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**GUIDANCE NOTE**

**to the**

**Biogas Certificates Standard Agreement**

**for Single Trade**

**WAIVER: THE FOLLOWING GUIDANCE NOTE TO THE BIOGAS CERTIFICATES STANDARD AGREEMENT FOR SINGLE TRADE WAS PREPARED BY EFET'S MEMBERS EXERCISING ALL REASONABLE CARE. HOWEVER, EFET, THE EFET MEMBERS, REPRESENTATIVES AND COUNSEL INVOLVED IN ITS PREPARATION AND APPROVAL SHALL NOT BE LIABLE OR OTHERWISE RESPONSIBLE FOR ITS USE AND ANY DAMAGES OR LOSSES RESULTING OUT OF ITS USE IN ANY INDIVIDUAL CASE AND IN WHATEVER JURISDICTION. IT IS THEREFORE THE RESPONSIBILITY OF EACH PARTY WISHING TO USE THE BIOGAS CERTIFICATES STANDARD AGREEMENT FOR SINGLE TRADE TO ENSURE THAT ITS TERMS AND CONDITIONS ARE LEGALLY BINDING, VALID AND ENFORCEABLE AND BEST SERVE TO PROTECT THE USER'S LEGAL INTEREST. USERS OF THE BIOGAS CERTIFICATES STANDARD AGREEMENT FOR SINGLE TRADE AND/OR OF THIS GUIDANCE NOTE TO THE BIOGAS CERTIFICATES STANDARD AGREEMENT FOR SINGLE TRADE ARE URGED TO CONSULT RELEVANT LEGAL OPINIONS MADE AVAILABLE THROUGH EFET AS WELL AS THEIR OWN COUNSEL.**

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**Background:**

The Biogas Certificates Standard Agreement for Single Trade (“**Biogas STA**”) is designed to respond to the growing need in the market for an agreement tailored specifically to the trade in certificates for biogas, rather than those currently in use for renewable electricity. While biogas certificates are similar to certificates for renewable power, the different potential uses of biogas certificates under various (EU law based) national schemes require additional contractual documentation. This requirement shall be met by the Biogas STA.

The Biogas STA has been developed in collaboration with the Central European Gas Hub AG (“**CEGH**”) for trade in biogas certificates, including but not limited to trade on the CEGH GreenGas Platform. The CEGH GreenGas Platform is a trading platform specifically designed for the trade and marketing of “green gases”, including biogas, on the Austrian market. Therefore, as a starting position the Biogas STA and its Appendices have been designed for use on the Austrian market. However, due to its generic concept and structure, the Biogas STA may also be used in other jurisdictions, while substantial amendments would only be required in Appendix 3, 4 and 5 which are specifically referring to the relevant Austrian legislation.

Certificates within the meaning of the Biogas STA are guarantees of origin (“**GoOs**”) for biogas according to Article 2(12) and Article 19 of Directive (EU) 2018/2001 (“**RED II**”) in conjunction with relevant national law transposing RED II. The definition of biogas is aligned with that under Article 2(28) RED II, i.e., gaseous fuels produced from biomass (this definition of biogas includes biomethane). The Biogas STA is therefore not geared towards use for trade in other gases foreseen by RED II, such as hydrogen or other RFNBOs.

The Union Database for biofuels in the transport sector is not yet operational. Various questions on the operability of the Union Database, its integration into existing registries in the member states as well as its linkage to GoOs remain open. The Biogas STA however takes into account the status quo of the Union Database, making reference to it in § 5 (*Non-Performance Due to Force Majeure*) as well as in Appendix 3 (*National Fuels Quota Scheme*). Reference is made to the Union Database only in Appendix 3 (*National Fuels Quota Scheme*) because under the current RED II framework the sustainability criteria and the use of the Union Database only apply to liquid and gaseous transportation fuels, i.e., including for biogas used in the transport sector. However, the current EU Commission draft for a proposal to amend RED II (COM(2021) 557 final, “**RED III**”) intends to widen the scope of the Union Database to all liquid and gaseous fuels. Due to the current lack of clarity, EFET recommends users of the Biogas STA to consult on the status of the Union Database on an EU wide level as well as its integration into the system of the relevant member states before entering into the agreement with counterparties.

**Structure:**

The Biogas STA is based on the EFET EECS Certificate & National Scheme Certificate Master Agreement (“**CMA**”). The CMA is widely used in the market thanks to its comprehensive provisions, yet user friendly structure. The CMA was therefore the ideal basis for the Biogas STA. Market participants familiar with the CMA will be at ease with the structure of the Biogas STA, which is as follows:

1. Part I – Individual Terms:
  - a. Section A: Commercial Provisions
  - b. Section B: Election Sheet
  - c. Section C: Additional Provisions
2. Part II – General Provisions
3. Appendices:
  - a. Appendix 1: Defined Terms
  - b. Appendix 2: Greenhouse Gas Protocol
  - c. Appendix 3: EU ETS Scheme as transposed by Applicable Law
  - d. Appendix 4: National Fuels Quota Scheme
  - e. Appendix 5: National Emissions Trading Scheme

The Biogas STA is however not designed to operate as a framework agreement, but as a single trade agreement (for single or multiple deliveries) due to the constantly evolving market for biogas. Given the anticipated developments in the market, a single trade agreement allows for more flexibility than a (long-term) framework agreement and therefore will better fit the users’ needs at this moment in time. Consequently, the Biogas STA does not require a template Individual Confirmation.

**Part I:**

Given the same legal basis and nature of biogas GoOs and GoOs for renewable power, the CMA already provides a useful basis with regards to delivery and acceptance of the certificates as well as the basic risk allocation. However, the EECs Rules and the AIB hub for transfer of renewable power GoOs do not currently apply to biogas GoOs. Consequently, currently the delivery of biogas GoOs via electronic transfer is only possible if the relevant jurisdictions involved allow for electronic transfer. Therefore, as a default position § 3 (*Primary Obligation for Delivery and Acceptance of Certificates*) provides for transfer of certificates by transfer of cancellation statement (via email).

In Part I – Section A (*Commercial Provisions*) parties are required to specify the designated purpose by choosing one or several of the Appendices 2-5 to be applicable, or by specifying that no particular designated purpose shall apply. For more details regarding the modular approach to specify the intended use of the biogas GoOs provided for within Appendices 2-5, please see below.

In line with the common EFET approach, parties may further customise existing provisions relating to common risk allocation points in Section B (*Election Sheet*) and add new clauses or materially modify clauses specific to their transaction in Section C (*Additional Provisions*), each as required. The elections in Section B (*Election Sheet*) are construed in a manner so the Biogas STA always provides for a default position in case parties do not wish to further customise the agreement.

**Part II:**

The general provisions are largely in line with the general provisions of the CMA. Primarily § 5 (*Non-Performance Due to Force Majeure*) and § 7 (*Remedies for Ineffectiveness*) have been revised to fit the modular structure with Appendices 2-5.

**Appendices 2-5:**

Appendices 2-5 reflect the most common usages of biogas GoOs by market participants at present. Depending on the intended use of the biogas GoOs by the buyer, the parties may integrate the relevant provisions into the Biogas STA by specifying one of the Appendices to be applicable.

Parties wishing to report under the EU ETS scheme as transposed in another member state, or to count the biogas towards another national fuels quota scheme, must make relevant adjustments in Appendix 3 and Appendix 4, respectively.

- **Appendix 2 (*Greenhouse Gas Protocol*)** covers the usage of biogas GoOs to offset and reduce the Buyer's emissions under the voluntary reporting standard of the Greenhouse Gas Protocol Corporate Standard - Scope 2.
- **Appendix 3 (*EU ETS Scheme as Transposed by Applicable Law*)** incorporates the additional documentation on the sustainability criteria and greenhouse gas emissions of the biogas ("**Proof of Sustainability**", "**PoS**") necessary for the zero-rating of biogas emissions under the EU ETS. Appendix 3 takes into account relevant directly applicable EU legislation as well as applicable national legislation (drawing on the Austrian sample case).
- **Appendix 4 (*National Fuels Quota Scheme*)** should be specified as applicable if the buyer wishes to count the purchased biogas GoOs towards a national fuels quota scheme. Appendix 4 incorporates the additional documentation on the PoS necessary to this end. Appendix 4 in the current version reflects the requirements under relevant Austrian legislation. Parties should pay attention to whether they elect either electronic transfer or transfer via email of the PoS. By default, transfer via email will apply because electronic transfer is feasible only in some jurisdictions at the moment (e.g., between Austria and Germany, electronic transfer is possible between the German *DENA Biogasregister* and the Austrian *AGCS Biomethan Register Austria*, as well as between the German *Nabisy* and the Austrian *e1Na*). Traders placing biofuels on the Austrian market should familiarise themselves with *e1Na* as usage of *e1Na* is mandatory if the biogas shall be counted towards the Austrian fuel quota.

Additionally, Appendix 4 section 8 offers parties the option of electing the transfer of the unique PoS-ID issued by the Union Database. The applicability of section 8 is currently drafted as an election to provide for the flexibility necessary to reflect the current dynamic developments on the operability of the Union Database and the fact that, at the time of writing, usage of the Union Database is not mandatory.

- **Appendix 5 (*National Emissions Trading Scheme*)** provides for the potential use of biogas GoOs under a national emissions trading scheme (e.g., the German Fuel Emissions Trading Act - *Brennstoffemissionshandelsgesetz - BEHG*) supplementing the EU ETS. The first set of Appendices was, however, drafted based on Austria as a sample case, and the Austrian National Emissions Certificates Trading Law 2022 (*Nationales Emissionszertifikatehandelsgesetz 2022*) does not cover reporting of biogas emissions to date.

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