

EFET publishes a Trade Restriction clause for the EFET Gas General Agreement

On 26 May, EFET published standard trade restriction language to enable market participants to adapt their contractual arrangements in a scenario when a counterparty is sanctioned.

The standardisation initiative comes in a response to the EU, US, UN and other countries and international organisations applying sanctions against individuals, businesses and officials from Russia and Ukraine in reaction to the Ukrainian crisis. Although none of the EU sanctions target specifically the energy sector or particular companies, they have still created an impetus for energy trading companies to mitigate exposures stemming from the impact any potential trade restrictions could have on the existing agreements.

Following an extensive research of different drafting scenarios, EFET embarked on finding a compromise language for unexpected disruptions in gas trading. A new clause § 7(a) „Non-Performance Due to Trade Restriction“ (“Trade Restrictions clause”) is to be used with the EFET General Agreement Concerning the Delivery and Acceptance of Gas (“EFET Gas General Agreement”). The clause, outcome of long-lasting discussions within the dedicated legal Task Force, was endorsed by the EFET Legal Committee and is now available on the [EFET website](#).

Under § 7(a).2, the "Trade Affected Party"¹ shall not be obliged to perform affected obligations under affected Individual Contracts, and instead, it shall be released from those obligations but only for the period of time and to the extent that such Trade Restrictions prevent its performance. In case of long-term trade restrictions, the clause provides for a termination right once the “Long Term Trade Restrictions Limit” is reached.

The standard wording reflects also the situation when under the laws of certain jurisdictions, e.g. in Germany, counterparties are limited as to the type of contractual references they make to foreign sanctions/trade restriction regimes, or they cannot pre-agree how to deal with such foreign regimes.

Different drafting scenarios, including a wording providing for an early termination and the calculation/payment of an early termination amount, were considered by the Task Force during the drafting process. The proposed standard clause follows the standard Force Majeure clause for EFET Gas General Agreement.

As a next step, EFET plans to publish a Trade Restrictions clause for its use with EFET Power General Agreement, amend the format in order to allow the parties to include the new clause in the main body of the General Agreements, and finalise the accompanying Guidance Note.

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¹ Trade Affected Party = a Party, which is fully or partly prevented due to a Trade Restriction from performing or procuring the performance of any obligation otherwise required by the EFET Gas General Agreement, since this would be in violation of, inconsistent with, or expose this Party to punitive measure under any Trade Restriction.