



# EFET Bye-Laws

**The Bye-Laws are internal governance rules according to  
Article 11 of the EFET Statutes**

# Table of Content

<i>Bye-Law</i>	<i>Page</i>
<b>1. INTRODUCTION.....</b>	<b>5</b>
<b>2. DEFINITIONS OF TERMS USED IN THE BYE-LAWS.....</b>	<b>6</b>
<b>3. VISION.....</b>	<b>6</b>
<b>4. STATEMENT OF PURPOSE.....</b>	<b>6</b>
<b>5. STATEMENT OF ACTIVITIES.....</b>	<b>6</b>
<b>6. PRINCIPLES.....</b>	<b>7</b>
<b>6.1 Core Principles.....</b>	<b>7</b>
<b>6.2 Principles of Good Conduct.....</b>	<b>7</b>
<b>6.3 Operational Principles.....</b>	<b>8</b>
<b>7. MEMBERSHIP.....</b>	<b>9</b>
<b>7.1 Categories of Member Companies.....</b>	<b>9</b>
<i>7.1.1 Regular Member Companies.....</i>	<i>9</i>
<i>7.1.2 Associate Member Companies.....</i>	<i>9</i>
<i>7.1.3 Subscriber Member Companies.....</i>	<i>10</i>
<i>7.1.4 Honorary Members.....</i>	<i>10</i>
<b>7.2 Separate membership for members of a corporate group.....</b>	<b>10</b>
<b>7.3 Membership application and obligations.....</b>	<b>11</b>
<b>7.4 Participation in Modules.....</b>	<b>11</b>
<i>7.4.1 Legal Module.....</i>	<i>11</i>
<i>7.4.2 The Back Office Group Module.....</i>	<i>12</i>
<i>7.4.3 Any other future Module.....</i>	<i>12</i>
<b>7.5 Membership cancellation.....</b>	<b>12</b>
<b>7.6 Fees.....</b>	<b>13</b>
<b>7.7 Referral of decisions to Regular Member Companies.....</b>	<b>14</b>

<b>8. BOARD COMPOSITION, ROLE OF BOARD MEMBERS, ELECTIONS AND CO-OPTIONS.....</b>	<b>14</b>
<b>8.1 Composition and duties .....</b>	<b>14</b>
<i>8.1.1. Balanced representation.....</i>	<i>14</i>
<i>8.1.2 Nominations and eligibility for appointment to the Board.....</i>	<i>15</i>
<i>8.1.3 Role of Board members.....</i>	<i>16</i>
<i>8.1.4 Transitional arrangements.....</i>	<i>16</i>
<b>8.2 Procedure and conditions for elections.....</b>	<b>16</b>
<i>8.2.1 General Meeting.....</i>	<i>16</i>
<i>8.2.2 Right to vote .....</i>	<i>17</i>
<i>8.2.3 Elected Board Members.....</i>	<i>17</i>
<b>8.3 Co-options .....</b>	<b>18</b>
<b>8.4 Procedure and conditions for co-options .....</b>	<b>19</b>
<b>8.5 Duration of service of Board members .....</b>	<b>19</b>
<b>9. COMMITTEES, PRINCIPAL COMMITTEES AND SUB-GROUPS.....</b>	<b>19</b>
<b>9.1 Committees and Principal Committees .....</b>	<b>19</b>
<b>9.2 Sub-Groups.....</b>	<b>20</b>
<i>9.2.1 Task Forces, Working Groups and Project Groups .....</i>	<i>20</i>
<i>9.2.2 National and Regional Task Forces and Working Groups .....</i>	<i>20</i>
<b>9.3 The relationship between the Committees and the Board .....</b>	<b>21</b>
<b>9.4 The relationship between the Committees and Sub-Groups vis-a-vis the Board .....</b>	<b>21</b>
<b>9.5 Board oversight of national and regional Sub-Groups .....</b>	<b>21</b>
<b>10. DECISION-MAKING PRACTICES IN COMMITTEES AND SUB-GROUPS.....</b>	<b>22</b>
<b>10.1 Consensus .....</b>	<b>22</b>
<b>10.2 Terms of Reference (ToR) and default rules for Committees and Sub-Groups.....</b>	<b>22</b>
<b>10.2 Dispute Resolution .....</b>	<b>23</b>
<b>11. FINANCIAL GOVERNANCE (SEE ANNEX 3).....</b>	<b>24</b>
<b>12. COMPLIANCE WITH ANTITRUST LAWS .....</b>	<b>24</b>
<b>13. BYE-LAWS BINDING .....</b>	<b>24</b>

**ANNEX 1. DEFINITIONS .....25**  
**ANNEX 2 EFET CORE PRINCIPLES .....28**  
**ANNEX 3 FINANCIAL GOVERNANCE.....35**  
**ANNEX 4 CONSENSUS IN EFET .....40**  
**ANNEX 5 EFET MEMBERSHIP APPLICATION FORM .....42**  
**ANNEX 6 ELECTED BOARD MEMBER CANDIDACY DECLARATION.....45**

## **Preamble**

WHEREAS EFET recognises the need to adapt its working structure in view of a larger and more diversified membership and changing requirements in the market, while preserving the consensual decision making process which lies at the core of EFET proven formula for success,

WHEREAS following the request of EFET Member Companies to conduct a review of governance, these Bye-Laws combine and consolidate successful established working principles and informal practices with changes recommended by the Board in order to enhance clarity and transparency of the governance process within EFET,

IT IS HEREBY RESOLVED to establish the governance of EFET on the following premises:

## **Bye-Laws:**

### **1. Introduction**

The European Federation of Energy Traders (EFET), established on 22 April 1999, is a foundation (“Stichting”) governed by Dutch law, The constitution of EFET is set out in the Statutes, which constitute part of the Foundation Act (“Oprichtingsakte”), executed in the obligatory form of a notarial deed.

These Bye-Laws shall constitute regulations within the meaning of Article 11 of the Statutes, which shall not be altered, amended or repealed except by resolution of the General Meeting upon referral of the Board. At no time shall these Bye-Laws override the Statutes, and in the event of conflict, the latter will prevail. The Bye-Laws shall be interpreted in accordance with the laws of the Netherlands.

In addition to the provisions in the Statutes, the Board has developed an array of principles and informal practices, which together comprise the constitutional rules. These principles and practices exist partly in writing. For example, current rules are to be found in the Vision, the Statement of Purpose and Principles of Good Conduct, in Committee and Sub-Group rules and in Board meeting Action and Decision lists. These rules are complemented by customary practices of the Board, the Secretary General, Committees and Sub-Groups.

In the spirit of transparency and good governance, consultation documents on governance reform are published in the members’ section of the Website.

## **2. Definitions of terms used in the Bye-Laws**

Unless the context otherwise requires, terms and definitions set forth in Annex 1 of the Bye-Laws shall apply to the construction of the Bye-Laws. References to one gender shall include the other.

## **3. Vision**

We foresee energy markets throughout Europe and beyond, in which wholesale traders are enabled efficiently to intermediate in the electricity and gas and related commodity value chains, thereby optimising supply and demand over the long term, enhancing security of supply and integrating renewable energy sources to the overall benefit of the economy and of society.

## **4. Statement of Purpose**

EFET promotes and facilitates European energy trading in open, transparent, and liquid wholesale markets unhindered by national borders or irrational obstacles.

## **5. Statement of Activities**

EFET aims to improve the operation of European wholesale energy markets and to enhance the performance of commodity traders and their support functions in those markets. EFET strives to reinforce the markets' functionality and facilitate better liquidity and transparency.

EFET strives to reach its aims in particular by:

- Advocating policies and regulatory measures, which allow electricity, CO2 emissions and gas trading to develop in parallel, and which minimise obstacles to trading in related instruments and products, including futures and forwards, other commodity derivatives, and renewable energy certificates;
- Encouraging sound and viable risk management practices, responsible corporate governance and proper accounting among energy traders;
- Providing standard solutions to wholesale energy transaction processes, such as contracting and electronic data exchange with the aim of maximizing the potential for wholesale market liquidity and reducing market participants' costs of operations;
- Participating in the consultation about the present and future regulation of the energy markets by offering know-how to national and international regulatory bodies and policy makers.

## **6. Principles**

EFET has adopted the following Core Principles and Principles of Good Conduct and Operational Principles.

### **6.1 Core Principles**

The Core Principles underlying the Vision and underpinning the design of the European energy market are described in Annex 2.

The Core Principles provide high-level guidance on the agreed direction of EFET to energy market design, the organisation of the liberalised power and gas sectors in Europe, energy policy and related policy issues, and the regulation of network operators, energy exchanges and energy market participants.

The Core Principles can be changed by a resolution of the Board. The Board shall refer the changes to the Core Principles for confirmation by the Regular Member Companies at the next scheduled General Meeting (or alternatively put for electronic vote of Regular Member Companies) in accordance with Bye-Law 7.7. The changes shall cease to have effect if not so confirmed at the General Meeting.

### **6.2 Principles of Good Conduct**

Wholesale trading occupies a pivotal position in the energy value chain, as it brings supply and demand together in commodities that are critical to the European economy and to European society. As a consequence, a general responsibility on the part of traders to contribute to the proper functioning and sustainability of energy and related product markets across the continent is understood. It is our intention that companies affiliated to EFET should adhere in their energy trading business to the highest standards of probity, honesty and fair dealing. These standards should be applied throughout a trading unit's front, middle and back offices and professional or support functions. They must also fit seamlessly with any governance arrangements or ethical guidance in force in other corporate units or relevant affiliated companies. We expect such standards to be built around the "10 Pillars" set out below (which constitute part of the Membership Application Form in Annex 5).

Companies engaged in trading in energy markets will:

- 1.** Respect free and fair competition as the basis for trading energy.
- 2.** Not engage in any activities which would amount to market abuse, market manipulation or fraud, nor relay information known or strongly suspected to be false or misleading.
- 3.** Deal with each other in accordance with established market practices and the standards expected of professional market counterparties.

4. Deal with customers fairly and with integrity and manage any conflicts of interest that may arise appropriately.
5. Organise their energy trading business effectively, respecting appropriate segregation of staff duties, and exercise diligent control over trading functions.
6. Establish effective risk management policies and control procedures governing the key risks managed by their energy trading functions.
7. Establish compliance policies setting out the company's procedures for fulfilling all legal and regulatory obligations and any related corporate governance rules relating to their energy trading functions.
8. Ensure that their traders are suitably qualified and properly supervised to carry out their duties, including where appropriate to have taken relevant industry examinations.
9. Prohibit their employees from giving or receiving bribes and from indulging in other corrupt behaviour in all circumstances; and establish policies governing gifts and hospitality, highlighting acceptable and unacceptable practices.
10. Maintain accounts related to trading transactions and risk books in accordance with relevant accounting standards, and respecting normal audit practices.

### 6.3 Operational Principles

- a. Consensus is the main basis for decisions within all Committees and Sub-Groups. The process for reaching a Consensus is described in Bye-Law 10.1 and complemented by the provisions attached as Annex 4;
- b. EFET empowers talented and active Member Company representatives with good ideas to undertake activities conceived to help reach EFET objectives;
- c. EFET strives for a fair and balanced consideration of the interests of Member Companies, to the extent they are consistent with the overall Vision, Statement of Purpose and Core Principles, and bearing in mind any limiting external circumstances or countervailing factors;
- d. EFET supports result-oriented, non-bureaucratic methods and uses common sense approaches;

- e. EFET provides to its Member Companies an open forum for discussion, where there should prevail respect for each other's opinions and a constructive attitude on the part of all involved.

## **7. Membership**

### **7.1 Categories of Member Companies**

The following categories of membership shall exist in EFET:

#### **7.1.1 Regular Member Companies**

Regular Member Companies are entitled to a high degree of involvement and enjoy the following rights:

1. To attend meetings of Committees, Task Forces and Working Groups, and receive information and documents related to their work;
2. To be involved in any decision-making process of Committees, Task Forces and Working Groups where the Member Company is a regular participant;
3. To access the members' section of the Website;
4. To vote in Board elections;
5. To be involved in any decision-making process at a General Meeting;
6. To be entitled to acquire EFET legal opinions.

#### **7.1.2 Associate Member Companies**

Associate Member Companies are entitled to a lesser degree of involvement in EFET activities. Associate Member Companies mainly have access to information about EFET activities. Associate Member Companies enjoy the following rights:

1. To receive information about EFET actions and decisions and copies of Action and Decision Lists of the Committees and Working Groups in which they have expressed an interest;
2. To be included in the cc mailing list of any Committee, Task Force or Working Group and to access electronic data and draft documents circulated by it, at the discretion of the Board in consultation with the Chair of the Committee or Working Group in question;
3. To access the members' section of the Website;
4. To be entitled to acquire EFET legal opinions;

5. To attend the annual General Meeting, subject to not participating in any decision or vote, and/or to attend other EFET meetings as an occasional guest on the invitation of the Chair of a Committee, Task Force or Working Group.

### **7.1.3 Subscriber Member Companies**

Subscriber Member Companies are those who do not participate in EFET activities, but who are granted access to EFET legal opinions. Subscriber Member Companies are only entitled to buy legal opinions.

### **7.1.4 Honorary Members**

Honorary Members shall be persons whom EFET specially desire to honour in consideration of outstanding contributions or exceptional service rendered by them in the furtherance of the purposes and objectives of EFET. The Board Members and Member Companies can nominate suitable individuals to be elected as Honorary Members. The Board shall have the authority to elect and remove an Honorary Member by a 2/3 majority of the vote of the Board. The Board appoints Honorary Members. In the spirit of transparency, such appointments should be notified to the Member Companies present at the annual General Meeting.

Honorary Members may attend and participate in regular and special meetings of EFET upon invitation, but shall be ineligible to vote. Honorary Members shall be exempt from the payment of any annual dues.

## **7.2 Separate membership for members of a corporate group**

For the avoidance of doubt, any subsidiary, affiliate or branch of a Regular or Associate Member Company engaged in wholesale energy market intermediation shall be required to apply separately for EFET membership at all times, unless all of the following three conditions are fulfilled:

1. The relevant market intermediation is carried out by two entities within the same group, one of which is a 100% owned subsidiary of the other, or both of which are 100% owned directly or indirectly by the ultimate parent company of that group;
2. The two entities are actively engaged in market intermediation in the same or directly contiguous territories; and
3. The two entities are engaged in trading the same range of commodities and products, rather than one or both of them being responsible separately for any part of the traded portfolio of the group.

### 7.3 Membership application and obligations

Companies wishing to become Member Companies of EFET must submit a completed application form, currently the form set out in Annex 5, which sets out several undertakings. A candidate Member Company must declare that:

1. It actively supports the principles of an open energy market and competition throughout Europe;
2. It acts as a trader on own account on the European energy market and/or provides portfolio services to its customers;
3. It adheres to the Principles of Good Conduct;
4. It will actively support the work of EFET.

### 7.4 Participation in Modules

Besides the membership categories referred to in Bye-Law 7.3 above, there are Modules, in which Member Companies can participate, and which give them the following additional rights and obligations, on payment of a Module subscription fee. There are currently 2 Modules, the Legal Module and the Back Office Group Module.

#### 7.4.1 Legal Module

The Legal Module consists of three categories of membership, namely full membership of the Legal Committee, associate membership of the Legal Committee and subscription membership of the Legal Module.

##### **Full membership of the Legal Committee (LC):**

- grants unlimited access to the documentation on the legal pages [of the Website], including all legal opinions commissioned and updated by EFET for most of the European Union jurisdictions and a number of other documents relevant for legal risk management;
- entitles Full LC members (whether representatives or alternates) to attend and vote at any LC Committee or Sub-Group meetings, to participate in the formation and work of LC Sub-Groups at any time, and to make recommendations on current and future priorities for EFET legal activities;
- obliges every Full LC member to regularly contribute to the activities of the LC, e.g. by taking at least one review of a legal opinion per year and/or participating in at least one Sub-Group per year; failure to contribute to the work of the Legal Committee on a continuous basis will result in a request to the company in question to become an Associate member of the LC.

#### **Associate membership of the Legal Committee:**

- grants unlimited access to the documentation on the legal pages [of the Website], including all legal opinions commissioned and updated by EFET for most of the European Union jurisdictions and a number of other documents relevant for legal risk management;
- entitles Associate LC members to attend one LC meeting per year as a guest and to request participation in a LC Sub-Group meeting as a guest. Associate members have no voting rights;
- entitles Associate LC members to remain on the mailing list of the LC.

#### **Subscription membership of the Legal Module:**

Subscription members are entitled to purchase the legal opinions made available to Full and Associate LC Members, but are excluded from all LC activities such as Committee and Sub-Group meetings, voting, correspondence and briefings.

#### **7.4.2 The Back Office Group Module**

The Back Office Group Module has the objective of the optimisation of business processes across the European Energy Trading Industry and grants its participants the following benefits:

- the opportunity to nominate persons from their Back Office staff to participate in the Back Office Group and the related Sub-Groups;
- the opportunity to participate in and comment on the development of new activities and standards;
- the right to attend up to 3 meetings per year to meet Back Office Group colleagues.

#### **7.4.3 Any other future Module**

Other Modules may be set up at the discretion of the Board for special project or programme cost-sharing reasons or for other designated purposes in line with the Statement of Purpose. The Board will determine the rights and obligations of membership of each Module.

### **7.5 Membership cancellation**

7.5.1 A Member Company may cancel its annual membership by delivering a notice of cancellation by registered mail to EFET's registered office. The

cancellation shall take effect for the membership year subsequent to the date of receipt of the notice at the EFET office and all dues for the current year will remain payable.

7.5.2 The Board are entitled to terminate the membership of any Member Company at any time and with immediate effect by Board resolution that it is in the best interests of EFET that such membership be terminated.

7.5.3 The Board decision to terminate a membership is final. However the Board may only terminate the membership of a Member if the Member has been given at least 21 days' notice in writing of the Board meeting at which the resolution will be proposed and the reasons why it is proposed, and if the Member is permitted to send to make representations to the meeting. The Board notice shall not be necessary for the purpose of Bye-law 7.5.5 (c).

7.5.4 As a preliminary measure, the Board may suspend a Member Company's membership, particularly in circumstances where the Board considers that further investigation or clarification is required.

7.5.5 Despite the generality of the foregoing, Member Companies should expect the following non-exhaustive list of circumstances to result in suspension and/or termination of membership:

- a. Failure to pay annual membership fees;
- b. Failure to observe the Principles of Good Conduct and applicable anti-trust laws;
- c. Suspected or actual illegal, criminal or other activity which could bring the Member Company, and by association EFET, into disrepute;
- d. Obstruction or failure to support the work of EFET in line with the Core Principles.

7.5.6 Unless otherwise determined by the Board, an expelled Member Company can reapply for EFET membership the following year provided the breaches which led to termination of membership have been rectified and such company continues to meet the qualifications for EFET membership. The Board shall consider any such application at a Board meeting before any action shall be taken on that application, and shall either grant or refuse the application.

## **7.6 Fees**

7.6.1 The annual membership fees applicable to the different types of Member Company are set each year by the Board.

7.6.2 The fees for participation in the modules referred to in Bye-Law 7.4 above are set annually by the members of the Modules, subject to approval by the Board.

7.6.3 Regardless of membership category, EFET membership will be automatically renewed for the following year unless a notification of membership termination is received at the EFET registered office by registered mail by the end of the financial year.

## 7.7 Referral of decisions to Regular Member Companies

The Board shall refer the following matters to a General Meeting of Regular Member Companies (or alternatively to an electronic vote of Regular Member Companies) for decision:

1. Changes to the Core Principles;
2. Changes to the Bye-Laws, excluding Annexes;
3. Changes to the Vision or Statement of Purpose.

## 8. Board composition, role of Board members, elections and co-options

### 8.1 Composition and duties

#### 8.1.1. *Balanced representation*

The objective of elections and co-options of persons as Board Members is to achieve a composition of the Board which:

- represents fairly the overall spread of Member Companies, both in terms of geographical coverage and the range of energy products that are traded;
- amounts to a balanced team of constructive, consensus-oriented, wise and active individuals, with complementary skills and professional networks, varied trading business and energy sector experience, relevant market knowledge and a good understanding of EFET activities.

Balanced representation in the Board must be pursued. Balanced representation means a balance of experience in different types of energy trading business and between geographical markets from across the spectrum of the Member Companies, in both cases bearing in mind the degree of maturity and liquidity of the wholesale market in a particular commodity, contract or region.

Without prejudice to the provisions of Article 5 of EFET Statutes, the total number of Board Members shall consist of up to nineteen (19) Members to ensure reasonable representation of types of market participant:

- **eleven (11) voting Board Members** representing Regular Member Companies and elected by the General Meeting;

- **up to eight (8) Board Members co-opted by the Board** by virtue of the key positions they hold within the organisation and/or special expertise, including normally (unless they are already elected Board Members) the Chairman, the Secretary General, the Treasurer, the Chair of the Electricity Committee, the Chair of the Gas Committee, the Chair of the Legal Committee, the Chair of the Business Process Standardization Committee and the Chair of EFET Deutschland as elected by EFET Deutschland Members.

The Board is free to co-opt Board Members in either a voting or non-voting capacity, provided that co-opted Board Members who are contracted to and remunerated by EFET in an executive capacity shall not be entitled to vote at meetings of the Board.

No Regular Member Company shall be entitled to be represented by more than one person on the Board at any one time, whether in elected or co-opted capacity, unless foreseen by transitional arrangements as stipulated in Bye-Law 8.1.4.

### **8.1.2 Nominations and eligibility for appointment to the Board**

All candidates standing for Board shall meet the following requirements:

- must be natural persons employed at senior management level in energy trading by a Regular Member Company in good standing, and any such person must be nominated with the consent of such a company;
- must demonstrate personal contributions and specific accomplishments for EFET and/or capacity to provide special skills and depth of experience to the Board.

Any person standing for election to the Board must submit the Elected Board member candidacy declaration (Annex 6), present themselves at the General Meeting and declare:

- that consensus based decision-making should be maintained;
- that he/she will vote in the interest of EFET and all Member Companies;
- that he/she agrees with the Core Principles;
- that he/she will comply with the Statutes and these Bye-Laws at all times in performing or exercising his/her functions,

to ensure balance and fair representation, every year the Secretary General shall invite nominations from among Regular Member Companies for candidates to fill vacant Board seats. The Board has a responsibility to consider nominations from Regular Member Companies and discretion to recommend replacement of any particular missing trading business type or missing geographical coverage.

### **8.1.3 Role of Board members**

Board Members are expected to reach decisions in the best overall interest of EFET, rather than in the interest of their employers, bearing in mind the Core Principles, the Principles of Good Conduct and other undertakings given by Member Companies, and to avoid conflicts of personal or corporate interest.

Individual persons working for Regular Member Companies, not the Companies themselves, are eligible to be nominated for election. Those persons who are elected by the Regular Member Companies as Board Members then serve on the Board in their individual capacity.

### **8.1.4 Transitional arrangements**

As a transitional measure, for the election to be held at the General Meeting in [November 2011]

- Six Board members to be elected in November (including newly vacant or newly created seats for elected members) will serve for an initial term of two years, and will then be eligible to stand for two further terms of two years;
- Five existing Board members will offer themselves for re-election next year, and will next year be eligible to stand for two further terms of two years.

Board Membership shall be limited to one person per company, but in exceptional cases (e.g. in the event of an acquisition or merger, in deserving cases) the Board may decide to allow for transitional arrangements to ensure continuity of EFET management until the next regular Board elections.

The transition from the current to the new EFET governance arrangements shall be based on transition decisions already made by the Board, which envisage extended timeline for the nomination process (i)- (iii) as described in Bye-law 8.2.3.

## **8.2 Procedure and conditions for elections**

### **8.2.1 General Meeting**

The duties of the General Meeting shall be:

- (i) To elect Board Members;
- (ii) To approve any changes in the Bye-laws, excluding the Annexes, in accordance with Bye-Law 7.7;
- (iii) To approve any changes to the Core Principles in accordance with Bye-Law 7.7;
- (iv). To approve any changes to the Vision or Statement of Purpose.

A Board election is held every year at a General Meeting. The date and venue of the General Meeting where any Board election takes place must be notified by electronic communication to Regular Member Companies at least three months in advance.

### **8.2.2 Right to vote**

As set out in Bye-Law 7.1, only delegates of Regular Member Companies who attend a General Meeting convened for that purpose, are eligible to vote. Associate and Subscriber Member Companies have no voting rights.

Each Regular Member Company delegate attending the General Meeting where the election takes place has the right to one vote, which can be exercised, provided the membership fees of such Member Company have been settled in their entirety. Regular Member Companies unable to send a delegate to the relevant General Meeting may nominate a proxy by written notice to the Secretary General to cast their votes. Delinquent Member Companies shall not be eligible to vote or nominate a representative to stand for election.

Except as stated in Bye-Law 8.1.4 appointments of elected Board Members are for two years and duly elected Board Members will be eligible for two further terms of two years.

### **8.2.3 Elected Board Members**

#### **Rotating Board seats**

There will be rotating annual elections, so that normally five or six elected Board Members of the Board stand for re-election each year (if they remain willing and eligible to serve).

The number of Board vacancies for elected members to be filled at each annual General Meeting is therefore five or six plus any casual vacancies that have arisen due to other elected Board seats becoming vacant during the year preceding the relevant General Meeting.

#### **Nomination process**

- (i) Ninety (90) calendar days prior to the annual Board election the Secretary General will solicit suggestions and nominations from all Regular Member Companies for persons who would be suitable for election to vacant Board seats.
- (ii) The Board will consider the candidates suggested by electronic communication from Regular Member Companies to the Secretary General in the period of sixty (60) to thirty (30) calendar days before the election and take them into account when assembling a slate of candidates.
- (iii) The Board will review all completed candidates' declaration forms to validate the declarations, and to verify the eligibility and assess the suitability of proposed candidates. The Board will present by electronic communication to Regular Member Companies a slate of recommended candidates for election including their biographical information, at least twenty five (25) calendar

days prior to the General Meeting where the election is to take place, taking into consideration both skills and experiences according to Bye-Law 8.1.2 and the need for balanced representation according to Bye-Law 8.1.1.

- (iv) The Regular Member Companies may nominate alternative candidates through the entire process described in these Bye-Laws, whose declaration forms may be submitted by electronic communication to the Secretary General no later than ten (10) working days in advance of the date of the General Meeting. Provided such alternative candidates meet eligibility requirements, they shall stand for election together with the slate candidates.

### **Election procedure**

The Board members receiving most votes shall fill the vacancies, subject to election at the General Meeting. A quorum of forty (40 %) of Regular Member Companies, represented in person or by proxy, is required for a valid Meeting. In case both the Chairman and the Secretary General determine that the Regular Members present at the General Meeting are fairly represented, they shall have the discretion to reduce the quorum in that meeting to one third (1/3) of the Regular Member Companies. In exceptional cases, the Secretary General shall hold a follow-up extraordinary General Meeting of Regular Member Companies or an electronic vote.

The Board members shall be elected according to the number of votes cast for them the Regular Member Companies. Each Regular Member Company shall be entitled to cast as many votes as there are vacancies for elected Board Members on that occasion. Any Regular Member Company is allowed to vote by proxy, provided a proxy form is requested from the Secretary General and delivered before the General Meeting. The Regular Member Company may appoint the chairman of the General Meeting or any third party as its proxy.

The chairman of the General Meeting shall manage the election and report the results to the Member Companies. Voting by acclamation is accepted if the slate of candidates proposed by the Board is unopposed.

If the slate of candidates is opposed voting shall be held by a secret ballot.

If insufficient number of candidates is elected for any reason, or failing a quorum, the Secretary General has discretion to arrange an electronic vote. In that case ballot papers are to be distributed by e-mail to all Regular Member Companies together with instructions to guide them through the voting process.

### **8.3 Co-options**

The Board Members elected by the Regular Member Companies may co-opt, by a majority vote, up to eight (8) additional Board Members. They should normally co-opt the following persons fulfilling essential functions in EFET, namely the Chairman, the Secretary General, the Treasurer, the Chair of the Electricity Committee, the Chair of the Gas Committee, the Chair of the Legal Committee, the Chair of the Business Process Standardization Committee and the Chair of EFET Deutschland (unless any of these happens already to be an elected Board Member).. They may also co-opt Board Members to provide specific areas of expertise otherwise not available from

the elected Board and to represent important types of Member Company which are otherwise not represented on the Board.

A person co-opted to serve on the Board, whether in a remunerated capacity or not, need not necessarily work for a Member Company, but must be engaged in a commercial or professional activity of relevance to the Vision and Statement of Purpose.

#### **Voting by co-opted Board members**

The Board is free to co-opt Board Members in either a voting or non-voting capacity, provided that co-opted Board Members who are contracted to and remunerated by EFET in an executive capacity shall not be entitled to vote at meetings of the Board.

### **8.4 Procedure and conditions for co-options**

The elected Board Members shall decide from time to time whom to co-opt to the Board for which purposes, subject to the provisions of Bye-Law 8.3. After each annual election any existing co-opted Board Members shall retire and be available for reappointment by the Board Members elected by the Regular Member Companies.

### **8.5 Duration of service of Board members**

The normal and maximum duration of service of each Board member<sup>1</sup>:

- Elected Board members serve for a two year term, extendible by up to two further terms of the same length if approved by the Regular Member Companies at the General Meeting, after which a Board member must step down, subject to a former Board Member being eligible to seek re-election after an interval of one year. A member appointed to fill a Board position as a result of a casual vacancy shall serve the remainder of the unexpired term of his or her predecessor and is eligible to stand for election for two further terms.
- Co-opted Board members serve until the Board meeting following the annual General Meeting when they are available for reappointment by the Board Members elected by the Regular Member Companies.

## **9. Committees, Principal Committees and Sub-Groups**

### **9.1 Committees and Principal Committees**

The Board has authority to establish Committees, a body to which Regular Member Companies may appoint delegates and to which specific duties are delegated directly

---

<sup>1</sup> There are exceptions to the obligation to stand down after three terms of two years for the Secretary-General, for the persons acting as Chairs of Principal Committees if they are remunerated for their services by EFET, and for the Chair of EFET Deutschland. If the Board elects a Chair or a Vice-Chair, who has been already on the Board for more than one year, then he should be eligible to stay on the Board for a fourth term of two years in their capacity of Chair, should the rest of the Board so wish.

by the Board. The Committees are responsible for the broader areas of EFET work on a pan-European basis.

The Board appoints the Chair of each Committee taking into account the wishes of persons engaged in the work of the relevant Committee

A Committee may be designated as a Principal Committee by the Board, in which case it is expected that the Chairman of that Committee will normally be co-opted to the Board in accordance with Bye-Law 8.3.

The Principal Committees are currently the Electricity Committee, the Gas Committee, the Legal Committee and the Business Process Standardization Committee.

The Committees are intended to remain active over a long period of time and can delegate their work to different Task Forces, Working Groups and Project Groups, which they oversee.

## **9.2 Sub-Groups**

The term Sub-Groups shall jointly refer to and shall include Task Forces (TFs), Working Groups (WGs) and Project Groups, with the last mentioned normally being subordinate to a Committee, Task Force or Working Group operating at national and regional level.

### **9.2.1 Task Forces, Working Groups and Project Groups**

TFs and WGs are set up for dealing with national and regional markets and for specialised products, contracts and issues. A Project Group is a group established under supervision of the relevant Committee, TF or WG for a short period of time only, which ceases to exist as soon as its mission and objectives are accomplished.

While the activities of these Sub-Groups are normally coordinated and overseen by the relevant Committee, the Board may also decide to set up a TF or WG, which reports directly to the Board.

If a Member Company wishes to set up a new Sub-Group, a proposal can be made to the Secretary General. When there is enough interest from other Member Companies in the proposed activity of the Sub-Group, Terms of Reference must be drawn up and referred either to the supervising Committee or to the Board, as appropriate. If any such Sub-Group is not to be supervised and guided by a Committee, formal approval by the Board of its Terms of Reference is required.

### **9.2.2 National and Regional Task Forces and Working Groups**

EFET foresees organising Task Forces and Working Groups which operate at regional and national level. EFET work can equally be performed across Europe irrespective of geographical variations through the establishment of relevant Task Forces and Working Groups.

At all times, responsibility for the activities and operation of national and regional Task Forces and Working Groups shall rest with the relevant Committee. In the event a dispute or contentious issue arises and where consensus cannot be reached, the members of the national and/or regional Task Force or Working Group in question shall refer such dispute or issue to the relevant Committee and, if such Committee fails to resolve it, to the Board.

### **9.3 The relationship between the Committees and the Board**

Committees take their powers from the Board<sup>2</sup>. The Board appoints the Chair of each Committee and the members of the Committee can appoint the Vice Chair or Vice Chairs.

The Board is responsible for the creation, composition, scope of activity and powers of each such Committee and, by extension, the Task Forces, Working Groups or Project Groups. Nonetheless, the Board is obliged actively to engage delegates of Member Companies in relevant Committees or Sub-Groups or in a dialogue about establishing such Committees or Sub-Groups and to consider the opinions and preferences of such delegates in a consultative process in a transparent manner.

### **9.4 The relationship between the Committees and Sub-Groups vis-a-vis the Board**

The Task Forces and Working Groups and Project Groups of Committees are subordinate and accountable to the Committees in the same manner as the Committees are subordinate and accountable to the Board.

The role and the limits of the decision making powers of Task Forces, Working Groups and Project Groups are established through their relationship with the relevant Committees and/or the Board.

### **9.5 Board oversight of national and regional Sub-Groups**

The relevant Committees are primarily responsible for supervising and coordinating national and regional Sub-Groups subject to occasional review and enquiry by the Board. Day-to-day oversight of any issues that arise in a Sub-Group working on regional or national issues are dealt with by the Chair of the Sub-Group, and the Chair of the responsible Committee.

To facilitate periodic review and enquiry, the Board may appoint a member of the Board as a “regional sponsor” to provide support and peer review to Task Force or Working Group Chairs, Vice-chairs and Secretaries and to report to the Board on progress of regional issues.

---

<sup>2</sup> It follows that according to the statutes the Board enjoys a discretion to wind up a committee or change its terms of reference.

## **10. Decision-making practices in Committees and Sub-Groups**

### **10.1 Consensus**

EFET meetings shall be run on a consensus model. The desired culture and process for Consensus to come about within EFET is described in Annex 4.

The Chairs (and Vice-Chairs, if applicable) of Committees and Sub-Groups shall be charged with responsibility to assess whether consensus can be achieved, taking into consideration the minority views and interests, and hold voting to resolve any urgent issues, where such consensus cannot be found. Committees and other groups are expected at all times to strive for consensus, and are requested to define voting rules as part of their Terms of Reference for any decisions which may not be reached by consensus principle.

An important role for the chairs of Committees and Sub-Groups is to judge when to push through a decision quickly and when to wait in order to build greater Consensus. The Chairs and the Committee or Sub-Group may however not be taken hostage by unreasonable participants in the meeting and should be able to move forward if there is a clear majority, after the parties have been heard and the arguments discussed, a fair solution has been proposed and a vote has taken place. Consensus does not mean that everybody has a veto right. With simple majority voting it is about the numbers, while with Consensus it is about the quality of the arguments and intelligent solutions.

### **10.2 Terms of Reference (ToR) and default rules for Committees and Sub-Groups**

Each Committee and Sub-Group should have Terms of Reference. The Terms of Reference may include any additional rules adopted by the Committee or Sub-Group which go beyond the minimum requirements set out by default rules, provided these are reasonable, functional and consistent with the Core Principles, the Statutes and the Bye-laws.

In the absence of the approved Terms of Reference or further guidance from the Board or the relevant Committee, the indicative content of rules should be the following:

- i. Aim or mission statement about objectives of a Committee or a Sub-Group;
- ii. Short description with background information on the Committee or Sub-Group, also confirming that current and future rules of EFET will apply;
- iii. The procedures for calling and conducting meetings, including any rules on participation (bearing in mind the EFET working principle that participation should generally be open to representatives of all Regular Member Companies);

- iv. Voting procedures: basic principle is Consensus; simple decisions 51%; more complex and/or controversial decisions default a majority of 66% is needed;
- v. Action & Decision Lists: of each meeting Action & Decision Lists need to be made. After approval of an Action & Decision List, in the subsequent meeting, this A&D List needs to be published in the members section of the Website;
- vi. Additional working procedures: e.g. the ability of the chair to invite guests if required to meet the group's objectives. For potential Member Companies guests can be invited to one meeting (twice if guests are different persons from same company).

ToR's and actual rules must be approved by the Board or by the relevant Committee Chair acting on behalf of the Board.

## 10.2 Dispute Resolution

The Chairs of Committees and of Sub-Groups should refer to the Board in a timely manner any pressing issue on which they fail to establish a Consensus in the relevant Committee or Sub-Group, and any decision which they feel may be inconsistent with the Core Principles or with a published position of EFET.

Chairs, Vice-Chairs and secretaries of all Sub-Groups are normally chosen by Consensus within each group and approved by the relevant Committee or the Board. For example, the relevant Committee Chair must approve the Chair of any Sub-Group and in the case of disagreement about the leadership of a Sub-Group, may choose to refer that choice to the Board.

For decisions on questions of policy, regulation and market design, which fall to be taken in national and regional groups, the aim should be to achieve a Consensus in line with the Core Principles. Whilst majority voting should be applied in the absence of Consensus, the chairs must exercise care when implementing the results of a vote.

Where a conflict arises in a Sub-Group on particularly sensitive issues, it is prudent to consult with the Committee or the Board before implementing a 'close' result. In any case, special interests (for example those of a regionally or nationally dominant market participant) should not be allowed to block a decision that is supported by the majority and is in line with the Core Principles.

In the event of a dispute or disagreement between a Committee and the Board which cannot be resolved, the Board shall ask the Committee or the part of the Committee in dispute or disagreement to submit their reasoned opinion and supporting arguments in writing to the Board.

The Board will then consider these views and make its own determination and submit such determination with supporting reasons to the Committee, which shall be final and binding on the Committee.

If the Board shall not have materially accepted the views submitted to it, the Board shall send two Board Members to the next meeting of the Committee to present their determination so that the Committee fully understand the reasons for the determination.

Following such a Committee meeting the Board may but shall not be obliged to reconsider its decision

## **11. Financial Governance (see Annex 3)**

The EFET internal financial rules are described in detail in Annex 2. This Annex needs to be updated regularly to adapt to changing circumstances.

## **12. Compliance with Antitrust Laws**

Member Companies (whether current or prospective) confirm their long-standing commitment to fair and effective competition. Accordingly, each Member Company shall adhere to its antitrust compliance policy and shall counsel its representatives to act in a manner which does not violate any applicable state, federal or international antitrust laws and regulations. Each Member Company should, however, seek their own legal advice on any particular issues or concerns.

It is imperative that antitrust compliance policies of Member Companies shall apply to their activities, ensure proper conduct at all meetings, guide any information exchange and communications involving Member Companies participating in EFET work and activities.

EFET staff and persons contracted to EFET in an executive capacity shall be bound by internal EFET Anti-trust Compliance policy.

## **13. Bye-Laws binding**

All Member Companies and their representatives are bound by the Statutes and the Bye-Laws and are expected to be familiar with the Statutes and the Bye-Laws.

---

## **Annex 1. Definitions**

**Action and Decision List (A&D list)** - a mandatory meeting document prepared by a designated secretary which duly records the decisions made and the actions attributed in every meeting of the Board, a Committee or a Sub-Group.

**Affiliates** - the persons referred to as Affiliates (“Aangeslotene”) in the Statutes who in these Bye-Laws are referred to as Regular Member Companies.

**Annex** - an annex to the Bye-Laws.

**Associate Member Companies** - Associate Member Companies of EFET with the rights and obligations set out in Bye-Law 7.1. They are referred to as Associates in [older versions of] the Membership Application Form. Associate Member Companies are not Affiliates, since they have no role in electing Board Members, nor do they have any other status under the Statutes.

**Board** - the body of EFET, which is responsible for the attainment of the Vision and the Statement of Purpose, and is vested with the power to manage EFET and regulate its operations including amending the Statutes. The Board is composed of up to 19 Board Members, appointed in accordance with Bye-Law 8, either by means of election by Regular Member Companies in General Meeting or by co-option by the Board.

**Board Members** - the duly appointed members of the Board from time to time.

**Bye-Laws** - these Bye-Laws or any of them as amended from time to time, and a reference to any **Bye-Law** shall be construed accordingly.

**Chairman** - the duly appointed Chairman of the Board from time to time.

**Committee** – a body to which Regular Member Companies may appoint delegates and to which specific duties are delegated directly by the Board. Committees may be designated as Principal Committees by the Board, in which case it is expected that the Chairman of that Committee will be co-opted to the Board. Each Committee may in turn delegate duties to a Sub-Group reporting to it.

**Consensus** - a cornerstone principle underlying the decision-making process and the overall functioning of EFET. The Consensus process is described in Bye-Law 10.1 and Annex 4.

**Core Principles** - the core principles for the functioning of energy markets adopted by EFET from time to time, derived from the Vision and from the Statement of Purpose and consisting currently of the Core Principles set out in Annex 3 as described in Bye-Law 6.1.

**EFET** - the foundation (“Stichting”) known as “The European Federation of Energy Traders”.

**EFET Deutschland** – EFET Deutschland (Verband Deutscher Gas- und Stromhändler e.V.) being a separate organization which shares the same objectives as EFET and works closely together with EFET in relation to the German energy market and shares some Member Companies.

**General Meeting** - a meeting of the Regular Member Companies duly convened and held in accordance with Bye-Law 8 and the Statutes. General Meetings are held annually to appoint Board Members, on which occasion Associate Member Companies are also invited.

**Honorary Members** - persons appointed as Honorary Members with the rights and obligations set out in Bye-Law 7.1.4.

**Member Companies** - currently mean Regular Member Companies, Associate Member Companies and Subscriber Member Companies.

**Modules** - membership modules entitling Member Companies to additional rights as set out in Bye-Law 7.5. Currently there are two Modules, namely the Legal Module and the Back Office Group Module.

**Officers** – the Officers of EFET are the Chairman, the Secretary General and Treasurer as more particularly described in the Statutes.

**Operational Principles** – the Principles as set out in Bye-Law 6.3.

**Participants** - a term used in the [old version of the] EFET Membership Application Form meaning Regular Member Companies.

**Principal Committee** - a Committee designated as such by the Board, Currently there are four Principal Committees, namely the Electricity Committee, the Gas Committee, the Legal Committee and the Business Process Standardisation Committee. Each of the Principal Committees can further delegate specific duties to different Sub-Groups consisting of Task Forces, Working Groups and Project Groups. Additional Principal Committees can be established by the Board.

**Principles** – the Principles described in Bye-Law 6 namely the Core Principles, the Principles of Good Conduct and the Operational Principles.

**Principles of Good Conduct** - the standards of conduct set out in Bye-Law 6.2 and including “The 10 Pillars”, to which Member Companies agree to adhere.

**Project Group** - a body to which a specific task or project is delegated by a Committee or a Sub-Group.

**Regular Member Companies** - full voting Regular Member Companies of EFET with the rights and obligations set out in Bye-Law 7.1. The persons referred to as Affiliates (“Aangeslotene”) in the Statutes shall continue to have that status conferred on them by the Statutes, but in these Bye-Laws shall be referred to as Regular Member Companies. Regular Member Companies were also referred to as Participants in older versions of the EFET Membership Application Form set out in Annex 5.

**Secretary General** - the duly appointed Secretary General of EFET from time to time. The Secretary General is referred to as the Secretary in the Statutes.

**Statement of Activities** – the statement of activities of EFET set out in Bye-Law 5.

**Statement of Purpose** - the statement of purpose of EFET set out in Bye-Law 4.

**Statutes** - the constitutional document (“Statuten”) of EFET as contained in the Foundation Act (“Oprichtingsakte”) of EFET as a Foundation (“Stichting”) and as amended from time to time.

**Sub-Group** - a collective term for any Task Force, Working Group or Project Group to which specific duties are delegated by a Committee.

**Subscriber Member Companies** - Subscriber Member Companies of EFET with the rights set out in Bye-Law 7.1.3.

**Task Force** or **TF** - a body to which a regional function or defined area of work is delegated by the Board or a Committee.

**Terms of Reference** - the terms of reference for a Committee or a Sub-Group determined in accordance with Bye-Law 9.2.1.

**Treasurer** - the duly appointed Treasurer of EFET from time to time.

**Vice Chairman** - the duly appointed Vice Chairman (if any) of the Board from time to time.

**Vision** - the Vision of EFET set out in Bye-Law 3.

**Website** – the EFET website [www.efet.org](http://www.efet.org) and/or such other websites as EFET may establish from time to time.

**Working Group** or **WG**- a body to which a defined area of work is delegated by the Board or a Committee (to be distinguished from the term working committees (“werkcommissies”) used in the Statutes).

**“10 Pillars”** - The “10 Pillars” which form part of the Principles of Good Conduct and are set out in Bye-Law 6.2 and the Membership Application Form (set out in Annex 5).

## **Annex 2 EFET Core Principles**

### **EFET Core Principles for Energy Markets**

#### **1. Reminder: EFET Vision and Statement of Purpose**

In 2005 the Board agreed on a **Vision Statement**, which **describes the wider industry, economic and social context into which we foresaw energy trading fitting in future**, followed by a **Statement of Purpose**, which **points to the role of EFET in removing barriers to the activity of trading and improving the structure of underlying markets**.

The Vision and Statement of Purpose were published in the 2005 booklet “The Past and Future of European Energy Trading” and have been repeated unaltered in the short booklet marking our tenth anniversary, published in April 2009.

#### *Vision statement*

#### Vision

**We foresee energy markets throughout Europe, in which wholesale traders are enabled efficiently to intermediate in the electricity and gas and related commodity value chains, thereby optimising supply and demand over the long term, enhancing security of supply and integrating renewable energy sources to the overall benefit of the economy and of society**

#### *Statement of purpose and explanatory notes*

#### Purpose

**EFET promotes and facilitates European energy trading in open, transparent, and liquid wholesale markets unhindered by national borders or other irrational obstacles\***

#### \*EXPLANATION OF TERMS USED IN THE STATEMENT OF PURPOSE

EFET is a trade association for wholesale energy market participants across the value chain, who may also be engaged in production, supply, consumption or banking

Promoting and facilitating includes the elaboration of recommendations to energy policymakers and regulators and the development of contract and data exchange standards

European indicates a determination to remove cross-border as well as national barriers to the wholesale trading of energy

Energy means gas and electricity, but may also entail related commodities, financial derivatives, certificates and allowances

Trading refers to own account dealing and risk management services, utilising physical or financial contracts for large volumes

An open market allows access to transmission grids and customers for any qualified company, without bias as to nationality or degree of integration in energy services

In a transparent market information about infrastructure availability should be published for all market participants on a non-discriminatory basis

In a liquid market it is possible to trade substantial volumes without moving the market price significantly

A wholesale market brings together sellers and buyers for re-sale, whether they aim at managing financial risks, trading for profit or balancing a physical portfolio

**Markets which are unhindered by national borders or other obstacles can constitute eventually a true European internal market, where trading in energy commodities and related instruments is unimpeded by technical and legal barriers, economic or national distortions, poor management practices, industry discrimination or political lack of objectivity**

## 2. Energy market principles underlying the EFET Vision

This section sets out the core principles, which should underpin energy market design and should apply for the benefit of all *bona fide* trading entities irrespective, of their nationality, their wholesale business model and the location of their place of business.

### 2.1 Freedom to transact

In the interests of efficiency and liquidity, wholesale energy market participants should be allowed to decide how and where they carry out their activities. Energy trading should not be mandated to take place only on certain platforms, for example an exchange, or mandated to use additional services, for example clearing. Regulatory oversight of wholesale markets and transactions should be conducted in a manner not to discourage a voluntary ethical framework, not to deter new entrants to markets and not to impede commercial innovation.

### 2.2 Market access

Wholesale markets in all energy commodities and related products and services should be open to competition and intermediation.

### 2.3 Network access

Power and gas trading are impossible without third party access to transmission networks. Therefore transmission system operators (TSOs) must grant, and energy sector regulators must ensure, open access to transmission networks for electricity and gas on regulated terms which are objective, non-discriminatory and transparent.

### 2.4 Cross-border markets

The European single market in energy can only transcend national boundaries if trade in energy commodities is unimpeded by artificial barriers. TSOs must never prefer a transaction, which takes place only within their territory, compared with a transaction involving two or more territories.

There should be sufficient operational harmonisation between connected TSO systems to allow market zones to expand across national boundaries where this provides the best economic solution. TSOs should ensure that their operations and investments are conducted in a manner, which enables gas and power within standard quality specifications to be traded freely across all transmission systems in Europe.

### 2.5 Freedom from Licensing and Secondary Establishment

Wholesale trading activity cannot flourish in the face of undue administrative burdens. Wholesale market participants legally operating in one European nation and wishing to expand their activities to others should not incur undue cost nor have to cope with duplicative licensing or reporting obligations, in order to operate in another Member State. All national regulatory requirements subjecting energy trading to unnecessary bureaucratic intervention, such as the requirement to establish a corporate presence in a particular Member State or produce separate wholesale business accounts, before undertaking wholesale transactions there, should be abolished.

### 2.6 Transparency

All market participants need access to information about underlying supply and demand fundamentals to facilitate wholesale trading of power and gas on a level playing field. *Ex ante* information about the availability of infrastructure, real-time information on energy flows and *ex post* information about rates of utilisation should be published.

Plant outages that cause material changes in availability must be disclosed without undue delay and to all market participants at the same time.

Published information should be disaggregated down to a unit or line size above a material threshold. The level of materiality and other implementation issues must take account of physical and geopolitical differences between power and gas.

Expected levels of demand and actual consumption statistics must also be published promptly by TSOs, or other competent authorities in possession of them.

Likewise, traders need prompt access to reliable pre-trade data (orders and price quotes) and aggregated post-trade data (relating to products and volumes actually transacted, together with relevant prices and delivery times).

## 2.7 Liquidity

If sufficient numbers of market participants are to be attracted to intermediate in the supply chain and thereby create wholesale liquidity, they must have confidence in the existence of a level playing field. Such confidence will tend to develop once the fundamentals of market access, regulated network access, freedom to trade and transparency are in place.

## 2.8 Unbundling

To help ensure non-discriminatory decisions related to third party access, market rules and investment, businesses owning or operating high-voltage and high-pressure transmission assets must be separated from any affiliated or related energy production and/or supply business. The separation should occur in terms of legal structure, financial governance, management reporting and physical location of staff and offices. Ownership unbundling is the cleanest solution in this respect.

## 2.9 Market design and implementation of market rules

Energy market design is increasingly important, as the European single markets in power and gas approach completion. A durable design will be based on efficiency, objectivity, transparency and sustainability. A target model for this long-run design should be developed through timely and meaningful consultation of market participants and should fulfil requirements implicit in principles 2.1 – 2.8 above. Changes in market rules must allow market participants sufficient time to implement adjustments to underlying IT systems and back office processes.

## 2.10 Regulated retail tariffs

Government intervention to regulate energy tariffs is incompatible with the goal of a competitive EU energy market. Regulated or fixed prices for power and gas, starting with those applying to industrial or commercial consumers, should be phased out as quickly as possible.

### 2.11 Harmonisation and standardization

A pan-European market requires close international cooperation between transmission system operators, energy regulatory agencies and market operators. Therefore:

- National Regulatory regimes and tariff structures should be sufficiently harmonised to avoid creating different incentives on the transmission system operators of interconnected networks.
- Interoperability, collaboration, information sharing and standardised electronic data exchange between such operators and agencies would improve market integration.

Standard wholesale market contracts for physical transactions in energy products and common standards for the electronic exchange of data between parties to a wholesale energy market transaction help wholesale market efficiency. This is why EFET is active in both these aspects of standardization.

### 2.12 Integration of renewable energy in wholesale markets

A full optimisation of supply and demand will not be achievable in Europe in the future unless renewable energy sources (RES) are integrated into the internal energy market. For this reason, fixed production subsidies for RES electricity (RES-E) output (especially fixed feed-in tariff regimes) must be enhanced by mechanisms, which allow the integration of RES-E plant dispatch and of RES-E supplies into the market. As these processes must consider various national and international realities a fair migration path shall lead the way. Ideally a harmonised European mechanism would entail a RES-E supply quota, backed by tradable certificates, which are redeemed when renewable electricity is actually sold and consumed. The introduction of such instruments, in a manner and over a period of time which takes account of national and international realities, could lead to

- A lower overall cost in the EU of meeting RES-E consumption targets,
- More efficient overall energy pricing,
- Improved choices for customers, and
- A superior potential for equitable burden sharing between EU Member States.

### 2.13 Market-based balancing

The most efficient way to balance supply and demand is through market mechanisms. The users of transmission systems should have economic incentives to balance their inputs and outputs, or provide flexibility, through a cash-out mechanism that uses the prices from the local intraday balancing market. The users must be provided with both the information and the tools to balance their portfolios within the balancing period.

#### 2.14 Primary and secondary transmission capacity allocation

To promote efficient utilisation of production sources and to serve demand optimally, TSOs need to allocate the maximum available transmission capacity to the wholesale market. Primary allocation of transmission capacity should be based on auctions by TSOs over a range of timeframes, involving explicit sales of long and short maturity tradable transmission capacity rights.

Transparent auction procedures must be designed in consultation with market participants.

Secondary markets in transmission capacity rights should allow market participants to manage their transmission capacity portfolios, giving the possibility to split or combine contracts.

#### 2.15 Market integrity and financial regulation

As Europe's markets in power, gas and emission allowances mature and deepen, and as the number and value of wholesale transactions correspondingly escalate, the risk of market abuse becomes more material. Revisions to regulatory arrangements in the wake of the global financial crisis of 2008-9 should, however, be focused first on markets in those debt instruments and derivatives directly linked to credit default.

Regulators may legitimately request post-trade transaction data from energy market participants, but this will best be furnished initially from existing exchange, broker and MTF platforms. Such data can also be published in anonymous formats. The spread of electronic interchanges of transaction data in OTC markets may enable a European data repository for wholesale energy transactions to be established.

#### 2.16 Emissions trading

EU policymakers have determined that European nations will address climate change through the setting of GHG emission reduction targets, backed by a cap and trade market mechanism. In the light of this policy, auctions of carbon emission allowances must be conducted fairly, efficiently, transparently and objectively. Revenue maximisation must not be the aim of the process. The execution of auctions must be harmonized across all Member States.

#### 2.17 Ancillary services

Ancillary transmission network services are necessary for the efficient functioning and integration of wholesale markets in power and gas. These services should thus be provided by the transmission system operator in line with market participants' needs and subject to regulatory approval.

## 2.18 Gas Storage

Storage is an important service for gas traders. However, access to storage facilities is commercially available in most of Europe. Therefore storage facilities should not be regulated in a particular nation or region, unless a consistently applied EU-wide test demonstrates that there is insufficient competition in the relevant geographic market. Where gas storage access does need to be regulated there must be clear rules to ensure transparency and non-discrimination.

---

## Annex 3 Financial Governance

<b>Draft EFET Internal Controls:</b>			
<b>Revision History</b>			
Version	Date	Changes	Author of changes
Version 0.1	25/01/2006	Early draft with template	Bart Pycke + Jan Haizmann
Version 0.2	10/02/2006	Internal control	Jan van Aken
Version 0.3	21/08/2006	Update	Jan van Aken
Version 0.4	21/08/2006	Update	Bart Pycke
Version 0.5	11/09/2006	Update	Suggestions Juan Alba
Version 1.0	28/08/2007	Update	Jan van Aken
Version 1.1	07/11/2007	Update	Jan van Aken
Version 1.2	08/11/2007	Update	Bart Pycke
Version 1.3	01/12/2009	Update	Jan van Aken

<b>CONTEXT AND OVERVIEW.....</b>	<b>36</b>
<b>DETAILS AND RESPONSIBLE INDIVIDUALS.....</b>	<b>36</b>
<b>Annual Budget and Financial control (See also Article 15 of the EFET Statutes):.....</b>	<b>36</b>
<b>EFET Funds (Article 3 of EFET Statutes) provides as follows:.....</b>	<b>36</b>
<b>Membership Fees .....</b>	<b>36</b>
<b>Other Revenue .....</b>	<b>37</b>
<b>Personnel, Contractors, Consultants and Freelance Staff .....</b>	<b>37</b>
<b>EFET Remuneration and Finance Committee .....</b>	<b>37</b>
<b>Office and Travel Expenses.....</b>	<b>37</b>
<b>Shareholding .....</b>	<b>38</b>
<b>Bank Account.....</b>	<b>38</b>
<b>INVOICING, PAYMENT AND ACCOUNTING.....</b>	<b>38</b>
<b>Invoicing.....</b>	<b>38</b>
<b>Payment.....</b>	<b>38</b>
<b>Accounting .....</b>	<b>39</b>

## CONTEXT AND OVERVIEW

This note provides information to Board members and EFET staff on the internal controls under which EFET conducts its activities.

### Details and Responsible Individuals

#### Annual Budget and Financial control (See also Article 15 of the EFET Statutes):

- The EFET Annual Budget is established by the Secretary General and the Treasurer in joint responsibility.
- The Annual Budget of the Back Office Group is established by the Secretary General and the BPOC ( of the Back Office Group)
- The Annual Budget of Legal Committee is established by the Secretary General and the EFET Legal Committee
- The budgets are presented annually to the Board for approval.
- Any EFET staff being Members of the Board shall not cast a vote for approving the budget, nor shall they cast any vote for any Board decisions relating to payments for their invoiced services, or the renewal of their service contracts (where applicable).

#### EFET Funds (Article 3 of EFET Statutes) provides as follows:

Current categories of income:

- membership fees
- contributions to specific modules (Back Office and Legal)
- sales Legal Opinions
- voluntary (cost sharing) contributions
- interest

#### Membership Fees

The EFET Membership Fees are set by the Board on proposal from the Treasurer and the Secretary General in order to ensure to run EFET on a non-profit basis with sufficient funds for daily operations and contingencies.

Following categories of membership exist:

- Regular member
- Associate member
- Subscriber member

Any change of membership fees requires the approval of the Board;

EFET shall put effective control mechanisms in place in order to check:

- that income is used in cautious commercial manner;
- that no income is hoarded for future and unspecified purposes;

Detailed control is in place in order to check that payments are made within the limits and the purpose allocated in the budget. A detailed budget is drawn up by the Secretary General, made available and discussed with Treasurer (4 eyes principle).

### **Other Revenue**

From time to time, EFET incurs revenue that is not directly coming from Membership Fees.

All sources of revenue should be reflected, and listed under separate accounts, explaining their nature in the Annual Budget to be approved by the Board;

Additional revenues are generated from 2 existing modules:

- i. Back Office Group and
- ii. Legal Committee where member companies contribute by paying a yearly subscription fee in return for having access to legal opinions prepared by outside counsels.
- iii. Some interest is received yearly from the EFET savings account and
- iv. an additional small scale revenue stream has been project based, where EFET acts as cost sharing vehicle.

The funds of the Back Office Group will only be spent on projects related to the standardization of business processes throughout the industry, and other Back Office issues like training, in accordance with the Back Office Budget

The funds of the Legal Committee will only be spent on legal fees for legal opinions and legal work on standardization of contractual documentation in according and with Budget of the Legal Committee.

### **Personnel, Contractors, Consultants and Freelance Staff**

EFET operates a virtual organization with staff in Amsterdam, Brussels, London and Berlin.

EFET has no employees, but contracts with free-lancers, partly operating through companies. This model increases flexibility and keeps cost lower than in case of employment and related tax and administrative burdens.

### **EFET Remuneration and Finance Committee**

- The Board may establish a Remuneration and Finance Committee to advise the Board on matters related to staff remuneration and items with an important financial impact.

### **Office and Travel Expenses**

Expenses, including travel expenses, may be settled by prior agreement of a fixed sum that is consistent with the EFET budget. If this has not been agreed then the following procedure shall apply:

#### Expenses

Any expenses which Consultants have reasonably incurred in the discharge of their duties shall be reimbursed to Consultants at cost level upon presentation of bills and

proofs of payment. Expense claims are to be presented within two months from the date when the expenses concerned were incurred.

### Travel Expenses

Travel expenses which Consultants have reasonably incurred in the discharge of their duties shall be reimbursed to Consultants at cost level upon presentation of bills and proofs of payment. Expense claims are to be presented within two months from the date when the expenses concerned were incurred.

### **Shareholding**

EFET is a 100% shareholder of EFETnet BV, a special purpose company created to enable the harmonization of standardized data exchange. Governance of EFETnet is described in EFETnet Governance and Internal Controls document and on EFETnet website: [www.efetnet.org](http://www.efetnet.org).

### **Bank Account**

EFET has 3 bank accounts at ABN/AMRO, one current account and two savings accounts. An additional bank account can be acquired when necessary. All bank transfers are done by paper bank transfers or electronic banking. The Secretary General has signatory power up to €15,000. For amounts above € 15,000, the signatures or electronic approval of the Secretary General and the Treasurer are required. For amounts to be transferred to the Secretary General There will be signature on related invoice/expense report from Treasurer. This is also being checked by accountant. For description payment and accounting procedures see III below.

### **Invoicing, payment and accounting**

#### **Invoicing**

Secretariat to produce and send out the invoices for member fees

Invoicing is done via electronic data base. Registration of payment is also registered via this database, so that “approved” persons can view database on-line to see who has paid and who not yet.

#### **Payment**

All invoices received are checked by the Secretary General, in relevant cases after consulting persons involved in placing the order. After approval payments are being prepared by secretariat and signed or electronically approved by the Secretary General. For amounts above €15,000 Treasurer will sign as well. For amounts to the Secretary General or his company, arrangement is that Treasurer signs for approval in advance. Accountant also checks this.

## Accounting

Secretariat sends each month all invoices to the accountant of EFET. The accountant will book all incoming and outgoing invoices based on bank statements, check VAT issues, fill in all tax forms etc. The accountant shall produce annual accounts and supply all legally required financial information to Chamber of Commerce

All EFET payments must be made via the bank accounts.

---

---

## Annex 4 Consensus in EFET

### What does it mean and how do we achieve it?

#### No ordinary industry association

EFET was founded by a group of like-minded senior executives in Western Europe, who in 1999 were in the process in each of their companies of initiating a continental wholesale power and gas business model from scratch. The essential mission of the new association was to pave the way, through external actions and internal standardization initiatives, for the establishment of a truly European wholesale market in energy. This demanded creative thinking, innovation, determination and a sense of shared purpose.

To this day the hallmark of EFET as an organisation remains our capability to be progressive, innovative, fast moving if necessary, and focused on our longer term objectives. We are by nature not defensive, unlike many longer established industry groupings. Especially when it comes to our work on market design, energy policy and regulatory controls, the vision, the external actions and the external effectiveness matter seem to matter most to our member trading businesses. Preservation of our core capability entails engendering a team spirit and a common will, not only in the Board and the Secretariat, but also in each Key Committee and in each new Task Force or Working Group. Inspired leadership of a particular group will naturally aid this process.

Given that new member companies must sign up to the principles of an open market and competition throughout Europe, it is not difficult for every Member Company to identify clearly the direction of travel of the association as a whole. Clarity is enhanced by a now very substantial corpus of published papers. These, taken together with the EFET Vision and Statement of Purpose, first published in 2005, already form an excellent basis for natural *Consensus* going forward.

#### Few market design, policy and regulatory issues referred to the Board

Virtually all our Committees, Task Forces, Working Groups and other groups (whether temporary or longer established) in fact succeed in achieving an internal *Consensus* and thereby pursuing a common external agenda in the name of EFET. Perhaps this is not surprising, given that it is a habit of the Board, secretariat and Committees to allow a manager in a Member Company, who comes with a new idea for improving, say, market accessibility, product standardisation or liquidity, to run with that idea. He or she will be free to assemble a team of other company delegates interested in the topic, and together consensually realise the improvement. The success can be measured by the relatively few

occasions when it became necessary for the chair or secretary of a Committee to refer a serious difference of opinion to the Board.

#### Using meetings to debate principles and direction, not a form of words

It has become common practice among the delegates representing Member Companies on Committees, Task Forces and Working Groups to use meetings chiefly to debate matters of mutual concern and reach high-level agreement on an EFET approach. Once this is done, delegates typically determine internal work priorities and external communication opportunities jointly, hammer out between them a common understanding of an issue and then, with the guidance of the group chair and members of the secretariat, establish a set of objectives to be pursued by EFET in relation to that issue.

This way of working can be described as *Consensus* building in action. The drafting of papers, presentations and letters supporting pursuit of the objectives can then be tackled between meetings, with details of these materials being settled through e-mail exchanges or interim conference calls.

#### Decisions emerge naturally, not through resolution of a confrontation

The working practices described above mean that misunderstanding and confrontation occur in EFET infrequently. If a *Consensus* on priorities, opportunities, interpretation and objectives emerges before attitudes harden and conflicting texts are circulated, it is much easier at a later stage to take a decision, about e.g. a final draft paper or a position to be adopted in an external meeting, unanimously or by consent, rather than by a formal vote. Of course the method requires the disciplines of deploying good arguments to convince any sceptical members in a particular group, respecting special situations or sensitivities, and finding intelligent and smarter solutions.

The process of building *Consensus* in principle on an issue at the outset, rather than at the last hurdle, also helps dissenting member companies decide earlier on a strategy for pushing their own interest or view independently or through another industry body. This has happened with various member companies on a number of occasions without any long-term ill will apparently being felt.

# Annex 5 EFET Membership Application Form

## Application form

to become participant/ associate\* of the European Federation of Energy Traders, a  
foundation registered in Amsterdam with number 4114458

EFET  
Amstelveenseweg 998  
1081 JS Amsterdam  
The Netherlands

Telephone: +31 20 520 7970  
Fax: +31 346 283 258

E-mail: [secretariat@efet.org](mailto:secretariat@efet.org)

Name of the company .....	
Contact person.....	E-mail:.....
Alternate Contact.....	E-mail:.....
Address .....	
Telephone number.....	
Fax number.....	
E-mail address .....	
Web site address.....	VAT number: .....

Your company is trading in the following European energy markets (geographical):		
0	0	0
0	0	0
0	0	0
Of which exchanges are you a member?		

Your company trades the following commodities.							
0	power	0	oil	0	coal	0	derivatives
0	gas	0	emissions/ renewables	0	weather	0	
	other						

Trading Operations are run as cost centre/profit centre/ separate company**.
--

- |      |   |
|------|---|
| I.   | The above-mentioned company herewith applies to become a member of EFET.  |
| II.  | The company declares that it actively supports the principles of an open energy market and competition throughout Europe.   |
| III. | The company declares that it acts as a trader on the European energy market, which among others includes taking physical and/or financial positions for its own financial risk. |
| IV.  | The company adheres to the EFET principles of good conduct for energy trading (The “10 Pillars”)  |
| V.   | The company will actively support the work of EFET.   |

Name: ..... Date: .....

Signature:

\*Please select your preference. The final decision will be made by the EFET Board.

\*\*Please select

## Principles of Good Conduct for Energy Trading

### The “10 Pillars”

Companies engaged in trading in energy markets will:

1. Respect free and fair competition as the basis for trading energy.
2. Not engage in any activities which would amount to market abuse, market manipulation or fraud, nor relay information known or strongly suspected to be false or misleading.
3. Deal with each other in accordance with established market practices and the standards expected of professional market counterparties.
4. Deal with customers fairly and with integrity and manage any conflicts of interest that may arise appropriately.
5. Organise their energy trading business effectively, respecting appropriate segregation of staff duties, and exercise diligent control over trading functions.
6. Establish effective risk management policies and control procedures governing the key risks managed by their energy trading functions.
7. Establish compliance policies setting out the company’s procedures for fulfilling all legal and regulatory obligations and any related corporate governance rules relating to their energy trading functions.
8. Ensure that their traders are suitably qualified and properly supervised to carry out their duties, including where appropriate to have taken relevant industry examinations.
9. Prohibit their employees from giving or receiving bribes and from indulging in other corrupt behaviour in all circumstances; and establish policies governing gifts and hospitality, highlighting acceptable and unacceptable practices.
10. Maintain accounts related to trading transactions and risk books in accordance with relevant accounting standards, and respecting normal audit practices.

## Annex 6 Elected Board member candidacy declaration



Amstelveenseweg 998  
1081 JS Amsterdam  
Phone: + 31 20 520 7970  
Fax: + 31 346 28 258  
Email: [secretariat@efet.org](mailto:secretariat@efet.org)  
Website: [www.efet.org](http://www.efet.org)

**Declaration form for:**

### **Candidates seeking election by regular member companies to the EFET Board**

I,

Name : \_\_\_\_\_

Position: \_\_\_\_\_

Employing company: \_\_\_\_\_

Company holding regular EFET membership in the same corporate group (if different)

Address: \_\_\_\_\_

Phone number: \_\_\_\_\_

E-mail address: \_\_\_\_\_

**Hereby declare that:**

- The company by which I am employed is a regular member company of EFET or is a company within a corporate group including such regular member company;
- The company and/or its controlling parent company and/ or its relevant subsidiary and/or its relevant affiliate consents to my standing as a candidate in the next EFET Board election;
- I wish to stand for election;
- I agree with and promise to pursue to the best of my ability the Vision and Statement of Purpose of EFET\*;
- I undertake to promote the Core Principles for Energy Markets promulgated by EFET (as adapted from time to time by the Board)\*;
- I recognise the importance of the Statement of Principles of Good Conduct for Energy Traders promulgated by EFET (as adapted from time to time by the Board)\*;



- I agree with the concept of and promise to pursue to the best of my ability consensus based decision making as explained in EFET Bye-laws\*;
- I accept that if elected I will serve as a Board member in my individual, not a corporate, capacity and participate in Board meetings and Board decision making in the wider interest of EFET and all EFET member companies;
- I will comply with other provisions of the EFET Foundation Statutes and Bye-laws\*.

***[\* Please consult governance pages of EFET website for current versions]***

My motivation for seeking election is:

---



---

I will/would bring the following experience and special skills to the EFET Board:

---



---

***[Please sign and add a short biography]***

Signature Date Place

I, \_\_\_\_\_, being a duly empowered officer / director of ....[insert corporate entity]... ,

which is a regular member company of EFET / is the controlling parent of \_\_\_\_\_, which is a regular member company of EFET / is a company within the same corporate group as \_\_\_\_\_, which is a regular member company of EFET\*

***(\* delete as appropriate)***

hereby confirm that [insert corporate entity] does nominate .... [insert name of candidate]... to stand in the next EFET Board election.

Signature Date Place