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Continuity of Access to ECC for Members in Resolution

CCP Risk Management
24.01.2022

V1.0

Purpose of this document

This document contains information to support resolution planning by resolution authorities of ECC's Clearing Members.

It contains the questions from the Financial Stability Board (FSB) 2021 questionnaire for "Streamlined information collection to support resolution planning" as available under [FSB Continuity of Access to FMI's for Firms in Resolution: Streamlined information collection to support resolution planning \(revised version 2021\)](#). The answers in this questionnaire shall help resolution authorities to maintain access to ECC for clearing members in resolution and prepare the resolution plans accordingly.

As recommended by the FSB, this document is published by ECC to be available for clearing members and resolution authorities.

1. Part I: Legal entity and general contract/service information

0. Please provide:

a. The date of the most recent version of the answers to this questionnaire:

31.01.2022

b. Overview of the changes made:

First version / no changes

1. Please provide the following details:

a. Full Legal Name:

European Commodity Clearing AG

b. LEI:

529900M6JY6PUZ9NTA71

c. Jurisdiction:

Germany, Leipzig, HRB 22362

d. Supervisory, resolution or other relevant regulatory authority:

Supervisory Authority	Bundesanstalt für Finanzdienstleistungsaufsicht Graurheindorfer Str. 108 53117 Bonn Referat WA22
Resolution Authority	Bundesanstalt für Finanzdienstleistungsaufsicht Graurheindorfer Str. 108 53117 Bonn Referat AP3

e. Ownership arrangements:

European Commodity Clearing AG is 100% owned by EEX AG and a member of Deutsche Börse Group.

2. Please Provide the following information:

a. Hyperlink to the published disclosure template:

[Reports \(ecc.de\)](https://www.ecc.de) under “CPMI-IOSCO Disclosure Report” for the quantitative disclosure and “IOSCO – PFMI Self-Assessment” for the qualitative self-assessment.

b. List or description of services provided, including access requirements for each service:

ECC provides clearing and settlement services for spot and derivatives contracts in different commodities (Product Specification Files ([ecc.de](https://www.ecc.de))). Access requirements are part of ECC’s Clearing Conditions ([Rules \(ecc.de\)](https://www.ecc.de)), section 2 and are largely identical for all products.

3. Do your members/clients access your services directly or through an intermediary?

Depending on the membership model, ECC offers direct and indirect access to its services. For membership types, please see ECC's Clearing Conditions ([Rules \(ecc.de\)](https://www.ecc.de)), section 2.1, 2.2 and 2.3.

4. *Do your members/clients need a specific software or IT programme to receive your services?*

No, specific software is not required. Access to clearing systems is possible via Web-GUI

If the answer is 'yes', is such software/ IT programme your proprietary product or a specific third-party product (please also consider whether specific plug-ins that you require clients to run only run in combination with certain software, e.g. Microsoft products)?

Access to EUREX clearing system C7 and / or the EUREX Common Report Engine (CRE). Also, connection to ECC's member area is required. Those systems can be accessed via Web-GUI.

5. *If your contracts are all governed by one governing law, please specify which governing law this is.*

Governing law for transactions with ECC is the German law.

6. *Are there any other service providers or FMIs (for example, CSDs, payment systems or other infrastructure) that a member/client would need to have access to in order to receive your services?*

Based on the requirements in ECC's Clearing Conditions ([Rules \(ecc.de\)](https://www.ecc.de)), section 2.1 and depending on the member type, Clearing Members need access to:

- TARGET2 or other Settlement Bank account
- Clearstream Banking Pledged-Securities Depository account optional for collateral other than cash
- In case physical settlement is required, balancing area agreements or registry accounts depending on the type of commodity

7. *Does your operating framework recognise the continued operations of FMI participants once they enter into resolution?*

ECC's participation requirements do not differentiate between members in recovery, resolution or business-as-usual. As long as obligations are fulfilled, operations of FMI participants at ECC can continue.

2. Part II: Rulebook / Contractual provisions regarding termination

For avoidance of doubt, ECC sees termination and close-out of one of its clearing members as last means to safeguard the financial stability of its clearing service. Therefore, ECC expects timely, relevant, and effective communication and guidance from the member and resolution authorities in case of financial stress or resolution of a clearing member.

ECC will not trigger termination and default management procedures regarding a clearing member if payment, collateral and risk management obligations are fulfilled, be it by the clearing member itself or bridge institute and such steps are communicated by the resolution authorities in a timely and effective manner.

8. Discretionary termination rights

- a. *Which provisions give rise to a right to terminate a service user's access? Are the FMI's termination provisions disclosed publicly? If so, please provide any link(s) to that information.*

Termination rights are part of ECC's rulebook and disclosed publicly.

The actual violation, of membership requirements or fulfillment of obligations under the Clearing Conditions gives ECC the right for termination. This includes first and foremost payment, collateral, and risk management obligations. A high probability of violation in the near future gives right to suspension.

Also, the opening of insolvency proceedings or a payment moratorium against a company exercising control of the clearing member can give rise for termination (or suspension) of the clearing license.

For details, see ECC's Clearing Conditions ([Rules \(ecc.de\)](https://www.ecc.de)), section 2.1.8 and 3.8.1.

- b. *Are these provisions based solely on objective criteria, or can the FMI exercise judgement when triggering termination?*

ECC has the right for termination only if objective criteria are fulfilled. However, there is no automatic termination. In exercising its right for termination, ECC retains scope for discretionary decision making depending on the specific circumstances and risk situation.

- c. *Does the FMI use 'forward looking' indicators that may trigger termination, and if so, which ones?*

No forward-looking indicators are defined that trigger an automatic termination of membership at ECC.

- d. *Do the FMI's provisions envisage that (i) financial stress on the participant's side (as defined in its provisions – please provide the definition of such stress) and/or (ii) a resolution event (recognised in the relevant jurisdiction) qualifies as a material change that may trigger termination?*

As long as the membership criteria and obligations towards ECC are fulfilled, termination is not triggered unless there is good cause to believe a clearing member will not be able to fulfill its obligations towards ECC. ECC relies on effective communication of resolution authorities and conduct of resolution plans regarding the progress of members in financial stress or resolution.

- e. *During stress or resolution of the member, are actions by other FMIs taken into account as possible indicators or triggers for termination?*

Actions of other FMI against a member in stress or resolution are observed but are not a single or automatic trigger for termination from ECC's side.

- f. *Are there any other relevant provisions regarding termination? If so, please explain why they are necessary for the FMI to enable rights for termination.*

No, all relevant provisions for termination are part of ECC's rulebook.

9. *Suspension or restriction of membership*

- a. *Does your framework allow for suspension or restriction of a participant's membership rather than termination? If yes, what exactly does this imply (for instance, limiting the right to enter new transactions in the system)? Please explain any differences to termination.*

Yes, ECC's rulebook allows for suspension and restriction instead of termination. First, a termination can be issued towards a certain date in the future and the affected member required to conduct only risk-reducing transactions, wind-down of positions and clients. Also, position limits or full suspension regarding new transactions are possible. Second, a clearing license can be restricted towards specific products. See ECC's Clearing Conditions, section 2.1.8 and 2.1.9.

- b. *Is there a specific timeline for a suspension period before it leads to termination of membership, and are there circumstances where suspension may be lifted without a termination of membership?*

Under section 2.1.8 (3), suspension can be issued for 6 months at longest. Suspension can be lifted without termination. ECC has not defined a period for such limitation or restrictions ending in automatic termination.

10. *Critical FMI service rules, contractual arrangements, or procedures should reflect any legal restrictions on termination and suspension of access because of an FMI service user entering into resolution.*

- a. *In what way do your rules, contractual arrangements and procedures reflect this?*

ECC does not have special rules for members in resolution. As long as obligations towards ECC are honored and membership requirements are met, the status of resolution of a member does not impair membership.

- b. *Do such arrangements include the effect of parent or affiliates entering resolution?*

No.

- c. *Do you have any plans to amend or otherwise change, or have you recently changed your rules, contractual arrangements or procedures to address legal restrictions on termination of access in the event that an FMI service user enters resolution? If so, please provide details of the proposed/applied changes.*

No changes are currently planned.

11. *Triggers, procedure and consequences of termination of FMI participation.*

- a. *Triggers: in which situations would termination be considered? Is participation/membership generally terminated in case of financial stress? Are these criteria clearly outlined in the rulebook or other contractual documentation (please include the relevant references)?*

Criteria triggering the termination of membership are part of ECC's Clearing Conditions, see our answer under question 8.a above. Membership is not automatically terminated due to financial stress at a member alone, as long as payment, collateral and risk management obligations are fulfilled by a member.

- b. *Please explain the management and monitoring around the termination process - steps and timelines of the escalation and decision-making, as well as of the implementation of termination. (Please provide concrete examples, if any, of participation/membership terminations and flag, where relevant, any changes made to the termination process since).*

ECC monitors continuously the financial situation of its clearing members and their performance in fulfilling payment, collateral, and risk management obligations towards ECC. Where the latter are not fulfilled, or the financial situation is expected to worsen significantly such that the obligations will likely not be fulfilled in the very near future, membership can be suspended, access restricted to certain products, position limits introduced, additional margins requested, or termination procedures can be activated.

Decisions regarding suspension, limitation to specific products, position limits etc. are taken by ECC's Management Board. Where the failure to fulfill obligations includes payment and settlement obligations, ECC can trigger its default management and close-out procedures. For the timeline and process, see the description the default management process at ECC's website under [Default Management \(ecc.de\)](https://www.ecc.de/Default-Management).

- c. *What are the consequences of termination on the participant/member's ability to access the FMI's services? Would the firm be able to complete the processing of any outstanding transactions (e.g. not accepted for clearing or settlement, or in process but not complete) it has in the FMI's systems, or are these cancelled or liquidated?*

The consequences depend on the specific way how the membership is terminated, which is again dependent on the type of violation of obligations and thus risk for the clearing system. The possible consequences are regulated in ECC's Clearing Conditions, sections 2.1.8 and 3.8.

As described above, immediate termination and activation of the default management process is the last means to contain risk for the clearing system. Activation of the default process would trigger cancelling of outstanding transactions. If viable, ECC will of

course allow a clearing member to complete processing of any outstanding transactions or deliveries. Moreover, if viable, ECC would of course prefer an orderly wind-down of the clearing activities by the clearing member itself instead of an immediate close-out.

- d. *Would the decision to terminate participation/membership be notified ex ante (i.e. before it takes effect) to the competent authorities of (i) the direct participant and/or of (ii) the FMI? Would this decision be communicated ex ante to the participant itself? On both aspects, how long in advance of actual termination would such notifications occur?*

Article 48 (3) EMIR foresees that a CCP informs its competent authority before any default management procedures are activated against a clearing member. This forms part of ECC's default management communication process. ECC's regulatory authorities are informed continuously on the progress of default management, including decision to terminate the membership.

Communication with a clearing member being in financial stress or violating its obligations is one of the main parts of ECC's risk management and default process operations. This includes informing the member on the consequences of (continued) failure to honor obligations towards ECC, including termination. Where ECC sees termination to a date in the future as viable, a clearing member will of course be informed on this decision ex ante.

- e. *What impact would a participant/member's termination have on their parent/subsidiaries' direct membership in the FMI?*

According to ECC's Clearing Conditions, ([Rules \(ecc.de\)](#)), section 2.1.8 (e), ECC has the right for termination of a member if the parent company is in insolvency or comparable. Furthermore, inability to honor obligations by one member might give good reason to assume that a sister company being also member at ECC will not be able to honor its obligations in the very near future. Note that there is no automatic termination in such case. Again, termination will only be a last means, and given timely and effective communication and fulfillment of the membership requirements, ECC does not intend to terminate a membership.

- f. *Does the FMI have cross-default provisions in its rule set? Could it put a member in default because of an affiliate's insolvency or of an indirect participant/client's default or do the rules explicitly prevent or exclude such automatic termination (as long as other obligations are being met)?*

There are two elements to this question: First, the insolvency of a parent undertaking can give reason for termination of a member (see answer e. above). Second, this is however not an automatic event, but rather part of ECCs decision making and discretionary choice based on the specific circumstances and actions of the member.

- g. *What assistance would the FMI provide with the porting (within the FMI) of the participant's direct and/or indirect positions/outstanding transactions to a parent/subsidiary membership, third-party successor or bridge entity?*

Porting and clearing member change are standard processes at ECC. ECC will fully support all requests by clearing members (or resolution authorities) or non-clearing members regarding transfer to another legal entity. Details for support depend on the

complexity of the transfer envisaged by the resolution authority (timeline, product set, number of non-clearing members / clients to be ported and number of target clearing members). In any way, ECC has highest interest in supporting successful porting of clients.

h. Please discuss any other points related to termination.

Any other points would relate to the communication and action plan of resolution authorities. We invite all resolution authorities of ECC's members to approach ECC in discussion planned steps and potential scenarios for a member in resolution and the resolution plan.

12. FMIs should retain the ability, as specified in rules or contractual arrangements, to terminate, suspend or restrict participation or continued provision of services where the firm fails to meet obligations or where safe and orderly FMI operations could be compromised

a. Under what conditions, if any, could safe and orderly FMI operations be at risk from maintaining participation of a service user in resolution?

As long as participation requirements, payment, collateral, and risk management obligations towards ECC are fulfilled, we see no risk for operations of ECC from a member in resolution.

b. Which indicators, if any, can a participant use to anticipate that such a scenario may occur?

See our answer under a.

13. Are there any further aspects or issues to mention in relation to the provisions for termination or suspension of membership? If possible, please provide concrete examples of specific factors that were considered in the past when assessing whether to exercise judgement to terminate or suspend a participant's access. Please elaborate.

ECCs processes for termination and default management are designed under the assumption of extremely short reaction time due to close to no information provided by members competent authorities. This increases costs and the risk of wrong market signals or risks contagion. To improve the situation, early information to ECC by the member (in case of stress or recovery), its competent authority (in case of early intervention) and the resolution authority (in case of resolution) are required. Such information should contain guidance on the way forward, the members ability to honor obligations and the financial situation towards ECC.

For further issues, ECC needs details on resolution authorities planned steps and progress from members' resolution plans. It would be of outmost benefit for the clearing system and maintenance of access to ECC for a member in resolution.

3. Part III: Prior to resolution, during signs of distress at the participant

14. *What management and monitoring process(es) does the FMI have in place to identify a situation of stress of a (direct) FMI participant or its affiliate?*

ECC has regular processes for monitoring the fulfillment of access criteria by members as well as processes for monitoring market-based indicators regarding the financial situations of individual members and their corporate groups.

Furthermore, clearing members are obliged to inform ECC in case of financial stress making activation of recovery plans or resolution measures with potential impact on ECC necessary. See section 2.1.6 (2) of ECCs Clearing Conditions.

15. *Which indicators does the FMI consider as part of its management and monitoring in order to determine whether its participants/members face difficulties due to idiosyncratic and/or market stress (outside of entry into resolution)?*

See our answer under 14. above. Indicators used included CDS spreads, credit, issuer and bond ratings, indicators part of financial disclosures, development of share prices, negative news

16. *What risk mitigation actions could the FMI take under its rules / internal procedures vis-à-vis the participant or member? Which of those potential actions are likely, i.e. to be expected by the firm? How would risk mitigation vary in the event of mild, moderate, and severe stress situations at a participant/member? Could actions be taken even though the participant/member meets its obligations?*

Where ECC's internal limits regarding exposure to a clearing member are reached, ECC can request additional margin collateral or reduction of portfolio exposure as part of risk mitigation. This is part of ECC's Clearing Conditions, section. 3.1.2.2

17. *What self-reporting requirements are placed on the member/participant in a situation of stress (e.g. additional reporting, increased reporting frequency; evidence of operational and financial capacity)? Please provide any templates or overviews of required data points, where available.*

Reporting obligations for members are part of ECC's Clearing Conditions, section 2.1.6. As such events are extremely rare and highly individual, no standard templates exist.

18. *Please explain the methodology used to calibrate additional membership requirements (including operational, financial and capital requirements) for a member/client in financial stress outside of resolution.*

Aside ECC's process for overruns of internal limits with potential additional margins and request to reduce exposure, no additional requirements exist for members in financial stress.

19. *Please describe for each of the below risk mitigation actions, in as far as they form part of the FMI's set of potential risk mitigation actions: (i) whether these actions are discretionary or pre-determined, e.g., would the FMI follow a required set of actions, which may be described in its rule book; (ii) in which way, if at all, the FMI could deviate from the predetermined procedure so as to either disregard a mandated risk mitigation action or adopt a non-standard action?*

- i. *Increasing membership contributions (e.g. default fund/loss sharing contributions), mandating pre-funding, restricting withdrawal of deposits;*

None of these options is currently foreseen as risk mitigation action.

- ii. *Increasing initial/variation margin/collateral requirements, restricting collateral types, removing cross-margining facilities; increasing liquidity obligations;*

Depending on a clearing members credit rating as determined by ECC (see our answer for question 14 above) and limits set by ECC's management board, a deterioration of the credit rating might lead to an additional margin requirement or request to reduce exposure. The decision to take such action is part of ECC's internal rules, but up to some discretion by ECC's management board, depending on the size of limit overrun and risk situation.

- iii. *Removing credit lines, reliance on parental guarantees or securities borrowing facilities;*

None of these options is foreseen as risk mitigation action.

- iv. *Enforcing trading controls including position limits, restricting markets;*

In its Clearing Conditions, section 3.1.2.2, ECC generally retains the right to implement different limit types, including limited market access or position limits. However, position limits are currently not part of automatic processes in case of financial distress at a clearing member.

- v. *Termination or suspension of participation/membership.*

Insofar a clearing member fulfills all participation requirements and obligations towards ECC and such violation is, based on objective criteria, not highly likely in the very near future, ECC has no right of suspension or termination of membership.

20. *Please answer question 19 also for other risk mitigation actions, if any, that are not mentioned here and would likely be taken.*

Currently, no other risk mitigation actions are considered or part of the rulebook.

21. *In a situation of idiosyncratic or market stress, in which one of the FMI's (direct) participants/members, or an affiliate company, exhibits signs of distress, communications and notifications may be necessary. Please distinguish in the below in case there are differences between a situation of idiosyncratic vs. market stress.*

- a. *What notifications or communications would the FMI undertake to the participant/member, their competent and/or resolution authority, the FMI's competent and/or resolution authority, the stressed firm's settlement agent, and other stakeholders, and when? Would any of these be based on an obligation for the FMI to notify?*

In its role as commodities CCP, ECC expects to recognize signs of financial stress at a clearing member way after the clearing member itself or its competent or resolution authority. Therefore, no active communication is planned in this direction. By contrast, ECC expects active communication from clearing members, their competent regulatory or resolution authorities once financial stress exceeds certain levels and financial

viability of a member is potentially threatened, measures from recovery plans activated or the resolution plan implemented.

Communication towards ECCs competent authority is situation-based. Generally, all risk relevant events or information is communicated directly and ad-hoc to ECCs regulatory authorities.

- b. *Do you have a specific communication plan for this, or does your approach leverage existing crisis communication mechanisms? In both cases, please describe the main features of the approach.*

For the main crisis events potentially involving clearing members – default events of clearing members and recovery measures of ECC – communication plans exist which will be applied.

- c. *Does the FMI need to get consent from the firm or inform the firm prior to a notification or communication?*

ECC will not disclose confidential information or information threatening the orderly functioning of markets or any insider information regarding a clearing member. In case of default events, communication is streamlined to the information needs of all relevant stakeholders while maintaining confidentiality as far as possible.

- d. *Do the communication/notification protocols require specific factors to be considered, for example legal implication, market impact, etc.?*

ECCs communication plans are guided by four broad criteria: information needs of all relevant stakeholders impacted by an event, legal impact of any communication, market impact and impact on other stakeholders not directly affected by an event.

- e. *Are your communication protocols standardised across participants or do they take into account the specificities of firms' participation and roles in respect of the FMI?*

Any communication is individual and tailored to specific information requirements and circumstances.

22. *Alleviating uncertainty for the FMI.*

- a. *Which actions could the firm or the relevant authorities take in order to alleviate uncertainty for the FMI, and reduce the risk that the FMI may take risk mitigation actions that may have an adverse financial impact on the firm?*

First, information from the resolution authority regarding the planned path of resolution actions, next steps for the member in stress in general and the plan for business with ECC within the next weeks and months are essential. ECCs processes for termination and default management are designed under the assumption of extremely short reaction time due to close to no information provided by members competent authorities. This increases costs and the risk of wrong market signals or risks contagion. To improve the situation, early information to ECC by the member (in case of stress or recovery), its competent authority (in case of early intervention) and the resolution authority (in case of resolution) are required. Such information should contain guidance on the way

forward, the members ability to honor obligations and the financial situation towards ECC.

Second, such relevant information should be provided as soon as possible and directly to the CRO or ECCs Management Board as a whole. As such information is also compliance or legally relevant, the information should also be provided in writing afterwards.

If the member has failed to honor obligations towards ECC already, the information shall come from the resolution authority and not from ECCs general operational contacts at the member to avoid any time lag, incomplete or misinformation in the internal communication of the member.

Third, where possible, detailed information on financial situation of the member or bridge institute, access to liquidity and risk management capacity and estimate of the ability to honor obligations towards ECC based on recent history of payments and margin calls etc.

Fourth, information regarding planned steps with non-clearing members and clients as well positions held with ECC.

- b. Which data / quantitative information and what qualitative information might you need to receive from the participant and/or RA in order to allow the participant to maintain access (please consider the three levels of access mentioned in footnote 3)? Please specify by when you would need each piece of information, if appropriate.*

If the member is and was able to honor its obligations towards ECC, see our answer under a. above.

If the member has failed to honor margin calls, payment obligations or comparable transactions, it is of utmost importance that the resolution authority states (and thereby guarantees) by which point in time the member will be able to fulfill obligations and what potential risk regarding partial fulfillment or inability to honor the obligations at all in a future point in time exists.

- c. What other actions could be taken ex-ante to avoid a temporary interruption of services or the risk of some transactions remaining unexecuted?*

We interpret “ex-ante” as before a violation of obligations towards ECC happens, e.g. before ECC is forced to activate the default procedures. Here, clear communication as stated under a. above and, if relevant, the planned steps regarding reduction of risk and exposure towards ECC is beneficial. This includes reduction of positions, preparation of or actual transfer of clients etc.

- d. Please discuss any other considerations.*

More detailed issues and considerations can be discussed if ECC knows to some extend relevant parts of members resolution plans.

23. *Considering adverse financial impact of FMI risk mitigation actions on direct/indirect participants.*

- a. *Some actions, designed to protect the FMI, may precipitate the failure of the relevant participant/member or worsen its position at the time of resolution. How does the FMI consider this when deciding to protect itself?*

Aside mandatory activation of the default management process if payment obligations are not fulfilled (see Art. 28 (2) EMIR), ECC's risk mitigation actions have discretionary space. Were information provided to ECC show that the member in resolution is able to manage the risk it brings to the clearing system, communicates clearly and timely and holds a path to reduce the exposure ECC faces, ECC will likely abstain from termination, restriction or close-out. If resolution actions threaten ECC's risk position, e.g. payments are not made, ECC's task to protect other clearing members will have high priority.

- b. *Does the FMI take into account the impact on indirect participants of actions taken in response to a direct participant/member facing financial stress?*

ECC's task as a CCP is to safeguard the integrity of the markets it clears and prevent spill-over of risk from a failure of one member to other members and stakeholders. The latter includes market participants in general and indirect clients. However, its main responsibility lies in protection of non-affected members and indirect clients and the system as a whole.

24. *Possible differences in treatment of domestic and foreign FMI service users entering into resolution.*

- a. *Do you differentiate in your treatment of domestic and foreign FMI service users, and if so in what way?*

Aside from special requirements for US-Clearing Members in compliance with US CFTC regulations or other US law (see sections 2.1.5 and 3.9.1 of ECC's Clearing Conditions), no differential obligations are imposed on foreign members.

- b. *Among foreign users, is there a distinction for users from certain jurisdictions? If so, what are those distinctions?*

See under a. above.

25. *Safeguards in jurisdictional legal frameworks.*

- a. *How do you assess whether the resolution framework of the jurisdiction in which a firm resides provides adequate safeguards to the provider of critical FMI services?*

If an institute from new jurisdiction would apply to become a clearing member at ECC, a full review of regulatory background at ECC and external legal opinions by leading legal counsels are undertaken.

- b. *From which regulatory regimes (e.g. countries) do you accept service users?*

Currently, clearing members are accepted from EU, Norway, Switzerland and the USA.

26. *Are there any further aspects or issues to mention in relation to interaction between the FMI and a participant in financial stress? Do you have any examples of past experiences where the FMI has utilised its powers in relation to a member undergoing stress? What actions were undertaken and what were the outcomes? Could this example be indicative of actions that may be taken in a future case?*

No further issues in general.

4. Part IV: During and after resolution

27. *When the FMI becomes aware of a participant entering a resolution process, which actions would the FMI be likely to take vis-à-vis the participant? Could actions be taken even though the participant/member meets its obligations?*

If a member continues to meet its obligations, no immediate action will be undertaken in general. However, this will strongly depend on communication from the member or the resolution authority, the market stress and assessment of the members or bridge-institutes credit rating etc. Again, it is not in the interest of ECC to terminate the business relation unless there is good cause, meaning increased risk for the clearing system.

28. *Please explain the methodology used to calibrate additional membership requirements (including operational, financial and capital requirements) for a member/client in resolution. To what extent does the FMI take into account the resolution strategy and tools applied to a member to determine their financial and operational requirements? Does the FMI consider anything specific in its methodology in relation to ring-fenced or specifically safeguarded entities?*

ECC does not have special requirements for members in resolution. Increase financial requirements (e.g. additional margins) or requirement to reduce exposure towards ECC might however result from standard credit risk and limit assessment process once the financial situation of a member deteriorates during resolution, or if a bridge institute has different characteristics than the clearing member beforehand. However, the criteria applied are not exclusively foreseen for institutes in resolution but are standard processes in ECCs risk management.

29. *Please describe for each of the below risk mitigation actions, in as far as they form part of the FMI's set of risk mitigation actions upon a participant entering a resolution process (in addition to actions that would be taken prior to resolution): (i) whether these actions are discretionary or pre-determined, e.g., would the FMI follow a required set of actions, which may be described in its rule book; (ii) in which way, if at all, the FMI could deviate from the predetermined procedure so as to either disregard a mandated risk mitigation action or adopt a non-standard action; (iii) how/when the following risk mitigation actions would be communicated to the participant.*

a. *Temporary suspension of certain activities (and if so, which activities);*

Are not foreseen as long as obligations are honored.

b. *Potential requirements to contribute additional margin or amounts to default or guarantee funds, secure additional liquidity commitments (including on an intra-day basis), or to pre-fund part or all of payment and settlement obligations;*

See our answers under questions 28 and 19. ii. above.

c. *Potential changes to operational or information requirements, including those needed because certain services might not be available;*

See our answer under 21 and 22 above.

d. *Potential requirements that may apply in relation to a bridge institution or a third-party purchaser to which functions have been transferred.*

Those parties have to fulfill ECC's general and non-discriminatory access and membership criteria as described in ECC's Clearing Conditions.

30. *Please answer question 29 also for other risk mitigation actions, if any, that are not mentioned here and that would likely be taken.*

None.

31. *In what way should a service user prepare for resolution-related risk mitigation measures by the FMI to maximise the likelihood of maintaining access? Does the FMI provide any documented guidance on this to its participants/members, and/or to their RAs?*

ECC has not documented guidance on this special topic. Again, as long as general access requirements and obligations towards ECC are fulfilled, ECC will not terminate the relationship.

32. *What impact would a member/participant's resolution have on any parent or subsidiary's direct membership at the FMI?*

See our answers 31, 16 and 11.

33. *In a situation of idiosyncratic or market stress in which one of the FMI's (direct) participants/members, or an affiliate company, enters resolution, communications and notifications may be necessary. Please distinguish in the below in case there are differences between a situation of idiosyncratic vs. market stress.*

To all sub-questions, the same answers as from question 21 apply.

34. *Alleviating uncertainty for the FMI. (As requested in Part II, if the responses to sub-questions a.-f. below have been documented in rulebook/contractual provisions or other documents, please reference.)*

a. *What actions (such as communication) could the participant or authorities take in order to alleviate uncertainty for the FMI about the participant's situation, and thereby reduce the risk that the FMI may take risk mitigation actions that may have a further adverse financial impact on the participant?*

See our answer to question 22 above.

b. *Assuming that the authorities and the affected member/client may not be able to share relevant information before the commencement of the resolution process, would that represent a material issue that could determine how your organisation responds to the fact that a member/client has been placed in resolution?*

The impact on ECC's reaction to the resolution situation would depend on the specific situation of the clearing member in resolution and wider systemic risk and market sentiment. However, lacking, incomplete or late information will definitely have an impact on the perception of risk for ECC and its clearing system and the perceived commitment of the clearing member or resolution authority to honor obligations towards ECC. Overall, the impression at ECC that the resolution authority does not treat ECC's information requirements with highest priority could lead to the conclusion that other, more costly, obligations towards ECC would also not be seen as high priority, potentially exposing ECC to increased risk and forcing independent decisions under incomplete information at the side of ECC. This includes unnecessary termination of the member and close-out of its portfolio while cutting the members' clients of the markets and clearing services.

- c. *Which data / quantitative information would the FMI need to receive from the participant and/or RA in order to allow the participant to maintain access (please consider the three levels of access mentioned in footnote 3)? Please specify by when you would need each piece of information, if appropriate, including when you would need to be informed prior to resolution measures.*

See our answer to question 22 above.

- d. *Which qualitative information would the FMI need to receive from the participant and/or RA in order to allow the participant to maintain access to the FMI? Please specify by when you would need each piece of information, if appropriate, including when you would need to be informed prior to resolution measures.*

See our answer to question 22 above.

- e. *What other actions could be taken ex-ante to avoid a temporary interruption of services or the risk of some transactions remaining unexecuted?*

See our answer to question 22 above.

- f. *Please discuss any other considerations.*

None

35. *Considering adverse financial impact of FMI risk mitigation actions on direct/indirect participants.*

- a. *Some actions, designed to protect the FMI, may worsen the position of the participant at the time of resolution and as a result may also affect other participants. How does the FMI consider this when deciding to protect itself?*

See our answer to question 23 above

- b. *Does the FMI take into account the impact on indirect participants of actions taken in response to a direct participant/member entering into resolution?*

See our answer to question 22 above

36. *FMI rules and contractual arrangements should allow a bridge institution to maintain its predecessor's participation (membership) during a resolution process (FSB 2017 Guidance, 1.1). (As requested in Part II, if the responses to the sub-questions below have been documented in rulebook/contractual provisions or other documents, please reference.)*

- a. *Please explain how the FMI rules, contractual arrangements and/or procedures reflect this.*

ECCs Clearing Conditions and default management processes do not foresee resolution measures as trigger for termination of the business relation or start of the close-out process.

- b. *What would be the FMI's process to ensure that continuity of access can be maintained for the purchaser of a resolved entity or for a bridge institution?*

Access criteria are non-discriminatory. If the purchaser or bridge institution fulfill ECC's participation requirements, access can be maintained. Other than that, the process of

clearer change for accounts and non-clearing members and clients is a standard process at ECC which can fully be supported and operated in case of resolution.

- c. *Please share any timelines and any external dependencies for this process.*

The timeline would depend on the particular resolution measure, number of non-clearing members and clients to be transferred, number and types of markets and products affected, access to ECC's clearing system established, reception of payments into the default fund, availability of financial information regarding the purchaser or bridge institution etc. Therefore, no general timeline can be given.

- d. *If the purchaser or bridge institution requires a new access, do you have a "fast-track" procedure to allow access for such a purchaser or bridge institution? How long is setting up access expected to take (with or without a "fast-track" procedure)? What would the FMI require in order to continue providing the service pending completion of the onboarding procedure (e.g. connectivity and BIC/SWIFT codes to remain unchanged)?*

If "everything" despite the legal entity acting as clearing member is unchanged and relevant financial information for ECC's risk assessment is available, such clearing member change is a matter of legal formalities and very few changes in master data and configuration. Under such ideal circumstances, it would take few days.

- e. *What type of information is needed in the context of a change-of-control assessment, i.e. to accept a purchaser or bridge institution as a participant/member? Please specify by when you would need each piece of information, if appropriate. How long would you then need to take an informed decision on access for the purchaser or bridge institution?*

The information required by ECC is describe on ECC's website under [Admission Forms \(ecc.de\)](http://ecc.de).

The time for evaluation and decision depends on the purchasing entity: If the entity is an established financial institute from a known jurisdiction, ideally with international ratings and complete sets of regulatory and financial information available, the analysis and decision process can be completed within one to two weeks.

- f. *Does the FMI explicitly consider, in its rulebooks or internal procedures, the possibility of a RA requiring access for the purchaser or bridge institution even in case they do not meet the membership or participation criteria (for instance where a credit rating is required)?*

No, ECC does not consider this possibility: ECC's access criteria follow the participation requirements of Art. 37 EMIR and are outside of ECC's discretion, even is viable from a risk management perspective.

- g. *Please discuss any other, e.g. practical, considerations around continuity of FMI access of a bridge institution or of a purchaser.*

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37. FMIs should consider the operational, technological, financial and legal implications arising from the transfer of functions or positions to a successor (either a bridge institution or a third-party purchaser). (FSB 2017 Guidance, 1.4)

- a. *What preparations are necessary in your circumstances for such a transfer to be successful? What changes would be necessary for such a transfer to be successful? Please consider any preparations and changes by the FMI as well as by FMI members/service providers/others.*

Clearer change is a standard process at ECC, applied for example fully in Brexit-preparations in 2019 and 2020. However, the preparations and prerequisites are different for each model of transfer chosen by the resolution authority. A general answer cannot be given: Full transfer to a legally new, but operationally similar bridge institute versus the transfer to an existing clearing member or transfer to an institute which has to become member at ECC first etc. For the first case, involving only change of the legal entity without other changes, preparations are minimal. If a new institute has to be onboarded as clearing member and/or existing positions and clients would be transferred to different members, effort and preparations would of course rise exponentially.

38. *Portability/Transferability of underlying client positions, for example to facilitate a bridge or partial transfer resolution strategy.*

- a. *For CCPs: Which kind of segregated accounts are offered to (underlying) clients to facilitate the portability/transferability of client positions and securities collateral? Do you envisage that there may be material barriers to the effective and timely transfer of client positions following a decision to transfer the activities of the member in resolution to another member? If so, please explain.*

ECC offers customers which are not clearing members two types of access: first, access as an unknown client through a clearing member or indirect clearing provider. Second, access as a known “non-clearing member”. Whereas in the first case, individual positions can be co-mingled with positions of other clients (but not the clearing members proprietary trading accounts), positions of non-clearing members are held in individually separated position accounts. Each position account is allocated to a specific collateral pool. For collaterals, different segregation models exist: General Omnibus Segregation, Simple Omnibus Segregation, Omnibus Segregated Accounts and Individually Segregated Accounts. In any case, house positions and collateral are segregated from client positions and collateral. For ECC’s segregation models, see Clearing Conditions, section 2.5.

ECC has no material barriers for effective and timely transfer of positions to another member.

- b. *For CSDs: Do you offer segregated accounts to (underlying) clients? Do you envisage that there may be material barriers to the effective and timely transfer of client securities and cash to another custodian following a decision to transfer the activities of the participant in resolution to another participant? If so, please explain.*

<<not applicable to ECC>>

39. *Are there any further aspects or issues to mention in relation to interaction between the FMI and the participant during or after resolution of the participant?*

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5. Part V: Arrangements and operational processes to facilitate continued access in resolution

40. *The FMI should consider establishing management, monitoring and operational rules and procedures that facilitate the ability of FMI management to make prompt decisions in response to a service user's resolution (including a period when the FMI is closed for business). (FSB 2017 Guidance, 1.4)*

- a. *What procedures are in place at the FMI to facilitate prompt decision making at any time? What, if any, are the limitations?*

ECC is, in comparison to other financial institutes and CCPs, a small organization with flat hierarchies and agile mindset. Therefore, decisions can be requested and reached fast. The time until decisions can be obtained is limited by the ability of ECC to obtain necessary information, analyze the situation, formulate legal opinions and evaluate different options and their consequences.

- b. *What would be the likely range of decisions undertaken after receiving notice of a service user entering into resolution? What market communications or notifications to the regulator would be undertaken?*

Decisions will depend on the information received from the resolution authority or member in resolution, the market risk situation and expectation regarding the member's ability to continue to fulfill its obligations towards ECC.

General communication to markets is not foreseen in case of resolution processes at a clearing member. ECC will communicate to markets and other members if there is good reason to assume there will be a relevant impact from actions taken by the member in resolution or ECC as reaction to resolution.

Also, ECC will communicate with its own regulator regarding the resolution of a member in case the actions planned or taken by the resolution authority can be assumed to have a significant impact on ECC's risk situation or processes.

41. *In line with the Key Attributes, 18 FMIs should regularly test the effectiveness of their relevant rules, contractual arrangements and procedures in responding to a resolution scenario of a participant.*

- a. *How do you test these contingency arrangements? How do you take participants in resolution into account in those contingency arrangements?*

Resolution measures at a member become relevant for ECC, if fulfillment of obligations towards ECC are at risk. This is part of ECC's default management process, which is tested regularly according to the requirements of EMIR.

- b. *How do your rules facilitate the transfer of positions of a client of a service user in resolution to another service user of the FMI, as applicable?*

ECC offers the transfer of assets and positions according to the requirements of Art. 39 EMIR and would trigger the processes for transfer according to Art. 48 No. 5 and 6 EMIR in case of default. Additionally, ECC offers known non-clearing members under general omnibus segregation transfer of positions to a back-up clearing member. For ECC's

rules regarding transfer in case of a default event, see sections 2.5 and 3.10.1 of ECC's Clearing Conditions ([Rules \(ecc.de\)](#)),

42. How do you test members' readiness of arrangements for meeting increased information and communication requests (beyond those required in business as usual (BAU)) that will be needed prior to and during resolution? Which disclosures do you require from members in this regard?

This is currently not part of the testing schedule with the clearing members.

43. Are there any further aspects or issues to mention in relation to arrangements and operational processes to facilitate continued access in resolution?

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