



**› eex group**

**General Conditions to  
the MiFID II EUREX  
Reporting Agreement**

Effective as of

17.03.2022

Leipzig

Ref. 0001A

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## 1. Scope of Application

These General Conditions to the MiFID II EUREX Reporting Agreement (“**GC**”) shall apply to any MiFID II EUREX Reporting Agreement (“**Agreement**”), consisting of the Participation Form, EEX AG’s corresponding notice of acceptance and these General Conditions to the MiFID II EUREX Reporting Agreement.

## 2. General Information

EUREX Frankfurt AG, Mergenthalerallee 61, 65760 Eschborn, Germany (“EUREX Frankfurt AG”), as the market operator of EUREX, is regulatorily required under Article 58 of Directive 2014/65/EU (“MiFID II”) to report details of positions of its trading participants and their clients to the respective competent authority. Trading participants of EUREX (“EUREX Participants”) are required to contribute to such reporting (Article 58 MiFID II is cited in excerpts for ease of reference further below).

EUREX Frankfurt AG has tasked European Energy Exchange AG, Augustusplatz 9, D-04109 Leipzig, Germany (“EEX AG”) as service provider with such regulatory reporting.

This Agreement covers the contribution of data (“Data Contribution”) to EEX AG by EUREX Participants in connection with the regulatory reporting requirements of EUREX Frankfurt AG under Article 58 MiFID II.

It remains the sole responsibility of the EUREX Participant to evaluate whether European or national jurisdictions require further activities to achieve compliance.

Article 58 of Directive 2014/65/EU (“MiFID II”)<sup>1</sup> states:

*“[...] a market operator operating a trading venue which trades commodity derivatives or emission allowances or derivatives thereof [shall]:*

*[...]*

*(b) provide the competent authority with a complete breakdown of the positions held by all persons, including the members or participants and the clients thereof, on that trading venue, at least on a daily basis.*

*[...] members or participants of regulated markets, [...] and clients of OTFs [shall] [...] report to the [...] market operator operating that trading venue the details of their own positions held through contracts traded on that trading venue at least on a daily basis, as well as those of their clients and the clients of those clients until the end client is reached.”*

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<sup>1</sup> Article 58 MiFID II has been transposed into Article 57 of the German Securities Trading Act (Wertpapierhandelsgesetz).

### 3. Definitions

In this Agreement:

**Agreement**

shall have the meaning given in Section 1.

**Business Day**

shall mean every working day except for Saturdays and public holidays under TARGET2.

**Commencement Date**

shall have the meaning given in Section 5.1.

**Contact Person**

shall mean the individual reflected as “Contact Person” in the Participation Form.

**Data Contribution**

shall have the meaning given in Section 7.1.

**Force Majeure**

shall have the meaning given in Section 14.

**GC**

shall have the meaning given in Section 1.

**Master Data**

shall have the meaning given in Section 7.1.

**MiFID EUREX Instrument File**

shall mean the file published by EUREX comprising information as to the instruments which (i) have been traded on that trading day on EUREX and (ii) are to be reported pursuant to Article 58 Directive 2014/65/EU.

**Participant Report**

shall have the meaning given in Section 7.3.

**Participation Form**

shall mean the Participation Form to the MiFID II EUREX Reporting Agreement.

**Party**

shall mean EEX AG and the EUREX Participant (collectively referred to as Parties).

**Required Data**

shall have the meaning given in Section 7.1.

### 4. Prerequisites for Conclusion of the Agreement

Prerequisite for **conclusion of the Agreement** is that the EUREX Participant

- (a) Has been communicated to EEX AG by EUREX as either
    - (i) legally assigned to the capacity “Commodity MiFID2” at EUREX, **or**
    - (ii) in the process of being legally assigned to the capacity “Commodity MiFID2” at EUREX;
- and**

- (b) has a LEI with the entity status “active” for both the EUREX Participant and – if applicable – its ultimate parent entity<sup>2</sup> **and**
- (c) has provided the duly completed and signed Participation Form.

## 5. Commencement Date

- 5.1 Data Contribution shall commence on the date (“**Commencement Date**”) on which the EUREX Participant
- (a) has been communicated to EEX AG by EUREX AG as legally assigned to the capacity “Commodity MiFID2” at EUREX, **and**
  - (b) has been granted access to the FTP server of EEX AG, to upload Participant Reports, **and**
  - (c) has created a valid certificate for the signing of Participant Reports.<sup>3</sup>
- 5.2 Data Contribution shall include all Required Data as of conclusion of this Agreement and the EUREX Participant shall upload the respective Participant Reports without undue delay following the Commencement Date.

## 6. Term of the Agreement

- 6.1 The Agreement is concluded for an indefinite term. The Agreement may be terminated by each party with fourteen (14) calendar days' prior written notice. A termination by the EUREX Participant will only be effective if the MiFID II EUREX Reporting Termination Form is used, duly signed and the original document is sent to EEX AG.
- 6.2 This Agreement shall terminate automatically without prior notice and with immediate effect on the date the legal assignment of the EUREX Participant to the capacity “Commodity MiFID2” at EUREX is terminated.
- 6.3 Notwithstanding the foregoing, EEX AG reserves the right to terminate this Agreement entirely or partly with immediate effect, and without prior notice,
- (a) If the EUREX Participant is in material breach of any of its obligations under this Agreement **or**
  - (b) On occurrence of an insolvency event with respect to the EUREX Participant.

## 7. Data Contribution

- 7.1 In accordance with the terms and conditions of this Agreement and without prejudice to any regulatory obligation on the part of the EUREX Participant, the EUREX Participant shall provide EEX AG with all information required by EEX AG to report on behalf of EUREX Frankfurt AG in a complete, accurate and timely manner and in accordance with the requirements under MiFID II, the respective applicable national implementing legislation of MiFID II, applicable delegated acts of the European Commission, the procedures, standards and electronic formats published by ESMA, relevant issuances by EEX AG (as referenced herein) in their respective valid version (“**Data Contribution**”). Such information comprises the data provided by the EUREX Participant

<sup>2</sup> In case the LEI changes the entity status into any other status than “active” EEX AG will not be able to successfully report within the given reporting deadline d+1.

<sup>3</sup> The relevant information is provided by EEX AG to the EUREX Participant upon receipt of a duly completed Participation Form.

in the Participation Form ("**Master Data**") and the data outlined in more detail in the MiFID II EUREX Reporting Description ("**Required Data**").

- 7.2 The EUREX Participant shall notify EEX AG about any changes in relation to its Master Data without undue delay.
- 7.3 More specifically, the EUREX Participant shall prepare and submit to EEX AG a report until 2 p.m. (CE(S)T) of the Business Day following the reportable event, including all Required Data ("**Participant Report**").
- 7.4 For the avoidance of doubt, EEX AG shall have no obligation to verify the Participant Report in terms of accuracy, completeness or otherwise.
- 7.5 Solely for the benefit of EUREX Frankfurt AG, EEX AG validates all Participant Reports in relation to certain aspects as outlined in more detail in the MiFID II EUREX Reporting Description. The system may automatically correct certain inconsistencies between the Participant Report and the MiFID EUREX Instrument File in which case the EUREX Participant will receive a warning for the concerned position shown in the acknowledgement file deployed on the sFTP. Other non-compliances with technical aspects may result in a rejection of the Participant Report as outlined more specifically in the MiFID II EUREX Reporting Description.
- 7.6 If a Participant Report fails the validation process or has not been provided in time, the latest validated Participant Report of a previous Business Day will be – as a rule – submitted. This does not release the EUREX Participant from its obligation to submit a proper Participant Report.

## **8. Technical Details**

- 8.1 EEX AG reserves the right to utilize any of the available connectivity channels and file formats specified by the competent authorities.
- 8.2 EEX AG only accepts Participant Reports in accordance with the relevant validations, technical specifications and formats applied by the so-called FIA/EFET schema. EEX AG will not adapt non-conforming messages to format requirements and will not accept those.
- 8.3 The technical and procedural details are stipulated in the MiFID II EUREX Reporting Description, which shall apply – as amended from time to time – to this Agreement. The MiFID II EUREX Reporting Description is available at [www.eex.com](http://www.eex.com).

## **9. Subcontractors**

EEX AG may subcontract third parties for the performance of any activities envisaged under this Agreement or any part thereof, provided that EEX AG remains responsible for the performance of this Agreement.

## **10. Amendment to these General Conditions**

EEX AG may amend these General Conditions. Any amendment to these General Conditions by EEX AG shall be electronically announced by EEX AG to the EUREX Participant at least ten (10) working days before such amendment becomes effective. The amendment shall be considered accepted by the EUREX Participant unless the EUREX Participant objects in writing to EEX AG until it becomes effective. EEX AG will advise the EUREX Participant thereof in the electronic announcement. In the

event of an objection against an amendment of the Agreement, EEX AG reserves the right to terminate this Agreement.

## 11. Confidentiality

- 11.1 Information transmitted in the framework of this Agreement shall be considered confidential. EEX AG and the EUREX 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.
- 11.2 EEX AG may share such information with third parties, in particular competent authorities, to the extent required for the performance of the activities envisaged under this Agreement.
- 11.3 EEX AG shall be entitled to report to EUREX Frankfurt AG on the performance of the obligations under this Agreement by the EUREX Participant.

## 12. Liability

- 12.1 Each Party shall be liable – irrespective on which legal ground (e.g. default or tort) – only in the following scope:
- (a) in the event of willful intent, gross negligence or a guarantee undertaking, each Party shall be fully liable;
  - (b) in the event of simple negligence, each Party shall only be liable when defaulting with an essential contractual obligation. Essential contractual obligations are those whose infringement jeopardizes the contractual purpose, or whose fulfilment enables proper implementation of the Agreement in the first place and on the compliance of which the other Party may regularly rely. In this case, however, the defaulting Party shall be liable only for the foreseeable, contract-typical damage;
  - (c) Beyond lit. a) to c), neither Party shall be liable.
- 12.2 The limitations of liability outlined above shall not apply to
- (a) any injury to life, body, and health; **and**
  - (b) any liability pursuant to the German Product Liability Act;
- 12.3 EEX AG shall not be liable for any consequences of incorrect, incomplete, invalid data or data not compliant with the regulatory requirements provided to EEX AG by the EUREX Participant.

## 13. Representations and Warranties of the EUREX Participant

Each EUREX Participant hereby represents and warrants on a continuing basis to EEX AG that:

- (a) its Master Data is accurate, true and complete and that it promptly informs EEX AG of any changes to its Master Data;
- (b) it waived off any confidentiality obligations in relation to the reported data to the extent required for the performance of the activities envisaged under this Agreement;
- (c) 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;
- (d) there are no actions, suits or proceedings or regulatory investigations pending or, to the EUREX Participant's knowledge, threatened against or affecting the EUREX Participant before any court or administrative body or arbitration tribunal that might affect the ability of the EUREX Participant to meet and carry out its obligations under this Agreement.

#### 14. Force Majeure

Neither Party shall be responsible for delays or failures in performance resulting from any exceptional event or a set of circumstances beyond the reasonable control of such Party, which cannot be reasonably avoided or overcome, and which make it impossible for such Party to fulfil temporarily or permanently its obligations under this Agreement (“**Force Majeure**”). These events include (but are not limited to) natural disasters (storms, floods, weather damage, etc.), fires, total or partial labor strikes, epidemics, transport blockings, computer breakdowns, telecommunications disruptions, system unavailability and legally binding orders of a governmental or other competent authority. In the event of Force Majeure, the Party affected thereby shall notify the other Party thereof.

#### 15. Applicable law

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

#### 16. 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 EEX AG and a EUREX Participant are solely for the benefit of EEX AG and the relevant EUREX Participant. No other party shall have or be entitled to assert any rights, claim or remedies against EEX AG. The EUREX Participant may not assign, resell, and sublicense any of its rights, duties, or obligations without EEX AG’s prior consent.

EEX AG may transfer this Agreement and all of its rights and obligations under this Agreement to a third party, provided such third party is an affiliated company (“*verbundenes Unternehmen*”) of EEX AG. Prior to such transfer, EEX AG will inform the EUREX Participant as early as possible but no later than 6 weeks prior to such transfer becomes effective. The consent of the EUREX Participant to such transfer shall not be required.

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