



---

## Legal constitution of TrustEE

### Work package 4

### D4.2

### TrustEE

---

Grant number: 696140

5.12.2017

**H2020-EE-2014-2015/H2020-EE-2015-3**

TrustEE

**INNOVATIVE MARKET BASED TRUST FOR ENERGY EFFICIENCY INVESTMENTS IN  
INDUSTRY**

#### **Report Prepared by:**

Winfried Braumann  
REENAG Holding

The sole responsibility for the content of this deliverable lies with the authors. It does not necessarily reflect the opinion of the European Union. Neither the EASME (Executive Agency for Small and Medium-sized Enterprises) nor the European Commission are responsible for any use that may be made of the information contained therein.

This project has received funding from the European Union's (EU) Horizon 2020 research and innovation programme under grant agreement No 696140.

## Table of Contents

<b>1</b>	<b>Executive Summary</b>	<b>3</b>
<b>2</b>	<b>Main content of the statutes</b>	<b>4</b>
2.1	Form and Name	4
2.2	Registered office	4
2.3	Duration	4
2.4	Corporate objects	4
2.5	Share capital	5
2.6	Shares	5
2.7	Transfer of shares	5
2.8	Debt securities	5
2.9	Meetings of the shareholders of the Company	5
2.10	Notice, Quorum, Powers of attorney and convening notices	6
2.11	Management	6
2.12	Meetings of the Board	6
2.13	Minutes of meetings of the Board	6
2.14	Powers of the Board or of the Sole Manager	6
2.15	Delegation of powers	7
2.16	Binding signatures	7
2.17	Conflict of interests	7
2.18	Approved statutory auditor(s)	7
2.19	Accounting year	7
2.20	Allocation of profits	8
2.21	Dissolution and Liquidation	8
2.22	Compartments	8
2.23	Non-petition	9
2.24	Limited recourse	9
2.25	Transitory Provisions	9
2.26	Applicable law	9

## 1 Executive Summary

For the legal constitution of TrustEE, REENAG has prepared with the help of a law firm in Luxemburg the statutes of a S.à.r.l. qualifying as a securitisation company (société de titrisation). The main content of the statutes is described briefly in the next section. The statutes are ready for registering in Luxemburg. REENAG will order the registration at the Public Notary as soon as the start-up cost and the cost of operation for the first year can be covered.

## 2 Main content of the statutes

The following paragraphs are excerpts of the statutes which do not contain the full text of the articles. For the full text, please refer to the statutes in the annex.

### 2.1 Form and Name

The company is a private limited liability company (société à responsabilité limitée) under the name of " S.à r.l." (the "Company") qualifying as a securitisation company (société de titrisation) . The proposed name is Sustainable Future TrustEE, which has been already reserved.

### 2.2 Registered office

The registered office of the Company is established in Luxembourg, Grand Duchy of Luxembourg.

### 2.3 Duration

The Company is incorporated for an unlimited duration.

### 2.4 Corporate objects

The corporate objects of the Company are to enter into, perform and serve as a vehicle for, any securitisation transactions as permitted under the Securitisation Act 2004, subject to the following limits: The Company shall not issue securities of any kind to the public more than three times during any twelve month period. Only professional investors, as defined in Annex II of the European directive 2014/65/EUR (MIFID II), shall be authorized to subscribe to the securities issued by the Company (the "Issue Limits"). The Company may not, by its activities generate its own risk and act as an entrepreneur. The Company must, inter alia, not be used as a holding company of an operational group. It must not actively intervene in the management of company whose shares or other instruments are being securitised by the Company (together with the Issue Limits, "Restrictions").

The Company may, among other things ....

a) acquire or assume, directly or through another entity or vehicle, the risks relating to the holding or property of claims, receivables (existing or future) and/or other goods or assets (including securities of any kind), either movable or immovable, tangible or intangible, and/or risks relating to liabilities or commitments (existing or future) of third parties or which are inherent to all or part of the activities undertaken by third parties, by issuing securities (valeurs mobilières) of any kind whose value or return is linked to these risks;

b) assume or acquire these risks by acquiring, by any means, existing or future claims (arising from existing or future agreements), structured deposits, receivables and/or other goods, structured products relating to commodities or assets, by guaranteeing the liabilities or commitments of third parties or by binding itself by any other means;

c) proceed, so far as they relate to securitisation transactions, to (i) the acquisition, holding and disposal, in any form, by any means, whether directly or indirectly, of participations, rights and interests in, and obligations of, Luxembourg and foreign companies, (ii) the acquisition by purchase, subscription, or in any other manner, as well as the transfer by

sale, exchange or in any other manner of stocks, bonds, debentures, notes and other securities or financial instruments of any kind (including notes or parts or units issued by Luxembourg or foreign mutual funds or similar undertakings and exchangeable or convertible securities), structured products relating to commodities or assets (including debt or equity securities of any kind), receivables, claims or loans or other credit facilities (and the agreements or contracts relating thereto) as well as all other types of assets, and (iii) the ownership, administration, development and management of a portfolio of assets (including, among other things, the assets referred to in (i) and (ii) above) in accordance with the provisions of the relevant issue documentation;

The Board is entitled to create one or more compartments (representing the assets of the Company attributable to an issue of securities) corresponding each to a separate part of the Company's assets. All notes or securities of any kind issued in relation to a specific compartment shall constitute one issue for purposes of the Issue Limits. The main rules applicable to compartments that may be created by the Company are further detailed in article 23 of the Articles.

## **2.5 Share capital**

The subscribed share capital is set at [EUR 12,000. - (twelve thousand Euros) consisting of 12,000 (twelve thousand) ordinary shares in registered form with a par value of EUR 1.- (one Euro) each.]

## **2.6 Shares**

The shares are and will remain in registered form (actions nominatives).

## **2.7 Transfer of shares**

In case of a sole shareholder, the shares held by the sole shareholder are freely transferable

## **2.8 Debt securities**

Debt securities issued by the Company in registered form (obligations nominatives) may, under no circumstances, be converted into debt securities in bearer form (obligations au porteur).

## **2.9 Meetings of the shareholders of the Company**

The sole shareholder assumes all powers conferred to the general shareholders' meeting (the "General Meeting").

In case of a plurality of shareholders, each shareholder may take part in collective decisions irrespectively of the number of shares which he/she/it owns. Each shareholder shall dispose of a number of votes equal to the number of shares held by him/her/it. Collective decisions are only validly taken insofar as shareholders owning more than half of the share capital adopt them.

The holding of general shareholders' meetings shall not be mandatory where the number of members does not exceed sixty (60). In such case, each member shall receive the precise wording of the text of the resolutions or decisions to be adopted and shall give his/her/its vote in writing.

## **2.10 Notice, Quorum, Powers of attorney and convening notices**

Art. 10. The notice periods and quorum provided for by law shall govern the notice for, and the conduct of, the General Meetings, unless otherwise provided herein.

Each share is entitled to one vote.

Except as otherwise required by law or by these Articles, resolutions at a duly convened General Meeting will be passed by a simple majority of those present or represented and voting.

A shareholder may act at any General Meeting by appointing another person as his proxy in writing whether in original, by telefax, cable, telegram, telex or e-mail to which an electronic signature, which is valid under Luxembourg law, is affixed.

## **2.11 Management**

The Company shall be managed by one or several managers, whether shareholders or not

The Manager(s) shall be appointed by the Sole Shareholder or, as the case may be, by the General Meeting, which will determine their number, their remuneration and the limited or unlimited duration of their mandate.

## **2.12 Meetings of the Board**

The Board shall meet upon call by the Chairman or any two Managers at the place indicated in the notice of meeting which shall be in Luxembourg.

Written notice of any meeting of the Board shall be given to all the Managers at least twenty-four (24) hours in advance of the date set for such meeting,.

Any member of the Board may act at any meeting of the Board by appointing, in writing whether in original, by telefax, cable, telegram, telex or e-mail to which an electronic signature (which is valid under Luxembourg law) is affixed, another Manager as his or her proxy.

The Board can deliberate and act validly only if at least the majority of the Company's Managers is present or represented in accordance with the preceding paragraphs at a meeting of the Board. Decisions shall be taken by a majority of the votes of the Managers present or represented at such meeting. In the case of a tied vote, the Chairman of the meeting shall have no casting vote.

Notwithstanding the foregoing, a resolution of the Board may also be passed in writing.

## **2.13 Minutes of meetings of the Board**

The minutes of any meeting of the Board shall be signed by the Chairman or a member of the Board who presided at such meeting. The minutes relating to the resolutions taken by the Sole Manager shall be signed by the Sole Manager.

## **2.14 Powers of the Board or of the Sole Manager**

The Board or the Sole Manager is vested with the broadest powers to perform or cause to be performed all acts of disposition and administration in the Company's interest, including the power to transfer, assign or dispose of the assets of the Company in

accordance with the Securitisation Act 2004. All powers not expressly reserved by the Companies Law or by the Articles to the General Meeting fall within the competence of the Board or of the Sole Manager.

### **2.15 Delegation of powers**

The Board or the Sole Manager is also authorised to appoint a person, either Manager or not, for the purposes of performing specific functions within the Company provided that overall management and control of the Company's affairs must be retained and actively carried out by the Board or the Sole Manager and that all matters of policy, strategy and key business decisions must be made by the Board at meetings of the Board, or by the Sole Manager where applicable, save for matters which have been delegated by the Board or the sole Manager in accordance with this Article 15.

### **2.16 Binding signatures**

The Company shall be bound towards third parties in all matters by (i) the joint signatures of any two Managers, or (ii) in the case of a Sole Manager, the sole signature of the Sole Manager or (iii) the joint signatures of any persons or sole signature of the person to whom such signatory power has been granted by the Board or the Sole Manager, but only within the limits of such power.

### **2.17 Conflict of interests**

No contract or other transaction between the Company and any other company or firm shall be affected or invalidated by the fact that any one or more of the Managers or officers of the Company is interested in, or is a Manager, associate, officer or employee of such other company or firm.

In the event that any Manager of the Company may have any personal and conflicting interest in any transaction of the Company, such Manager shall make known to the Board such personal and conflicting interest and shall not consider or vote upon any such transaction, and such transaction, and such Manager's interest therein, shall be reported to the next following General Meeting.

The two preceding paragraphs do not apply to resolutions of the Board or the Sole Manager concerning transactions made in the ordinary course of business of the Company of which are entered into on arm's length terms.

### **2.18 Approved statutory auditor(s)**

The operations of the Company shall be supervised by one or more approved statutory auditors (réviseurs d'entreprises agréés). The approved statutory auditor(s) shall be appointed by the Board in accordance with the Securitisation Act 2004.

### **2.19 Accounting year**

The accounting year of the Company shall begin on 1st January and shall terminate on 31st December of each year.

The Board or the Sole Manager shall draw up the balance sheet and the profit and loss account. It submits these documents together with a report of the operations of the

Company at least one month prior to the annual general meeting of shareholders to the independent auditors who shall make a report containing comments on such documents.

## **2.20 Allocation of profits**

From the annual net profits of the Company, 5% (five per cent.) shall be allocated to the reserve as required by law. This allocation shall cease to be required as soon as such legal reserve amounts to 10% (ten per cent.) of the capital of the Company as stated or as increased or reduced from time to time as provided in article 5 above.

The General Meeting shall determine how the remainder of the annual net profits shall be disposed of and it may, in its sole discretion, decide to pay dividends from time to time, as it believes best suits the corporate purpose and policy of the Company.

The Board may decide to pay interim dividends under the conditions and within the limits laid down in the Companies Law.

Profits accrued by the Company which are not allocated to a compartment shall result in an immediate and irrevocable commitment to shareholders

## **2.21 Dissolution and Liquidation**

The Company may be dissolved, at any time, by a resolution of the Sole Shareholder or the General Meeting,

The liquidation of a compartment will not affect any other compartment or the Company in general.

## **2.22 Compartments**

The Sole Manager or the Board may establish one or more compartments which may be distinguished, among other things, by the nature of acquired risks or assets, the distinctive terms of the issues made in their respect, the reference currency or other distinguishing characteristics (each a "Compartment").

The terms and conditions in respect of any notes or debt securities issued in connection with a specific Compartment (the "Instruments"), and the specific objects of, each Compartment shall be determined by the Sole Manager or the Board. The same shall be stated in issuance documentation relating to that Compartment (the "Conditions"). Each holder of Instruments issued by the Company shall be deemed to fully adhere to, and be bound by, the Conditions applicable to these Instruments and these Articles by subscribing to these Instruments.

All assets allocated to a Compartment are exclusively available to investors thereunder and the creditors whose claims have arisen in connection with the creation, operation or liquidation of that compartment. If the realised net assets of any compartment are insufficient to pay any amount due to holders of notes or securities linked to that compartment, such holders shall have no claim against the Company for any such shortfall and shall have no claim against any other Compartment or any other assets of the Company. In the relationship between the holders of Instruments, each Compartment is deemed to be a separate entity.



The sole manager or the Board shall establish and maintain separate accounting records for each of the Compartments of the Company for the purposes of ascertaining the rights of holders of Instruments issued in respect of each Compartment. Such accounting records to be conclusive evidence of such rights in the absence of manifest error.

The assets and liabilities of the Company and each compartment shall be valued by the Sole Manager or the Board or its delegate for the purposes of the accounting records of the Company in accordance with Luxembourg generally accepted accounting principles and in conformity with any further valuation methods which may be relevant to the assets of the relevant Compartment set out in the relevant Conditions.

As and when several compartments have been created, the Company shall establish consolidated accounts. Such consolidated accounts of the Company, including all compartments, shall be expressed in the reference currency of the corporate capital of the Company. The reference currencies of the compartments may be different denominations.

Fees, costs, expenses and other liabilities incurred on behalf of the Company as a whole shall be general liabilities of the Company and may be allocated by a decision of the board of directors to all compartments on a pro-rata basis and/or in accordance with the relevant issue documentation.

### **2.23 Non-petition**

No holder of any financial instruments issued by the Company or any other creditor of the Company (including those whose claims relate to a particular compartment) may attach any of the assets of the Company, institute against or consent to any bankruptcy, insolvency, controlled management, reprieve of payment, composition, moratorium or any Luxembourg or foreign similar proceedings, unless so required by law.

### **2.24 Limited recourse**

Claims against the company of holders of financial instruments issued by the Company outside of a specific compartment or any other creditors of the Company outside of a specific compartment are limited in recourse to the assets of the Company.

Claims of holder of financial instruments issued by the Company in relation to specific a compartment or any other creditors whose claims arose in relation to such compartment are limited to the assets of such compartment only.

### **2.25 Transitory Provisions**

The first business year commences on the date of incorporation of the Company and ends on 31st of December 2018.

The first annual general meeting will be held in 2019.

### **2.26 Applicable law**

All matters not expressly governed by these Articles shall be determined in accordance with the Companies Law and the Securitisation Act 2004.