

› eex group

## EMIR Data Services Agreement

07.03.2018  
Leipzig

Ref. 0001A

› eex	› pxe
› ecc	› cltx
› epexspot	› nodal
› powernext	› nodalclear
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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”) 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 European Commodity Clearing AG (“ECC”) where the reporting obligation is applicable.

This EMIR Data Services Agreement (“Agreement”) contains a subscription form (2.), general terms and conditions (3.), a price list (4.) and a termination form (5). The subscription or termination form shall be submitted to conclude or terminate an Agreement with ECC.

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Compliance Services

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<sup>1</sup> The Services are technically provided by European Energy Exchange AG (“EEX”).

## 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>2</sup></b>	
<b>Country where the registered office is located<sup>3</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>

<sup>2</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>3</sup> The reporting obligation according to EMIR Article 9 is only applicable to companies incorporated in the EEA.

Please fill in your member status:

- CM                       NCM

Please fill in the following **information, which shall be reported by ECC when reporting on your behalf:**<sup>4</sup>

- Financial Counterparty                       Non-Financial Counterparty (“NFC”)

Does your trading volume exceed the EMIR Clearing Threshold?

- Yes (NFC+)                       No (NFC-)

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 |

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

For Financial Counterparties only:	For Non-Financial Counterparties only:
<p>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)</p> <p>.....</p> <p>1 Assurance undertaking authorised in accordance with Directive 2009/138/EC of the European Parliament and of the Council</p> <p>2 Credit institution authorised in accordance with Directive 2013/36/EU of the European Parliament and of the Council</p>	<p>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)</p> <p>.....</p> <p>1 Agriculture, forestry and fishing</p> <p>2 Mining and quarrying</p> <p>3 Manufacturing</p>

<sup>4</sup> According to Commission Implementing Regulation (EU) 1247/2012 Annex, Table 1 Field 7.

<sup>5</sup> According to Commission Implementing Regulation (EU) 1247/2012 Annex, Table 1 Field 15.

<sup>6</sup> According to Commission Implementing Regulation (EU) 2017/105 Annex, Table 1 Field 6.

3 Investment firm authorised in accordance with Directive 2004/39/EC of the European Parliament and of the Council	4 Electricity, gas, steam and air conditioning supply
4 Insurance undertaking authorised in accordance with Directive 2009/138/EC	5 Water supply, sewerage, waste management and remediation activities
5 Alternative investment fund managed by Alternative Investment Fund Managers (AIFMs) authorised or registered in accordance with Directive 2011/61/EU of the European Parliament and of the Council	6 Construction
6 Institution for occupational retirement provision within the meaning of Article 6(a) of Directive 2003/41/EC of the European Parliament and of the Council	7 Wholesale and retail trade, repair of motor vehicles and motorcycles
7 Reinsurance undertaking authorised in accordance with Directive 2009/138/EC	8 Transportation and storage
8 Undertakings for the Collective Investment in Transferable Securities (UCITS) and its management company, authorised in accordance with Directive 2009/65/EC of the European Parliament and of the Council	9 Accommodation and food service activities
	10 Information and communication
	11 Financial and insurance activities
	12 Real estate activities
	13 Professional, scientific and technical activities
	14 Administrative and support service activities
	15 Public administration and defence; compulsory social security
	16 Education
	17 Human health and social work activities
	18 Arts, entertainment and recreation
	19 Other service activities
	20 Activities of households as employers; undifferentiated goods – and services – producing activities of households for own use
	21 Activities of extraterritorial organisations and bodies

If any information supplied by us in this document changes, we are obliged to inform ECC about any changes immediately. We acknowledge that ECC assumes no responsibility for the accuracy of the provided data.

## 2.2. Conclusion of the Agreement

- As soon as possible (at least five 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 five working days prior to this date).

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

EMIR Data Services	For Markets cleared by ECC
<p><b>Basic Service<sup>1, 2</sup></b>  <b>Provision of EMIR Data<sup>4</sup> File 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.</p>	<input type="checkbox"/>
<p><b><u>Additional Service (requires subscription to the Basic Service)<sup>3</sup></u></b>  <b>Transfer of EMIR Data<sup>4</sup> File 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.</p>	<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.  <sup>2</sup> ECC will provide the messages in accordance with the relevant validations, technical specifications and formats applied by Regis-TR. ECC will not adapt messages to format requirements applied of TR's other than Regis-TR.  <sup>3</sup> For NCMs: can only be selected by NCMs if their CM delegates reporting to ECC.  <sup>4</sup> Data in the possession of the ECC as defined in Table I and Table II of both the Implementing Technical Standards (EU No 1247/2012) and the Regulatory Technical Standards (EU No 148/2013).</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)

## 3. Terms and Conditions

### 3.1. Entry into force of the Agreement

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

### 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 EMIR Data Services terminates automatically with immediate effect and without prior notice.

Notwithstanding the foregoing, ECC reserves the right to terminate or suspend the provision of EMIR Data 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 EMIR Data 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.



### 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

The EMIR Data 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
- netting is reported as a modification of action type compression

#### 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
- any reported position is marked as originating from a compression exercise

#### 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

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 EMIR Data 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 EMIR Data Services, unless jointly delegated to ECC.

### **3.6. Subcontractors**

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

### **3.7. 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. 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.

### **3.8. 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 EMIR Data Services of the Reporting Participant concerned.

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

### **3.9. 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.

### **3.10. 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 ECC Clearing Circulars available on [www.ecc.de](http://www.ecc.de) against any external reporting requirements (e.g. Regis-TR or ESMA).

### 3.11. 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.

### 3.12. 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.

### 3.13. 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.

## 4. Price List

	Basic Service	Additional Service
	Data provision to the Reporting Participant	Reporting to Regis-TR
CMs and NCMs	300 €/month	Free of charge
For CMs that have at least 3 NCMs that delegate reporting to ECC	Free of charge <sup>1</sup>	<i>Can only be selected in addition to the Basic Service</i>
<sup>1</sup> The fee waiver will be granted for months where the condition is met at least for 20 calendar days.		

All prices are exclusive of VAT or other taxes. The VAT stated in the invoices is set in accordance with the respectively valid tax regulations.

## 5. EMIR Data Services Termination Form

The Reporting Participant hereby terminates an ongoing EMIR Data Services Agreement with ECC. This Agreement will terminate with fourteen (14) calendar days' prior notice through this form. After receiving the termination form ECC will confirm the termination date to the Reporting Participant.

In case the Membership of the Reporting Participant with ECC ceases, the termination of the respective EMIR Data Services Agreement is automatically effected to the same date. An additional termination through this form is not necessary.

<b>We herewith request the termination of the Agreement.</b>		
Place	Date	Company stamp and legally binding signature(s)