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## Attorney Work Product

### By Electronic Mail

**To:** Dr Jan Haizmann - European Federation of Energy Traders (EFET)  
EFET Legal Committee Members

**Date:** 15 July 2014

**Subject:** **EFET EDRS Platform: Effectiveness under German law**

## INTRODUCTION

This note considers the use of the EFET EDRS Platform to amend EFET General Agreements governed by German law. The EFET EDRS Platform envisages using EFET as an agent for certain purposes in connection with the making of standard amendments using the EFET EDRS Platform.

## LEGAL ANALYSIS

1. Under German law it is permissible to authorise an agent (i.e. EFET) to act on behalf of the respective contracting parties as it regards the amendment of EFET documents. The procedure that EFET contemplates (the EDRS process) requires the parties to accept and sign the ratification letter for amendment of an EFET agreement, and upload it to EFET's website. EFET would review them within certain limits and, once accepted, publish them on its website (the EDRS platform). In agreeing to use the EDRS platform and in submitting Ratification Letters through the system, in the relevant ratification letter the parties will each have appointed EFET as their respective authorised agent for receipt of contractual declarations vis-à-vis and on behalf of the other parties to each agreement.
2. Under a standard form Ratification Letter, existing agreements shall be deemed modified as if the parties had signed a bilaterally agreement with each other. The General Agreement concerning the Delivery and Acceptance of Electricity and the General Agreement concerning the Delivery and Acceptance of Natural Gas (the "**EFET Master Agreements**") provide for a formal requirement (§ 23 Section 3), regarding the amendments to existing agreements, namely: "*Amendments: Except for § 3 (Concluding and Confirming Individual Contracts) with respect to*

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Confirmations, any amendments or additions to this “General Agreement” shall be made only in writing signed by both Parties”.

- (a) **In respect of the requirement that any and all amendments should be made in writing:** § 127 (2) German Civil Code addresses the scenario where parties voluntarily require written form in their transaction and no written form is required by law. In such scenario, § 127 (2) states that in case of a conclusion of a legal transaction, which includes the conclusion of an amendment to a contract, an exchange of letters suffices. In addition, it is recognised that instead of a letter, a fax or an email exchange would also suffice for the form requirement. Hence the parties can amend an agreement by written instrument through the online platform which facilitates the exchange of letters through EFET as agent. Contractual declarations are declarations of intent that require receipt by the other party in order to become valid, unless this requirement of receipt has been waived in advance by the parties. Presuming that it has not been waived, it is thus necessary that the respective other party receives the amendment letter. In this case, receipt is based on EFET being appointed as the relevant party’s agent for the purpose of receiving contractual declarations (§ 164 (3) German Civil Code). It is important that the amendment letters are identical, i.e. that no deviating amendment letters are uploaded because then there is no consensus between the contractual parties.
- (b) **In respect of the requirement that the amendments should be signed by both Parties:** Parties will sign their respective ratification letters. As there is no express provision within the EFET Master Agreements that stipulates a stricter written form, i.e. signature of both parties on the same document, we consider that the EFET EDRS platform (which facilitates the written form requirement as set out above) is also sufficient in this respect.