



FEDERATION BANCAIRE DE L'UNION EUROPEENNE
BANKING FEDERATION OF THE EUROPEAN UNION
BANKENVEREINIGUNG DER EUROPÄISCHEN UNION

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EUROPEAN SAVINGS BANKS GROUP GROUPEMENT
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EUROPEAN ASSOCIATION OF COOPERATIVE BANKS
GROUPEMENT EUROPEEN DES BANQUES COOPERATIVES
EUROPÄISCHE VEREINIGUNG DER GENOSSENSCHAFTSBANKEN

MASTER AGREEMENT FOR FINANCIAL TRANSACTIONS

EXPLANATORY MEMORANDUM FOR VERSION 2004 and 2020

The following is a summary of the updates made to the form of Master Agreement for Financial Transactions since it was published on 1 January 2001 (the “European Master Agreement”, the “EMA”). The updates are, like the original version of the EMA, sponsored by the European Banking Federation (“EBF”) in co- operation with the European Savings Banks Group (“ESBG”) and the European Association of Cooperative Banks (“EACB”).

The work on the updates has been undertaken by joint working groups consisting of members of the EBF, the ESBG and the EACB, and with respect to the 2020 version, as well as representatives of the European Central Bank and national central banks.

Goals

The European Master Agreement version 2001 aimed to consolidate into a single set of harmonised documents, various master agreements used within the euro zone and certain neighbouring countries, particularly for repurchase transactions and securities lending. In 2004 the European Master Agreement was revised and its structure expanded by the publication of new product annexes for derivative transactions and for deposits and loans. Following the global financial crisis of 2007 - 2008, documentation standards required further modernization, in particular in light of the legislative initiatives that were introduced in response to the crisis. A first step in this direction was achieved by the publication of the EMIR annex in 2013 to comply with requirements for timely confirmation, portfolio reconciliation and dispute resolution as provided for under the European Market Infrastructure Regulation (EMIR)¹. The 2020 version further modernizes the European Master Agreement by revising the Margin Maintenance Annex to comply with margin requirements for uncleared OTC derivatives under EMIR and Delegated Regulation (EU) 2016/2251 and by updating the General Provisions and certain product annexes to comply with current documentation standards. The following provides an overview of the amendments made since the publication of the European

¹ Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4.7.2012 on OTC derivatives, central counterparties and trade repositories

Master Agreement in 2001 with a focus on the latest changes introduced by the version 2020.

Benefits

The 2004 and the 2020 versions (the “Updated Versions”) of the European Master Agreement aim, like the 2001 version, to

- enable market participants to document potentially all trading transactions under a single master agreement, including repurchase transactions, securities loans, derivative transactions and deposit and loans transactions. To date, a uniform approach to documentation, particularly with respect to repurchase and securities lending transactions, which are closely related in economic terms, has not been undertaken by the market;
- provide a contractual basis for cross-product netting and margining, subject to systems requirements and applicable law;
- result in further harmonisation of operational provisions with the New York or English law master agreements developed by, for example, ISDA, PSA/ISMA and ISLA; this issue is particularly relevant with respect to back-to-back transactions, where inconsistencies can result in mismatches;
- offer a standard for documentation in countries which currently do not have standard forms of their own;
- facilitate trading with an increasing number of counterparties in Europe who request the use of their home country standard, because, if the EBF Master Agreement is broadly accepted, home standards would be nearly identical in many continental European jurisdictions;
- simplify and speed up the documentation process by reducing the number of master agreements which are handled and accordingly the number of legal opinions required; and
- result in cost-savings as a consequence of the foregoing.

Structure

The structure of the European Master Agreement consists now of the following elements:

1. Special Provisions,
2. General Provisions,
3. Product Annex for Repurchase Transactions,
4. Product Annex for Securities Loans
5. Product Annex for Derivative Transactions
 - a. Foreign Exchange Supplement
 - b. Interest Rate Supplement
 - c. Options Supplement
 - d. EMIR Annex
 - e. Clearing Annex
6. Product Annex for Deposits and Loans
7. Margin Maintenance Annex.

With respect to the Updated Versions of the European Master Agreement, the Special Provisions will continue to be the only component of the master agreement which is signed by the parties.

Likewise, the Updated Versions of the General Provisions and Annexes continue to constitute *terms of business* which are not signed as such, but incorporated into an agreement between the parties (normally the Special Provisions). As it was the case with the European Master Agreement version 2001 the Updated Versions of the General Provisions, represent a *multi-product* documents.

General Provisions

The General Provisions have been revised in 2004 to expand its coverage to derivative and deposit and loan transactions and in 2020 to update it in line with current documentation standards. The following provides an overview of the most material changes made thereto.

-Section 3(3) Withholding Right

The 2020 version now includes in Section 3(3) a withholding right provision. The withholding right has been introduced as it more specifically reflects the legal concepts prevailing in civil law jurisdictions. In addition, the 2020 version of the Special Provisions allows parties to amend Section 3(3) to include an end date until which the withholding right has to be exercised in case an Event of Default has occurred.

-Section 3(5) Late Payment

Following the introduction of the euro short-term rate “€STR” provided by the European Central Bank, Section 3(5) of the 2020 version refers to “€STR” as the interest rate for Euro, thereby allowing parties to select alternative rates for Euro or other currencies. Parties may wish to make use of alternative selections for Euro in case they have existing European Master Agreements in place that refer to EONIA and for which they may wish to replace EONIA with €STR plus a spread. Samples of such fallbacks are provided in the 2020 version of the Special Provisions.

-Section 3(9) Provision of Margin

A new Section 3(9) has been introduced in the 2020 version to reflect that different margin concepts may be used under the European Master Agreement. On the one hand, the “full title transfer” concept embedded in the Margin Maintenance Annex and, as a new concept, a “security interest” arrangement. This approach allows the development of a separate annex or supplement to address the exchange of initial margin and the segregation requirements outlined in the Delegated Regulation (EU) 2016/2251.

-Section 5(j) Accuracy of Specified Information

A new Section 5(j) has been introduced in the 2020 version to allow parties to choose to confirm to each other that the documents they are to provide under the European Master Agreement are true, accurate and complete in every material respect.

-Section 6(1) Event of Default

-Section 6(1)(a)(i) Failure to Pay or Deliver

The 2004 version expands the previous Section 6(1)(a)(i) to also cover failure to deliver following the introduction of product annexes for derivative transactions and deposits and loans. The 2020 version shortened the grace period to one Business Day in line with other market standard documentation.

-Section 6(1)(a)(vi) Cross Default and Section 6(1)(a)(viii) Insolvency Events

The grace period has also been shortened in Section 6(1)(a)(vi) and Section 6(1)(a)(viii) of the 2020 version in line with current documentation standards.

-Section 6(1)(a)(vii) Corporate Merger Without Assumption

In the 2020 version, the scope of Section 6(1)(a)(vii) has been expanded in line with the broadening of scope of Section 6(2)(a)(iv) (*see below for details*).

-Section 6(1)(a)(x) Guarantee Ineffective

Section 6(1)(a)(x) of the 2020 version has been expanded to provide for an Event of Default in case representations given by a guarantor prove incorrect and have a materially adverse effect.

-Section 6(2) Change of Circumstances

-Section 6(2)(a)(ii) Illegality Event and Section 6(2)(a)(iii) Impossibility Event

In the 2020 version, Section 6(1)(a)(ii) has been revised and a new Section 6(1)(a)(ii) has been introduced to cover Impossibility Events. In the prior versions, it was at the option of the parties to select the application of an Impossibility Event. Since 2001 the trend in the market has been to include force majeure events as a standard provision, and the 2020 version reflects such approach. Also, waiting periods have been introduced during which no termination may occur. Different time periods have been specified for the relevant event. It has also been clarified that while such events are occurring, outstanding obligations under the Transactions are deferred.

- Section 6(2)(a)(iv) Credit Event upon Corporate Merger

Section 6(2)(a)(iv) of the 2020 version (in previous versions Section 6(2)(a)(iii)) has been expanded to cover changes in ownership and capital restructuring events.

- Section 6(2)(a)(v) additional Change of Circumstances

The 2020 version includes an option for the parties to select additional events as Change of Circumstances.

-Section 6(2)(b) Termination

It has been clarified in Section 6(2)(b) of the 2020 version that any change of circumstances relating to Margin provides the relevant party with a right to terminate all Transactions under the European Master Agreement.

- Section 6(2)(d) Transfer and Section 6(2)(e) Waiting Period and Deferral

Section 6(2)(d) of the 2020 version has been modified by deleting the deferral requirement applicable to Tax and Illegality Events termination rights. The deferral was seen no longer necessary following inclusion of new features in Section 6(2)(a)(i) and (ii) and the newly introduced sub-section (iii): With respect to the revised sub-section (i), there needs to exist now a high likelihood that the negative implications as specified in sub-section (i) exist at the time obligations have to be complied with in relation to the Transactions or Margin. With respect to sub-section (ii) and (iii) of the 2020 version, it is now to be determined whether, if obligations were to be performed on the day the relevant event occurs, such event would render performance unlawful, impossible or impracticable. Further, and as specified above, a waiting period has been included with respect to Section 6(2)(a)(i)(ii) and (iii) of the 2020 version to cater for the possibility that the respective event ceases to exist after a certain period of time.

-Section 6(4) Applicability to Relevant Entity

Section 6(4) of the 2020 version allows parties to select third party entities as a so-called “Relevant Entity” in the Special Provisions to achieve that certain Events of Defaults and Change of Circumstances extend to such entities. This feature may be helpful in case credit determinations are linked to third parties that do not provide any credit support.

-Section 6(5) Effect of Termination

Section 6(5) of the 2020 version provides that the Final Settlement Amount shall be due as of the Early Termination Date. As in the previous versions, the Final Settlement Amount will however only become payable following receipt of the notice requirements specified in Section 7(3)(a) and (b). This new concept allows a clearer differentiation between the due and the payable date.

-Section 6(6) Event of Default and Change of Circumstances

Section 6(6) of version 2020 has been updated to capture the hierarchy of the Events of Default and Change of Circumstances adequately following the revision of the respective Change of Circumstances provisions.

-Section 6(7) Remedies

Clarity has been provided in Section 6(7) of the 2020 version that in case a Final Settlement Amount cannot be paid following an Impossibility or Illegality Event concerning less than all Transactions, this does not trigger an Event of Default.

-Section 7(1) Final Settlement Amount - Calculations

Section 7 has been modernized and includes the following new features: (1) Final Settlement Amounts that remain outstanding following a partial termination pursuant to Section 6(2)(a) have been added to

the definition of Amounts Due, (2) a clarification on the Default Value definition for the assets to be valued under Transactions and Title Transfer Margin arrangements has been added, (3) a comparable clarification on the Margin Claims definition has been included, and (4) the methodologies for the determination of the Transaction Values have been modernized.

-Section 7(2)(b) Two Calculating Parties

With respect to the situation where both parties are calculating parties, Section 7(2)(b) of the 2020 version now clarifies the various situations that may arise in such a scenario and how the Final Settlement Amount is to be calculated in each such case.

-Section 7(3)(b) Final Settlement Payment Date

As per above, it has been clarified that the Final Settlement Amount becomes due as of the Early Termination Date. Accordingly, a new term “Final Settlement Payment Date” has been introduced in Section 7(3)(b) of the 2020 version, which is the date upon which the Final Settlement Amount becomes payable. Interest will accrue from such date until it is actually paid.

-Section 8 Notices

The 2020 version includes a modernized Section 8 specifying the manner of giving notice and its effectiveness.

-Section 9(1) Booking Offices – Extent of Obligations

It has been clarified in Section 9(1) of the 2020 version that a party shall not be required to pay any Final Settlement Amount through any of its other offices in case of an Illegality or Impossibility Event occurring in relation to the office responsible for payment.

-Section 11(2) Jurisdiction, Arbitration

Parties now have the option to agree to receive service of process at its registered address. If the parties are in agreement therewith, they will not need to specify a Process Agent in the Special Provisions.

Product Annexes

In 2004, Product Annexes were published for derivative transactions and deposits and loans. The following provides a high-level overview of such annexes and the modifications made in the 2020 versions thereto and to the existing product annexes for repurchase and securities lending transactions to reflect current market standards.

Product Annex for Repurchase Transactions

The 2020 version of the Product Annex for Repurchase Transactions largely follows its prior versions. Clarifications have been added, where deemed helpful. Negative pricing rates have been introduced anew. The interplay between the late delivery remedies in the product annex and the application of the Events of Defaults in the General Provisions has been clarified. The concept of a partial delivery by the buyer has been introduced for late deliveries and it has been specified that remedies for late delivery are not available in case of gross-negligence or wilful misconduct.

Product Annex for Securities Loans

The 2020 version of the Product Annex Securities Loans also largely follows its prior versions. Clarifications have been introduced, where deemed helpful. The interplay between the late delivery remedies in the product annex and the application of the Events of Defaults in the General Provisions has been clarified. It has been specified that remedies for late delivery are not available in case of gross-negligence or wilful misconduct. In the absence of agreement on the lending fees, the product annex now provides that it is to be calculated on the market values of the loaned securities

Product Annex for Derivative Transactions

The 2004 version of the Product Annex for Derivative Transactions provides a framework for derivative transactions and is to be used together with the supplements for Foreign Exchange, Interest Rate and Options Transactions, as applicable. To comply with EMIR requirements, the EMIR Annex was published in 2013 and in 2020, the Clearing Annex. Both are to be used together with the Product

Annex for Derivative Transactions. As an alternative to the supplements or for transaction types not covered by the supplements, the parties may elect to incorporate market standard documentation into the terms of certain transactions. In such case, the parties may elect to construe the terms of such market standard documentation in accordance with the law applicable generally to such market standard documentation and agree thereto accordingly in the Special Provisions. Also, the 2020 version of the Product Annex for Derivative Transactions includes a new concept for late deliveries in line with current documentation standards. Further, a generic benchmark fallback provision has been introduced to comply with Article 28(2) of the Benchmark Regulation².

Interest Rate Transactions Supplement

The 2004 version of the Interest Rate Transactions Supplement provides for standard terms for interest rate transactions, such as interest rate swaps, cross currency swaps, forward rate transactions, interest rate cap and floor transactions and interest rate swaptions. With respect to options transactions, the terms of the Options Transactions Supplement will apply, unless otherwise specified in the Interest Rate Transactions Supplement. The 2020 version of the Interest Rate Transactions Supplements includes updated day count fraction definitions and a negative interest provision.

Foreign Exchange Transactions Supplement

The 2004 version of the Foreign Exchange Transactions Supplement provides for standard terms for foreign exchange transactions, such as foreign exchange spot and forward transactions, non-deliverable foreign exchange forward and option transactions and foreign exchange options.

Options Transactions Supplement

The 2004 version of the Options Transactions Supplement provides for standards terms for option transactions, irrespective of the derivative product transacted (e.g. interest rate transactions or foreign exchange transactions).

Margin Annex

The 2004 and 2020 version of the Margin Maintenance Annex continue to set out common rules on the provision of margin. The 2004 version expanded the scope of margining to cover derivatives transactions. The 2020 version provides for a substantially revised version to reflect the uncleared margin requirements outlined in Delegated Regulation (EU) 2016/2251. It also provides for margining of deposits and loan transactions and has generally been updated to reflect current documentation standards.

In this respect, the 2020 version of the Margin Maintenance Annex now provides for the following features:

- Repurchase and securities loans transactions, as well as derivatives and deposits and loans transactions can be margined, either on a cross-product or individual product group level.
- The uncleared margin requirements outlined in Delegated Regulation (EU) 2016/2251 have been reflected, thereby differentiating between requirements that apply to derivatives transactions only and, where it was determined to be beneficial, such that are applicable to all product categories.
- Modified terms have been introduced for the parties exchanging the margining.
- The concept of having both parties act as joint Valuation Agent has been revised to provide for the party entitled to receive margin to act as Valuation Agent. This is in line with market practice.
- The definition section has been modernized to better differentiate between calculation methods applicable to each transaction category.
- A new valuation methodology for repurchase transactions has been introduced in line with current documentation standards.
- The concept of payment of negative interest for cash margin has been introduced.
- It has been specified that the types of cash and securities margin are to be agreed to by the parties in the Special Provisions.

² Regulation (EU) 2016/1011 of the European Parliament and of the Council of 8.6.2016 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds and amending Directives 2008/48/EC and 2014/17/EU and Regulation (EU) No 596/2014 (OJ L 171, 29.6.2016, p.1)

-A new substitution provision has been introduced.

Other Matters

Legal opinions are being sought in the various European jurisdictions, and versions in various languages are published and can be subscribed to by individual institutions. Information concerning the subscription program are provided on the EBF [and the ESBG] website[s].
