

› eex group

EMIR Data Services  
Agreement

Effective as of  
29.04.2024  
Leipzig

Ref. 0004

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## 1. General Information

Pursuant to Article 9 of Regulation (EU) 648/2012 (“EMIR”) CCPs and Counterparties “*shall ensure that the details of any derivative contract they have concluded and of any modification or termination of the contract are reported to a trade repository ... The details shall be reported no later than the working day following the conclusion, modification or termination of the contract. ... A counterparty which is subject to the reporting obligation may delegate the reporting of the details of the derivative contract.*”

European Commodity Clearing AG (“ECC”) as central counterparty (“CCP”) offers “EMIR Data Services” (“Services”) which allows non-clearing and clearing members (“Reporting Participants”) to delegate their reporting obligations under EMIR Art. 9 to ECC. The Services cover transactions concluded or registered on markets cleared by ECC where the reporting obligation is applicable.

This EMIR Data Services Agreement (“Agreement”) contains a subscription form (2.), general terms and conditions (3.) and an excerpt of ECC’s price list (4.). The subscription form shall be submitted to conclude an Agreement with ECC.

### **European Commodity Clearing AG**

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## 2. Subscription Form for EMIR Data Services

### 2.1. Reporting Participant Data

<b>Reporting Participant (complete name of the company)</b>	
<b>ECC Member ID</b>	
<b>Legal Entity Identifier (LEI)<sup>1</sup></b>	
<b>Country where the registered office is located<sup>2</sup></b>	
<b>Name of contact person</b>	<b>Name of invoice recipient</b>
<b>Street or POB of contact person</b>	<b>Street or POB of invoice recipient</b>
<b>Postal code, city and country of contact person</b>	<b>Postal code, city and country of invoice recipient</b>
<b>Email address of contact person</b>	<b>Email address of invoice recipient</b>
<b>Telephone of contact person</b>	<b>Fax of contact person</b>
<b>Group Email address of contact team</b>	<b>Group Email address of invoice team</b>

<sup>1</sup> For further information regarding the issuance of LEIs, please consult the web page of the Regulatory Oversight Committee (ROC) of the Global Legal Entity Identifier System (GLEIS) [www.leiroc.org](http://www.leiroc.org).

<sup>2</sup> The reporting obligation according to EMIR Article 9 is only applicable to companies incorporated in the EEA.

Please fill in your member status:

- Clearing Member (CM)
- Non-Clearing Member (NCM)

CM<sup>3</sup>: \_\_\_\_\_

For CMs: Which relations shall be covered by the service?

- CCP – CM
- CM – NCM

ESMA specifies that reporting on position level requires an agreement between the counterparties. If ECC reports on behalf of the Clearing Member on position level it lies with the Clearing Member to set up an agreement to agree with the Non-Clearing Member as Counterparty to report on position level.

Please fill in your financial sector:<sup>4</sup>

- Financial Counterparty (FC)
- Non-Financial Counterparty (NFC)

Does your trading volume exceed the EMIR Clearing Threshold?

- Yes (NFC/FC+)
- No (NFC/FC-)

Please note which accounts are used for commercial activity.<sup>5</sup> If no account is specified, ECC will report all transactions/positions on all accounts as being linked to your commercial activity.

- |                  |  |                  |  |                  |  |
|------------------|--|------------------|--|------------------|--|
| P <sub>1</sub> : | <input type="checkbox"/> Yes <input type="checkbox"/> No | A <sub>1</sub> : | <input type="checkbox"/> Yes <input type="checkbox"/> No | A <sub>5</sub> : | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| P <sub>2</sub> : | <input type="checkbox"/> Yes <input type="checkbox"/> No | A <sub>2</sub> : | <input type="checkbox"/> Yes <input type="checkbox"/> No | A <sub>6</sub> : | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| M <sub>1</sub> : | <input type="checkbox"/> Yes <input type="checkbox"/> No | A <sub>3</sub> : | <input type="checkbox"/> Yes <input type="checkbox"/> No | A <sub>7</sub> : | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| M <sub>2</sub> : | <input type="checkbox"/> Yes <input type="checkbox"/> No | A <sub>4</sub> : | <input type="checkbox"/> Yes <input type="checkbox"/> No | A <sub>8</sub> : | <input type="checkbox"/> Yes <input type="checkbox"/> No |

<sup>3</sup> Name of the current Clearing Member of the NCM

<sup>4</sup> According to Commission Implementing Regulation (EU) 2022/1860 Annex, Table 1 Field 5.

<sup>5</sup> According to Commission Implementing Regulation (EU) 2022/1860 Annex, Table 1 Field 20.

Which Corporate Sector should be reported?<sup>6</sup>

Please provide applicable numbers. Where more than one activity shall be reported, list the codes in order of the relative importance of the corresponding activities.

For Financial Counterparties only:	For Non-Financial Counterparties only:
.....	.....
INVF Investment firm authorised in accordance with Directive 2014/65/EU of the European Parliament and of the Council	A Agriculture, forestry and fishing
CDTI Credit institution authorised in accordance with Directive 2013/36/EU of the European Parliament and of the Council	B Mining and quarrying
INUN an insurance undertaking or reinsurance undertaking authorised in accordance with Directive 2009/138/EC of the European Parliament and of the Council	C Manufacturing
UCIT a UCITS and, where relevant, its management company, authorised in accordance with Directive 2009/65/EC of the European Parliament and of the Council ( 4 ), unless that UCITS is set up exclusively for the purpose of serving one or more employee share purchase plans	D Electricity, gas, steam and air conditioning supply
ORPI an institution for occupational retirement provision (IORP), as defined in point (1) of Article 6 of Directive (EU) 2016/2341 of the European Parliament and of the Council	E Water supply, sewerage, waste management and remediation activities
CSDS a central securities depository authorised in accordance with Regulation (EU) No 909/2014 of the European Parliament and of the Council	F Construction
	G Wholesale and retail trade, repair of motor vehicles and motorcycles
	H Transportation and storage
	I Accommodation and food service activities
	J Information and communication
	K Financial and insurance activities
	L Real estate activities
	M Professional, scientific and technical activities
	N Administrative and support service activities
	O Public administration and defence; compulsory social security
	P Education
	Q Human health and social work activities
	R Arts, entertainment and recreation
	S Other service activities
	T Activities of households as employers; undifferentiated goods – and services – producing activities of households for own use
	U Activities of extraterritorial organisations and bodies

If any information supplied by the Reporting Participant in this document changes, the Reporting Participant is obliged to inform ECC about any changes immediately. The Reporting Participant acknowledges that ECC assumes no responsibility for the accuracy of the provided data.

<sup>6</sup> According to Commission Implementing Regulation (EU) 2022/1860 Annex, Table 1 Field 6.

## 2.2. Fixed EMIR reporting details for the Clearing Members EMIR reports

With EMIR Refit, the Non-Clearing Members (Counterparty 2) of the Clearing Members (Counterparty 1) must be classified with regards to the following details:

- Nature of the Counterparty 2 (Non-Clearing Member)
- Corporate sector of the counterparty 2 (Non-Clearing Member)
- Clearing threshold of counterparty 2 (Non-Clearing Member)
- Reporting obligation of the counterparty 2

If these Non-Clearing Members (counterparty 2) do not use an ECC EMIR service, this data will be missing from the EMIR reports. In this case, the following default values are stored:

EMIR reporting field	default values
Nature of the Non-Clearing Member	"N" - Non-Financial Counterparty
Corporate sector of Non-Clearing Member	"D" - Electricity, gas, steam and air conditioning supply
Clearing threshold of Non-Clearing Member	"False" - Below the threshold
Reporting obligation of the counterparty 2	"True"

In the event that these default values do not apply to some of your Non-Clearing Members who do not use the ECC EMIR Data Service, you can enter these details in Table 1 in Annex 1. The EMIR reports are updated with the information you have provided about your non-clearing members.

## 2.3. Conclusion of the Agreement

- As soon as possible (twenty (20) working days after the receipt of the duly completed form and notification of acceptance by ECC);
- Requested date \_\_\_\_\_ (entry into force of the Agreement on the requested date is subject to the receipt of the duly completed form and notification of acceptance by ECC twenty (20) working days prior to this date).

**The Reporting Participant herewith requests ECC to perform the following Services** after entry into force of the Agreement:

<b>Clearing Member</b>		<b>For markets cleared by ECC</b>
<b>EMIR Data Services</b>		
<b>Harmonized File</b> <b>Provision of EMIR Harmonized File in csv to the Reporting Participant on an FTP Server for individual download by the Reporting Participant</b> on the working day following the reportable event. The Files purpose is to harmonize important EMIR data fields such as Position-UTI and improve the position reconciliation process. The file is based on the structure agreed among European CCPs.		<input type="checkbox"/>
<b>Basic Service Files<sup>5</sup></b> <b>Provision of EMIR Data<sup>4</sup> Files to the Reporting Participant on an FTP Server</b> or by other appropriate means <b>for individual download by the Reporting Participant</b> on the working day following the reportable event.		<input type="checkbox"/>
<b>Additional Service (requires subscription to the Basic Service)<sup>6</sup></b> <b>Transfer of EMIR Data<sup>7</sup> Files to Regis-TR</b> on behalf of the Reporting Participant in a complete, accurate and timely manner in consistence with EMIR, the Implementing Regulation and the latest procedures, standards and electronic formats published by Regis-TR.  <b>Regis-TR Account ID<sup>6</sup>:</b> _____		<input type="checkbox"/>
<p><sup>5</sup> ECC will provide the messages in accordance with the relevant validations, technical specifications and formats specified by ESMA. ECC will not adapt messages to format requirements applied of TR's other than Regis-TR.</p> <p><sup>6</sup> Institution Clearing Members are required to hold an own Regis-TR Reporting Participant account.</p> <p><sup>7</sup> Data in the possession of the ECC as defined in Table I and Table II of the Implementing Technical Standards (EU No 2022/1860) and the technical standards on reporting, data quality, data access and registration of Trade Repositories under EMIR REFIT.</p>		
<p><b>We herewith request the conclusion of the Agreement and accept the Terms and Conditions and the Price List in their respective valid version. This Agreement replaces all prior Agreements.</b></p>		
Place	Date	Company stamp and legally binding signature(s)

<b><u>Non-Clearing Member</u></b>		<b>For markets cleared by ECC</b>
<b>EMIR Data Services</b>		
<b><u>Harmonized File</u></b> Provision of EMIR Harmonized File in csv to the Reporting Participant on an FTP Server for individual download by the Reporting Participant on the working day following the reportable event. The Files purpose is to harmonize important EMIR data fields such as Position-UTI and improve the position reconciliation process. The file is based on the structure agreed among European CCPs.		<input type="checkbox"/>
<b><u>Basic Service</u><sup>1, 2</sup></b> Provision of EMIR Data <sup>4</sup> Files to the Reporting Participant on an FTP Server or by other appropriate means for individual download by the Reporting Participant on the working day following the reportable event.		<input type="checkbox"/>
<b><u>Additional Service (requires subscription to the Basic Service)</u><sup>3</sup></b> Transfer of EMIR Data <sup>4</sup> Files to Regis-TR on behalf of the Reporting Participant in a complete, accurate and timely manner in consistence with EMIR, the Implementing Regulation and the latest procedures, standards and electronic formats published by Regis-TR		<input type="checkbox"/>
<p><sup>1</sup> For NCMs that wish to delegate reporting while their CM does not delegate: ECC will report the UTI/Position-UTI and all other reporting fields only according to ECC's reporting specifications and ECC's UTI construction algorithm. ECC will not resolve mismatches or adapt reporting to the CM's reporting specifications.</p> <p><sup>2</sup> ECC will provide the messages in accordance with the relevant validations, technical specifications and formats specified by ESMA. ECC will not adapt messages to format requirements applied of TR's other than Regis-TR.</p> <p><sup>3</sup> For NCMs: Can only be selected by NCMs if their CM delegates reporting to ECC.</p> <p><sup>4</sup> Data in the possession of the ECC as defined in Table I and Table II of the Implementing Technical Standards (EU No 2022/1860) and the technical standards on reporting, data quality, data access and registration of Trade Repositories under EMIR REFIT.</p>		
<b>We herewith request the conclusion of the Agreement and accept the Terms and Conditions and the Price List in their respective valid version. This Agreement replaces all prior Agreements.</b>		
Place	Date	Company stamp and legally binding signature(s)

## 3. Terms and Conditions

### 3.1. Entry into force of the Agreement

Necessary prerequisite for the conclusion of an Agreement is the admission at ECC according to its rules and regulations. The appointment of ECC to provide the above described Services shall be effective upon the notification of the acceptance of such appointment by ECC or European Energy Exchange AG (“EEX”) acting as an agent on its behalf. ECC is not obliged to begin the Services until the notification of the acceptance. Once the Agreement is effective, ECC is appointed, authorised and obliged to conduct the Services pursuant to the present Terms and Conditions.

Necessary prerequisites for the activation of the Services are:

- Fulfillment of the technical requirements according to Reporting Services information
- A LEI code with status “Issued”. In case the LEI changes the status into any other status than “Issued” ECC will not be able to report within the given reporting deadline d+1.

Reporting Participants that hold a membership with Regis-TR shall provide the authorization and delegation control details directly to Regis-TR.

### 3.2. Term of the Agreement

The Agreement is concluded for an indefinite term. Each party may terminate the Agreement with fourteen (14) calendar days' prior written notice. A termination by the Reporting Participant will only be effective if the EMIR Data Services Termination Form is delivered to the specified address.

In case the Reporting Participant is no longer a member of ECC the provision of the Services terminates automatically with immediate effect and without prior notice.

Notwithstanding the foregoing, ECC reserves the right to terminate or suspend the provision of the Services to the Reporting Participant with immediate effect, and without prior notice, if

- any warranty granted by the Reporting Participant pursuant to this Agreement ceases to be true,  
**or**
- if the Reporting Participant is in material breach of any obligation under this Agreement or any other agreement between the Reporting Participant and ECC (as the ECC Clearing Conditions)  
**or**
- on occurrence of an insolvency event with respect to the Reporting Participant.

### **3.3. Provision and verification of information / responsibility for unrequested information**

The Reporting Participant shall promptly provide ECC with all information not being in ECC's possession but which is required to conduct the Services in a complete, accurate and timely manner according to EMIR, the Implementing Regulation and the latest procedures, standards and electronic formats published by ESMA. ECC shall not be held responsible for any information directly sent by the Reporting Participant to a Trade Repository or for any other data not stipulated in the Commission Implementing Regulation (EU) 1247/2012 Annex, Table 1, provided by the Reporting Participant for integration into the EMIR Data File.

ECC may rely on the data derived from its electronic trading system, clearing system or provided by the Reporting Participant without further investigation.

The Reporting Participant is responsible for timely verification of the completeness, accuracy and timeliness of the submission of relevant data to Regis-TR (t+1 reporting). If the Reporting Participant becomes aware of a reporting error, it will notify the ECC without undue delay.

In case of a LEI change, the member needs to inform ECC and inform whether the LEI change has been requested with Regis-TR.

### **3.4. Responsibilities and Technical Details**

ECC reserves the right to utilize any of the available connectivity channels and file formats specified by Regis-TR. All reports are conditional on the data that is required to enable ECC to make such reports in a timely manner. ECC has no obligation to verify the required data. In case it becomes apparent to ECC that the data required to make such reports is incorrect, incomplete, invalid or not compliant with the regulatory requirements, ECC may choose not to generate or submit a reporting file. ECC will notify the respective Reporting Participant if such incident occurs.

The obligation for reporting according to EMIR Article 9 and the regulatory responsibility for the correctness of the content, completeness, validity and compliance with the regulatory requirements of such reporting remains with the Reporting Participant.

The liability for complete and accurate reporting remains with the Reporting Participant.

### **3.5. Reporting Details**

#### **3.5.1 Harmonized File**

With regard to the content of the Harmonized File, reference is made to <https://www.ecc.de/en/clearing/emir/trade-reporting-under-emir-refit>

#### **3.5.2 Basic & Additional Service**

The Services cover provision or reporting of trades, positions and for Financial Counterparties reporting of exposures

### Trades

- reporting in end-of-day status, i.e. new trades are reported for the ultimate counterparties
- lifecycle events are not reported
- all trades are netted during end-of-day processing

### Positions

- reported as separate transactions
- position lifecycle events are reported as position modifications
- at maturity, the position is automatically cancelled and no specific lifecycle event is reported

### Exposures

- reporting according to EMIR Art. 9 and as specified by the Reporting Participant in the Agreement
- reported for positions only, not for individual transactions
- for all open positions, valuation update and collateral update are reported
- only applicable to Financial Counterparties and Non-Financial Counterparties above the threshold
- reporting of exposures is only covered for Clearing Members

As far as prior to trade registration, a previous bilateral trade was reportable, such trade has to be reported by the respective counterparties themselves (including cancellation).

For agency or omnibus account trades/positions, ECC does not know the ultimate beneficiary of the trade/position. Any transaction between the ECC member offering agency trading and its client may also constitute a reportable derivatives transaction under EMIR, but is beyond the scope of ECC's Services. It must be separately reported by the member and the member's client.

Matching between CM and NCM reporting is beyond the scope of ECC's Services, unless jointly delegated to ECC.

ECC does not exclude transactions that reporting participants consider to be intragroup transactions. ECC reports all transactions and positions as "not intragroup".

CMs are responsible for unreconciled and mismatched records in case their NCM does not apply the reporting logic by ECC. ECC will not adapt the reporting logic in order to reconcile and match reporting between the CM and non-delegating NCMs. Full matching for the CM-NCM relation can only be ensured for NCMs that also have delegated reporting to ECC.

The Agreement does not cover reporting of the inserted paragraph 1a for EMIR Art. 9 from Regulation 2019/834 amending the reporting obligation for Financial Counterparties to both counterparties for OTC contracts. This includes in particular EEX Asia contracts, classified as OTC derivatives. ECC will not report positions and transactions for EEX Asia contracts for the NCM-CM relation on behalf of Clearing Members.

### **3.6. Subcontractors**

ECC may subcontract third parties for the performance of the Services or any part thereof, provided that ECC remains responsible for the performance of the Agreement.

### **3.7. Fees**

As consideration for the provision of the Services under this Agreement, ECC charges fees as stipulated in the respective valid version of the List of Services and Prices of ECC. ECC further charges extra fees for (additional) individual services requested by the Participant pursuant to the List of Services and Prices of ECC. The full monthly fee is due for every commenced month, unless (i) the Services start within five (5) calendar days before the end of a month or (ii) the Services terminate within five (5) calendar days after the start of a month, in which case no fee shall be charged in relation to the respective month.

Please find the complete List of Services and Prices of ECC on our website <https://www.ecc.de/ecc-en/about-ecc/rules/price-list>.

### **3.8. Invoicing**

Invoices are issued by ECC once per calendar year and due upon receipt. ECC reserves the right to adjust the invoicing frequency to a quarterly rhythm and to submit invoices electronically to the email address of the invoice recipient according to the Agreement. It is the reporting participant's obligation to provide and update a valid invoice recipient by using the Agreement. ECC reserves the right to send the invoice to the email address of the contact person of the Agreement, if no invoice recipient has been named.

Any due fees according to this Agreement are debited directly via the Clearing Member or the Settlement Agent as appointed paying agent of the Reporting Participant. Clearing Member/Settlement Agent is the Reporting Participant's Clearing Member/Settlement Agent on the debit date.

### **3.9. Amendment to the Agreement and Change of Services**

Any amendment to the Agreement by ECC shall be electronically announced by ECC to the Reporting Participant at least ten (10) working days before such amendment becomes effective. The amendment shall be considered accepted by the Reporting Participant unless the Reporting Participant objects in writing to ECC until it becomes effective. In the event of an objection against an amendment of the Agreement, ECC reserves the right to terminate the provision of Services of the Reporting Participant concerned.

In case a Reporting Participant intends to change the scope of the Services specified in section 2.2, the Reporting Participant shall hand in a new Agreement which will then seamlessly replace the present Agreement.

### 3.10. Confidentiality

Information transmitted in the framework of this Agreement shall be considered confidential. ECC and the Reporting Participant shall exercise at least the same degree of care as they use with regard to their own confidential information, but in no event less than a reasonable degree of care in protecting the other party's confidential information.

### 3.11. Liability

The liability of ECC shall in any case be limited to the total of all fees paid by the Reporting Participant for the twelve (12) months preceding the first written notification of a direct damage. This limitation of liability shall not apply to intentionally caused damages and gross negligence.

Furthermore, ECC shall not be liable to the Reporting Participant for any of the following:

- action taken or any failure that has arisen from or caused by force majeure events
- consequences of incorrect, incomplete, invalid data or data not compliant with the regulatory requirements provided to ECC by the Reporting Participant.
- consequences of the Reporting Participant not checking ECC's reporting on its behalf
- the inaccuracy of any information received from any recognized source that ECC employs in the ordinary course of business;
- any communication and information sent by a Reporting Participant to a trade repository, non-performance of the services caused by any technical error or any malfunction or disruption of, or error in the transmission of information that is outside the technical control of ECC
- any acts or omissions in relation to instructions from a Reporting Participant in relation to this Agreement after termination of this Agreement
- incorrectness of ECC's trade reporting specification as maintained in Member Info available on <https://www.ecc.de/en/clearing/emir/trade-reporting-under-emir-refitagainst> any external reporting requirements (e.g. Regis-TR or ESMA).
- Undirect or consequential damages

### 3.12. Representations and Warranties of the Reporting Participant

Each Reporting Participant hereby represents and warrants on a continuing basis to ECC that:

- the default values as specified in the Agreement are accurate, true, complete and compliant with regulatory requirements,
- it regularly checks the reporting made on its behalf by ECC for correctness
- it promptly informs ECC of any changes to the default values, confirmations and declarations, which have been given to ECC in the Agreement or any other means of communication. This shall also apply in case of a potential insolvency of the Reporting Participant.
- it waived off any confidentiality obligations of ECC in relation to the reported data to the extent required for the provision of the Services by ECC.
- the Services will not infringe on any other confidentiality or other obligations or rights of third parties
- it has full capacity, capability and all authorizations, consents and approvals of all competent authorities necessary to enter into and perform its obligations under this Agreement.

- there are no actions, suits or proceedings or regulatory investigations pending or, to the Reporting Participant knowledge, threatened against or affecting the Reporting Participant before any court or administrative body or arbitration tribunal that might affect the ability of the Reporting Participant to meet and carry out its obligations under this Agreement.
- according to EMIR Art. 9 (1) no report duplications are caused by the Reporting Participant in respect to the ECC delegated submission of reports.

### **3.13. Applicable law**

The Agreement shall be subject to, construed in accordance with and governed by the laws of Germany. The exclusive jurisdiction for all conflicts arising in connection with the Agreement shall be Leipzig.

### **3.14. Miscellaneous**

If any of the provisions of this Agreement shall become or be held invalid or unenforceable, all other provisions hereof shall remain in full force and effect. The invalid or unenforceable provision shall be deemed to be automatically amended and replaced by a valid or enforceable provision which economically accomplishes as far as possible the purpose and the intent of the invalid or unenforceable provision. The same shall apply with regard to any unintentional loopholes in the regulations.

Except as may be expressly provided therein, the governing documents and any other relevant agreement between ECC and a Reporting Participant are solely for the benefit of ECC and the relevant Reporting Participant. No other party shall have or be entitled to assert any rights, claim or remedies against ECC. The Reporting Participant may not assign, resell and sublicense any of its rights, duties or obligations without ECC's prior consent.

No waiver by ECC of any breach by the Reporting Participant of any term, condition or obligation hereunder shall be effective unless made in writing executed by ECC and no such waiver shall be deemed a waiver of the same or similar breach thereafter.

