A&D LIST
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EFET
European Federation
of Energy Traders

EFET Legal Committee Meeting Q2/2023

1 & 2 June 2023

Hosted by Vattenfall in Amsterdam, held in a hybrid format

Participants List
(present in person)

1.	Carola Vernimmen	Alpiq	14.	Maxim Bragin	Gunvor
2.	Lynn Shaw	BP	15.	Rosana Bovia	Iberdrola
3.	Fedor Matezky	Centrica	16.	Ulla Achleitner	OMV
4.	Jan Michek	CEZ	17.	Judith Asiama	RWE
5.	Veronika Zuberova	CEZ	18.	Jochum Lubbers	Vattenfall (day 1)
6.	Aygul Adamson	EFET	19.	Safina Smak Gregoor	Vattenfall
7.	Michaela Duve	EFET	**Guest speakers:**		
8.	Sonia Auguscik	EFET	20.	Frederick Bernthaler	CEGH (day 1)
9.	Evelyn Hager	EnBW	21.	Guido Kleve	DLA Piper (day 2)
10.	Benjamin Dargnies	Engie	22.	Michael Cieslarczyk	DLA Piper (day 2)
11.	Christoph Sänger	E.ON	23.	Valentina Eigner	DLA Piper (day 1)
12.	Felix Diem	EVN	24.	Katharina Lueken	RWE (day 2)
13.	Natalie Skacelova	Ezpada	25.	Bernd Rajal	Schoenherr (day 2)

Furthermore, about 40 people dialled into the meeting, including guest speakers: Julie Vaughan (Reed Smith), Doug Wood (EFET), Mike Bostan (EFET), Jerome Le Page (EFET), Andreas Gunst (DLA Piper).

General remark: for technical reasons, the meeting could not be recorded. The slides from day 1 & day 2 along with additional meeting materials are available at the dedicated EFET page: https://www.efet.org/home/documents?id=698.

Meeting Day 1

1. Opening and approval of the last A&D list (Michaela Duve, EFET)

Michaela Duve opened the meeting for the first time in her role as a newly appointed Chair of the Legal Committee and introduced the agenda. Members were asked if they had any comments or remarks on the minutes of the last Legal Committee meeting held in Brussels on February 27, 2023.

Decision: the A&D list from the previous Legal Committee meeting, held in Brussels on February 27, 2023 (in a hybrid format) was unanimously approved by members, subject to no comments.

2. Update on the Legal Committee matters (Michaela Duve, EFET)

On March 9, 2023, Michaela Duve was appointed by the EFET Board as the new Chair of the Legal Committee. The EFET Board will take a decision about Michaela's potential co-option as a Board member at its next meeting on June 20, 2023. Michaela introduced herself, describing her over 20 years of experience working in the energy industry.

Michaela discussed the new transparency and compliance rules. She explained that EFET operates a consultancy system, informed members of requirement to follow the EFET's "conflict of interest" policy and communicated the services she would not provide under her consultancy company to avoid conflicts or potential conflicts of interest.

Note: for more details, please refer to the press release that EFET published in late March 2023: "Michaela Duve to replace Jan Haizmann as Chair of the EFET Legal Committee".

Michaela informed about the recent reorganisation of the various workstreams run by the Legal Committee – this reorganisation aims to streamline operations and achieve greater efficiency. In line with these changes, the Legal Committee has established eight (8) working groups to focus on specific areas. A member of the LC Secretariat serves as the first point of contact ("FPoC") for each Working Group:

- EFET Templates Development & Maintenance Working Group (FPoC – Michaela, Aygul and Sonia);
- Power Purchase Agreement Standardisation and Electricity Working Group (FPoC – Sonia);
- Biogas Standardisation Working Group (FPoC – Aygul);
- Hydrogen Standardisation Working Group (FPoC – Michaela);
- LNG and Natural Gas Working Group (FPoC – Aygul);
- Contract Digitalisation Working Group (FPoC – Michaela);
- Legal Opinions Working Group (FPoC – Sonia); and
- Support and Cross-Committee Cooperation Working Group (FPoC – Michaela, Aygul and Sonia).

Action: LC Secretariat to send out shortly further communication to members with an invitation to join the relevant workstreams (call for registration).

Michaela also announced that reorganisation of the Legal Committee meetings, returning to the pre-pandemic tradition, i.e.: an educational workshop prior to each Legal Committee meeting, two-day meetings with a group dinner, with the aim that every Legal Committee meeting will be followed by a specific Task Force meeting on the second day.

She reported on the priorities for 2023 which are the following:
- potential revision of EFET General Agreements for Electricity and Natural Gas;
- expanding range of EFET documentation for green products (renewable PPA standard 2.0, biogas certificates single trade agreement);

- faster settlement (priority set by EFET board);
- housekeeping, including revision of the EFET web page, legal committee terms and instruction letters for the legal opinions.

3. Update on Hydrogen Certificate Single Trade Agreement (Michaela Duve, EFET; Andreas Gunst, DLA Piper)

Michaela Duve reported on the developments with the draft Hydrogen Certificate Single Trade Agreement, and gave an update on recent meetings the EFET LC Secretariat had with VertiCer and HyXchange:

- HyXchange retains a project status, and simulations for spot and balancing market are still running - the Hydrogen Certificate Single Trade Agreement is not needed for these market simulations; going forward, use of this standard will only be voluntary. This platform at the moment is aimed at developing the market and it is not a trading platform - later on, HyXchange considers developing a price index on green hydrogen GoOs, and thereafter, becoming an MTF or exchange.

- January 1, 2023, marked the merger of Vertogas and CertiQ – now operating under the name of VertiCer, certifying body issuing the Guarantees of Origin in the Netherlands. This restructuring resulted in the changed terms of business and revocation of Vertogas participation agreement – no replacement or rulebook is planned, quite the opposite, VertiCer decided to rely only on the Dutch secondary legislation regarding the issuance, suspension and cancellation of the GoOs. VertiCer does not intend to make its own terms and conditions and registration documents available as non-binding translations in English.

The draft Hydrogen Certificate Single Trade Agreement from June 2022 has been now updated to reflect the recent national system restructuring, and address some other comments received. Andreas Gunst walked members through the recent changes, paying particular attention to those resulting from the VertiCer merger:

- change of "Administrator" definition to VertiCer,
- change of "Issuance and Registry Rules" definition to include contractual documentation governing registry operation,
- change of "Law" definition to include specific Dutch laws governing the treatment of renewable source electricity, gas and hydrogen.

Furthermore, in the revised draft, there are also updated references in some definitions to better align with the concept of designated purpose, and the title is now clarified the status as a single trade agreement. It is an open question whether the Automatic Termination wording should not be reinstated into the contract (it was removed in an earlier stage but without a specific rationale). For a complete overview, members are invited to look at the change log and redline (compared to the version last circulated in June 2022).

Actions: LC Secretariat to send out the latest draft of the Hydrogen Certificate Single Trade Agreement, along with the change log and redline against version circulated in

June 2022; members are invited to review the document and share their feedback. In case of questions, please get in touch with Michaela.

4. Update Biogas Certificates Single Trade Agreement (Aygul Adamson, EFET; Frederick Bernthaler, CEGH; Valentina Eigner, DLA Piper)

Aygul Adamson presented the finalised draft of the Biogas Certificates Single Trade Agreement (Biogas Certificates STA). The contract has been developed in collaboration with the Central European Gas Hub (CEGH) for trade in biogas certificates, including but not limited to trade on the CEGH GreenGas Platform. Therefore, as a starting position the Biogas Certificates STA and its appendices have been designed for use on the Austrian market.

Aygul elaborated on the drafting approach, as emerged on the basis of membership feedback stemming from the Discussion Paper Biogas Trading & Contract Design. The contract is designed for trades in certificates as a single trade, and is based on the EFET EECS Certificate & National Scheme Certificate Master Agreement. The contract has a modular structure with the appendices specifying the designated purpose and reflecting the various possible use cases. For more details, members are invited to review the Guidance Notes accompanying the Biogas Certificates STA and the comments log/Q&A document.

The agreement has been consulted extensively with members of the Legal Committee and RES Gas Working Group (who dealt with associated regulatory aspects), as well as presented through CEGH GreenGas Stakeholder Committee meetings (notably, the more recent one on 27 March 2023). Aygul recommended the agreement for endorsement through electronic vote.

Action: LC Secretariat to invite members to formally endorse the EFET Biogas Certificates Single Trade Agreement through electronic vote. Please consult a dedicated EFET webpage for the full set of documents, including the compare redline version (with the 22 December draft), the Q&A document based on the received comments and the Guidance Note. In case of questions, please get in touch with Aygul.

Update: following an extended approval period until end of June, the EFET Biogas Certificates Single Trade Agreement has been officially endorsed by the members. The final version of the agreement, along with the accompanying Guidance Note, are now published on the EFET website.

Valentina Eigner walked members through the recent changes made to the Biogas Certificates Single Trade Agreement - for details, members are encouraged to review the compare redline (between draft from December 2022 and the final version) and the change log (overview of comments).

Frederick Bernthaler gave an update on the Central European Gas Hub (CEGH) GreenGas Platform initiative, reporting that it is now connected with the DENA Biomethane Register – this way, CEGH offers trading of biomethane certificates in the German market via the CEGH GreenGas Platform. Marianna Liakopoulou (EFET) provided a quick summary from the RES Gas WG side, including EFET response to the Austrian draft ordinance on gas labelling.

5. New documentation initiatives – AVB Appendix for Spain (Aygul Adamson, EFET)

During the last Legal Committee meeting (February 27, 2023), it was discussed to produce EFET documentation to cover AVB trading. As a follow-up, the Secretariat approached the Iberia Gas Group (IGG) members to gauge whether they would be willing to use EFET documentation governed by English or German law for AVB trading instead of Spanish law documentation such as the Acuerdo Marco.

Aygul Adamson reported the sufficient buy-in from the Legal Committee and IGG members to produce EFET documentation to cover AVB trading in Spain. The ultimate objective would be for market participants to have one set of terms, namely the EFET, to enhance liquidity at the Spanish virtual points, rather than incurring basis risk by trading the same products under two different contracts and different governing laws. Iberdrola indicated that they support the initiative but see a need for drafting changes in the remedies wording – this will be taken further at the Task Force level.

Action: LC Secretariat to set up a dedicated Task Force to commence the drafting process. In case of interest in this workstream and/or in case of questions, please get in touch with Aygul.

6. Update from the EFET Gas Committee (Doug Wood, EFET)

Doug Wood, Chair of the EFET Gas Committee, provided a short update report on the latest gas market developments, especially around the Madrid Forum discussions. He briefly reported on the AggregateEU, mentioning the EC request for comments on experience with the platform. Michaela reported that the Legal Committee secretariat was in contact with PRISMA to clarify in what context and with what intention the AggregateEU interface refers to the EFET General Agreement. It has been confirmed that EFET terms are recommended but not mandatory.

Action: in case of interest, LC Secretariat to provide members of the Legal Committee with detailed notes from the Madrid Forum.

Doug also mentioned two national interventions. One in Bulgaria, where support for storage-filling was being applied selectively to Bulgargaz, and there is a suggestion to write to the national and European stakeholders to draw this to their attention. Second one, in Ukraine, where the recently passed resolution required a certificate of origin of gas to prove that it is not produced in Russian Federation, in order to obtain customs clearance.

Update: meanwhile this problem has been solved, the Ukrainian government adopted the amendments (effective as of June 9, 2023), and gas shippers are no longer required to submit certificates of origin (customs warehouse regime, backhaul regime are excluded).

Meeting Day 2

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

Background: with more and more new regulatory initiatives around the environmental, social and corporate governance (ESG), the LC Secretariat was approached by members with inquiries regarding the German Supply Chain Act and the national implementation of the ESG related directives, especially in view of assessing the potential impact on the EFET documentation.

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

Directive (EU) 2022/2464, the so-called Corporate and Sustainability Reporting Directive ("CSRD") entered into force on January 5, 2023, and must be transposed into the national legislation of the EU Member States within 18 months. Bernd Rajal described the scope of the directive and its potential impact on the energy trading companies and the EFET documentation. He also spoke more about the current legal situation in Austria - the CSRD has not been implemented yet in Austria but there are already certain obligations provided by the Austrian Sustainability and Diversity Improvement Act and by §243 Section 5 of the Austrian Corporate Code.

- **Corporate Sustainability Due Diligence Directive ("CSDDD"), German Supply Chain Act vs CSDDD draft (Michael Cieslarczyk & Guido Kleve, DLA Piper)**

Guido Kleve presented the German Supply Chain Act (Lieferkettensorgfaltspflichtengesetz; "LkSG") that entered into force on January 1, 2023, and which applies to companies seated in Germany or operating a German branch with 3,000 or more employees (but from January 1, 2024 - with 1,000 or more employees). This imposes new supply chain obligations on in-scope companies (risk analysis, preventive measures, remedial actions, compliance procedures, documentation and reporting).

Just before the presentation, on June 1, 2023, the European Parliament has agreed on its position on the directive on corporate sustainability due diligence ("CSDDD") – it requires in-scope companies to conduct due diligence throughout their global value chains. Based on the position paper, the European Parliament will now enter into the "trialogue" with the Council and the Commission (in the second half of 2023 – final decision most likely in 2024). Given the developments at the EU level, some changes in German law can be expected in the future.

Michael Cieslarczyk highlighted the potential impact this has on energy trading companies and the EFET documentation. It was discussed whether a joint industry approach is needed (or would be helpful) to face the challenges related to the implementation of the German

Supply Chain Act, for example, by creating compliance wording that could be incorporated into the EFET agreements.

- **Upcoming ESG-related legislation in the UK (Julie Vaughan, Reed Smith)**

Julie Vaughan reported that there are no proposals in the UK to mirror the ESG related initiatives of the EU. The current legislation is more focusing on the corporate requirements (directors' duties, for example) and sustainability disclosure requirements. At the moment, there is not much going on around the supply chain in the UK, and there are no specific due diligence requirements for energy purchases.

Note: this useful discussion and suggestions will feed further work of the Working Group on a potential review of the EFET General Agreements.

8. Update from the EFET Trading Compliance Working Group – REMIT refit current status (Katharina Lüken, RWEST)

There is an ongoing revision of the REMIT framework – on March 14, 2023, the European Commission proposed some amendments (not yet final). In general, EFET supports that REMIT II aims at strengthening and widening the REMIT regime to take account of market developments and to foster the supervision of energy wholesale markets. However, there are quite a few areas that require amendments and/or further clarification, to mention some: overlapping and/or unclear definitions of the market participants, persons professionally arranging (and executing) transactions, organised marketplaces and wholesale energy products; requiring disclosure of "intermediate steps" for inside information that creates legal uncertainty and is inconsistent with the equivalent financial information (MAR); significant overlap of supervisory and investigative powers between national regulatory authorities and ACER also needs rethinking.

Note: please see the EFET position on the REMIT II proposal - summary of the most important points and full assessment including EFET specific amendment proposals (both of April 28, 2023). EFET continues its advocacy work on the REMIT II under the leadership of the Market Supervision Committee.

9. Legal opinions – status quo review (Sonia Auguscik, EFET)

Sonia Auguscik presented the latest overview of the legal netting opinions (instruction cycle 2022/2023), highlighting those recently finalised and published: the legal opinions for Romania (March 27, 2023) and for Spain (May 16, 2023). Members have been informed that there is already a draft of the updated legal opinion for Italy which reflects the new insolvency regime. Members were also asked if they see a need for the updated legal opinion for England and Wales but there appear to be no reforms to consider – consequently, the update is not pressing.

Sonia informed members that the updated 2022 opinion for Liechtenstein is no longer published on the EFET website – following careful review, it was concluded that this opinion did not meet the EFET conditions, i.e., the update was not instructed by EFET and EFET is not the addressee of this opinion; instruction scope was not set by EFET; and members of the Legal Committee did not peer review for quality assurance.

Action: members to check internally if there is interest for EFET to instruct the update of the 2019 legal opinion for Liechtenstein. In case of interest, please get in touch with Sonia.

Sonia also reported on the latest legal reforms relating to close-out netting.

- The Netherlands: starting with the good news, the joint EFET & Energie Nederland efforts have produced some positive results – there is a novel interpretation of the WHOA stay period, as of January 1, 2023, that eliminates one of the principal risks for unsecured creditors in and outside the energy sector. This states that the collateral should be provided by the debtor before the stay order, meaning that the debtor can only avoid the creditor's exercise of its termination, close-out or suspension rights if it proactively ensures that the creditor has received acceptable and sufficient collateral before it applies for a stay order.

Note: more details on the latest changes to WHOA, as of January 1, 2023, are available in the client legal alert produced by Clifford Chance.

Actions: members expressed interest in updating the legal opinion for Netherlands to cover these new changes and green certificates; LC Secretariat to instruct an update. Members of WG Legal Opinions to decide if the update is to be instructed on the current or revised legal opinion instruction letter.

- Slovakia: EFET in cooperation with ISDA backed up the initiative of the Slovak energy companies aimed at broadening the scope of the current Slovak close-out netting legislation. In April 2023, the amendment of the national Insolvency Act was submitted for a vote and, unfortunately, rejected by the Parliament. The next attempt at change will happen in autumn 2023 at the earliest.

- Czechia: EFET in cooperation with ISDA backed up a complete carve-out and protection of close-out netting in the national Preventive Restructuring Bill. So far, the developments are promising (convinced Ministry of Justice and the Czech National Bank) - however, these positive changes must still be proposed and accepted by the Parliament (expected timeline: summer break / early autumn 2023).

- Bulgaria: the Bulgarian Ministry of Finance (MoF) insists that the netting law in Bulgaria should follow the current personal scope of the Financial Collateral Directive, excluding unregulated corporates dealing with other corporates. Ministry is also against including FX/commodities spot transactions (as opposed to derivatives) in the scope of the netting law. The draft of the law is expected to appear for public consultation in the coming weeks (but it also depends on the political situation).

Action: interested members are invited to contact Sonia and share intelligence on the national insolvency developments on a continuous basis.

Sonia also initiated a discussion on a potential revision of the instruction letter (review of the appendix B, precise instruction wording for green certificates, traffic light system for material questions, separate annex for recommended wording, last but not least – focus on energy traders, not regulated financial institutions), and potential change of the update frequency. New cycle of the updated MNA/CMPA opinions is also approaching but will be preceded by a review of the instruction letter. These discussions will continue at the Legal Opinions Review Working Group level.

Sonia also reported on the proposed EU Directive on harmonising insolvency law – the proposal was published on December 7, 2022, and it is still at an early stage of the legislative process. It partly complements two recently adopted pieces of legislation: Directive 2019/1023 on preventive restructuring frameworks and Regulation 2015/848 on insolvency proceedings. Major planned changes are the harmonised conditions for exercising avoidance actions and provisions to introduce so called 'pre-pack' liquidation procedures.

EFET has been contacted by ISDA to see if we have the proposed EU harmonising Directive on our agenda. We are also invited to review the ISDA position paper that describes the main features of the proposed directive so far as they may be relevant to OTC derivatives business and makes proposals for amendments to address potential concerns. In the proposed Directive, there are certain exemptions that relate to close-out netting understood very narrowly, in a way that would not cover some of the transactions traditionally concluded under EFET.

Decision: members expressed support for EFET exploring the proposed Directive further and potentially taking advocacy actions together with ISDA.

Actions: members are invited to review the ISDA discussion paper and share their comments; LC Secretariat to align the position with the EFET Market Supervision Committee.

10. Progress report on Faster Settlement (Michaela Duve, EFET)

Michaela briefly reported on the latest meeting of the EFET Operations Committee, organised in Essen on May 25, 2023. The Legal Committee has been contacted with a request to support the initiative from a legal perspective, i.e., developing the respective Faster Settlement annex. There are some legal issues that remain to be discussed, such as the contractual scope of the initiative but also the consequences of not paying on time (whether it should trigger termination rights or not). This work will continue in a dedicated Task Force.

Note: for more details on the Faster Settlement initiative, please refer to the meeting slides and the PwC study on the benefits of daily settlements.

Action: this work will continue in a dedicated Task Force. Interested members of the Legal Committee are invited to get in touch with Michaela.

11. Update on other Working Groups and EFET Committees

- **Electricity Committee – report on the electricity market reform (Jerome Le Page, EFET)**

Jerome Le Page, Chair of the Electricity Committee, provided a brief update on the currently pending electricity market design (EMD) reform, including the anticipated timeline (with EP plenary vote in September 2023, and trialogues in Q4 2023) and the EFET approach.

Note: the EFET position papers and responses related to the electricity market design reform can be found on the EFET website in the Electricity Committee section, including the summary position and more detailed amendment suggestions.

- **Market Supervision Committee – report on EMIR and related initiatives (Mike Bostan, EFET)**

Mike Bostan (Manager of the Market Supervision Committee) gave a quick update on the recent developments - EMIR refit comes into force from April 29, 2024, which means a lot of changes in the way of reporting (new reporting format, significantly increased number of reportable fields, new reporting rules). Market participants need to prepare their systems for implementation but still have some interpretation and operational problems. The EFET joint EMIR and ORR Working Group has been established to discuss the implementation problems and form an industry view on the EMIR refit reporting. In parallel, there are some other initiatives, including: proposal for EMIR 3.0 and the potential deletion of the MiFID II ancillary activity exemption.

12. AOB and scheduling next Legal Committee meeting

Michaela has announced that the next Legal Committee meeting will be held in September in London, hosted by EDF Trading - potential dates are in the week commencing September 18 and September 25. Members have expressed a preference for the meeting to be on Thursday and Friday, the dates will be confirmed with the hosting company and communicated to members shortly. The next workshop will be focused on topics related to power purchase agreements, potentially also granular certification - members are invited to share their suggestions.

Actions: LC Secretariat to confirm the dates of the next Legal Committee meeting in London in September 2023; members to share the agenda topics, including ideas for the PPA related workshop.

Update: meanwhile, the dates for the next meeting of the Legal Committee in London have been set for 21 and 22 September 2023.

Another potential topic for the next meeting in September could be discussion around the distinction between EUAs and EUAAs in the trading documentation - as a reminder, end of 2022, ICE removed the distinction between the EUA and the EUAA products. Depending on appetite, this topic can be further investigated by EFET members.

Action: LC Secretariat to check with EEX their current position, especially whether they plan to remove the distinction between the EUA and the EUAA products as well.

Aygul reported the planned merger of the existing ZTP Physical and ZTP Notional Trading Services in Belgium into a single ZTP Trading Service as from October 1, 2023 - this may require changes to the EFET documentation and should be reviewed accordingly.

Actions: LC Secretariat to further investigate the merger into a single ZTP Trading Service in Belgium and assess with members the need for changes in the EFET Zeebrugge Appendix.

LC Secretariat has been alerted that there may be potential problems in France in 2024 regarding the recognition of licenses of non-EU registered companies. In March 2021, the French Ministry of Energy published the ordinance that allows continued license holding through entities which reside in non-EU countries having signed "an equivalent treaty for energy services". The UK company could use this exemption on the basis of the Brexit deal, i.e., the EU-UK Trade and Cooperation Agreement, until 2026.

Actions: LC Secretariat to investigate this matter further and verify if anything has changed in the legislation that may cause problems for non-EU domiciled licence holders in France already in 2024.