EFET European Federation of Energy Traders

EFET Legal Committee Meeting
2nd of June 2023, Amsterdam

EFET

DAY 2: MEETING AGENDA

7. Overview of the current and upcoming ESG-related legislation in the EU and at the national level	Corporate and Sustainability Reporting Directive (“CSRD”) and its implementation in the EU Member States: Austrian perspective	Bernd Rajal, Schoenherr
	Draft Corporate Sustainability Due Diligence Directive ("CSDDD"), German Supply Chain Act vs CSDDD draft	Michael Cieslarczyk & Guido Kleve, DLA Piper
	Upcoming ESG-related legislation in the UK	Julie Vaughan, Reed Smith
8. Update from the EFET Trading Compliance Working Group	Report from the Working Group, EFET response to REMIT II consultation	Katharina Lüken, Co-Chair of Trading Compliance WG
9. Legal Opinions – status quo review	Review status; further revision of the instruction letter; frequency of updating legal opinions; close-out netting reforms; new update cycle of the MNA/CPMA opinions; proposed EU Directive Harmonising Insolvency Law	Sonia Auguscik, EFET
10. Progress report on Faster Settlement	New documentation initiative - Faster Settlement Appendix	Michaela Duve, EFET
11. Update on other Working Groups and EFET Committees	Market Supervision Committee – report on EMIR and related initiatives	Mike Bostan, EFET
	Electricity Committee – report on the electricity market reform	Jerome Le Page, EFET
12. AOB and scheduling next Legal Committee meeting		

7. Overview of the current and upcoming ESG-related legislation in the EU and at the national level

Corporate and Sustainability Reporting Directive ("CSRD") and its implementation in the EU Member States: Austrian perspective – presentation by Bernd Rajal, Schoenherr

CSRD - Implementation in the EU Member States

Bernd Rajal
EFET Legal Committee
02 June 2023
Amsterdam

Austrian perspective

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EU & Sustainability

Paris Agreement
UN 2015

SDGs
UN 2015

Green Deal
EU 2019

Fit for 55
EU 2021

Taxonomy Regulation
EU 2020

CSRD
EU 2023 (NFRD)

CSR-Directive

New Directive 2022/2464 → entered into force on 5 January 2023

C

Corporate

Who?

Large & listed companies

~ 49.000 companies within EU

~ 2.000 companies in Austria (from 2024)

EFET members & clients / consumers

S

Sustainability

What?

„Sustainability matters"

- Environmental
- Social
- Governance

- Sector-specific standards

R

Reporting

How?

Disclosure of information regarding the impact of the company

General disclosures: business model, strategy, policies

Specific disclosures: sector-specific data (delegated acts e.g., ESRS)

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CSRD – Who & Why

- Who?
  - **Large** Companies meeting 2 out of the 3 following criteria:
    - net turnover more than EUR 40 million
    - balance sheet total of more than EUR 20 million
    - more than 250 employees on average during the financial year
  - **Listed** Companies
- Why?
  - Ensuring comparable information for investors and stakeholders
  - About risks arising from climate change and sustainability issues
  - To create a culture of transparency about the impact of companies

CSRD – When?

- When?
  - 2024 (financial year) → report in 2025 for large public interest entities
  - 2025 → report in 2026 for large companies subject to the CSRD
  - 2026 → report in 2027 (Opt-out-possibility until 2028) for
    - listed SMEs (except micro undertakings)
    - small and non-complex credit institutions
    - captive insurance undertakings

CSRD – Structure

- Preamble with many recitals (no 1-84)
- Article 1 – Amendments to Directive 2013/34/EU [Accounting]
- Article 2 – Amendments to Directive 2004/109/EC [Transparency]
- Article 3 – Amendments to Directive 2006/43/EC [Statutory Audits]
- Article 5 – Amendments to Regulation (EU) 537/2014 [Audit Regulation]
- Article 5 – Transposition of CSRD
- Article 6 – Review and reporting of CSRD
- Article 7 – Entry into force and application of CSRD
- Article 8 – Addressees of CSRD [All Member States]

Sustainability reporting standards

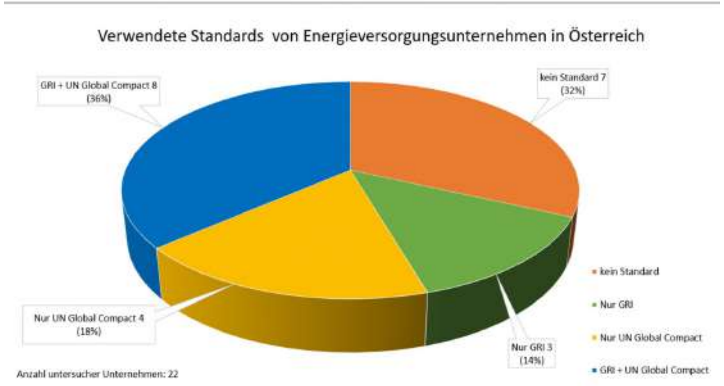
Environmental factors (Article 1 CSRD)

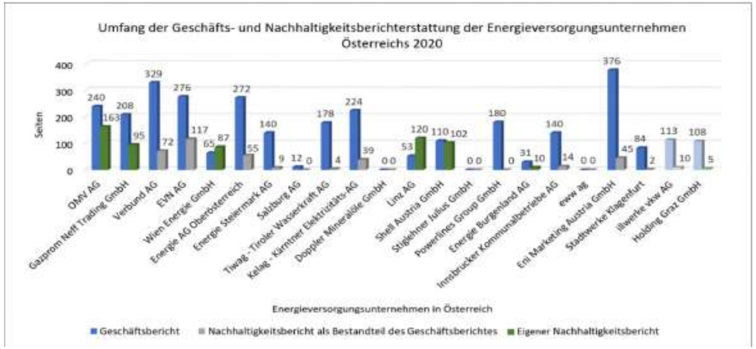
Climate change mitigation	**Climate change adaption**	**Water & marine resources**
Resource use and circular economy	**Pollution**	**Biodiversity and ecosystems**

CSRD – Austrian Perspective

- CSRD entered into force on 5 January 2023
- CSRD must be transported into national law in Austria within 18 months
- The CSRD is not yet implemented in AT
- Currently: NFI Reporting introduced under Sustainability and Diversity Improvement Act (German: NaDiVeG)
- **§ 243 Sec 5 Austrian Corporate Code** (German: UGB): Large corporations must include non-financial KPIs including information on environmental and employee matters

CSRD – Austrian Perspective





- **37%** of energy corporates do not use any reporting standards
- 36% GRI + UNGC
- 18% UNGC only
- There are substantial differences in CSRs among energy corporates (volume, data quality etc)
- Comparability insufficient

CSRD – ESRS Reporting obligations

- What information must companies provide to comply with CSRD?
- How / in what way must the information be presented to comply with the CSRD?
  - The European Financial Reporting Advisory Group (**EFRAG**) = non-profit association that serves the public interest & provides advice to the EU Commission
  - EFRAG drafted the European Sustainability Reporting Standards (**ESRS**) in November 2022
  - The drafted ESRS are currently being reviewed and are not yet adopted as delegated acts by the EU Commission
  - Adoption by the EU Commission → **30 June 2023!**

CSRD & Reporting obligations

ESRS drafted by EFRAG:

Cross-Cutting-Standards		
ESRS 1 General requirements		
ESRS 2 General disclosures		
Environment	**Social**	**Governance**
ESRS E1 Climate change	ESRS S1 Own workforce	ESRS G1 Business conduct (with six appendices)
ESRS E2 Pollution	ESRS S2 Workers in the value chain	
ESRS E3 Water and marine resources	ESRS S3 Affected communities	
ESRS E4 Biodiversity and ecosystems	ESRS S4 Consumers and end-users	
ESRS E5 Resources use and circular economy		

CSRD & EFET I

ESRS prescribe material disclosures and compulsory **general** (ESRS2) and **climate change** (ESRS E1) disclosures which could be relevant for EFET:

- **EFET members:** may have to conduct a materiality assessment and report on all industry/operations-relevant ESG-topics from ESRS
- **EFET members' counterparties (offtaker / consumers):** may have to make general (ESRS 2) and climate change related (ESRS E1) disclosures [*even if the consumers operate in non-critical industries, for which some disclosure topics are immaterial*]

CSRD & EFET II

- New due to CSRD: Focus on the comparability of data & sustainability information
- Obligations & opportunities for EFET:
    - Legal review of EFET templates (e.g., CPPA)
    - New (internal) guidelines for EFET-members
    - Guidance on ESRS

Example: § 30 Sec 2c EFET-PPA template: "(…) Provide the other Party with all documents, data, certificates or other information relating to the subject matter of this Agreement as the other Party may reasonably request (including any of the same that the other Party may have been requested to provide to a Competent Authority), and shall provide any Competent Authority with all documents, data, certificates or other information relating to the subject matter of this Agreement which such Competent Authority may request from time to time. (…)"

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Summary & Outlook

- CSRD → relevant for the (financial) reliability
- CSRD → demands risk management related to sustainability ("ESG")
- CSRD → needs proper data assessment and evaluation in companies
- CSRD → may require detailed legal analysis of existing & new contracts / guidelines

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7. Overview of the current and upcoming ESG-related legislation in the EU and at the national level

Draft Corporate Sustainability Due Diligence Directive ("CSDDD"), German Supply Chain Act vs CSDDD draft – presentation by Michael Cieslarczyk/Guido Kleve, DLA Piper

German Supply Chain Due Diligence Act („LkSG“) and upcoming CSDDD

Overview and good to know

EFET Legal Committee Meeting, 2 June 2023

DLA PIPER

Agenda for Today

1 Where we stand

2 Protected rights and addressees

3 Due dilligence obligations

4 Concrete actions to be taken

5 Expected Changes due to CSDD Proposal

6 Questions

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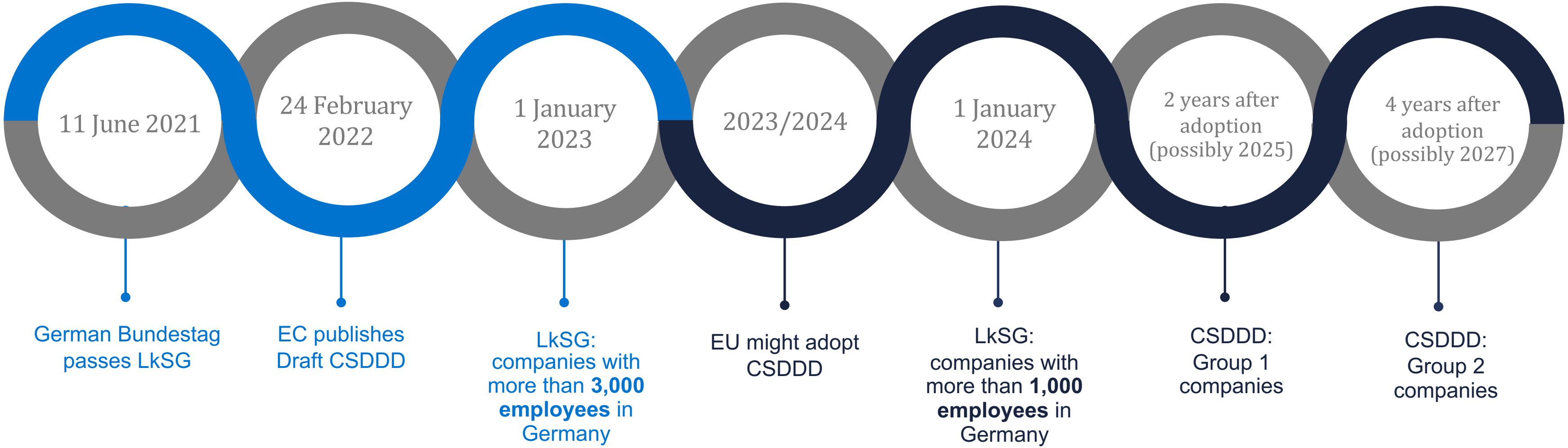
1 Where we are

Timeline

- German Act on Corporate Due Diligence Obligations in Supply Chains (*Lieferkettensorgfaltspflichtengesetz* – „**LkSG")**
- EU **Di**rective on **Co**rporate **S**ustainability **D**ue **D**iligence („**CSDDD**"),
  - 1 December 2022: Council has adopted position on CSDDD („**Council position**")
  - 1 June 2023: EP has adopted position on CSDDD („**EP position**")



2 Protected rights and addressees

Core facts of the current legal environment

Core Facts

Subject of protection: Both human rights and environmental duties

For example, in its own and the direct suppliers' business areas enterprises need to secure prohibitions of:

Child labour

Appropriate Wages and Freedom of Coalition

Occupational health and safety regulations

Forced labour

Environmental pollution

Defining the supply chain:

The supply chain includes all steps in Germany and abroad that are essential for the manufacturing of products or the supply of services

Material consequences for enterprise's own business and its direct suppliers

Limited obligations regarding indirect suppliers – enterprise's must "only" take actions, if it obtains substantiated knowledge of violations

Addressees of the LkSG

Companies with a head office, principal place of business, administrative headquarters, registered office or branch **in Germany**

Only companies with a minimum **number of employees** (including affiliated companies)

- From 01.01.2023: **3,000 employees** in Germany
- From 01.01.2024: **1,000 employees** in Germany

3 Due diligence obligations

Requirements under 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

Implementing new supply chain obligations

What are companies required to do according to the LkSG:

Own business area	• Implementation of risk-based control measures and introduction of **risk management system**
	  ○ Identifying risks, prevent the realization of any risks and put an end to and minimize violations of protected legal positions
	  ○ Appointment of responsible person within the company (e.g., human rights officer)
	• Anchoring **prevention measures** in relevant business areas
	• Adoption of **policy statement** regarding the human rights strategy
	• Immediate **corrective actions** if violation of human rights or environmental duties is detected
	• Development and implementation of appropriate purchasing strategies and practices
	• Establishment of **complaints procedure**

Tier 1 Direct suppliers	• Continuous **risk analysis** and implementation of **corrective measures** in the event of violations ○ In case of an identified risk obligation to take appropriate preventive measures immediately (remedial actions without delay) • Establishment of a **policy statement** • **Contractual assurance** of compliance with human rights and environmental duties • **Contractual agreement** of contract mechanisms

Tier 2
Indirect suppliers
	• Passive **monitoring**
	• **Passing down complaints' procedure information** for internal and external stakeholders
	  ○ shall give persons the opportunity to report the violation of protected legal positions
	  ○ shall be open for persons who are affected by the company's economic activities or by the economic activities of a direct or indirect supplier of the company

Ensure documentation: Companies will be obliged to continuously document the fulfilment of its due diligence obligations. Furthermore, a report on this must be submitted and published annually (e.g., extension of your existing sustainability report or stand-alone report).

Note: For all obligations differentiation between the own business area as well as its direct and indirect suppliers. Due diligence obligations do not always have to be observed to the same extent.

Risk analysis – Types

Indirect suppliers

Direct suppliers

Own business area

Ad hoc:
Incident related risk analysis due to substantiated knowledge of violation

Annual:
Ongoing risk analysis

Ad hoc:
Incident related risk analysis:
due to significant changes in the supply chain

Complaint Procedure

- Company must establish a procedure to enable persons to point out human rights or environmental risks or violations
- Public information should ensure that potential users also make use of this mechanism
- Needs to direct suppliers and indirect suppliers (through direct suppliers)
- Confidentiality of the user's identity must be ensured

Policy statement, Documentation and Reporting

Policy statement on human rights strategy,

Sec. 6 LkSG

Documentation must be stored for 7 years,

Sec. 10 (1) LkSG

Annual:
German report on the fulfillment of due diligence obligations,

Sec. 10 (2) LkSG

Severe fines and reputational damage

No independent civil liability, however, risks include:

- The competent authority may **enforce and impose payments** to fulfil the due diligence obligations (up to EUR 50,000)
- Administrative **fines up to EUR 800,000.00** per violation or up to 2 % of the company's **total worldwide turnover**
- Additionally, authorities may issue a **forfeiture order**

- Losing suppliers in the chain in case of non-compliance or issues
- Producers / manufacturers might be seen as a target for NGOs or other stakeholders to enforce due diligence and human rights
- Reputation risks

4 Actions to be taken

What should companies do that have customers inscope of the LkSG?

Companies out of scope have **no obligations under LkSG** but they should ensure that their customer can “tick the box”, in particular:

- the consideration of human rights-related and environment-related expectations when selecting a direct supplier,
- contractual assurances from a **direct supplier that it will comply with the human rights-related** and **environment-related expectations**
- the **implementation of initial and further training measures** to implement the contractual assurances made by **the direct supplier**
- agreeing on **appropriate contractual control mechanisms** and their risk-based implementation

Code of Conduct

A company that is itself in the scope of application demands that the supplier sign the new Code of Conduct in accordance with the LkSG, but the supplier refuses. What consequences must the company draw?

- Conflicting CoC are difficult for both parties and a standard problem
- CoC should only be signed if it can be adhered to CoC is the easiest way for the in-scope company to embed preventive measures in the supply chain
- Refusal by the contractual partner must be considered in the risk analysis
- **Termination of the business relationship usually not necessary**
- Possible compromise: a description of the measures already taken that is as comprehensive as possible

5 Expected Changes due to CSDDD Proposal

Addressees

	LkSG	CSDDD [Council Position / EP Position]	
	German Companies	**EU Companies**	**Oversea Companies**
	• From 01.01.2023: **3,000 employees** in Germany • From 01.01.2024: **1,000 employees** in Germany	**Group 1** (1) > 500 [250] employees; (2) > EUR 150 [40] million worldwide turnover	**Oversea Group 1** > EUR 150 [40] million EU net turnover *[incl. royalties]*
		Group 2 (1) > 250 [50] employees *[three years: >1000 employees]*; and (2) > EUR 40 [8] million *[first three years: EUR 300 million]* worldwide net turnover, at least 50% *[EUR 20 million / 30%]* of net turnover generated in “high-risk” sector	**Oversea Group 2** (1) > EUR 40 million EU net turnover *[first three years: EUR 300 million] [incl. royalties]* (2) > 50% *[EUR 20 million / 30%]* of EU net turnover generated in “high-risk” sector
		In the last fiscal year *[two fiscal years in a row]*	

Current Status

On 1.6.2023, after months of negotiations, the European Parliament voted in favor of a position paper on the CSDDD

- Content:
  - Companies with > 250 employees and worldwide annual net turnover > EUR 40 million (confirms the Council requested limits) are included – highly debated
  - Monitoring of suppliers for compliance with human rights and environmental standards
  - Labor unions and NGOs can sue on behalf of victims for violations of the law, regardless of the applicable national law
  - Civil liability
  - Management obligations
  - Climate change (1,5)
- Potential points of dispute:
  - threat of withdrawal of companies from various regions of the world because of costs associated with monitoring
  - obligations are passed on to smaller companies through cascading effects

Expected Changes

LkSG	CSDDD	*Council Position*	*EP Position*
Indirect suppliers			
Extension of Due Diligence initially only to direct suppliers (only in case of substantial knowledge also to indirect suppliers)	Extension of due diligence to the entire supply chain		*Extension to the entire supply chain*
Managementrole			
• Issue a policy statement • Meet regularly, at least once a year to be informed about the work of the Human Rights Officer	• Management is obliged to implement and monitor measures and procedures with regard to the sustainability-related due diligence • Remuneration models for managers that linked them to compliance with due diligence obligations with regard to climate change, the environment and human rights	*No obligations for managing directors*	*Obligations for managing directors* *Remuneration models only with company size > 1.000 employees*
Civil liability			
• No new civil-law claim (beyond the existing legal framework and general civil law). • Victims can authorise a labour union or NGO to initiate civil court proceedings in Germany on their behalf.	New civil liability Victims will have the opportunity to take legal action in Member States against a non-compliant company for damages that could have been avoided with appropriate due diligence measures	• *Responsibility requirement* • *Causality requirement* • *No punitive damages*	• *NGOs and labor unions can file lawsuits even if no national laws are violated* • *Punitive damages*

Further procedure

Based on the position paper, the European Parliament will enter into the "trialogue" with the Council and the Commission

- The position paper has no legislative effect, but only provides a basis for negotiation ("trialogue") for the representatives of the Parliament
- The final form of the directive will be discussed in these meetings
- Subsequently, the Parliament and the Council vote on the outcome of the negotiations
  - Parliament: Absolute majority of votes cast
  - Council: Qualified majority representing 55% of the member states and 65% of the total population of the EU
- Trialogue in second half of 2023 – final decision most likely in 2024

Environmental duties

Conventions under CSDDD (different positions between COM/EP)

LkSG

- International Covenant on Civil and Political Rights
- International Covenant on Economic; Social and Cultural Rights
- ILO Convention No. 29 (Forced or Compulsory Labour) and Protokol to ILO Convention No. 29
- ILO Convention No. 87 Freedom of Association and Protection of the Right to Organise);
- ILO Convention No. 98 (Collective Bargaining)
- ILO Convention No. 100 Equal Remuneration for Men and Women Workers for Work of Equal Value)
- ILO Convention No. 105 (Abolition of Forced Labour)
- ILO Convention No. 111 (Employment Dicriminiation)
- ILO Convention No. 138 (Minimum Age for Admission to Employment)
- ILO Convention No. 182 (Worst Forms of Child Labour)
- Minamata Convention on Mercury
- Stockholm Convention on Persistent Organic Pollutants (POPs Convention),
- Basel Convention (Movement of hazardous waste)

- Universal Declaration on Human Rights (UDHR)
- The Convention on the Prevention and Punishment of the Crime of Genocide
- The Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment The International Convention on the Elimination of All Forms of Racial Discrimination The Convention on the Elimination of All Forms of Discrimination Against Women
- The Convention on the Rights of the Child
- The Convention on the Rights of Persons with Disabilities
- The United Nations Declaration on the Rights of Indigenous Peoples
- The Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities
- United Nations Convention against Transnational Organised Crime and the Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime
- The International Labour Organization’s Declaration on Fundamental Principles and Rights at Work
- The International Labour Organization’s Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy
- 1992 Convention on Biological Diversity (incl. Cartagena Protocol on the development, handling, transport, use, transfer and release of living modified organisms and of the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity of 12 October 2014)
- Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) of 3 March 1973
- Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (UNEP/FAO), adopted on 10 September 1998 (Rotterdam Convention)
- Vienna Convention for the protection of EN 6 EN the Ozone Layer and its Montreal Protocol on substances that deplete the Ozone Layer

6 Discussion Points

To those in scope of the LkSG:

- Is the assumption correct that your organization has implemented the necessary measures/compliance procedures required in relation to your own business area and does this also apply to your energy trading operations?
- Did your organization implement any standard procedures relating to your Tier 1 Direct and Tier 2 Indirect Suppliers applicable in the context of your energy trading operations?
- If your organization has implemented respective standard procedures relating to your Tier 1 Direct and Tier 2 Indirect Suppliers: What challenges did you phase with your suppliers?
- To what extent could a joint industry approach help with those challenges?
- Would a joint industry approach be acceptable from the perspective of your wider inhouse compliance efforts?
- What consequences would you expect/require (from a compliance perspective)? (e.g. termination right, audit rights?)

To all others:

- Have you been approached by trading counterparties in scope of LkSG with respect to LkSG and obligations thereunder?
- What actions/undertakings have been requested from your counterparties?
- Have you been able to agree on undertakings/contractual amendments?
- Would you expect back-to-back obligations to be required for your suppliers (even if you are not in scope of LkSG)?
- Would you prefer a joint industry approach in relation to the obligations arising from the LkSG?
- Would such joint industry approach be acceptable from the perspective of your wider inhouse compliance efforts?
- What consequences would be acceptable? (e.g. termination right, audit rights?)

Thank you

7. Overview of the current and upcoming ESG-related legislation in the EU and at the national level

Upcoming ESG-related legislation in the UK – presentation by Julie Vaughan, Reed Smith

UK: Developments in supply chain DD and non-financial reporting

EFET: 2nd June 2023
Julie Vaughan

Driving progress
through partnership

Supply chain due diligence

- No proposal to mirror the EU's CSDD directive
- Directors must already:
  - Have regard to (amongst other things) impacts on environment and communities, long term consequences and reputation for high standards of business conduct, when acting to promote the success of the company (s.172(2) Companies Act 2006)
  - s174: exercise reasonable skill, care and diligence (including applying their particular expertise)
- Strategic report – must include information on how the directors' duties have been applied
- Enforcement of breach of duty - is a matter for the company; shareholders need permission to bring court action, a prima facie case and good faith

Specific due diligence requirements

- Nothing specifically requiring DD for energy purchases
- Modern Slavery Act
  - Enhanced obligations being considered
- ABC – Bribery Act 2010
  - Offence of failing to prevent bribery by others
  - Defence of having adequate procedures in place to prevent
- Deforestation
  - Currently the retained EU Timber Regulation applies
  - New draft Forest Risk Commodities regulations expected: wider obligations on UK commercial end users to undertake DD

Corporate governance changes

- Major reform of the UK corporate governance and audit system
  - corporate governance as a whole
  - ongoing since 2021
  - new regulator (Audit, Reporting and Governance Authority)
- UK Corporate Governance Code
  - covers systems for risk and internal control for companies with a premium listing
  - proposed changes include:
    - Board to declare they can reasonably conclude that risk management and internal control is effective, explain their reasoning and describe any material weaknesses in the system
    - Audit Committee will become responsible for narrative reporting

Sustainability Disclosure Requirements

- ## Financial Conduct Authority policy statement
  - Final rules are expected in the autumn
  - Follows a consultation launched on 25 October 2022 (CP22/20)
  - Not expected to come into effect until at least 30 June 2024
  - Certain financial institutions expected to:
    - disclose in line with new International Sustainability Standards Board (ISSB) reporting standards (expected end of June)
    - explain how they align to the forthcoming UK Green Taxonomy

- ## UK Green Taxonomy
  - Government consultation expected in Autumn 2023
  - A test period of voluntary disclosures for at least two years is expected before the introduction of any mandatory obligations

Climate-related financial disclosure

- TCFD disclosures
  - required by UK Listing Rules, and for certain types of investors
- Non-financial and sustainability information statement
  - to include climate disclosures
  - for FY on or after 6 April 2021
  - applies to large companies with over 500 employees that are required to have a strategic report
  - if they are traded, AIM-listed, or high turnover private companies
- Net Zero transition plans
  - Government consultation on mandatory disclosure of plans expected later in 2023
  - Transition Plan Taskforce (TPT) is expected to issue its guidance for transition plans in the summer

8. Update from the EFET Trading Compliance Working Group

Report by Katharina Lüken, Co-Chair of the EFET Trading Compliance WG

RWE

REMIT refit – current status

EFET Legal Committee Meeting

June 2023

Katharina Lüken

Agenda

1

What is REMIT?

...in a nutshell

2

What's new?

Main topics / issues

3

Next steps

EU timeline

Background
REMIT…

- …is the **R**egulation on Wholesale **E**nergy **M**arket **I**ntegrity and **T**ransparency
- …**prohibits trading** with **inside information** and **market manipulation**
- …promotes and facilitates **transparency and fair conditions** in the market
- …sets requirements for fundamental **data reporting** for **generation** units

What are the main topics / issues in REMIT II (draft) ?

EC REMIT Amendment
What we support

Harmonisation
- Harmonized ACER guidelines/recommendations
- Unified understanding in the market

Cooperation of NRAs
- Increased coordination and data exchange
- Energy and financial regulators

Regulating operators of infrastructure
- Registered Reporting Mechanism (RRM)
- Inside Information Platforms (IIP)

Ne bis in idem principle
- Avoiding double prosecution

Post-trade transparency
- Publication of aggregated, anonymized trade data by ACER

Publication of sanctions
- Creation of an ACER public register for REMIT cases
- Better understanding of obligations / prohibitions

EC REMIT Amendment
not yet final

- Updated definitions
- Suspicious transactions and order reporting (STOR)
- Publication of inside information (only) via approved Inside Information Platforms (IIPs)
- ACER powers shall increase

- **EU Parliament provided updates mid of May (highlighted)**
  - Updates are also not yet final

Definitions (new)
Currently overlapping or unclear definitions

LSO	PPAET	DSO	Market participant
Intermediate step	OMP	PPAT	SSO

Wholesale energy product

"...contracts for the supply of electricity or natural gas which ***may result in the delivery in the Union****"*

Definitions (new)

European Parliament considers industry feedback

Parlamentum Europaeum

LSO	PPAET	DSO	Market participant
Intermediate step	OMP	PPAT	SSO

- … by integrating LSO, DSO and SSO into the definition of a market participant

Wholesale energy product
*"…contracts for the supply of electricity or natural gas which **may result in the delivery in the Union**"*

Definitions (new)

European Parliament considers industry feedback

Parlamentum Europaeum

LSO	PPAET	DSO	Market participant
Intermediate step	OMP	PPAT	SSO

- … by integrating LSO, DSO and SSO into the definition of a market participant
- … by not including PPAETs in the definition of a market participant or OMP

Wholesale energy product

*"…contracts for the supply of electricity or natural gas which **may result in the delivery in the Union**"*

Definitions (new)
European Parliament considers industry feedback

Parlamentum Europaeum

LSO	PPAET	DSO	Market participant
Intermediate step	OMP	PPAT	SSO

- … by integrating LSO, DSO and SSO into the definition of a market participant
- … by not including PPAETs in the definition of a market participant
- … by proposing to include clarifications of intermediate steps

Wholesale energy product

EP

"…contracts for the supply of electricity or natural gas which ~~may result in the delivery in the Union~~"

STOR obligation (new extension)
“suspicious transactions and order report”

EC proposal

• **Persons professionally arranging and executing transactions (PPEAT) have to report**
  • suspicious transactions and orders
  • breaches of Art. 4 REMIT (obligation to publish inside information)
• **The same applies to Direct Electronic Access (DEA) providers**

EP
limited to PPAT

EP
excluded DEA

Thresholds for the publication of inside information EP
• **ACER shall define thresholds for events which, if made public, would be likely to significantly affect the prices of wholesale energy products**   • Increased clarity for market participants

Algorithmic trading and DEA (new)
Extended power for ACER and NRAs

Algos

are defined (as in Mifid II)

and some general measures and requirements will apply

NRAs have the right to request

On a **regular** and **ad hoc** basis

EP

1. A ~~description of the nature of the **MP's trading strategies**~~ and

2. Trading **parameters or limits** to which the trading system is subject to

High frequency trading included EP

More regulation

+

More enforcement power

RRM and IIP (new)
Back-up solutions are missing

At the moment approved IIPs (inside information platforms) must be used to publish inside information

But what happens in case they fail?

- Consequences of an IIP failure unclear (insider trading)
- Transition period required in case of registration withdrawal not included (applies to RRM and IIP)

Transition period added EP

Limited liability for MPs EP

Other channels as backup EP

LNG and benchmarks (extended)
“new” commodities require new regulation

Market data reporting

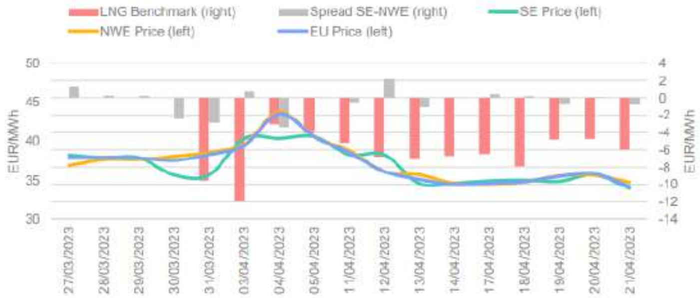
LNG price assessment data statistics*

Number of transactions	14	Number of market participants	17
Number of LNG terminals	16	Number of registered market participants	82
Traded volume in TWh	13.00		

* Only relevant DES SPOT LNG transactions considered.

Publication of price assessments/benchmarks

LNG price assessment and benchmark 30-day history



Source: https://aegis.acer.europa.eu/terminal/price_assessments/file/81

Updated LNG inclusion EP

- Improved integration and definitions
- Optimizing the LNG data collection process
- Streamlining and integration on REMIT transaction reporting system

Market participants resident or established in a third country

May non-EU firms easily access the REMIT market?

NO!

Market participants resident or established in a third country shall register in a Member State in which they are active

EP

Office requirement removed

Which topics are subject to further discussions?

There is (at least) one important bit missing in the regulation and the EP report

Accepted market practices

ACER shall provide **list of indicators** relating to market manipulation and insider trading

EP

More DOs and less DON'Ts

ACER controls and sanctions

The EU body itself has increased its power

What is possible?

On site inspections

RFI rights

Guidelines and recommendations

- Binding or unbinding?
- Scope?
- Define procedure

Sanctions for legal persons in case of insider trading or market manipulation up to 15 % of the annual turnover in the preceding business year

EP Clarified as unbinding

EP Further articles included

EP Consultation required

Next steps

EU timeline and next steps
The REMIT update is to be completed by Q3 2023

Council of the European Union

- End of April: EMD REV 1-3
- 05 June: EMD REV 4
- 6-13 June: EMD REV 5
- 19 June: Council vote
- Sept-Dec: Trialogues

Parlamentum Europaeum

- 12 May: Draft report
- 22/23 May: ITRE discussion of draft report
- 23/24 May: Deadline for amendments in ITRE
- 08 June: ITRE follow-up discussions
- 07 Sept: ITRE vote on REMIT
- 11 Sept: Plenary vote

End

Q&A

9. Legal Opinions – Status Quo Review

Report by Sonia Auguscik, EFET

Report

- current cycle of new legal opinions - review status;
- further revision of the instruction letter;
- discussion on frequency of updating legal opinions;
- legal reforms relating to close-out netting;
- new update cycle of the MNA/CPMA opinions;
- proposed EU Directive Harmonising Insolvency Law

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EFET NETTING OPINIONS 2022/2023 UPDATE

Austria	Schoenherr, Vienna	Combined Electricity & Gas	Published 14.11.2022
Baltic States	TGS Baltics	Combined Electricity & Gas	Pending review
Belgium	Stibbe BV/SRL, Brussels	Combined Electricity & Gas	Review of the 3rd draft
Bulgaria	Kambourov & Partners, Sofia	Combined Electricity & Gas	Review of the 2nd draft
Croatia	Wolf Theiss, Zagreb	Combined Electricity & Gas	Published 27.11.2022
Czech Republic	Allen & Overy, Prague	Combined Electricity & Gas	Published 17.01.2023
Denmark	Kromann & Reumert, Copenhagen	Combined Electricity & Gas	Published 08.11.2022
France	Reed Smith, Paris	Combined Electricity & Gas	Review of further clarification
Germany	Luther, Munich	Combined Electricity & Gas	Published 16.12.2023
Greece	Karatzas & Partners, Athens	Combined Electricity & Gas	Pending review
Hungary	Faludi Wolf Theiss, Budapest	Combined Electricity & Gas	Pending review

REFORM

REFORM

EFET NETTING OPINIONS 2022/2023 UPDATE

Italy	Parola Angelini Law Firm, Milan	Combined Electricity & Gas	Pending review
The Netherlands	Clifford Chance LLP, Amsterdam	Separate Electricity and Gas	Published 16.03.2022 DEVELOPMENT
Poland	Wolf Theiss, Warsaw	Combined Electricity & Gas	Review of the 3rd draft
Portugal	Morais Leitão, Lisbon	Combined Electricity & Gas	Published 04.09.2022
Romania	Leroy Law, Bucharest	Combined Electricity & Gas	Published 27.03.2022 NEW
Slovakia	Schoenherr, Bratislava	Combined Electricity & Gas	Waiting for the 3rd draft REFORM
Slovenia	Schoenherr, Ljubljana	Combined Electricity & Gas	Published 20.01.2023
Spain	CMS, Madrid	Combined Electricity & Gas	Published 16.05.2022 NEW
Switzerland	Lenz & Staehelin, Zurich	Combined Electricity & Gas	Published 20.12.2022

- full overview published on the EFET legal pages – status 31 May 2023;
- 2022 legal opinion for Liechtenstein not endorsed by EFET and no longer published;
- need to instruct any other netting opinion updates (England and Wales, the Netherlands)?

NEED TO REVISE OUR INSTRUCTION LETTER?

Suggestions for further discussion

- review of the appendix B (product list);
- precise instruction wording for green certificates;
- traffic light system for material questions;
- separate annex for recommended wording;
- focus on energy traders, not regulated financial institutions

Points for further consideration

- potential revision of the EFET general agreements;
- potential change in the frequency of issuing full legal opinions

NEED TO CHANGE THE UPDATE FREQUENCY?

Suggestion for further discussion

- commissioning new (full) legal netting opinions every 2-4 years, in the meantime only publishing updates on issues that have changed since the last full opinion/update – published either as update letters or redlines
- note – we publish some of the redlines on the EFET legal pages

Points for further consideration

- commitment to work with the same counsel/law firm for about 2-4 years;
- material and structural changes in the instruction letter
- potential revision of the EFET general agreements

NEW UPDATE CYCLE OF THE MNA/CPMA OPINIONS

Austria	Taylor Wessing, Vienna	1 March 2021
Czech Republic	Allen Overy, Prague	17 May 2021
Denmark	Kromann Reumert, Copenhagen	7 January 2021
England and Wales	Reed Smith, London	2 November 2021
France	Reed Smith, Paris	1 April 2021
Germany	DLA Piper, Cologne	7 April 2021
Italy	Herbert Smith Freehills, Milan *counsel now with Parola Angelini Law Firm, Milan	18 December 2020
The Netherlands	Clifford Chance, Amsterdam	1 March 2021
Poland	DZP, Warsaw	4 February 2021
Spain	Cases & Lacambra, Madrid	29 March 2022
Switzerland	Lenz & Staehelin, Zurich	15 December 2020

- **we have allocated budget for MNA/CMPA legal opinion updates;**
- **which jurisdiction should be covered by the 2023 update cycle?**
- **need to revise our standard MNA/CPMA instruction letter to make it better structured and simpler?**

PROPOSED EU DIRECTIVE HARMONISING INSOLVENCY LAW

- proposal published on 7 December 2022, still at an early stage of the legislative process
- proposal partly complements two recently adopted pieces of legislation: directive 2019/1023 on preventive restructuring frameworks, and regulation 2015/848 on insolvency proceedings
- purpose: offer more certainty and create a common minimum standard of insolvency regimes across Member States, encouraging more effective cross-border investment

PROPOSED EU DIRECTIVE HARMONISING INSOLVENCY LAW

Subject matter and scope

- harmonised conditions for exercising avoidance actions
- tracing of assets belonging to the insolvency estate
- provisions to introduce so called ‘pre-pack’ liquidation procedures
- duty of directors to timely submit a request for the opening of insolvency proceedings
- simplified winding-up proceedings for microenterprises
- requirements for improving the representation of creditors’ interests in the proceedings through creditors’ committees
- enhanced transparency for creditors on the key features of national insolvency regimes

AVOIDANCE ACTIONS

Three grounds for transaction avoidance to enable an insolvent company to recover assets:

- legal acts at an undervalue - transactions taking place within one year prior to an insolvency filing, where the transaction in question involves no or manifestly inadequate consideration;
- fraudulent actions - debtor intentionally causing detriment to its general body of creditors, where the relevant act took place four years prior to the insolvency filing and the other party knew of the debtor's intention;
- creditor preferences - legal acts benefitting or preferring a creditor that were carried out either within three months before the filing of insolvency proceedings or after the filing.

If an act falls under one of the three grounds, it will be void and unenforceable against the insolvent estate and the benefiting party must provide compensation.

Exemptions: the proposed directive states that the rules on preferences (<u>only</u>) should not apply to legal acts that are not subject to avoidance actions in accordance with the Settlement Finality Directive (SFD) and the Financial Collateral Directive (FCD):

- no protection for clearing arrangements covered by the European Market Infrastructure Directive (EMIR)
- no protection for netting provisions not covered by the FCD (e.g., where the netting provision is not part of a financial collateral arrangement or where both of the parties do not fall within the categories covered by the FCD).

PRE-PACK PROCEEDINGS

Reasoning: “It is generally assumed that more value can be recovered in liquidation by selling the business (or part thereof) as a going concern rather than by piecemeal liquidation”. New form of pre-pack proceedings consisting of two consecutive phases:

- **the preparation phase**, which aims at finding an appropriate buyer for the debtor’s business or part thereof;
- **the liquidation phase**, which aims at approving and executing the sale of the debtor’s business or part thereof and at distributing the proceeds to the creditors.

Stay of individual enforcement actions: during the preparation phase, the debtor can benefit from a stay of individual enforcement actions in accordance with Articles 6 and 7 of the Restructuring Directive, where it facilitates the seamless and effective roll-out of the pre-pack proceedings **--> adverse impact on close-out netting provisions**

Assignment of contracts without counterparty consent: executory contracts which are necessary for the continuation of the business are to be assigned to the purchaser and the assignment does not in principle require the consent of the counterparty.

10. Progress report on Faster Settlement - new documentation initiative

Report by Michaela Duve, EFET

eSM - Faster Settlement

EFET

- Settlement Context - Timetable examples
- Benefits of Faster Settlement
- Progress at the Ops Committee
- Members expressing interest to form Task Force

eSM - Daily Settlement – Timetable Example

Reviewed by WG X 2 on 22.11.22 and 19.01.23 – feedback amendments in blue

Coverage : FIXED prices and INDEX -> payment BD+4

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday	Monday
(1)delivery		(1)Settlement	(1)netting statement	(1)Payment			(8)delivery		(8)Settlement	(8)netting statement	(8)Payment			
	(2)delivery		(2)Settlement	(2)netting statement			(2)Payment	(9)delivery		(9)Settlement	(9)netting statement			
		(3)delivery		(3)Settlement			(3)netting statement	(3)Payment	(10)delivery		(10)Settlement			(10) netting statement
			(4)delivery				(4)Settlement	(4)netting statement	(4)Payment	(11)delivery				
				(5)delivery				(5)Settlement	(5) + (6) +(7) netting statement	(5) + (6) +(7)Payment	(12)delivery			
					(6)delivery			(6)Settlement				(13)delivery		
						(7)delivery		(7)Settlement					(14)delivery	

Example : If Thursday was a holiday in **either** of the parties jurisdiction

Monday	Tuesday	Wednesday	TH HOLIDAY	Friday	Saturday	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
(1)delivery		(1)Settlement		(1)netting statement			(1)Payment						
	(2)delivery			(2)Settlement			(2)netting statement	(2)Payment					
		(3)delivery					(3)Settlement	(3) + (4) netting statement	(3) + (4) Payment				
			(4)delivery				(4)Settlement						
				(5)delivery				(5)Settlement	5) + (6) +(7) netting statement	(5) + (6) +(7)Payment			
					(6)delivery			(6)Settlement					
						(7)delivery		(7)Settlement					

ONE invoice per single Flow Day
(per aggregation keys)

Invoice to be **sent** by midday of the second BD, BD+2 , i.e **2 BD** after the delivery flow

Payment - to be **paid** the later of **4 BD** after the flow
or **2 BD** after the invoice is issued

Key

Settlement	=generation of invoice and shadow invoice matching via eSM and resolution of mismatches
Netting statement	= generation of netting statement & shadow netting statement matching via eSM and resolution of mismatches

eSM – M+10 CD Settlement – Timetable Example

A. Scenario: 1st falls on a Monday

..Previous Month...	1st	2nd	3rd	4th	5th	6th	7th	8th	9th	10th	11th	12th
	Monday	Tuesday	Wednesday	Thursday	Friday	Sat	Sat	Monday	Tuesday	Wednesday	Thursday	Friday
Delivery ...			Settlement	Netting Generated & Matched						Payment		
			M +3 BD	**M +4 BD**						**M + 10 CD**		

B. Scenario: 1st falls on a weekend, followed by PH , e.g. Jan

..Previous Month...	1st	2nd	3rd	4th	5th	6th	7th	8th	9th	10th	11th	12th
	Sun	Mon -PH	Tuesday	Wednesday	Thursday	Friday	Sat	Sat	Monday	Tuesday	Wednesday	Thursday
Delivery ...					Settlement	Netting Generated & Matched				Payment		
					M +3 BD	**M +4 BD**				**M + 10 CD**		

C. Scenario: 1st falls on a PH , weekend, followed by another PH , e.g. Easter Good Fri, WE followed by Easter Mon

..Previous Month...	1st Apr	2nd	3rd	4th	5th	6th	7th	8th	9th	10th	11th	12th
	Easter Fri PH	Sat	Sun	Easter Mon PH	Tuesday	Wednesday	Thursday	Friday	Sat	Sun	Monday	Tuesday
Delivery...							Settlement	Netting Generated & Matched			Payment	
							M +3 BD	**M +4 BD**			**M + 10 CD**	

M+10 Settlement Rules

M +3 BD	Settlement == Invoice Generated & Matched
M +4 BD	Netting Generated & Matched
M + 10 CD	Payment on the 10th or ~~earlier~~ **next BD,** if the 10th CD is a PH in either jurisdictions

eSM - Faster Settlements

Coverage

Definitions & Rules	Descriptions
Coverage & Pre-requisites Gas, Power, Emissions , Coal Physical plus associated fees **Pre-requisites:** Both parties use eSM at Line Item level. Preferred that both parties use the eSM rounding rules as per eSM Standard.	**Coverage** All commodities and products (Physical & associated fees) that fall under eSM, Not covered: transactions with pricing that does not allow for daily settlement, e.g., deals whose final price is calculated based on a monthly average of daily closing prices, Remedies §8 EFET GA, Other costs/fees.

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eSM - Faster Settlements

Agreement Code	Agreement Description	Current state	Last updated	SCOPE	Status	Notes
Beach2000	Beach delivery master trading agreement for UK Gas 2000	Active	28-Aug-15	OUT	Pending	WG to confirm OUT Beach2000 /2015 include retrospective trading and is therefore difficult as 2parties may try to match invoices with differing trades. Assumed OUT as these values are not material.
Beach2015	Beach delivery master trading agreement for UK Gas 2015	Active	28-Aug-15	OUT	Pending	WG to confirm OUT Same as Beach2000 - //-
Deutscher_Rahmenvertrag	European Federation of Energy Traders Master Trading Agreement - German Translation	Active	18-Dec-13	~~IN~~ OUT	Pending	Assumed IN as identical to EFET-translated into German – Legal to review
EFET	European Federation of Energy Traders Master Trading Agreement	Active	01-Apr-09	IN	Reviewed	03/10/22 Reviewed for electricity Definitions & Rules in supporting slide
GTMA	Grid Trading Master Agreement for UK Electricity	Active	01-Apr-09	IN	Reviewed	Reviewed for electricity Definitions & Rules in supporting slide
IETA	International Emissions Trading Association master trading agreement	Active	01-Apr-09	IN	Reviewed	Reviewed Definitions & Rules in supporting slide
ISDA	International Swaps and derivatives Association master trading agreement	Active	01-Apr-09	OUT	Pending	WG to confirm OUT ISDA settles fast already, hence assumed OUT WG to confirm OUT
NBP15	National Balancing Point master trading agreement for UK Gas 2015	Active	28-Aug-15	IN	Reviewed	Reviewed Definitions & Rules in supporting slide
NBP97	National Balancing Point master trading agreement for UK Gas	Active	01-Apr-09	OUT	Pending	Assumed OUT as no longer traded; Legal to confirm
Other	Other undefined types of master trading agreement, kept for backwards compatibility with earlier versions of the eCM standard	Active	01-Apr-09	OUT	Pending	Need to clarify Agreement coverage - assumed OUT/TBC; Legal to confirm
Zebrugge	Zeebrugge Hub master trading agreement for Gas at Zeebrugge, Belgium	Active	01-Apr-09	IN	Pending	Assumed IN and similar to TTF check Annex in website

Agreement Code	Agreement Description	Current state	Last updated	SCOPE	Status	Notes
AFB	N/A	Not Active - New	01-Jun-09	OUT	N/A	Assumed OUT as NOT active
FFABA	N/A	Not Active - New	01-Jun-09	OUT	N/A	Assumed OUT as NOT active
SCoTA 5a	Standard Coal Trading Agreement	Active	28-Apr-10	IN	N/A	
SCoTA 6	Standard Coal Trading Agreement	Active	28-Apr-10	IN	N/A	
SCoTA 6a	Standard Coal Trading Agreement	Active	28-Apr-10	IN	N/A	
SCoTA 6b	Standard Coal Trading Agreement	Active	28-Apr-10	IN	N/A	
SCoTA 7	Standard Coal Trading Agreement	Active	28-Apr-10	IN	N/A	
SCoTA 7a	Standard Coal Trading Agreement	Active	28-Apr-10	IN	N/A	
SCoTA 7b	Standard Coal Trading Agreement	Active	28-Apr-10	IN	N/A	

Agreements List – sourced from Equias static data, assumed complete

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Benefits of FS

Reduce counterparty credit risks

Avoid swings collateral/payment

between payment day and return of collateral

Keep trading lines open

In netting unfriendly jurisdictions

Progress at the Ops Committee

Objectives of the Operations - Faster Settlements Working Group

Propose Cutover Approach : how will companies cutover from M+20 to Faster Settlement

Create a High Level Impact Assessment: multi-disciplinary analysis, impacted areas to be disseminated;

Collectively explore, share issues and seek resolutions to any findings arisen from the High Level Approach Assessment and Cutover Approach (Q3/23-2024)

Feedback results to involved Committees

Members expressing interest to form a Task Force

Operations Committee

- CEZ
- ENBW
- EDTF
- EWE
- Mercuria
- RWEST
- Uniper

Contact: Anca Bossons, a.bossons@efet.org

Legal Committee

- CEZ
- ENBW
- EDTF
- EWE
- Mercuria
- RWEST
- Uniper

11. Update on other Working Groups and EFET Committees

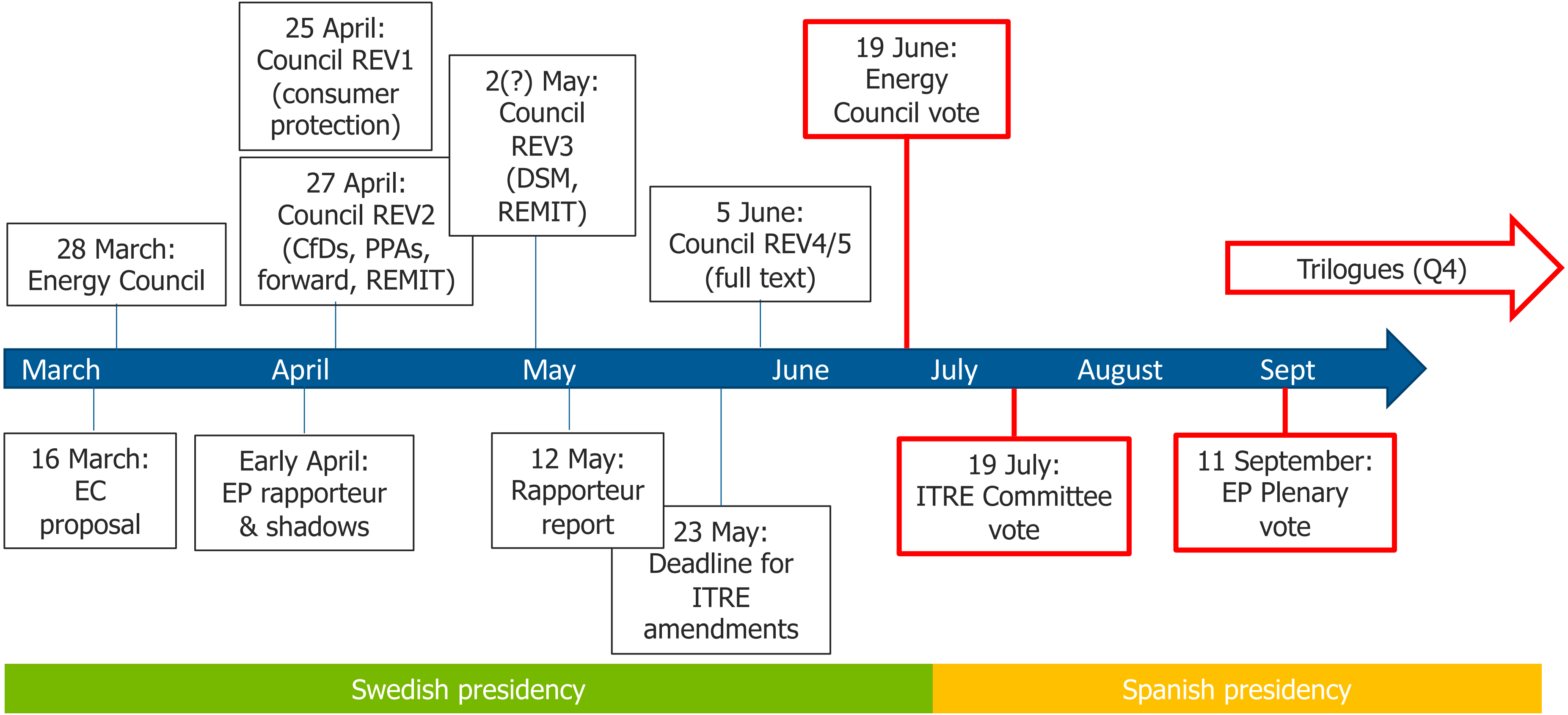
Market Supervision Committee – report on EMIR and related initiatives – by Mike Bostan, EFET

11. Update on other Working Groups and EFET Committees

Electricity Committee – report on the electricity market reform – by Jerome Le Page, EFET

EFET

Electricity Market Design (EMD) reform – anticipated timeline



EFET approach to REMIT and EMD reforms

Start from what works:	Improve what needs to improve:	Focus on confidence and stability:
• Optimising resources across Europe. • Clear, Europe-wide rules. • Clear decarbonisation targets. • Dedicated framework for transparency and market monitoring.	• Better price predictability. • More choice for customers. • Increased flexibility – on demand and generation sides. • Strengthened transparency.	• Prevent extension of emergency measures. • Ensure consistency with European decarbonisation objectives. • Work together Europe wide.

12. AOB and scheduling next Legal Committee meeting