

# EPEX SPOT Code of Conduct

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## Title 1 General provisions

### 1.1. Introduction

When becoming an Exchange Member of EPEX SPOT, each Exchange Member undertakes to act in a loyal, honest, transparent, professional and responsible manner, in accordance with good business practice. Each Exchange Member further undertakes, at all times, to safeguard the proper functioning and the integrity of EPEX SPOT markets, as described in this Code of Conduct. EPEX SPOT Code of Conduct aims to provide the rules that Exchange Members and Exchange Traders should apply at all times in order to support EPEX SPOT in operating a fair and orderly market. EPEX SPOT Code of Conduct intends to strengthen the market and public confidence in EPEX SPOT, its pricing mechanisms and its reference prices for the benefit of end consumers.

### 1.2. Legal framework

EPEX SPOT Code of Conduct is part of the Rules and Regulations of EPEX SPOT. Exchange Members are bound to comply with all the other documents forming part of EPEX SPOT Rules and Regulations, such as the Trading Agreement, the Exchange Rules and the Operational Rules, as well as any Notice or communication issued by EPEX SPOT SE in compliance with EPEX SPOT Rules and Regulations. Exchange Members are also bound by any legal and regulatory provisions applying to trading on EPEX SPOT. In this regard, European Regulation No 1227/2011 on wholesale energy market integrity and transparency (**“REMIT”**) is of utmost importance for trading on EPEX SPOT. As a result, this Code of Conduct establishes rules prohibiting abusive practices affecting Physical Power Contracts, in line with Articles 3 and 5 of REMIT, irrespective of its applicability. Any obligation provided for in this Code of Conduct and binding on the Exchange Member is expressly qualified as an obligation of result (*“obligation de résultat”*) meaning the Exchange Member has undertaken to achieve a specific result, in the sense that it may be held liable only subject to the demonstration of the non-achievement of such result (except in the event of Force Majeure).

### 1.3. Application

All rules contained in this Code of Conduct apply to all EPEX SPOT Exchange Members, except otherwise provided herein. EPEX SPOT Code of Conduct as well as any amendments thereto shall enter into force on the day of their publication or any other date explicitly specified by EPEX SPOT SE. They are binding on the Exchange Member as of their publication, without prejudice to the right of the Exchange Member to terminate its membership according to the provisions of the Trading Agreement.

## Title 2 Rules of conduct

### 2.1. Definitions

#### § 1 Definition of market abuse

For the purposes of this Code of Conduct, the following definitions, as provided under Article 2 “Definitions” of REMIT, shall apply, irrespective of the applicability of REMIT.

- **“Inside information”** means information of a precise nature, which has not been made public, which relates, directly or indirectly, to one or more Physical Power Contracts and which, if it were made public, would be likely to significantly affect the prices of those Physical Power Contracts.
- **“Market manipulation”** means:
  - i. entering into any Transaction or issuing any Order to trade, which:
    - a) gives, or is likely to give, false or misleading signals as to the supply of, demand for, or price of Physical Power Contracts;
    - b) secures or attempts to secure, by a person, or persons acting in collaboration, the price of one or several Physical Power Contracts at an artificial level, unless the person who entered into the Transaction or issued the Order to trade establishes that his/her reasons for doing so are legitimate and that such Transaction or Order to trade conforms to accepted market practices on EPEX SPOT markets; or
    - c) employs or attempts to employ a fictitious device or any other form of deception or contrivance, which gives, or is likely to give, false or misleading signals regarding the supply of, demand for, or price of Physical Power Contracts;
  - or
  - ii. disseminating information through the media, including the internet, or by any other means, which gives, or is likely to give, false or misleading signals as to the supply of, demand for, or price of Physical Power Contracts, including the dissemination of rumours and false or misleading news, where the disseminating person knew, or ought to have known, that the information was false or misleading.
- **“Attempt to manipulate the market”** means:
  - i. entering into any Transaction, issuing any Order to trade or taking any other action relating to a Physical Power Contract with the intention of:
    - a) giving false or misleading signals as to the supply of, demand for, or price of Physical Power Contracts;
    - b) securing the price of one or several Physical Power Contracts at an artificial level, unless the person who entered into the Transaction or issued the Order to trade establishes that his/her reasons for doing so are legitimate and that such

Transaction or Order to trade conforms to accepted market practices on EPEX SPOT markets; or

- c) employing a fictitious device or any other form of deception or contrivance which gives, or is likely to give, false or misleading signals regarding the supply of, demand for, or price of Physical Power Contracts;

or

- ii. disseminating information through the media, including the internet, or by any other means with the intention of giving false or misleading signals as to the supply of, demand for, or price of Physical Power Contracts.

## § 2 Definition of economic justification

The Exchange Member undertakes at all times to ensure that all Orders placed and all Transactions executed on the Exchange have an economic justification. The Exchange Member further undertakes to provide, upon request, such justification to EPEX SPOT SE, meaning giving the reason that allows the Exchange Member:

- i. to decide to buy or sell for its own account;
- ii. to trade on behalf of its client, knowing that the third-party's interest in buying or selling is genuine when placing an Order or executing a Transaction on the Exchange.

Such reason should include but is not limited to the trading strategy, in particular:

- i. retail/supply;
- ii. hedging the risks of positions taken on the market;
- iii. speculating in order to try to take benefit from a situation on the market by assuming risks;
- iv. arbitrage between several market areas and the circumstances behind the decision to place the relevant Order.

EPEX SPOT Market Surveillance is entitled to look for such economic justification by requesting any explanation from the Exchange Member. Such request may require the Exchange Member to disclose information about the beneficiary of the relevant Orders or Transactions.

## 2.2. Behavioural requirements applicable to Exchange Members

### 2.2.1. General behavioural requirements applicable to Exchange Members

#### **§ 3 Prohibition of market manipulation**

Any engagement in, or attempt to engage in, market manipulation on a Physical Power Contract is prohibited. This prohibition includes, without limitation:

- i. any kind of false or misleading behaviour;
- ii. any kind of collusions or the collusive cooperation among Exchange Members or with third parties;
- iii. any kind of price fixing behaviour.

#### **§ 4 Prohibition of false and misleading behaviours**

Exchange Members are strictly forbidden to:

- i. enter Orders without a due economic justification;
- ii. place Orders with no intention of executing them;
- iii. give false or misleading signals as to the supply of, demand for, or price of Physical Power Contracts;
- iv. employing a fictitious device or any other form of deception or contrivance which gives, or is likely to give, false or misleading signals regarding the supply of, demand for, or price of Physical Power Contracts;
- v. disseminate false or misleading market information through media, including the internet, or by any other means;
- vi. intervene in Transactions involving VAT fraud or money laundering.

#### **§ 5 Prohibition of collusion of collusive cooperation**

Exchange Members are strictly forbidden to:

- i. place buy or sell Orders at the same time (or nearly the same time) for the same price and quantity (i.e. pre-arranged Trades);
- ii. enter into Cross Trades or cross-border Cross Trades, except if there is real economic justification and no intention to influence exchange prices;
- iii. enter into arrangements for the sale or purchase of a Physical Power Contract, where there is either no change in beneficial interests or market risks, or enter into arrangements where the transfer of beneficial interests or market risks is only between parties who are acting in concert or collusion.

## **§ 6 Prohibition of price fixing behaviours**

Exchange Members are strictly forbidden to:

- i. secure the price of one or several Physical Power Contracts at an artificial level, unless the person who entered into the Transaction or issued the Order to trade establishes that his/her reasons for doing so are legitimate and that such Transaction or Order to trade conforms to accepted market practices on EPEX SPOT markets;
- ii. artificially cause prices to be at a level not justified by market forces of supply and demand, including actual availability of production, or transportation capacity, and demand.

## **§ 7 Alternative procedures**

If alternative procedures are established to set indexes, all participants in these procedures – in which the fair market value is established – shall conduct their assessment without any self-interest and to the best of their knowledge and belief.

## **§ 8 Prohibition of insider trading**

Exchange Members or their Exchange Traders who possess inside information in relation to a Physical Power Contract shall be prohibited from:

- i. using that information by acquiring or disposing of, or by trying to acquire or dispose of, for their own account or for the account of a third party, either directly or indirectly, Physical Power Contracts traded on EPEX SPOT to which that information relates;
- ii. disclosing that information to any other person unless such disclosure is made in the normal course of the exercise of their employment, profession or duties;
- iii. recommending or inducing another person, on the basis of inside information, to acquire or dispose of Physical Power Contracts traded on EPEX SPOT to which that information relates.

### **2.2.2. Particular provisions for specific EPEX SPOT rules**

## **§ 9 Behaviour in relation to a second auction procedure**

Exchange Members are requested, if possible, to modify their Orders in a way to improve tight conditions of the Order Book on a given Market Area at specific hours when EPEX SPOT SE triggers a second auction procedure. The rules of conduct applying in this particular case are described in EPEX SPOT Operational Rules. EPEX SPOT SE may trigger a second

auction procedure on each EPEX SPOT Market Segment, unless otherwise stipulated in EPEX SPOT Operational Rules.

## **§ 10 Manipulation or abuse of technology**

EPEX SPOT SE authorises the use of automatic Order routing systems and application programming interface (“**API**”) provided that Exchange Members comply with all provisions of the Rules and Regulations. Exchange Members undertake not to manipulate the technology of EPEX SPOT with a view to influencing EPEX SPOT prices or otherwise disturb the access of other Exchange Members to EPEX SPOT. Automatic Order routing systems should be upgraded with sufficient care to continue to comply with EPEX SPOT Rules and Regulations.

## **§ 11 Manipulation of the order-to-trade ratio**

EPEX SPOT SE has implemented Intraday Trading System usage fees. The calculation of fees is based on the computation of the order-to-trade ratio (“**OTR**”), as described in EPEX SPOT Operational Rules. Exchange Members undertake not to manipulate the OTR by placing Orders and executing Transactions so as to reduce their Trading System usage fees. Notwithstanding the application of the Code of Conduct, EPEX SPOT SE reserves the right to exclude manipulated Transactions from the statistics. This rule applies to EPEX SPOT continuous Market Segments as defined in the paragraph related to the Intraday Trading System usage fees in EPEX SPOT Operational Rules.

## **§ 12 Transparency commitment**

The Exchange Members support EPEX SPOT SE in further developing the transparency and integrity of EPEX SPOT markets. As a consequence, the Exchange Members shall promptly provide in writing any relevant information to EPEX SPOT Market Surveillance about:

- i. any manifest error they have been involved in;
- ii. any event that could constitute a market manipulation as defined in this Code of Conduct.

## **§ 13 Exchange Members’ conduct towards other Exchange Members and the public**

In so far as an Exchange Member makes public statements regarding its participation in the Exchange, such statements shall be made truthfully. Moreover, Exchange Members shall refrain from bringing EPEX SPOT SE into disrepute by consciously making false statements.



## 2.3. Organisational requirements applicable to Exchange Members

### **§ 14 Exchange Members' conduct towards other Exchange Members and the public**

The Exchange Member shall organise its business operations in such a way that it fulfils all the legal and regulatory requirements for power trading, especially for exchange trading and the Settlement of market Transactions. The adequate organisation of the Exchange Member shall comprise, in particular, the following (considering personal circumstances and the scope of the business activities of the Exchange Member):

- i. an organisation and processes that limit the risk of involvement in any misbehaviour;
- ii. monitoring of trading activities;
- iii. having an effective risk management arrangement in place;
- iv. the obligation to inform EPEX SPOT SE without delay of any change in the information on the Exchange Member's organisation that could affect the orderly trading and the proper execution of Transactions (i.e. update of customer centre);
- v. compliance with the general admission requirements as described in EPEX SPOT Exchange Rules.

### **§ 15 Qualification of Exchange Traders**

The Exchange Members shall ensure that their Exchange Traders are sufficiently qualified and are required to comply with the Rules and Regulations of EPEX SPOT, in particular this Code of Conduct.

### **§ 16 Exchange Members' organisation in case of Direct Trading Membership or trading on behalf**

The following provisions apply to the Exchange Members, Exchange Traders and Brokers who directly or indirectly execute their clients' Orders on EPEX SPOT. The Exchange Member shall, in particular:

- i. provide their services related to trading on EPEX SPOT with the required expert knowledge, care and due diligence in the interest of their clients, at all times;
- ii. endeavour to avoid conflicts of interest and clearly explain the general type and cause of the conflicts of interest to the clients prior to the execution of Transactions for clients.

All information made available by the Exchange Member to their clients has to be honest and unmistakeable. Such information must not be misleading. Generally, any placement of client Orders should serve the interests of the client. Upon the execution of client Orders, an Exchange Member shall take precautionary measures ensuring that:

- i. client Orders are immediately executed on the Exchange and, in particular, without favouring other client Orders or the own interests of the Exchange Members;
- ii. comparable client Orders are executed or forwarded in accordance with the sequence in which they were received;
- iii. any misuse of information in connection with client Orders that have not been executed yet is prevented.

## **§ 17 Mandatory practices against VAT fraud and money laundering**

The Exchanges Members shall be liable to EPEX SPOT SE for the compliance of their clients with the provisions of this Code of Conduct. The Exchange Members purchasing and selling in their own name for the account of a third party (customer Transactions) or acting as intermediaries for Contracts to buy and sell (brokerage operations) shall avoid suspicious contractual relationship. In particular, they shall avoid being involved in transaction chains involving VAT fraud or money laundering. In addition, Exchange Members shall:

- i. contract with their customers only after checking the reliability, good standing and economic capacity of the company (i.e. “know your customer” process) based on, but not limited to, the following information:
  - company’s history;
  - shareholding structure;
  - location of the company;
  - professionalism of the company;
  - experience in the energy market;
- ii. monitor the Transactions of their customers and ask for explanations in the event of unusual trading behaviours (variable volumes, peak volumes);
- iii. regularly inquire whether their customers act as agent of third parties and about the identity of these third parties;
- iv. not engage in Transactions for which the economic justification is unknown or appears unusual, for example when:
  - the terms of payment proposed by their customers are unusual, e.g. cash payment or payment into a bank account in a country other than the one where the vendor is domiciled;
  - the delivery terms and/or terms and conditions proposed by their customers are unusual for the relevant industry;
  - their customers act as agents of third parties and the identity of these third parties is unknown or suspect.

If the Exchange Member detects any suspicious behaviours, it shall inform without delay the relevant authorities and the Market Surveillance.

## **§ 18 Exchange Members' conduct towards Sponsorship services**

In the context of a Sponsorship Agreement, the Sponsor and the Sponsored Member will have access to sensitive information on their respective partner's trading behavior and profile. The Sponsor and the Sponsored Member shall use it for the sole performance of their duties agreed upon in the Sponsorship Agreement and in full compliance with applicable regulations, in particular the prohibition of insider trading and the prohibition of collusion.

## **Title 3      Execution procedure**

### **§ 19 Instructions**

The Exchange Member and Exchange Traders authorised to trade on EPEX SPOT shall comply with the instructions and rules of the Relevant Authorities, as defined in the Exchange Rules, as well as those of EPEX SPOT SE and in particular of the Market Surveillance.

### **§ 20 Information rights**

The Market Surveillance is entitled to request information and the submission of documents from any Exchange Member and to carry out investigations in so far as required for the performance of its tasks according to EPEX SPOT Exchange Rules. In particular, the Market Surveillance is entitled to request, at any time, information pertaining to the economic justification and the final beneficiary(ies) of the operations of the Exchange Member. The Market Surveillance is entitled to carry out audits, under the general conditions for audit and request for information described in the Operational Rules.

### **§ 21 Sanctions**

Exchange Members or Exchange Traders authorised to trade on EPEX SPOT may be temporarily suspended from trading on EPEX SPOT in its entirety or for certain Markets Segments if they breach existing provisions or fail to comply with the instructions of EPEX SPOT SE, the Market Surveillance or any relevant regulatory authority. They may also be banned from dealing with client Orders. The decision is taken by EPEX SPOT SE following the Market Surveillance's recommendation, in accordance with the more detailed provisions contained in EPEX SPOT Rules and Regulations. These sanctions are cumulative and not exclusive of other sanctions provided for in EPEX SPOT Rules and Regulations.