

› eex group

## MiFID II/MiFIR Data Services Agreement

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## 1. General Information

Pursuant to Article 58 of Directive 2014/65/EU (“MiFID II”)

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

*(a) make public a weekly report with the aggregate positions held by the different categories of persons for the different commodity derivatives or emission allowances or derivatives thereof traded on their trading venue, specifying the number of long and short positions by such categories, changes thereto since the previous report, the percentage of the total open interest represented by each category and the number of persons holding a position in each category in accordance with paragraph 4 and communicate that report to the competent authority and to ESMA; ESMA shall proceed to a centralised publication of the information included in those reports;*

*(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.”*

and pursuant to Article 26 of Regulation (EU) 600/2014 (“MiFIR”)

*“The operator of a trading venue shall report details of transactions in financial instruments traded on its platform which are executed through its systems by a firm which is not subject to this Regulation ...*

*For commodity derivatives, the reports shall indicate whether the transaction reduces risk in an objectively measurable way in accordance with Article 57 of Directive 2014/65/EU.”*

European Energy Exchange AG (“EEX”) and Powernext SA (“POWERNEXT”) require their trading members to contribute to their own reporting requirements as set forth by their respective exchange rules, affiliated proceedings and this MiFID II/MiFIR Data Services Agreement (“Agreement”).

The Agreement covers transactions concluded via order book trading or trade registration on trading venues operated by EEX and POWERNEXT where the reporting obligation is applicable.

This Agreement comprises 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 EEX for its markets or with EEX on behalf of POWERNEXT for the markets of POWERNEXT.

### **European Energy Exchange AG**

Reporting Services

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reporting-services@eex.com

## 2. Subscription Form for MiFID II/MiFIR Data Services

### 2.1. Reporting Participant details<sup>1</sup>

|   |  |
|---|--|
| <b>Reporting Participant (complete name of the company)</b>   |  |
| <b>Membership at</b><br><input type="checkbox"/> EEX <input type="checkbox"/> POWERNEXT <input type="checkbox"/> Not applicable |  |
| <b>ECC Member ID (if applicable)</b>  |  |
| <b>Legal Entity Identifier (LEI)</b>  |  |
| <b>Country where the registered office is located<sup>2</sup></b>   |  |
| <b>Name of contact person</b>   | <b>Name of invoice recipient (if applicable)</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<sup>3</sup></b>  | <b>Email address of invoice recipient</b>  |
| <b>Telephone of contact person</b>  | <b>Fax of contact person</b>   |
| <b>Ultimate parent LEI</b>  | <b>Ultimate parent national ID</b>   |
| <b>Ultimate parent email address</b>  | <b>Parent of collective investment scheme status</b><br><input type="checkbox"/> TRUE <input type="checkbox"/> FALSE |

<sup>1</sup> See Glossary for further explanation.

<sup>2</sup> The reporting obligation according to Art. 26 MiFIR is also applicable to investment firms located outside of the European Union.

<sup>3</sup> This email will be used for the population of field <Email address of position holder> in the position reports.

Please fill in your member status (if applicable):

- Clearing Member
  Non-Clearing Member

Please fill in your regulatory status:

- Investment Firm
  Non-Investment Firm

Please specify the categorisation applicable to the nature of your firms main business pursuant to Article 58 para 4 MiFID II in conjunction with the requirements set out in Commission Implementing Regulation (EU) 2017/1093 (ITS 4) for weekly position reports, taking into account any applicable authorisation:

- Investment Firm or Credit Institution
  Investment Fund  
 Other Financial Institution
  Commercial Undertaking  
 Operators with compliance obligations under Directive 2003/87/EC

Please specify the default value for the **risk reducing indicator** for all transactions and positions that shall be used by EEX AG if no other information is being provided:

For position reporting

- TRUE
  FALSE

For transaction reporting

- TRUE
  FALSE

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

## 2.2. Conclusion of the MiFID II/MiFIR Data Services Agreement

With this subscription form the Reporting Participant requests the conclusion of the MiFID II/MiFIR Data Services Agreement (hereinafter referred to as “Agreement”) with EEX pursuant to the provisions stipulated below.

The Agreement shall be concluded on the date the Reporting Participant receives the notification of acceptance by EEX. EEX will accept the request and provide the notification of acceptance without undue delay, provided that this subscription form has been duly completed and signed and the Reporting Participant fulfils the requirements pursuant to this Agreement.

## 2.3. Commencement Date of the Provision of MiFID II/MiFIR Data Services

The provision of MiFID II/MiFIR Data Services by EEX shall commence on the date as specified by EEX in the notification of acceptance.

The Reporting Participant hereby requests to commence the provision of MiFID II/MiFIR Data Services:

- As soon as possible, however not earlier than five working days after the notification of acceptance by EEX;
  
- As of \_\_\_\_\_.

## 2.4. Subscribed MiFID II/MiFIR Data Services

The Reporting Participant herewith requests EEX to perform the following MiFID II/MiFIR Data Services as of the commencement date:

| MiFID II Data Services (Position Reporting)  | For EEX                  | For POWERNEXT            |
|--|--------------------------|--------------------------|
| <p><b><u>Basic Service</u></b><br/> <b>Provision of MiFID II Draft Data File<sup>1</sup> to the Reporting Participant on an FTP Server or by other appropriate means for individual download and amendment by the Reporting Participant on the working day following the reportable event.</b></p>   | <input type="checkbox"/> | <input type="checkbox"/> |
| <p><b><u>Additional Service 1 (requires subscription to the Basic Service)</u></b><br/> <b>Delegation of the amendment of the MiFID II Draft Data File<sup>1</sup> by the Reporting Participant to the following entity:</b></p> <p><b>Name of the service provider:</b></p> <p><b>Contact person:</b></p> <p><b>Telephone:</b></p> <p><b>Email address:</b></p>   | <input type="checkbox"/> | <input type="checkbox"/> |
| <p><b><u>Additional Service 2</u></b><br/> <b>Compliance with the amendment requirement as a non-member of EEX or POWERNEXT by submitting the final MiFID II Data File<sup>1</sup> to EEX.</b></p>   | <input type="checkbox"/> | <input type="checkbox"/> |
| <p><b><u>Additional Service 3 (requires subscription to the Basic Service)</u></b><br/> <b>Compliance with the amendment requirement by directly submitting the amended MiFID II Draft Data File<sup>1</sup> to Deutsche Börse's Regulatory Reporting Hub by the Reporting Participant.</b></p>  | <input type="checkbox"/> | <input type="checkbox"/> |
| <p><b><u>Additional Service 4 (requires subscription to the Basic Service)</u></b><br/> <b>Reporting of off-exchange positions in products listed at EEX or POWERNEXT as an amendment to the MiFID II Draft Data File<sup>1</sup>. This service is only available for Position Reports to the Bundesanstalt für Finanzdienstleistungsaufsicht (BaFin) and the Autorité des Marchés Financiers (AMF).</b></p> | <input type="checkbox"/> | <input type="checkbox"/> |
| <p><sup>1</sup> EEX will provide and expect the messages in accordance with the relevant validations, technical specifications and formats applied by the so-called FIA/EFET schema. EEX will not adapt messages to format requirements other than that and will not accept those.</p>   |                          |                          |

| MiFIR Data Services (Transaction Reporting)   | For EEX                  | For POWERNEXT            |
|---|--------------------------|--------------------------|
| <p><b><u>Basic Service</u></b><br/> <b>Provision of MiFIR Draft Data File<sup>1</sup> to the Reporting Participant on an FTP Server or by other appropriate means for individual download and amendment by the Reporting Participant on the working day following the reportable event.</b></p>   | <input type="checkbox"/> | <input type="checkbox"/> |
| <p><b><u>Additional Service 1 (requires subscription to the Basic Service)</u></b><br/> <b>Delegation of the amendment of the MiFIR Draft Data File<sup>1</sup> by the Reporting Participant to the following entity:</b></p> <p><b>Name of the service provider:</b></p> <p><b>Contact person:</b></p> <p><b>Telephone:</b></p> <p><b>Email address:</b></p>   | <input type="checkbox"/> | <input type="checkbox"/> |
| <p><b><u>Additional Service 2 (requires subscription to the Basic Service)</u></b><br/> <b>Compliance with the amendment requirement by directly submitting the amended MiFIR Draft Data<sup>1</sup> File to Deutsche Börse's Regulatory Reporting Hub by the Reporting Participant.</b></p>  | <input type="checkbox"/> | <input type="checkbox"/> |
| <p><b><u>Additional Service 3 (requires subscription to the Basic Service)</u></b><br/> <b>Reporting of transactions concluded outside of a trading venue in products listed at EEX or POWERNEXT as an amendment to the MiFIR Draft Data File<sup>1</sup>. This service is only available for Transaction Reports to the Bundesanstalt für Finanzdienstleistungsaufsicht (BaFin) and the Autorité des Marchés Financiers (AMF).</b></p> | <input type="checkbox"/> | <input type="checkbox"/> |
| <p><sup>1</sup> EEX will provide and expect the messages in accordance with the relevant validations, technical specifications and formats applied by Deutsche Börse for further submission to the competent authorities. EEX will not adapt messages to format requirements other than that and will not accept those.</p>   |                          |                          |



**2.5. Fees**

For consideration for the provision of the MiFID II/MiFIR Data Services under this Agreement EEX charges fees as stipulated in the respective valid version of the Price List of EEX which is available at [www.eex.com](http://www.eex.com). The Basic Services according to Section 2.4 of this Agreement are free of charge for Non-Investment Firms if not stipulated otherwise in the Price List of EEX. The Additional Services according to Section 2.4 shall be subject to the fees stipulated in the Price List of EEX. EEX may charge an extra fee pursuant to the Price List of EEX if efforts relating to a MiFID II/MiFIR Data Final File become necessary and are caused by the Reporting Participant.

|   |      |  |
|---|------|--|
| <p><b>We herewith request the conclusion of the MiFID II/MiFIR Data Services Agreement and accept the Terms and Conditions (Section 3 below) and the EEX Price List in their respective valid version. This Agreement replaces all prior Agreements relating to MiFID II/MiFIR Data Services.</b></p> |      |  |
| Place   | Date | Company stamp and legally binding signature(s) |
|   |      |  |

### 3. Terms and Conditions

#### 3.1. Conclusion and Entry into force of the Agreement

Necessary prerequisite for the conclusion of the MiFID II/MiFIR Data Services Agreement is that the Reporting Participant is

- a. admitted for trading at EEX and/or POWERNEXT according to their respective rules and regulations,

and/or

- b. is an undertaking that is not admitted for trading at EEX and/or POWERNEXT itself but trades at EEX and/or POWERNEXT directly or indirectly via an admitted participant and that is required to contribute to position and transactions reporting,

and/or

- c. is an undertaking that is not admitted for trading at EEX and/or POWERNEXT and which trades commodity derivatives, emission allowances and derivatives thereof that are economically equivalent to instruments listed at EEX or POWERNEXT outside a trading venue and which is obliged by MiFID II/MiFIR and related implementing acts to report such transactions and resulting positions to the competent national authority.

The provision of MiFID II /MiFIR Data Services by EEX shall commence on the date specified in the notification of acceptance. EEX is not obliged to start providing the MiFID II/MiFIR Data Services before said date, if not otherwise required by law. Once the Agreement has been concluded, EEX shall be authorised and obliged to conduct the MiFID II/MiFIR Data Services pursuant to the present Terms and Conditions.

#### 3.2. Term of the Agreement

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 Reporting Participant will only be effective if the MiFID II/MiFIR Data Services Termination Form.

In case a Reporting Participant that fulfilled condition a) of Section 3.1 when this Agreement was closed and that subscribed only to Basic Services and the respective Additional Services 1 according to Section 2.4 ceases to be a member of EEX and/or POWERNEXT, as the case may be, this Agreement shall be terminated automatically and without prior notice with immediate effect on the date the membership with EEX and/or POWERNEXT is terminated.

Notwithstanding the foregoing, EEX reserves the right to terminate or suspend the provision of MiFID II/MiFIR Data Services to the Reporting Participant entirely or partly with immediate effect, and without prior notice, if

- a. any warranty granted by the Reporting Participant pursuant to this Agreement ceases to be true, or

- b. if the Reporting Participant is in material breach of any obligation under this Agreement or any other agreement between the Reporting Participant and EEX or
- c. 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 provide EEX promptly with all information not known to EEX but which is required by EEX to conduct the MiFID II/MiFIR Data Services in a complete, accurate and timely manner according to MiFID II/MiFIR, the respective applicable national implementing legislation of MiFID II/MiFIR, applicable delegated acts of the European Commission and the procedures, standards and electronic formats published by ESMA in their respective valid version. EEX shall not be held responsible for any information directly sent by the Reporting Participant to a competent authority or for any other data not stipulated in the Commission Delegated Regulation (EU) 2017/1093 Annex I, Table 2 or Commission Delegated Regulation (EU) 2017/590 Annex I, Table 3, respectively, provided by the Reporting Participant for integration into the MiFID II/MiFIR Draft Data File.

EEX may use the relevant data it has received from EEX's and POWERNEXT's electronic trading systems, it has received from ECC AG from its clearing system or that has been provided by the Reporting Participant without further investigation.

The Reporting Participant shall be responsible to timely verify the completeness, accuracy and timeliness of the MiFID II/MiFIR Draft Data Files provided by EEX and to amend these MiFID II/MiFIR Draft Data Files in a complete, correct and timely manner for t+1 reporting if needed. If the Reporting Participant becomes aware of any reporting error it cannot remedy by amending the MiFID II/MiFIR Draft Data Files, it will notify EEX without undue delay.

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

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

The obligation for reporting according to Article 58 MiFID II and Article 26 MiFIR and the regulatory responsibility for the correctness of the content, completeness, validity and compliance with the regulatory requirements of such reporting remains with EEX and POWERNEXT.

The liability for complete, accurate and timely amendment of the MiFID II/MiFIR Draft Data Files remains with the Reporting Participant.

### 3.5. Reporting Details

The MiFID II/MiFIR Data Services cover provision and reporting of positions and transactions. MiFID II/MiFIR Draft Data Files are created accordingly and made available on a technical Exchange Member level. MiFID II/MiFIR Data Draft Files become MiFID II/MiFIR Final Data Files which are reported towards regulatory authorities either by Reporting Participant's amendments within a predefined timeframe or without amendment after the predefined timeframe has expired. The technical and procedural details are stipulated in the Technical MiFID II/MiFIR Reporting Specification which is made available by EEX in its respective valid version under [www.eex.com](http://www.eex.com).

The respective MiFID II/MiFIR Draft Data Files will be based for

- Transactions on
  - end-of-day status, i.e. new trades are reported for the ultimate counterparties
  - lifecycle events are not reported.
- Positions on
  - end-of-day position data.

As far as prior to Trade Registration, a previously existing bilateral transaction was reportable such transaction has to be reported by the respective counterparties or trading venue themselves (including the cancellation).

For agency or omnibus account transactions/positions, EEX and POWERNEXT do not know the ultimate beneficiary of the transaction/position. Any transaction between the member of EEX or POWERNEXT, respectively, offering agency trading and its client may also constitute a reportable transaction under MiFIR, but is not within the scope of the MiFID II/MiFIR Data Services. It must be reported separately by the member and the member's client.

### 3.6. Subcontractors

EEX may subcontract third parties for the performance of the MiFID II/MiFIR Data Services or any part thereof, provided that EEX remains responsible for the performance of this Agreement.

### 3.7. Invoicing

Invoices are issued by EEX once per quarter and due upon receipt. 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.

Reporting Participants that are neither a member at EEX or POWERNEXT shall be invoiced annually. The invoiced amount shall be due and payable one (1) month after receipt of the respective invoice.

### **3.8. Amendment to the Agreement and change of Services**

Any amendment to this Agreement by EEX shall be electronically announced by EEX 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 EEX until it becomes effective. In the event of an objection against an amendment of the Agreement, EEX reserves the right to terminate the provision of MiFID II/MiFIR Data Services to the Reporting Participant concerned.

In case a Reporting Participant intends to change the scope of the MiFID II/MiFIR Data Services specified in section 2.4, the Reporting Participant shall hand in a new MiFID II/MiFIR 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. EEX 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 EEX 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 if the damage has been caused intentionally or by gross negligence or in cases of personal injury or death of a person resulting from the negligence of EEX.

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

- actions taken or any failure that has arisen from or has been caused by force majeure events
- consequences of incorrect, incomplete, invalid data or data not compliant with the regulatory requirements provided to EEX by the Reporting Participant.
- consequences of the Reporting Participant not checking and/or amending EEX's reporting
- the inaccuracy of any information as contained in the MiFID II/MiFIR Draft Data Files that EEX create in the ordinary course of business;
- any communication and information sent by a Reporting Participant to another service provider such as Deutsche Börse AG, non-performance of the services if 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 EEX
- any acts or omissions in relation to instructions from a Reporting Participant in relation to this Agreement after termination of this Agreement.

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

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

- the default values as specified in the Agreement are accurate, true, complete and compliant with regulatory requirements,
- it regularly checks the reports made on its behalf by EEX for correctness
- it promptly informs EEX of any changes to the default values, confirmations and declarations, which have been given to EEX 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 EEX, POWERNEXT and ECC AG, as the case may be, in relation to the reported data to the extent required for the provision of the Services by EEX.
- the Services will not infringe 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.

### 3.12. 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.

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

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

## 4. Glossary for MiFID II/MiFIR Reporting Participant Details

### Legal Entity Identifier (LEI)

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).

### Ultimate parent LEI/Ultimate parent national ID

The MiFID II position reporting requires the population of the field <Ultimate parent entity ID>. The population will either be done with the Legal Entity Identifier code (LEI) for legal entities **or** the NATIONAL\_ID for natural persons not having a LEI.

### Ultimate parent email address

This email will be used for the population of field <Email address of ultimate parent entity> in the position reports. Clients should be aware that the Email address will be used for any correspondence in relation to aggregated positions by national regulatory authorities.

### Parent of collective investment scheme status

The purpose of this field is to report on whether the position holder is a collective investment undertaking that makes investment decisions independently from its parent as set out by Article 4(2) of the Commission Delegated Regulation (EU) 2017/591 of 1 December 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the application of position limits to commodity derivatives (OJ L 87, 31.3.2017, p. 479).

'TRUE' — the position holder is a collective investment undertaking that makes independent investment decisions

'FALSE'— the position holder is not a collective investment undertaking that makes independent investment decisions

## 5. Excerpt of EEX Price List (for information purposes only)

|   | Basic Service  | Additional Service   |
|---|--|--|
| MiFID II Data Services  | Free of charge   | Free of charge <sup>3</sup><br>300 €/month <sup>4</sup><br>On request <sup>5</sup> |
| MiFIR Data Services   | Free of charge <sup>1</sup><br>On request <sup>2</sup> | Free of charge <sup>6</sup><br>On request <sup>7</sup>                             |
| <sup>1</sup> For Non-Investment Firms and 3 <sup>rd</sup> country firms. <sup>2</sup> For Investment Firms. <sup>3</sup> For Additional Services 1 and 3.<br><sup>4</sup> For Additional Services 2. <sup>5</sup> For Additional Services 4. <sup>6</sup> For Additional Services 1 and 2.<br><sup>7</sup> For Additional Services 3. |  |  |

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