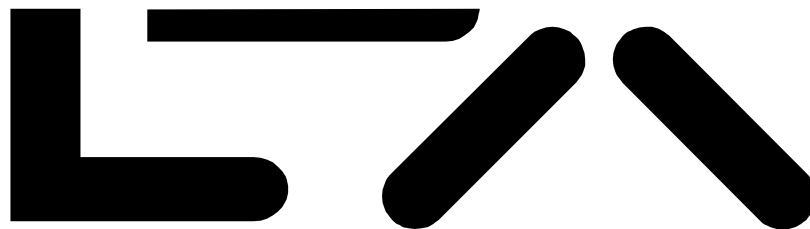


*X-pand into the Future*



**Summary of Brexit preparations of Eurex Deutschland  
(Eurex Exchange) and Eurex Clearing**

*7 August 2019*

## **1. Introduction**

The following considerations are based on the assumption that the UK leaves the European Union on 31 October 2019 without an exit treaty or other transitional arrangement in place. The political Brexit process may still yield other results that would need to be taken into account as they arise.

## **2. Eurex Exchange**

Eurex Frankfurt AG as the market operator of Eurex Exchange received recognition as a Recognised Overseas Investment Exchange (ROIE) from the Financial Conduct Authority (FCA) on 21 February 2019. The ROIE status ensures that Eurex Exchange may continue memberships with UK-based trading participants after Brexit.

## **3. Eurex Clearing**

### **3.1 Temporary recognition as a non-UK CCP**

Eurex Clearing applied for recognition with the Bank of England (BoE) and benefits from the UK Temporary Recognition Regime (TRR) for non-UK CCPs. The TRR allows non-UK CCPs for which recognition decisions have not been made yet to continue providing clearing services in the UK for up to three years after Brexit. The BoE included Eurex Clearing in its respective list of non-UK CCPs that will offer clearing services and activities in the UK under the TRR.

Furthermore, the BoE included Eurex Clearing in its respective list of European Economic Area (EEA) systems whose operators have indicated their intention for such systems to receive settlement finality protection in the UK.

### **3.2 Brexit update of UK member opinion**

Eurex Clearing has addressed the impact of a no-deal Brexit on the enforceability of its rules vis-à-vis UK clearing members with external legal counsel. As a result thereof, a supplemental opinion to the existing UK member opinion has been made available in the member section on the Eurex Clearing website (Eurex Clearing Member Section >> Risk & Collateral Management >> Client Asset Protection >> Legal Opinions >> Eurex Clearing Brexit Memorandum 2019).

Eurex Clearing will accordingly not require UK clearing members to provide a legal opinion on the validity and enforceability of the Clearing Conditions themselves (as provided for in Chapter I Part 1 Section 2.1.2(2)(c) of the Clearing Conditions).

However, the supplemental opinion does not consider changes in licensing requirements or loss of passporting rights applicable to a UK clearing member or client as a consequence of a no-deal Brexit, and is accordingly based on the

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assumption that each member has obtained all licenses, approvals, authorisations and consents which may be necessary in connection with its clearing activities.

Eurex Clearing monitors the legislative process in the UK and will consider an update of the supplemental UK opinion closer to the Brexit date if required.

#### **4. Authorisation requirements for UK members**

On the basis of the above-mentioned measures, UK members may continue their memberships with Eurex Deutschland and Eurex Clearing (including clearing relationships with UK-based clearing members).

However, the scope of business that UK members will be able to maintain in the case of a no-deal Brexit might still be limited due to the loss of passporting rights and corresponding new licence requirements. UK members will need to ensure that the required authorisations are obtained or other contingency measures are in place. This particularly applies to:

- the provision of financial services to clients domiciled in the EU,
- dealing on own account at an EU trading venue, either as a direct member or as a user of a Direct Electronic Access (DEA) facility,
- market making or high frequency trading at an EU trading venue

UK members may want to seek legal advice to assess whether the Brexit transitional measures that have been put forward in various EU national jurisdictions would be applicable to their business activities.

#### **5. German Brexit transitional act**

The German Brexit transitional act (Act on taxation and other provisions concerning the withdrawal of the UK from the EU – *Brexit-Steuerbegleitgesetz*) entered into force on 29 March 2019.

The act confers powers to the Federal Financial Supervisory Authority (*Bundesanstalt für Finanzdienstleistungsaufsicht – BaFin*) to extend the passporting regime for UK firms that conduct banking business or provide financial services in Germany through a branch or on a cross-border basis for a period of up to 21 months after Brexit. BaFin is given discretion whether and how to make use of this instrument. The extension may be limited and may only cover such banking business and financial services by UK firms that stand “in close connection” with agreements already existing at the time of withdrawal. In any case, an extension of the passporting regime must be necessary to avoid disadvantages for the orderly functioning or the stability of financial markets.

In addition, UK firms that engage in proprietary trading at a German regulated market or an MTF may apply to BaFin for an exemption from licence

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requirements within three months after Brexit. If they do so, the exemption is deemed to be granted as of the Brexit date until an equivalence decision under MiFIR is taken. The exemption will only apply to (true) proprietary trading (*Eigengeschäft*) but does not cover dealing on one's own account as a service for others (agency business), market making, HFT or systematic internalisation (*Eigenhandel*).

#### DISCLAIMER

This briefing is for information purposes only. It is not intended to constitute legal advice or to create an advisory relationship and may accordingly not be relied upon as such by any party. Eurex Exchange and Eurex Clearing assume no liability vis-à-vis any party in relation to the statements contained herein. Clients of Eurex Exchange and Eurex Clearing are responsible to perform their own analysis as regards the preconditions for continuing their membership and the permissible scope of activities that they may perform on Eurex Exchange and Eurex Clearing after Brexit.

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