



Guidance Notes
to the
RECS Trade Agreement for
Single or Multiple Deliveries

February 2021



WAIVER: The following Guidance Note was developed by the Secretariat of RECS International in collaboration with its members exercising all reasonable care.

It serves as a general guide only for the purposes of assisting the users of the RECS Trade Agreement for Single or Multiple Deliveries. RECS, RECS Secretariat, RECS Members, Representatives, DLA Piper and other Counsel involved in the development, preparation and approval of this guidance, shall not be liable or otherwise responsible for its use and any damages or losses resulting out of its use in any particular case and in whatever jurisdiction. It is the responsibility of each party wishing to use the RECS Trade Agreement for Single or Multiple Deliveries to ensure that its terms and conditions are legally binding, valid and enforceable and best serve to protect their legal interests.

This Guidance Note should be read in conjunction with the RECS Trade Agreement for Single or Multiple Deliveries.

This Guidance Note should not be relied on as absolute advice and does not replace legal counsel.

For information, comments or concerns regarding the RECS Agreement, this Guidance or any related information, contact DLA Piper at: andreas.gunst@dlapiper.com or kenneth.wallace-mueller@dlapiper.com

For additional information, comments or concerns, contact RECS Secretariat at: www.recs.org or secretariat@recs.org



Jared Braslawsky
Secretary-General, RECS International
T: +31 268 20 03 96
j.braslawsky@recs.org



Adam White
Director, RECS International
T: +32 472 11 33 18
a.white@recs.org



Andreas Gunst
Partner, DLA Piper
T: +44 780 271 9480
andreas.gunst@dlapiper.com



Kenneth Wallace-Mueller
Senior Associate, DLA Piper
T: +44 207 796 6200
kenneth.wallace-mueller@dlapiper.com

Introduction by RECS International

RECS Trade Agreement for Single or Multiple Deliveries

Process, key features, and availability

The standard contract that this guidance note informs was developed by the RECS International Legal Working Group. This group of energy traders and lawyers was facilitated by the RECS International secretariat. The Secretariat takes this opportunity to thank them for their commitment to this project.

The RECS International EECS GO Trade Agreement For Single or Multiple Deliveries (Version 2.0) is an update of the standard trade contract it replaces – reflecting how the market has developed since RECS International published the first version of the contract. While this new agreement will be recognisable to those who have used its predecessor, it also adds a new facility that has been requested by users – the ability to make a trade for GOs that are delivered in either a single batch or in multiple batches.

All GO market participants can access this standard contract and its related guidance as an Adobe .pdf file from the www.recs.org website. The .pdf file includes editable fields that users can fill with the details of their trade.

Members of RECS International can also request a word version of the standard contract, which they are then free to edit further if they wish. As with the standard contract, RECS International is not liable or otherwise responsible for the content or use of any such edits.

Background to European certificate trading

DLA Piper

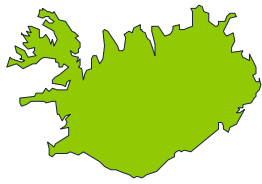
Background to the RECS Agreement and certificates

- The RECS Trade Agreement for Single or Multiple Deliveries (**RECS Agreement**) was adopted by RECS International in January 2021 and allows for the trade of European Energy Certificate Scheme (**EECS**) certificates in single or multiple batches.
- The issuance, trade and retirement of EECS certificates is regulated by the **EECS Rules**, developed by the Association of Issuing Bodies (**AIB**), available at <https://www.aib-net.org/eecs/eecsr-rules> (as amended from time to time).
- Under the RECS Agreement, EECS certificates include:
 - EECS guarantees of origin (**EECS GOs**) which are guarantees of origin established under the EECS Rules, and
 - EECS-disclosure certificates (**EECS-Disclosure Certificates**).
- These EECS certificates are based on and developed upon the requirements of the Renewable Energy Directive 2009/28/EC (**RED**) and the recast Renewable Energy Directive (EU) 2018/2001 (**RED-2**).
- The aim of the AIB and the EECS Rules is to standardise and harmonise the national guarantee of origin (**GO**) systems across its member countries. This is designed to facilitate and promote cross-border transfer of renewable energy between the AIB member countries.

The AIB, national Issuing Bodies and RECS

- To facilitate cross-border exchange of EECS certificates between AIB member countries, the AIB operates an inter-registry communications hub (**AIB Hub**).
- While national registries are self-sufficient with respect to national transactions, the AIB Hub is required for any cross-border trade of EECS certificates, where it acts as a "central point" for transferring EECS GOs from one national registry to another. It allows national registries to inter-communicate to allow for the transfer GOs beyond the borders of their own country.
- The AIB and RECS International work in cooperation. They were both founded in 2002 and a "Memorandum of Understanding" between them was signed. The bodies then formally separated in 2005.
- Today, while RECS International and the AIB are two individual and separate organisations, they share goals in respect of their work to implement and develop the EECS system.
- The AIB and its members have the objective of implementing the RED and the RED-2 in a trustworthy, reliable and cost-effective manner, and facilitating the cross-border trade of EECS Certificates throughout Europe. RECS International, on the other hand, represents market parties who strive for a open, transparent, credible and efficient marketplace.

Certificates across Europe



Beyond EECS Certificates, there are other renewable certificates which are commonly traded in Europe, including:

- National GOs, for instance UK REGO or Polish guarantees of origin
- Support scheme certificates, for instance Norwegian/Swedish Elcert, Romanian GOs or the UK ROCs.

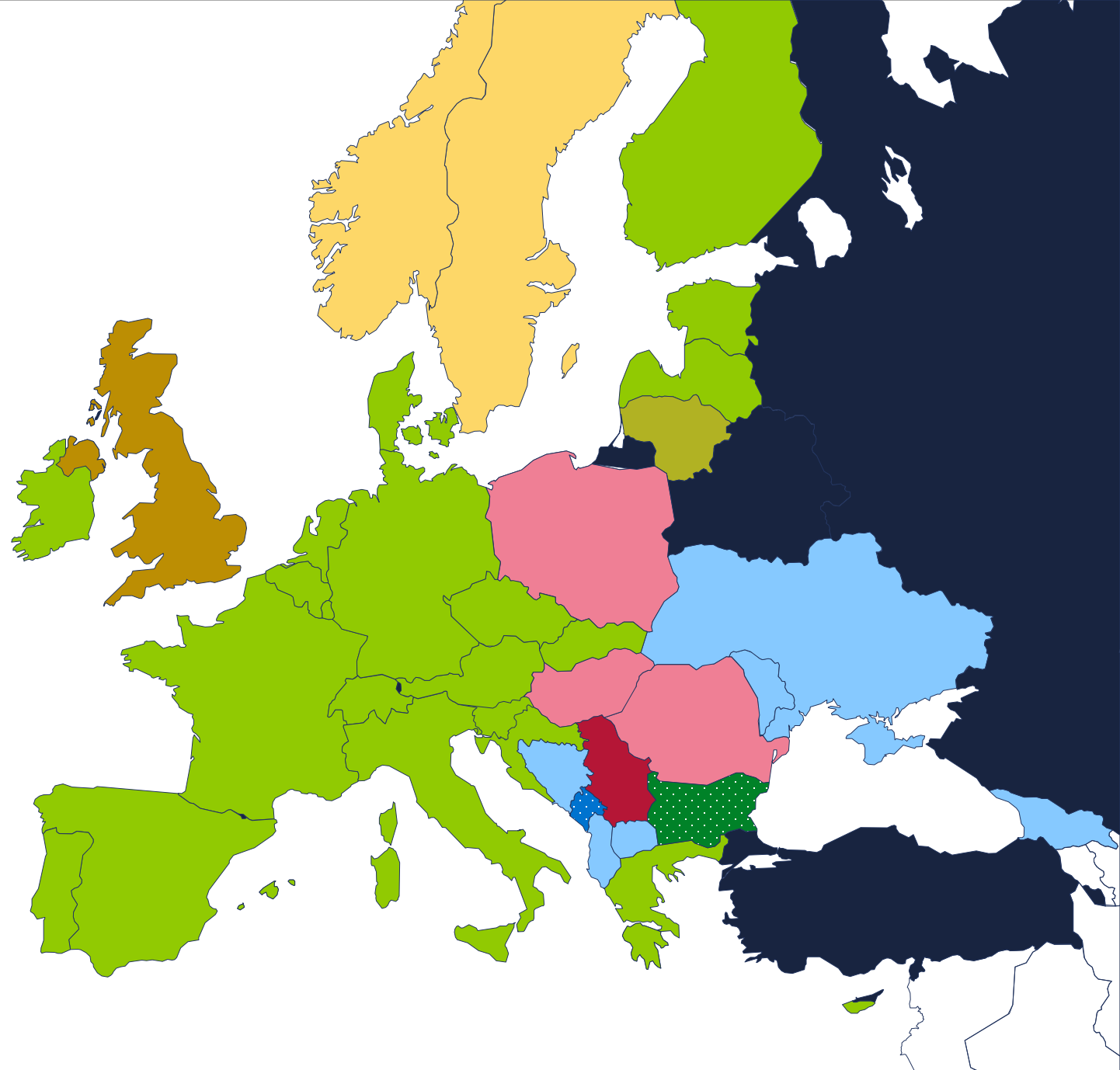
AIB Members

- EU / EEA / EFTA - AIB Member (with EECS GOs)
- EU / EEA / EFTA - AIB Member (with EECS GOs) – import only
- EU / EEA - AIB Member (with EECS GOs, GOs and support certificates)
- Energy Community - AIB Member (with EECS GOs)

Other

- EU - Non-AIB (with GOs and/or support certificates)
- UK - Non-AIB (with REGOs and ROCs (closed scheme))
- EU - AIB Observer (with GOs)
- Energy Community - AIB Observer (with GOs in legislation)
- Energy Community - Non-AIB (with GOs in legislation)
- I-RECS (via local issuer or rest of world issuer)

* countries with dotted colours are those which have formally applied for AIB membership



Information from www.aib-net.org - correct as of 2 February 2021

The RECS Agreement and other standardised documents on the market

- The RECS Agreement is based off the 2014 RECS Single Trade Agreement and is adapted for both single trading and batch trading, as well as including various adaptations in relation to the current legal regime.
- Other standardised agreements that are commonly used for the trade of renewable energy certificates include the EFET Certificates Master Agreement (**EFET CMA**) and, in the United Kingdom, the REGO Trading Master Agreement (**RTMA**).
- The EFET CMA – similarly to the RECS Agreement – allows for certificates trade transactions and is intended to function as a framework contract. However, the EFET CMA is designed for large volume transactions and long delivery time frames. It contains standardised clauses in respect of performance assurance, the provision of financial statements, tangible net worth, and guarantees and credit support. This is not necessary (or appropriate) for the type of transactions envisaged under the RECS Agreement. The RECS Agreement supports the same mechanisms as the EFET CMA but is lighter and easier to use.
- The RTMA is also used for renewable certificate trade transactions, however it is designed for the purposes of national trade of GOs implemented in the United Kingdom (i.e. REGOs).

Guidance to the use of the RECS Agreement

Clauses 1 to 4: Basic contractual terms

- **Clause 1** (*Subject of this Agreement and Interpretation*) relates to the operation of the agreement. Users are to include the date upon which they wish for the RECS Agreement to become effective.
- **Clause 2** (*Trade Identifier*) relates to the trade identifier, an optional reference number which may be agreed between specific Parties.
- **Clause 3** (*Seller*) and **Clause 4** (*Buyer*) include fields for parties to insert their specific information. The format of the RECS Agreement however allows parties to include additional details beyond the expressly listed fields.
 - By way of example, where the authorised signatory for a party is a different person from the contract manager, this may be separated included.
 - Additionally, where a party is a larger corporate entity with a dedicated trading team, the contact details may be included, as well as instructions on the responsible contact person in different circumstances.
 - *EECS Registration Database* is the part of the national registry database (e.g. Cesar in Sweden, HKNR in German, NECS in Norway) which interfaces with the EECS transfer system – the national registry in which the seller and buyer hold their respective accounts from / into which they would like the certificates to be transferred.

Clause 5: Transaction details

- The RECS Agreement allows for the trade of two different types of certificates:
 - EECS GOs as established under RED and the EECS Rules, which have been expanded in scope to include renewable gas and hydrogen introduced under RED2; and
 - EECS-Disclosure Certificates as established under the EECS Rules, which are issued to producers of electricity from fossil or nuclear sources as evidence for purposes of disclosure.
- Under **Clause 5.1** (*Certificate Details*), users may select one of these two certificate types by ticking the relevant box. Where parties wish to trade both types of certificates, it is recommended to execute a separate agreement for each certificate type.
- Users should note that only those jurisdictions which have a system of full disclosure in place tend to accept the cancellation of EECS-Disclosure Certificates for disclosure purposes. Whilst the import and export of EECS-Disclosure Certificates is not restricted, the option to cancel them is not necessarily guaranteed.
- The field on "Minimum Validity" in **Clause 5.1** allows the buyer to specify the remaining validity time of the certificates. This is of particular relevance in relation to compliance purposes and for the resale of certificates. As certificates have a dedicated lifespan, this allows the buyer to ensure they have sufficient time for the onward purpose of the certificate.

Clause 5: Transaction details (ctd)

- "Earmark" in **Clause 5.1** (*Certificate Details*) is mainly relevant where buyers wish to exclude certificates from generators that receive financial support. Under RED, some jurisdictions allow certificates can be issued to generators that receive financial support. This must be recorded on the certificate as an earmark. Where the buyer does not wish to receive supported certificates, this can be specified under clause 5.1.
- The fields in **Clause 5.2** (*Domain Details*) can be used to narrow down the specifications with respect to the domain. If a buyer wishes to receive only certificates from a certain jurisdiction, this may be detailed in this field.
- The fields in **Clause 5.3** (*Production Device Details*) allow the buyer to opt to receive certificates from a specific generator. This is less common in trading agreements, however it may be relevant where a buyer or a downstream buyer is a corporate entity that wishes to receive only certificates from a specific project.
- The fields in **Clause 5.4** (*Additional Qualities*) allows the buyer to specify that the certificates are to be in alignment with the requirements of voluntary or mandatory compliance schemes, such as the GHG Protocol corporate standards or the RE100 standard.
- The fields in **Clause 5.5** (*Special Conditions*) may be used to add further specifications beyond those specified under Clauses 5.1 to 5.4.

Clause 6: Transfer mechanism

- **Clause 6.1** (*Transfer*) provides for two different transfer options in respect to the certificates, of which users may choose one by ticking the relevant box, namely:
 - Electronic Transfer, where certificates are electronically removed from the seller's certificate registry account and credited to the buyer's account; and
 - Cancellation Statement Transfer, where the certificates remain in the seller's account, but the seller must request the registry operator to cancel these certificates (removing these from circulation) and the operator issues a standardised cancellation statement, which can be transferred to the buyer in an agreed form, such as by email.
- Electronic transfers are more frequently used, in particular for national transfers and cross-border transfers between two AIB member countries.
- Cancellation statements are commonly used where the buyer is located in a non-AIB member country (which does not accept EECS Certificates, e.g. GB, Poland, Romania or Bulgaria). Alternatively this may be used where a buyer does not have or does not wish to have a registry account.
- Where Cancellation Statement Transfer is selected, **Clause 6.3** (*Delivery by Cancellation Statement Transfer*) sets out the information that is to be included on the Cancellation Statement. This list may be expanded by the buyer, depending on any regulatory or compliance requirements.

Clause 6: Transfer mechanism (ctd)

- Where Electronic Transfer is selected, **Clause 6.4** (*Applicable EECS Registration Database*) creates an obligation for both parties to ensure that their account is properly established and capable of delivering and accepting certificates. In practice, this means that both parties must hold accounts and have full transfer rights, rather than restricted accounts.
- **Clause 6.5** (*Title and Risk*) deals with the transfer of title and risk in both transfer mechanisms. The RECS Agreement includes an updated provision on the transfer with respect to cancellation statements.
 - For Electronic Transfer, title and risk pass when the certificates are credited to the buyer's account. Subject to any relief such as under force majeure, where certificates are not credited in the buyer's account following transfer, the risk lies with the seller and the buyer will not be obliged to pay for such certificates.
 - For Cancellation Statement Transfer, as the certificates themselves are not transferred, title and risk pass when the cancellation statement is received by the buyer, which is commonly upon receipt of the email in the buyer's email account. If the cancellation statement is not received, the buyer may request the seller to send another copy of the email.
 - In either case, no restrictions are placed on the party suffering loss from claiming damages from a responsible third party under the governing law of the RECS Agreement.

Clauses 7 to 9: Financial obligations

- **Clause 7** (*VAT*) deals with VAT in relation to the contract price and reflects the general position on VAT in the EU. This Clause and the tax position more generally in relation to the transaction should however be considered by local counsel when negotiating the RECS Agreement, especially where the parties are located in an EU member state and a non-EU third country.
- **Clause 8** (*Transaction Costs*) provides that each party bears its own fees and expenses incurred in connection with the RECS Agreement as well as the performance of the Certificates transaction contemplated under the RECS Agreement. This provision primarily serves to clarify the positions of the parties during the negotiations and performance of the executed contract.
- **Clause 9** (*Invoicing and Payment*) sets out the invoicing process, the relevant payment periods, and interest due on late payments. **Clause 9.5** deals in particular with invoice disputes, setting out a payment obligation on the buyer for the undisputed portion, and a true-up mechanism following resolution of the dispute.

Clause 10: Failure to deliver and accept

- **Clause 10** (*Failure to Deliver and Accept*) provides for two mechanisms, depending on whether the seller fails to deliver or the buyer fails to accept the quantity of EECS Certificates (in full or in part), provided this is not due to force majeure.
- In either case, subject to a cure period of 3 business days following written notification by the non-defaulting party, the defaulting party is to pay compensation.
- This is determined using the mark-to-market valuation method, which reflects the loss suffered by the non-defaulting party in selling or buying replacement EECS Certificates.
- This default compensation includes reasonable transaction costs and expenses which the non-defaulting party has incurred as a result of default. This includes brokerage fees, commissions and other third-party costs and expenses.
- Whilst non-acceptance of EECS Certificates may be considered an unlikely event given the automatic nature of electronic transfer, it is designed to cover events including where the buyer's account is incapable of receiving EECS Certificates, as well as where an emailed copy of a cancellation statement is not accepted by the buyer's email server.

Clauses 11 & 12: Risk allocation provisions

- **Clause 11** (*Representations and Warranties*) provides for:
 - transfer-specific representations and warranties for the seller and the buyer separately; and
 - general representations and warranties that apply to both parties, which are customary to B2B agreements and serve to confirm the relationship between and legal standing of the parties.
- More detailed representations and warranties of the seller may be desirable where the buyer is a trader or supplier seeking to sell the EECS Certificates to an end-consumer for voluntary or mandatory compliance purposes. These may include restrictions to a certain project, energy source (e.g. wind, solar, hydrogen gas) or country.
- **Clause 12** (*Limitation of Liability*) sets a liability cap at an amount equal to the contract value, i.e. the Total Contract Price.
 - This liability cap is subject to mandatory limitation exemptions under national law.
 - The standard position of the RECS Agreement is derived from English law, and carves out damage caused by gross negligence, intentional default or fraud from the liability cap.
 - Where the parties elect a specific governing law in **Clause 24.1**, this clause in particular would need to be considered and potentially redrafted by local counsel to avoid any competent court from striking it out.

Clause 13: Force majeure

- **Clause 13** provides a key exception to the rule that both Parties must fulfil their contractual obligations owed to each other, specifically:
 - an event beyond the control of a party;
 - which it could not reasonably have avoided or overcome; and
 - which makes it impossible for such party to transfer or accept EECS Certificates.
- In addition to this broad definition, **Clause 13.1** includes a single demonstrative example common to EECS Certificate transfer agreements concerning the suspension, failure or malfunction of the transfer system. Users may wish to set out further transaction specific force majeure events in **Clause 25**.
- **Clause 13.2** sets out the process for a party to claim force majeure, and requires such party to use all reasonable efforts to terminate or overcome the event. The claiming party is thereby relieved from its performance obligations (which are not suspended), and under **Clause 13.3** the other party is equally relieved from its obligations.
- Where a force majeure events lasts over 30 consecutive days, **Clause 15.2(e)** (*Term and Termination Event*) offers either party the right to terminate.
- **Clause 16.3** (*Change in Law*) clarifies that, where an event may be captured by the definitions of a force majeure event and a change in law, it is to be deemed a change in law only.

Clause 14: Confidentiality

- **Clause 14.1** provides for a general disclosure prohibition of Confidential Information and **Clause 14.2** sets out an exhaustive list of exemptions.
 - Both the terms of the Agreement itself as well as any other documents relating to the RECS Agreement are considered Confidential Information.
 - The contracting Parties may separately agree on further specific documents or information that is to be considered Confidential Information in **Clause 25** (*Specific Conditions*).
- **Clause 14.3** extends the scope of a breach of the confidentiality obligation beyond contractual damages to allow for the affected parties to seek injunctive relief where available under the governing law and relevant jurisdictions.
- Under **Clause 14.4**, the confidentiality obligation survives the RECS Agreement by one year following the last delivery date. Such a survival clause is common in such trade agreements, however if users wish to remove, shorten or extend this period, this may be done in **Clause 25** (*Specific Conditions*).

Clause 15: Term & termination events

- **Clause 15.2** sets out six exhaustive events which entitle one or both parties to terminate.
 - These events are subject to express cure periods, with exception of insolvency (**Clause 15.2(a)**), force majeure exceeding 30 consecutive days (**Clause 15.2(e)**) and an unresolved Change in Law event (however this is subject to a separate negotiating regime) (**Clause 15.2(f)**).
 - The parties may add or remove termination events or vary the length of the cure periods lengths under **Clause 25** (*Specific Conditions*).
- **Clause 15.3** and **Clause 15.4** set out the termination notification process.
- **Clause 15.5** sets out two calculations for the termination amount, which are separate depending on whether the seller or the buyer is the non-defaulting party.
 - The termination amount is determined using the mark-to-market valuation method, which reflects the loss suffered by the non-defaulting party in selling or buying replacement EECS Certificates.
 - The termination amount calculation includes reasonable transaction costs and expenses which the non-defaulting party has incurred as a result of default. This includes brokerage fees, commissions and other third-party costs and expenses.
- **Clause 15.6** sets out that the non-defaulting party is to calculate the termination amount, and that payment of the termination amount is the sole remedy for losses resulting from the default and the termination.

Clause 16: Change in law

- The performance of the RECS Agreement is highly reliant on legal structures (including EECS Certificates, national registries, and the AIB Hub in relation to cross-border transfers).
- A change in either EU or national law, the EECS Rules or Domain Protocols, or a court judgment or administrative decision which materially affects these legal structures may cause performance of the RECS Agreement to be frustrated.
- **Clause 16** allows Parties to renegotiate the RECS Agreement where a change in law:
 - makes it impossible or unlawful to give effect to the RECS Agreement; or
 - makes it impossible for a party to perform its delivery or acceptance obligations.
- The parties are obliged to negotiate in good faith (under **Clause 16.1**) for a period of 30 calendar days (under **Clause 16.2**), after which either party may terminate the RECS Agreement.
- Users may establish guidelines for these negotiations, introduce an escalation instance (such as a meeting between senior officers of the parties, or arbitration), vary the negotiation period, or add further events which may trigger the change in law negotiation rights under **Clause 25** (*Specific Conditions*).
- **Clause 16** does not exclude price adjustments as part of these negotiations, however users may restrict this right or add other conditions using **Clause 25** (*Specific Conditions*).

Clauses 17 to 20: Operation of the agreement

- Under **Clause 17** (*Assignment*) the RECS Agreement can only be assigned from one of the parties to a third party subject to prior written consent from the other contracting Party.
 - Such consent is not required where the assignee is an affiliate of the assignor (as defined in **Clause 17.4**) incorporated in the same jurisdiction and has equivalent or greater creditworthiness.
- **Clause 18** (*Notification and Correspondence Terms*) sets out deemed delivery dates for any communication between the parties. This has particularly relevance to notification obligations and cure periods of termination events under **Clause 15** (*Term and Termination Event*).
- **Clause 19** (*Telephone Recordings and Personal Data Protection*) entitles parties to record any telephone conversations between the themselves.
 - Users may wish to review this clause with local counsel, particularly to ensure that they have appropriate data protection measures in place with respect to the collection, processing and holding of personal data.
- **Clause 20** (*Severability*) provides that where a competent court deems any individual provision of the RECS Agreement to be invalid or unenforceable, the remaining provisions remain valid and enforceable. This clause is subject to **Clause 16** (*Change in Law*).
 - Users may wish to review this clause with local counsel, as such severability clauses may not comply with statutory requirements in some jurisdictions.

Clauses 20 to 25: Operation of the agreement (ctd)

- **Clause 21** (*Entire Agreement*) provides that previous agreements, including oral agreements, are superseded by the RECS Agreement. Where two parties wish for an existing agreement to continue in force, this should be carved out from this provision using **Clause 25** (*Special Conditions*).
- Under **Clause 22** (*Amendment*) any amendments or additions to the RECS Agreement must be written and signed to have effect. This includes any amendments following change in law negotiations.
- **Clause 23** (*Third Party Rights*) excludes third parties from having any rights under the RECS Agreement.
- Under **Clause 24** (*Governing Law and Dispute Resolution*) users are to select an appropriate governing law for the RECS Agreement.
 - Parties should seek advice from local counsel from the jurisdiction of the governing law to ensure that the provisions of the RECS Agreement (as amended) are compliant and enforceable.
 - An additional consideration is the insolvency laws of the jurisdictions in which the parties are incorporated, as this may impact the enforceability of provisions including termination and continuing performance following insolvency of a party.
 - Under **Clause 24.2 and 24.3**, users may specify an applicable arbitration court.
- **Clause 25** (*Special Conditions*) allows users to add, remove (disapply), or modify any provisions of the RECS Agreement. Any such amendments should be discussed with local counsel to ensure enforceability.

Considerations on governing law and country selection

Countries and election of governing law

- The RECS Agreement is a standardised agreement designed for use in the European markets.
- It may be used by parties incorporated and operating from a variety of countries, and may be used for transactions either within one country or between different countries.
- There are therefore different drivers on the selection of a governing law of the RECS Agreement.
- Depending on this choice, there are various considerations including the enforceability of certain provisions and execution requirements. **Users are recommended to seek advice from local counsel to ensure that the negotiated agreement will have full force and effect as intended.**
- There are two factors to be considered:
 - **governing law** (how is the agreement to be interpreted, and how are disputes to be handled); and
 - **country/ies of the transaction** (where do the EECS GOs originate, and where are they delivered).
- The following slides include two case studies on UK and Germany, as two illustrative examples of GO trading, which highlight various considerations.
- **These case studies are however:**
 - **not intended to be exhaustive comments relevant to the specific governing law or country; and**
 - **not to be considered as legal advice.**
- **Users are strongly recommended to consult their own legal counsel before negotiating a RECS Agreement.**

Application to the UK

English & Wales governing law

- The RECS Agreement has historically been drafted on the basis of English law, and the revised version continues this approach.
- Where one or both parties are incorporated outside the UK, the laws of these countries may imply certain terms into the RECS Agreement.
- Whilst **Clause 12** (*Limitation of Liability*) is generally aligned with English law, this should be reviewed with local counsel to ensure full compliance with UK law.
- **Clause 24.2** (*Dispute Resolution*) may commonly select arbitration rules of the London Court of International Arbitration, with its seat in London, England.

UK certificate transactions

- GOs have been implemented into national law as Renewable Energy Guarantees of Origin (**REGOs**).
- The United Kingdom (**UK**) is not an AIB member – EECS Certificates are not issued in or transferrable to the UK.
- Following the UK's withdrawal from the EU, UK currently continues to accept EU GOs. UK REGOs are no longer accepted by EU member states.
- Parties seeking to import GOs into the UK may do so by means of electing Cancellation Statement Transfer under **Clause 6** (*Transfer*).
- Alternatively, an EECS GO – REGO swap contract structure may be considered, however this would require significant amendments to the agreement.

Further information

This slide highlights general considerations on UK transactions, and should not be relied upon as legal advice. For further information, please contact:



Andreas Gunst
Partner, DLA Piper
T: +44 780 271 9480
andreas.gunst@dlapiper.com



Kenneth Wallace-Mueller
Senior Associate, DLA Piper
T: +44 207 796 6200
kenneth.wallace-mueller@dlapiper.com

Application to Germany

German governing law

- Although market participants usually rely on the argumentation that standard terms provided by e.g. industry associations are not to be considered as standard terms and conditions in the meaning of the German Civil Code (*AGB*), there is a general risk that the terms of the RECS Agreement could be considered as such, especially where one party is less experienced with the relevant business terms. In such case, the terms would be subject to a review of the statutory limitations and restrictions that apply to standard terms and conditions under German law.
- There are a number of statutory principles under German law that contracting parties cannot exclude by contract, such as the statutory termination right for good cause and the principle of frustration of the underlying basis of a contract (*Wegfall der Geschäftsgrundlage*).

German certificate transactions

- Market participants trading with Certificates should be aware of the German legal framework for GOs, in particular:
 - Under the current regulatory rules, only electricity suppliers can ultimately cancel GOs (therefore excluding traders and end-consumers) and only for fuel mix disclosure purposes.
 - An end-consumer seeking to claim a benefit from GOs must therefore generally purchase renewable source electricity directly from the supplier, which will demonstrate the volume of cancelled GO certificates.
 - Despite RED2 permitting member states to allow GO issuance to generators receiving support, Germany has not implemented this.

Further information

This slide highlights general considerations on German transactions, and should not be relied upon as legal advice. For further information, please contact:



Michael Cieslarczyk
Partner, DLA Piper
T: +49 221 277 277 341
michael.cieslarczyk@dlapiper.com



Christopher Ollech
Senior Associate, DLA Piper
T: +49 221 277 277 341
christopher.ollech@dlapiper.com

