

# Implementation of Article 9 of Regulation (EU) 2021/23 into the Legal Framework of Eurex Clearing AG

## Eurex Clearing Circular 110/21 Implementation of Article 9 of Regulation (EU) 2021/23 into the Legal Framework of Eurex Clearing AG

### 1. Introduction

This circular contains information with respect to the service offering of Eurex Clearing AG (Eurex Clearing) and introduces amendments to the Clearing Conditions of Eurex Clearing (Clearing Conditions) and the FCM Regulations of Eurex Clearing (FCM Regulations) regarding the following topic:

- ◆ Implementation of the requirements stipulated by Article 9 (6) of the European Regulation on a framework for the **recovery and resolution of Central Counterparties** (Regulation (EU) 2021/23).

The planned effective date of these amendments will be **12 February 2022**.

### 2. Required action

No specific actions are required by clients.

### 3. Details of the initiative

According to Regulation (EU) 2021/23, Central Counterparties (CCPs) are required to include a provision into their rules which allows for the deviation from recovery plan measures after notifying the national competent authority in order to achieve the goals of the recovery process.

Based on the proposed provision, Eurex Clearing will be entitled to (i) take recovery measures although the relevant indicators have not been met yet or (ii) refrain from taking recovery measures although the relevant indicators have been met.

To reflect the proposed changes, the following provision will be amended as outlined in Attachment 1 and Attachment 2:

- ◆ Chapter I Part 1 Number 17.7 of the Clearing Conditions,
- ◆ Chapter I Numbers 16.6 of the FCM Regulations.

### **Publication of amendments to the Clearing Conditions**

As of the effective date, the full versions of the amended Clearing Conditions and the FCM Regulations will be available for download on the Eurex Clearing website [www.eurex.com/ec-en/](http://www.eurex.com/ec-en/) under the following link:

#### **Rules & Regs > Rules and Regulations**

The changes and amendments to the Clearing Conditions published by this circular are deemed accepted by each affected contractual party of Eurex Clearing AG, unless the respective contractual party objects by written notice to Eurex Clearing AG within the first ten (10) Business Days after publication. Any ordinary right of Eurex Clearing AG to terminate the respective contract (including a Clearing Agreement or a FCM Clearing Agreement, if applicable) shall remain unaffected.

Unless the context requires otherwise, terms used and not otherwise defined in this circular shall have the meaning ascribed to them in the Clearing Conditions or FCM Clearing Conditions of Eurex Clearing AG, as applicable.

#### **Attachments:**

1. Chapter I Part 1 Number 17.7 of the Clearing Conditions
2. Chapter I Number 16.6 of the FCM Regulations

#### **Further information**

Recipients: All Clearing Members, Basic Clearing Members, Disclosed Direct Clients and FCM Clearing Members of Eurex Clearing AG and vendors

---

Target groups: Front Office/Trading, Middle + Backoffice, IT/System Administration, Auditing/Security Coordination

---

Contact: [client.services@eurex.com](mailto:client.services@eurex.com)

---

Web: [www.eurex.com/ec-en/](http://www.eurex.com/ec-en/)

---

Authorized by: Dmitrij Senko

## Further information

- [Attachment 1 to Eurex Clearing Circular 110/21](#)
- [Attachment 2 to Eurex Clearing Circular 110/21](#)

A member of

[Eurex  
Frankfurt](#)

[Eurex Clearing  
Clearstream](#)

[Eurex Repo  
Qontigo](#)

[Buy-in Agent](#)

[EEX](#)

[360T](#)

[Xetra](#)

[Börse](#)

[Disclaimer](#)

[Privacy notice](#)

[Imprint](#)

[Rules and Regulations](#)

[Sitemap](#)

Chapter I of the Clearing Conditions of Eurex Clearing AG

# General Provisions

As of 12.02.2022

\*\*\*\*\*

AMENDMENTS ARE MARKED AS FOLLOWS:

INSERTIONS ARE UNDERLINED,

DELETIONS ARE CROSSED OUT.

\*\*\*\*\*

[...]

## Part 1 General Clearing Provisions

[...]

### 17 Miscellaneous

[...]

#### 17.7 General Clearing Provisions in accordance with the CCP Recovery and Resolution Regulation

##### 17.7.1 Deviating Decisions (Article 9 (6) of the CCP Recovery and Resolution Regulation

Pursuant to Article 9 of the Regulation (EU) 2021/23 dated 16 December 2020 on a framework for the recovery and resolution of central counterparties (“**CCP Recovery and Resolution Regulation**”), Eurex Clearing AG is obliged to establish and maintain a recovery plan.

(1) Such recovery plan shall include (i) the recovery measures Eurex Clearing AG intends to take in case of the occurrence of a default event or non-default event and (ii) a framework of indicators identifying the circumstances under which any recovery measure is to be taken.

(2) According to Article 9 (6) of the CCP Recovery and Resolution Regulation, Eurex Clearing AG is entitled to

(i) take recovery measures although the relevant indicators have not been met or

(ii) refrain from taking recovery measures although the relevant indicators have been met.

Any decision pursuant to Paragraph (2) (i) and (ii) shall be taken by the management board of Eurex Clearing AG.

|   |            |
|---|------------|
|   | Eurex04e   |
| Clearing Conditions for Eurex Clearing AG | 12.02.2022 |
|   | Page 3     |
| Chapter I                                 |            |

(3) In case Eurex Clearing AG takes a decision pursuant to Paragraph (2) (i) or (ii) above, Eurex Clearing AG will

(i) when taking such decision use best efforts to establish a reasonable argumentation equally considering the interests of Eurex Clearing AG and all of its Clearing Members and which outlines in detail why

(I) in case of Paragraph (2) (i), the relevant recovery measure is required to restore or to ensure Eurex Clearing AG's financial soundness, or

(II) in case of Paragraph (2) (ii), Eurex Clearing AG's financial soundness can be restored or ensured without the relevant recovery option;

(ii) notify BaFin about any such decision without undue delay; and

(iii) closely monitor the relevant situation and notify BaFin about any new developments in this regard.

[...]

\*\*\*\*\*

Chapter I: Clearing Model Related Provisions

# FCM Regulations of Eurex Clearing AG

As of 12.02.2022

\*\*\*\*\*

AMENDMENTS ARE MARKED AS FOLLOWS:  
INSERTIONS ARE UNDERLINED,  
DELETIONS ARE CROSSED OUT.

\*\*\*\*\*

[...]

**16 Miscellaneous**

[...]

**16.6 General Clearing Provisions in accordance with the CCP Recovery and Resolution Regulation**

**16.6.1 Deviating Decisions (Article 9 (6) of the CCP Recovery and Resolution Regulation**

Pursuant to Article 9 of the Regulation (EU) 2021/23 dated 16 December 2020 on a framework for the recovery and resolution of central counterparties (“**CCP Recovery and Resolution Regulation**”), Eurex Clearing AG is obliged to establish and maintain a recovery plan.

(1) Such recovery plan shall include (i) the recovery measures Eurex Clearing AG intends to take in case of the occurrence of a default event or non-default event and (ii) a framework of indicators identifying the circumstances under which any recovery measure is to be taken.

(2) According to Article 9 (6) of the CCP Recovery and Resolution Regulation, Eurex Clearing AG is entitled to

(i) take recovery measures although the relevant indicators have not been met or

(ii) refrain from taking recovery measures although the relevant indicators have been met.

Any decision pursuant to Paragraph (2) (i) and (ii) shall be taken by the management board of Eurex Clearing AG.

(3) In case Eurex Clearing AG takes a decision pursuant to Paragraph (2) (i) or (ii) above, Eurex Clearing AG will

(i) when taking such decision use best efforts to establish a reasonable argumentation equally considering the interests of Eurex Clearing AG and all of its FCM Clearing Members and which outlines in detail why



(I) in case of Paragraph (2) (i), the relevant recovery measure is required to restore or to ensure Eurex Clearing AG's financial soundness, or

(II) in case of Paragraph (2) (ii), Eurex Clearing AG's financial soundness can be restored or ensured without the relevant recovery option;

(ii) notify BaFin about any such decision without undue delay; and

(iii) closely monitor the relevant situation and notify BaFin about any new developments in this regard.

\*\*\*\*\*