THE VIGILANCE PLAN BY THE ENTITIES

engie

DUTY OF VIGILANCE FOR ENERGY SUPPLIES

ENGIE HAS IDENTIFIED RISKS RELATING TO THE GROUP'S ENERGY SUPPLY AS A SPECIFIC ISSUE OF VIGILANCE FOR THE GROUP.

- Apply ENGIE's policies (human rights, due diligence, environmental and societal etc.);
- Mitigation measures and contractual clauses adapted to the identified risks (e.g., specific performance clauses for the carbon footprint and methane emissions);
- Certification of certain suppliers and energy sources (e.g., biomass) as well as the presence of guarantees of origin;
- Include the Group's ethics and CSR clause, which also allows to terminate a contract in the event of a breach of these obligations by the third party;
- Carry out onsite audits at certain suppliers;
- Take part in bilateral and sector CSR working groups;
- Enter into gas procurement agreements that are compatible with the Group's carbon trajectory;
- Shale gas : carry out enhanced environmental & social due diligence and choose producers who can offer the best guarantees (i.e., emissions traceability and social & environmental performance monitoring of their activity).

HOW TO DRAFT AN ETHICS CLAUSE ?

- **IDENTIFY** the Ethical standards and corporate policies
- **SPECIFY** the obligations to be respected by the contracting party
- **ADAPT** to the risk profile of the contracting party & the context of the contract
- **SET OUT AN EFFECTIVE IMPLEMENTATION IN CASE OF ETHICS BREACH**
- **ENSURE CONSISTENCY**

Supply Chain Obligations And Due Diligence

Need For Standard Contract Wording?

EFET Legal Committee Meeting, 8 March 2024

DLA PIPER

Agenda for Today

1 CS3D - Where does the EU stand?

2 The German LkSG

3 Information requests

4 Contract design

5 Questions

Presenters

Guido Kleve
Partner | Rechtsanwalt
Regulatory/Compliance
T: +49 221 277 277 351
M: +49 152 01 52 94 93
guido.kleve@dlapiper.com

Michael Cieslarczyk
Partner | Rechtsanwalt
Energy
T: +49 221 277 277 341
M: +49 172 75 84 709
michael.cieslarczyk@dlapiper.com

1 CS3D - Where does the EU stand?

Progress so far

CS3D - Where does the EU stand?

- *11 June 2021 - **German Bundestag passes LkSG***
- 24 February 2022 - **Commission publishes Draft CS3D**
- 1 December 2022 - **Council adopts position on CS3D**
- *1 January 2023 – **LkSG comes into force (1st phase)***
- 1 June 2023 - **Parliament Vote on CS3D**
- ***Trilogue***
- 14 December 2023 - **Council and Parliament strike deal**
- 9 February 2024 – **Decision on „final“ CS3D is prosponed**
- 28 February 2024 – **Council decides not to endorse the proposal**
- 06 February 2024 – **Council presents new deal**
- 08 Febraury 2024 – **COREPER meeting**

Points of conflict

CS3D - Where does the EU stand?

- Scope of application
- Inclusion of the Financial Sector
- Civil liability
- Management liability
- Definition of Value Chain

Next steps

CS3D - Where does the EU stand?

The clock is ticking…

- The Council has adapted the latest deal
  - Scope (80% of companies will no longer be included)
  - No “high risk” groups
  - Civil liability watered down
    - In the public session Belgium, Poland, Irelnd, Finland, the Netherland and Spain supported the new deal while Germany, France and Italy did not comment
    - Germany will likely not endorse latest changes - Minister of Justice Marco Buschmann (FDP) still considers it too bureaucratic and unmanageable with respect to liability risks
- The last meeting of the EU Parliament's Legal Affairs Committee (JURI) was on 7 March – now “atypical procedure”
- The CS3D needs to be adopted by the EU Parliament by 15 March 2024 (internal deadline before election June 2024)

Addressees

CS3D - Where does the EU stand?

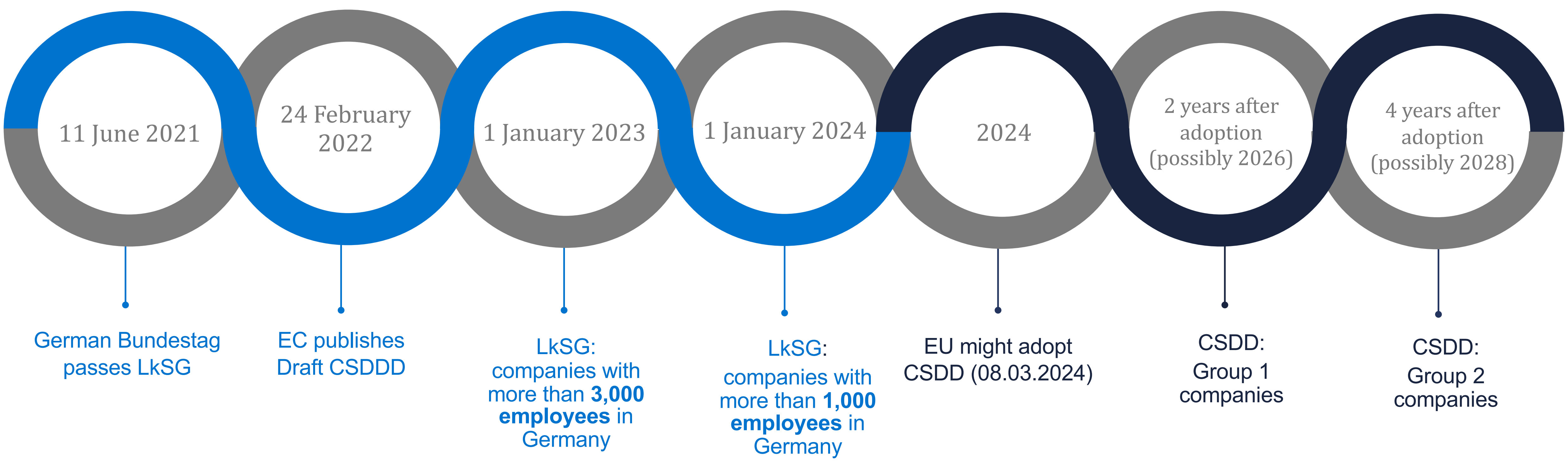
LkSG	CS3D	
German Companies	**EU Companies**	**Oversea Companies**
• As of 01.01.2023: **3,000 employees** in Germany • As of 01.01.2024: **1,000 employees** in Germany	**Group 1** (1) > 500 employees [new deal: 5,000]; (2) > EUR 150 million worldwide turnover [new deal: 300 million];	**Oversea Group 1** > EUR 150 million EU net turnover
	Group 2 **Oversea Group 2** [new deal: no longer included] (1) > 250 employees *[three years: >1000 employees]*; and (2) > EUR 40 million *[first three years: EUR 300 million]* worldwide net turnover, at least 50% *[EUR 20 million]* of net turnover generated in "high-risk" sector	
	last financial year *[two fiscal years in a row]*	

2 The German LkSG - Who is subject to which obligations?

Timeline

The German LkSG - Who is subject to which obligations?

- German Act on Corporate Due Diligence Obligations in Supply Chains (*Lieferkettensorgfaltspflichtengesetz* – „**LkSG”)**
- EU Directive on Corporate Sustainability Due Diligence („**CS3D**“) – might be decided today!



Scope of application of the LkSG

The German LkSG - Who is subject to which obligations?

Addressed directly: in-scope companies

Companies with a central administration, principal place of business, administrative HQ, statutory seat or domestic branch office

in Germany

With a specific **minimum number of employees in Germany** (incl. affiliated enterprises)

- From 1 January 2023: **3.000 employees** in Germany
- From 1. Januar 2024: **1.000 employees** in Germany

Affected indirectly: out of-scope suppliers

Business partners whose contribution is necessary for product manufactured, or service provided by the company

Part of the supply chain

Direct suppliers

Indirect suppliers

Not subject to any obligations under the LkSG

Requirements under the LkSG

- Risk management and internal responsibilities, Sec.4 LkSG
- Risk analysis, Sec. 5 LkSG
- Preventive measures, Sec. 6 LkSG
- Remedial actions, Sec. 7 LkSG
- Complaints Procedure, Sec. 8 LkSG
- Documentation and reporting, Sec. 10 LkSG

3 Information Request

Obligations under the LkSG

Information Request

depend on cooperation for the fulfilment of their obligations

In-scope companies

Due diligence obligations under the LkSG:

- Appropriate and effective risk management, Sec. 4 LkSG
- Risk analysis, Sec. 5 LkSG
- Preventive measures, Sec. 6 LkSG
- Remedial action, Sec. 7 LkSG
- Complaints procedure, Sec. 8 LkSG
- Documentation and reporting, Sec. 10 LkSG

Non-compliance may result in substantial fines

Suppliers

- No specific due diligence obligations under the LkSG
- No statutory duty to contribute to the fulfilment of due diligence obligations under the LkSG
- Usually: Contractual duty to contribute to the fulfilment of due diligence obligations

Which information is relevant?

Information Request

In-scope company‘s risk analysis obligation (counterparties)
Identification of suppliers‘ human rights and environment-related risks

Step 1: Risk mapping	Step 2: Specific risk assessment

Step 1: Risk mapping

Aim:
- Identifiying potential *at risk suppliers*
- Creating risk profiles

Approach:
Analysing accessible information on the supplier's industry and region, e.g:
- CSR-Risiko-Check (BMAS)
- Business and Human Rights Resource Centre
- Environmental Justice Atlas
- Other tools

Step 2: Specific risk assessment

Aim:
Identifying the risks of an individual supplier

Approach:
- Requesting information from suppliers, local employee representations, municipalities
- Audits/visitations
- Verification
- Prioritising risks
- Documentation

Relevant supplier information (examples)

Information Request

Product type	Order volume	Business sites	Production process
What type of product of service does the supplier offer?	What is the supplier's position in the market?	Does the supplier operate business sites in high-risk regions?	What are the technical conditions like?
Raw materials	**Procurement**	**Waste management**	**Staff organization**
Does the supplier use typically risky materials?	How and, if applicable, where does the supplier acquire material?	Does the supplier produce typically high-risk waste?	Does the supplier have a form of employee representation?

Risk-based approach:

Requesting specific information only if **appropriate** and **necessary**

Usually too extensive:

- Detailed requests with no reason arising from risk mapping
- Requests for sensitive information that the supplier may be obliged to keep confidential

Extensive requests for information

Information Request

Fulfilment of due diligence obligations requires ***serious*** efforts by the in-scope company to obtain ***adequate*** assurances from the supplier. Example:

Assess, whether request for information is appropriate

If not: Ask the counterparty for the reason for the request

↓

Assess, whether the requested information is available

If not: Support the counterparty in obtaining the information if possible

↓

Assess, whether the request involves sensitive information (e.g. business secrets)

Redaction of confidential information	Confidentiality agreement	Providing tools for independent analysis (and addressing)	Partial information (e.g. Audit results, intermediary platforms)

3 Contract design

Contract design

Relevant Contractual Documents

Framework Agreements	General Terms and Conditions of Purchase	Ethics Policy
Supplier Code of Conduct	Employee Code of Conduct	Annexes

Contract design

Options for EFET?

Industry Framework Agreement

General Terms and Conditions of Purchase

Ethics policy

Industry Supplier Code of Conduct

Employee Code of Conduct

Annexes

Supplier Code of Conduct

Contract Design

Purpose

- General definition of an in-scope company's human rights and environmental requirements for suppliers
- Clarification of the requirements to be met by the in-scope company, formulation of common objectives and procedures for cooperation, creation of positive and negative incentives for the cooperation of suppliers
- Limits: **No blanket shifting** of the fulfillment of due diligence obligations / **Appropriateness of measures**

Typical Content of the Supplier CoC

Contract design

Human rights and environmental obligations

- Fair compensation
- Occupational health and safety
- Freedom to unionize
- Ban on child labour
- Ban on forced labour and slavery
- Land rights
- Commissioning of security staff
- Compliance with international environmental conventions
- Use of mercury
- Persistent organic pollutants
- Dangerous waste

Rules for cooperation

- Monitoring by in-scope companies
- Rights of inspection and information
- Procedure for violations (escalation levels)
- Termination rights (as a last resort)
- Documentation obligations
- Training by in-scope companies
- Audits
- Obligation to take independent remedial action against violations
- Passing on along the supply chain
- Supplier obligation to carry out independent checks
- Obligation to set up an internal reporting system
- Use of reporting offices of the business partner

Risk-conscious contract design (examples)

Contract design

Risk-preventive

- Price adjustment clauses to guarantee living wages or to adjust to changes in minimum wages
- Coverage of the costs for training and professional development by in-scope company
- Multi-stage escalation procedure for violations
- Consideration of due diligence obligations and required standards as an integral part of pricing
- Financial incentives for continuous improvement(higher quantities, more orders)

Risk-enhancing

- Low prices that do not allow for adequate wages
- The right to change delivery times and product specifications at short notice
- Financial uncertainty due to short contract terms and low-threshold termination rights
- Purchasing products made from environmentally harmful materials
- Obligation to guarantee circumstances over which suppliers have no influence

6 Questions?

Thank you

EMIR 3.0

ANYA BISSESSUR
ENERGY TRADERS EUROPE LC, 8TH
MARCH 2024

EMIR 3.0

- **For whom is it important?**
  - All entities trading OTC Derivatives
    - ISDAs
    - EFET emission appendices
    - Virtual PPAs
    - Etc…
- **Why is it important?**
  - It is regulating energy market participants' compliance requirements
  - It is regulating energy products compliance requirements
  - It is regulating energy exchanges and CCPs

Entities compliance

- EMIR requires entities to **self-assess the systemic risk** they pose to the general financial system, and to comply according to that risk level (NFC- / NFC+)
  - This is the clearing threshold calculation
  - It’s a cornerstone of our compliance setup.
- EMIR 3 greatly **simplifies** that calculation by:
  - Limiting it to an entity level only (non-EU entities are out)
  - Limiting it to uncleared derivatives only (Brexit consequences solved)
- EMIR 3 in addition introduces the **phase-in** of the most stringent regulatory obligations (for NFC+): MTM reporting and margining (Clearing being already phased-in)

Product Compliance

- Rules on **reconciliation** obligations and **timely confirmation** requirements remain unchanged.
- **Reporting** rules are changing now (EMIR Refit)
- EMIR 3 maintains the i**ntragroup transaction reporting exemption**
  - In its current status
  - With an additional position reporting obligation for NFC+
- **New penalties** will apply (up to 1% of the average daily turnover for the past busienss year) for systematic material reporting errors

Exchange and CCPs

- EMIR 3 takes the lessons learned from the **energy crisis** last year.
- We faced difficulties to cover «surprise» **margin calls**:
  - EMIR 3 increases the t**ransparency and predictability** of margin calls
  - CCPs and Clearing members are obliged to provide **information and simulation** of margins
- We faced difficulties as being **asset rich and cash poor**:
  - EMIR 3 reintroduces **uncollateralised commercial bank guarantees** to cover margin calls at CCPs.

ESMA
European Securities and Markets Authority

Statkraft

statkraft.com

Updated EMIR Risk Mitigation Techniques Agreement

Progress report by Sonia Auguscik, energy traders europe

Recap: review of the EMIR RMTA

- Starting point: modifications in §3 of the Election Sheet (counterparty status) to reflect changes introduced by EMIR REFIT
- Workshop and suggestions to increase the scope of the review:
  - alignment on reporting of complex derivatives,
  - Unique Transaction Identifier (UTI) generation and communication,
  - incorporation of static data.
- Request to cover Unique Product Identifier (UPI) communication

New §3(a): UTI Generation and Communication

- Drafted to align with section 4.11 “UTI generation” of ESMA guidelines for reporting under EMIR.
- Option to designate one Party responsible for generating and communicating the UTI for each EMIR Relevant Transaction.
- Deadline: 10:00 am UTC on the Business Day of the Party with the earlier reporting deadline.

New §3(a): UTI Generation and Communication

- Non-compliance procedure:
  - First step - If the UTI Generating Party misses deadline, the other Party shall contact the UTI Generating Party to inquire about the process rather than reporting using a self-generated UTI.
  - Second step: If UTI still not provided within <u>two (2) hours</u>, the other Party generates UTI and informs the UTI Generating Party.
- Agents and third-party service providers - possible delegation.

New §3(b): UPI Communication

- Option to designate one Party responsible for sourcing a UPI from ANNA DSB and communicating the UPI to the other Party.
- Representation that at the time of this agreement and of each EMIR Relevant Transaction, both Parties are paying users of ANNA DSB that are authorised to receive a UPI on T+0.
- If UPI is not provided on time, the other Party may proceed to report the EMIR Relevant Transaction in order to meet the reporting deadline.

New §3(c): Counterparty Static Data

- To meet the transaction reporting requirements under EMIR and Supporting Regulation, the Parties may elect in Part II of this Agreement to exchange the necessary counterparty data.
- Drafting approach follows the approach taken for §3 "Election of Counterparty Status; Status Change", i.e., it must be elected as applicable, and there are the same default rules for change of data - but there are different effects for non-compliance.

New §3(c): Counterparty Static Data

- Obligation to promptly give a written notice to the other Party in case of a change in the Counterparty Static Data.
- Different effects for non-compliance: inaccurate Counterparty Static Data would only affect the reporting but not the terms of the transaction.
- Defaulting Party should clarify the reporting consequences and assist the other Party in rectifying any additional reporting obligations resulting from inaccurate Counterparty Static Data.
- Schedule with Counterparty Static Data.

Update from Legal Committee Working Groups

Changes in the regulatory context - EMD

Article 19ab – Voluntary standardised PPAs and information on PPAs

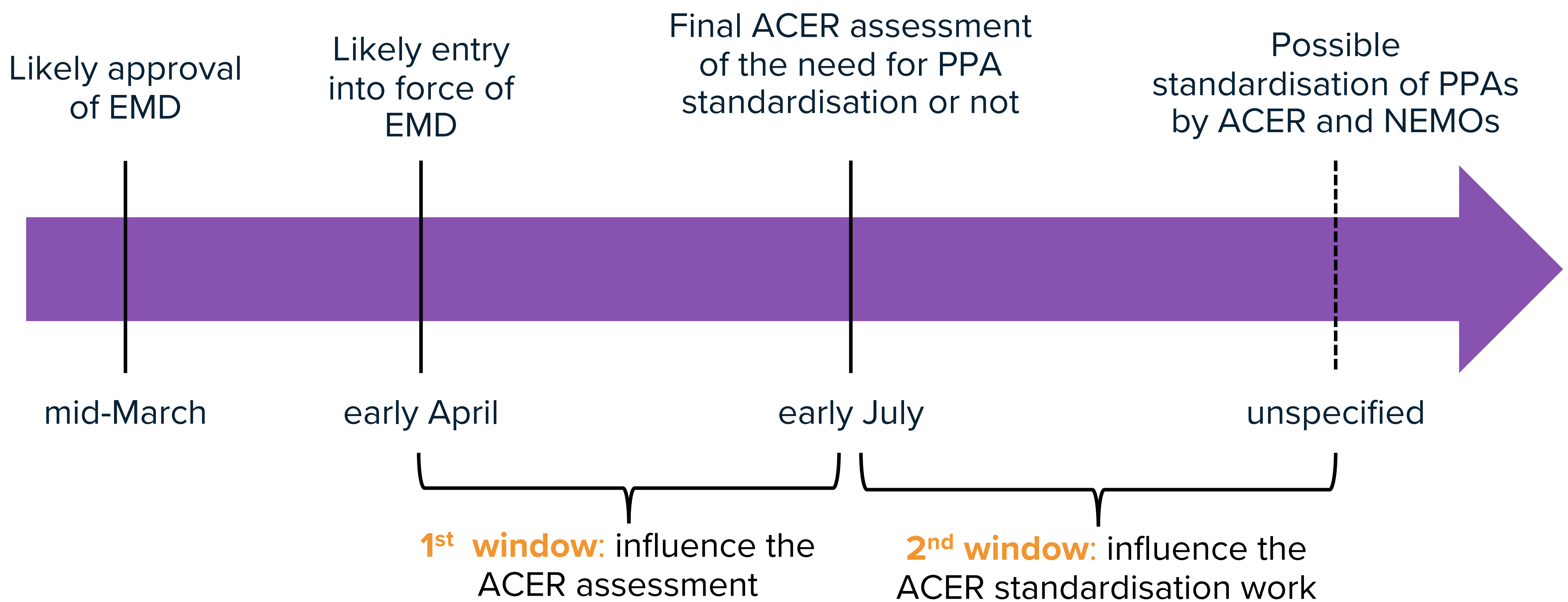
1. ACER shall publish an annual assessment on the PPA market at Union and Member State level as part of the monitoring report referred to in Article 15 of Regulation (EU) 2019/942.

2. By 3 months after the entry into force of this Regulation, ACER shall assess, in close coordination with the relevant institutions and stakeholders, the need to develop and issue standard contracts for Power Purchase Agreements for voluntary use, adapted to the needs of the different categories of counterparties.

In case the assessment concludes that there is a need to develop and issue such standard contracts, ACER together with the NEMOs and, after consulting the relevant stakeholders, shall develop these standard contracts considering the following elements:

- The use of those standard contracts shall be voluntary for the contracting parties.
- Standard contracts shall have, inter alia, the following characteristics:
  a) offer a variety of contract durations;
  b) provide different price formulas;
  c) consider the offtaker's load profile and the generator's generation profile.

What the EMD means in practice



Update from Energy Traders Europe Committees

Operations Committee, Electricity Committee, Gas Committee

Spot markets development

13 June 2024
Intraday auctions go live in the EU

24 July 2024
Deadline for accession to EU balancing platforms

October 2024
Nordic Flow-based Market Coupling Go-live

January 2025
15 minutes market time unit in day-ahead, intraday and balancing (ISP)

Mid-2025
Advanced hybrid coupling go-live

Q4 2025/Q1 2026
Single day-ahead coupling (SDAC) extenstion to Western Balkans

2026
Ireland recoupling with the EU (Celtic interconnector)

Operations Committee

2024 Priorities

Summary Update

February 2024

2024- Operations Committee Priorities – Summary Update

	Must Do (2023)	Update	Who	RAG
EMIR Reporting	**eRR EMIR REFIT**	**Electronic Regulatory Reporting (eRR)**Teamed up with Market & Supervision Committee (MCS) and held joint WG sessions with Ops stakeholders Completed setting up additional agreements as per EMIR Refit list. Participated in all Equias WGs related to eRR standards updates. Published eRR standards Interim updates in Dec-23 ; Final version 9.2 due Mar in advance of GoLive inApr-24 Engaged with Equias to close open queries arisen during design and testing	Anca	On Track
	MIC/ ISIN /UPI request to Brokers	Held monthly calls Trayport/LEBA to walkthrough requirements& data scenarios on regulatory fields. SLIDE 16 • **Trayport confirmed timeline for Jan 24 to have the new fields added.** • **Brokers have stated that their platforms are being updated, however no timeline was confirmed** Circulated Requirements Clarifications and UseCase Matrix to aid testing for MIC/ ISIN/UPIs. Collaborating with MSC Committee & Broker TF and gained more engagement from other trading companies.	Stuart/Anca RWE ; EDFT MSC Broker TF	Awaiting Trayport/ Leba
	Missing **CPR-s & UPI Process**	Sep23 -Established that the missing 65% CRPs will **NOT** be available for EMIR Refit reporting Apr 24 deadline. Jan24-Obtained **ESMA response** stating that using **"OTHER" as UPIs for missing CRPs would be acceptable**. Engaging externally with ISDA /ANNA DB and internally with MSC to define an **interim process** for securing UPIs in advance of GoLive.	Stuart/Anca EQUIAS /MSC/ RWE	At Risk
	NEW: EMIR Refit UK	Teamed up with MSC EMIR Refit UK Task Force to cover differences EU vs.UK reporting rules. Engaging with Equias to impact assess and carry out eRR standards updates for EMIR Refit UK	Anca /MSC	On Track
eSM	**NEW : Promote eSM a**	**Actively promoting electronic Settlement Matching (eSM) across the industry**, via eSM WG and OpCom Issued Draft Comms Plan for promoting eSM; Internal review in progress.	Stuart / OpCom	On Track

2024- Operations Committee Priorities – Summary Update

	Should Do (2023/24)			
eSM	**eSM - Additional Scope** –per release cycle	**3.1. 3.2. 3.3 3.4** all published in as **per 2023 plan**. **2024 – Update** : Held Prioritisation of eSM Backlog; **For 3.5** Highest priority assigned **eSM "Static Data Alignment"** to commence analysis in Q1-24. • In parallel with **eCM "Rounding Rules Alignment"** to **support eSM tolerance matching**.	WG	On track
	eSM - Financials Interop. Testing	**Published in eSM 3.4 in Dec**. Further scope of eSM changes for Financials Testing Prep in Q1-2024. Test Execution in Q2-2024. **Not wide interest** from companies, as focus remains on Physical.	RWE/CEZ EnBW	On track
	eSM - Netting	Awaiting **eSM - Netting Interoperability functionality** to be enabled by supplier.	TBC	Blocked
Static Data eCM - Static Data Alignment eSM - Static Data Alignment		eCM- Initiated eCM static data review ; Split scope : a)EMIR Critical, b)Tactical & c) Strategic. Commenced work on a) EMIR Critical : Commodity Price Reference and Agreements and b)Tactical.	RWE/ ENBW	On track
		eSM -Counterparty related static data, issues highlighted by Uniper, to be tackled subject to prioritisation.	Uniper /WG	Started
eCM	**eCM** Baselining Release Next Standard Interoperability Testing	Initiated **electronic Confirmation Matching** (**eCM**) WG in 2023 ; **2024 – Update** : Held Prioritisation of eCM Backlog Highest priority eCM **"Rounding Rules Alignment"** to **support eSM tolerance matching**.	eCM WG	On Track
		Explored in the WG 3 alternatives to carry out InterOperability testing with WG in Sep. Engaged with WG and Suppliers. Agreed by Fidectus. Blocked by Equias.	New WG	Blocked
New : E Invoicing Euro standards		Comparison Analysis European invoicing standard, eInvoicing vs.eSM Recommendations / Next Steps ; May require Legal Support	New TF	Started

2024- Operations Committee Priorities – Summary Update

Should Do (Q3-Q4 2024/25)			
Bilateral Cparty Margining	**Initiated scope discussion in 2023**. Initial analysis carried out by Jorg/ENBW In parallel attended EQUIAS Conference in Jun-23, where Juan Moya/Endesa presented case for automation of CSA daily margining. Planning **to attend further discussions** organised by Equias WG on bilateral **CSA margining** **To re-prioritise this as 2024 work in the next OpCo subject to Credit Committee agreement.**	JuanMoya ENDESA / Jorg/ENBW MichaelJost RWE	Started
New : TSO/ISOs - automate & standardise flows ++ PPA – Settlement Data Review	**Kicked off the first scope discussion to shape the work.** **Short Term : GEN-I & CEZ driving AS4 certification as urgent priority with GoLive March24** **Long Term : Uniper to propose work list for discussion and prioritisation, Work to commence in H2-2024** **To cooperate internally with Gas, Electricity and DE Committees**	Visha Tomas (AXPO) Matej, Luka (GEN-i) Marie & Dan (Uniper)	Started
New : GoOs	**End2end impact assessment of eCM , eSM to cater for Guarantees of Origin (GoOs), Low interest from members** [Only 1 company expressed interest so far] **To re-consider for second half of 2024 subject to wider interest.** **In the meantime to focus on engaging other interested parties.**	Geert (EWE)	H2 2024

2024- Operations Committee Priorities – Summary Update

Should Do (Q3-Q4 2024/25)			
Could Do (2023/24/25)			
eSM - Faster Settlement	**Initiated two WGs in May-2023:** **1.Legal WG** – to create the **FS Annex** – organised and progressed by Legal team, Michaela Duve. **2.Implementation WG** Dec23 - Attended Allegro UG to promote eSM & FS Jan24 -Held kick off session on scope of POC with ION and walked through requirements Defined high level scope of the pilot and next milestone. Established that none of WG members plan to adopt F.S in 2024, however interested in participating in ION Pilot. **Next: Progress ETRM Pilot with ION; Apr24- Review ION Recommendations report ; Progress Impact Assessment ; Agree High Level Requirements**	Anca / ION/ F.S WG	On track
eSM – Broker Settlement	**Held first initial Scope discussion in 2023 ; Low interest from members , low priority 2024** [Only 1 company expressed interest so far] To reconsider in the second part of the year subject to member interested.	Jorg/ENBW	Started

2024/ 25 OpCo Priorities

Summary of New Priorities Identified for 2024

Description	WG	Leads agreed in OpCo 06Dec
Promotion of eSM uptake across the industry	Must 24 **eSM WG**	All who have eSM All in OpCo
E Invoicing European standards – Analysis & Recommendations	Should 24 **NEW TF**	Laetitia (Engie) Geert (EWE) Michel (AXPO) Filip (EnergyTraders)
GoOs – Guarantees of Origin – eCM Confirmations & eSM Settlement	Should H2-24 **eCM & eSM WG**	Lead: Geert (EWE)
eCM - LEI as Identifier in addition to EIC cparty set up	Could 24 **eCM & eSM WG**	**To Add to eCM / eSM Backlog** - per release cycle
BROKER Confirmation - solution for brokers confirms to include execution venue		
eSM – Clarifications on agreement used		
TSO, ISO – standardise, automate & digitize data flows	Could 24/25 **NEW WG**	Lead: Marie/Dan (Uniper) Tomas (AXPO) Matej/Luka(GEN-I) Daniel/Jana/Robert(CEZ) Marcus(UNIPER)

Operations - Working Groups (WG) & Task Force (TF)

2023	2024/25
Regulatory – in cooperation with MSC	**Regulatory – in cooperation with MSC**
eSM WG	**eSM WG**
eCM WG	**eCM WG (with Legal)**
Faster Settlement WG	**Faster Settlement WG (with ION, Credit & Legal)**
	New : Supporting Bilateral Margining WG (TBC) (with Credit & Equias)
	New : E-Invoicing Standards Review TF (with Legal)
	New : TSO/ISO Automation & Standardisation WG - TBC (with internal Committees : Gas, Electricity & DE)