

## **Articles of Association**

**of**

## **EEX Power Derivatives GmbH**

### **1 Company Name and Seat**

- 1.1** The name of the Company is EEX Power Derivatives GmbH.
- 1.2** The Company has its seat at Leipzig.

### **2 Object of the Company**

- 2.1** The object of the Company is the operation and sponsorship of an electronic exchange for futures trading activities with electricity and other products in accordance with the statutory requirements. This includes in particular:
  - 2.1.1** the planning, development and implementation of electronic data processing in the area of the futures and other electricity derivatives trading exchange business;
  - 2.1.2** the collecting, processing and distribution of information related to electricity;
  - 2.1.3** the rendering of supporting services for entities whose business is related to energy.
- 2.2** The Company is entitled to carry out all actions and take all business measures which appear necessary or useful for the fulfilment of the object of the Company.
- 2.3** In particular, the Company is entitled to establish branch offices and subsidiaries in Germany and abroad, as well as to acquire and participate in other enterprises in Germany and abroad.

### **3 Share Capital**

- 3.1** The share capital of the Company amounts to EUR 100.000.
- 3.2** The capital contributions have been fully paid up.

### **4 Financial Year; Duration**

- 4.1** The financial year of the Company is the calendar year. The first financial year is an incomplete financial year beginning on the date of first registration of the Company with the Commercial Register and ending on 31 December of the year of first registration.
- 4.2** The Company is established for an indefinite period of time.

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## **5 Corporate Organs of the Company**

The Company has the following corporate organs:

- 5.1** Shareholders' Meeting (*Gesellschafterversammlung*),
- 5.2** Supervisory Board (*Aufsichtsrat*),
- 5.3** Management (*Geschäftsführung*).

## **6 Shareholders' Meeting**

- 6.1** The Shareholders' Meeting takes resolutions on all matters, for which according to the Articles of Association, the rules of procedure of the management or statutory provisions a resolution of the Shareholders' Meeting is required.
- 6.2** Shareholders' Meetings are convened by the Managing Directors. Each Managing Director has the right to convene a Shareholders' Meeting alone.
- 6.3** A regular Shareholders' Meeting is to be convened at least once a year within the first eight months of that year for the purpose of approving the annual accounts and approving the actions of the Managing Directors.
- 6.4** An extraordinary Shareholders' Meeting is to be convened, subject to passing a resolution pursuant to Clause 7.1, if resolutions are required by law or the Articles of Association or the rules of procedure for the management or the convocation lies in the interests of the Company for some other reason or one or more shareholders, whose shares together amount to at least one tenth of the share capital upon stating the purpose and reasons demand to convene a Shareholders' Meeting.
- 6.5** The convocation shall take place by mail, facsimile or email to each shareholder, specifying place, date, time and agenda of the meeting, with a notice period of at least three weeks or of at least two weeks in case of an extraordinary Shareholders' Meeting; in case of urgency the convocation can take place by email with a notice period of one week. The day of sending and the day of convocation shall not be included in calculating this period.

The agenda can in urgent cases be subsequently supplemented, whereas the supplement must reach the shareholders in the form prescribed for the convocation at least three days before the day of the meeting.

Unless the Chairman of a Shareholders' Meeting considers this required for urgent reasons, the proposal of a resolution to exclude the participation of the Managing Directors and/or the members of the Supervisory Board at a Shareholders' Meeting must be included in the agenda sent to the shareholders prior to the Shareholders' Meeting.

- 6.6** The Shareholders' Meeting shall have a quorum of at least 50% of the share capital of the Company being present or represented. For the determination of the quorum only the presence or representation of the shareholder shall be taken into consideration, not the existence of the shareholder's voting right. If a Shareholders' Meeting does not have a quorum, the Managing Directors are to convene a new Shareholders' Meeting with the same agenda with a convocation period of at least one week. This meeting shall constitute a quorum irrespective of the amount of share capital represented, if this was specified in the invitation.

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- 6.7** Shareholders' Meetings shall be held at the seat of the Company, unless the shareholders determine another place for the respective next Shareholders' Meeting by way of majority resolution.
- 6.8** The Shareholders' Meeting shall elect a chairman with the majority of votes cast. The chairman shall chair the meeting.
- 6.9** To the extent Shareholders' Meetings are not recorded in a notarial protocol, minutes are to be taken of the course of the meeting (for the purpose of evidence, not as a precondition of validity) specifying the place and date of the meeting, the attendance and the agenda, as well as the essential content of negotiations and the resolutions of the shareholders. The minutes are to be signed by the chairman of the Shareholders' Meeting. Each shareholder is to be provided with a copy of the minutes by way of mail, facsimile or email without undue delay after the Shareholders' Meeting.
- 6.10** The Managing Directors and the members of the Supervisory Board are to participate in Shareholders' Meetings unless the shareholders pass a resolution to the contrary with a simple majority of votes.

### **7 Shareholders' Resolutions**

- 7.1** Resolutions of the shareholders are passed at Shareholders' Meetings. Unless mandatory law provides otherwise, resolutions outside of meetings can be passed by written, facsimile or oral (including telephone) vote, to the extent all shareholders take part in the vote and none of them objects to the manner of voting.
- 7.2** Besides the matters provided for by law and the matters stipulated in these Articles of Association, the following matters require a resolution by the shareholders:
- 7.2.1** approval of the annual financial statements and distribution of profits;
  - 7.2.2** calls for payment of the share capitals;
  - 7.2.3** repayment of additional contributions;
  - 7.2.4** partition and redemption of shares;
  - 7.2.5** approval of the acts of the Managing Directors;
  - 7.2.6** approval of the acts of the members of the Supervisory Board.
- 7.3** Shareholders' resolutions are passed with the simple majority of votes cast, unless the law or the Articles of Association specify any other majority. Each EUR 100.00 of a share shall grant one vote. Abstentions from voting are not included for the purpose of counting votes.
- 7.4** The following resolutions shall always require a majority of three quarters of the votes cast:
- 7.4.1** admission of a new shareholder;
  - 7.4.2** capital increases and capital decreases;
- 7.5** The following resolutions shall always require 90% of the votes cast:
- 7.5.1** amendments to Clause 2 and 6 to 11 of the Articles of Association;
  - 7.5.2** entering into control or profit and loss transfer agreements or other enterprise agreements;

**7.5.3** liquidation of the Company;

**7.5.4** transformation of the legal form of the Company and the consent to measures according to the German Company Transformation Act (*Umwandlungsgesetz*).

**7.6** Each shareholder may appoint one or several of its employees, another shareholder or a third party economic advisor being subject to a professional duty of confidentiality as representative for the exercise of the voting right. A representation by a person other than the aforementioned persons shall only be admissible if the remaining shareholders agree to the representation. Each case of representation requires a written power of attorney in the form of sec. 47 para. 3 GmbHG (*Textform*).

**7.7** To the extent a shareholders' resolution is not recorded in a notarial protocol, a protocol of any resolution passed outside a shareholders' meetings shall be drawn up without undue delay (for the purpose of evidence, not as a precondition of validity), specifying the day and form of the resolution, the content of the resolution and the voting. The protocol is to be sent to each shareholder without undue delay after the passing of the resolution by mail or by email.

**7.8** Shareholders' resolutions can only be challenged within one month of the receipt of the protocol in accordance with the Articles of Association.

## **8 Supervisory Board**

**8.1** The Company has a Supervisory Board comprising seven members. To the extent legally permissible, sec. 52 Limited Liability Companies Act (*GmbHG*) and the provisions of the Stock Corporation Act (*AktG*) mentioned therein shall not apply to the Supervisory Board.

**8.2** The members of the Supervisory Board shall be elected by the Shareholders' Meeting with simple majority of the votes cast. The members of the Supervisory Board shall be elected for the period until the end of the Shareholders' Meeting which resolves on the approval for the fourth financial year after the elections; for purposes of calculation, the financial year in which the office term commences shall be disregarded.

**8.3** The Supervisory Board shall elect a chairman and a deputy chairman from its ranks. The elections shall take place in a meeting to take place without special notice directly following the Shareholders' Meeting in which the members of the Supervisory Board were elected. The chairman and deputy chairman shall be elected for the duration of their office term as members of the Supervisory Board. The deputy chairman shall have the rights and duties of the chairman if the chairman is unable to attend.

**8.4** The Supervisory Board shall advise and supervise the management and represent the Company vis-à-vis the managing directors. The Supervisory Board shall furthermore have the competence for the following matters:

**8.4.1** approval of the business plan of the Company including investment and strategic plan;

**8.4.2** appointment and dismissal of Managing Directors;

**8.4.3** entering into, amending and terminating service agreements with Managing Directors;

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- 8.4.4 granting managing directors power of sole representation and releasing them from the restrictions of sec. 181 BGB and further changes to the management competences of the Managing Directors;
  - 8.4.5 adopting rules of procedure for the management and issuing instructions to the management;
  - 8.4.6 checking the annual accounts of the Company prepared by the management;
  - 8.4.7 commissioning the auditor with the audit of the annual accounts,
  - 8.4.8 appointment of procurists (holders of general commercial signing powers - *Prokuristen*) and of authorised signatories with powers extending to the whole business of the Company (*Handlungsbevollmächtigte zum gesamten Geschäftsbetrieb*);
  - 8.4.9 consent to the legal transactions and measures which according to the rules of procedure of the Management Board are subject to the consent of the Supervisory Board.
- 8.5 The Supervisory Board may adopt rules of procedure for the Supervisory Board, which contain further details and regulations applicable to the Supervisory Board.
- 8.6 The members of the Supervisory Board are entitled to claim a refund of their expenses and payment of an appropriate remuneration; the amount of which shall be resolved by the Shareholders' Meeting after hearing the Supervisory Board.

### **9 Meetings of the Supervisory Board**

- 9.1 Supervisory Board meetings shall be convened by the chairman, in the event he is unable to attend, by his deputy. The convocation shall take place by (registered) mail, facsimile or email to each Supervisory Board member, specifying place, date, time and agenda of the meeting, with a notice period of at least two weeks. The day of sending and the day of convocation shall not be included in calculating this period.
- 9.2 In case of urgency the convocation can take place by telephone or email with a shorter notice period. The agenda can in urgent cases be subsequently supplemented, whereas the supplement must reach the Supervisory Board members in the form prescribed for the convocation at least three days before the day of the meeting.
- 9.3 The Supervisory Board meetings shall regularly take place once per calendar quarter; they must take place twice per calendar half-year. Notice of a Supervisory Board meeting shall also be given if one of the Supervisory Board members or the management requests such in writing giving the purpose and grounds for such.

### **10 Supervisory Board Resolutions**

- 10.1 The resolutions of the Supervisory Board shall be generally adopted in meetings. Members attending by telephone or video conference shall be deemed to be present. Supervisory Board members who are absent from the meeting may have their written vote by another Supervisory Board member.

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- 10.2** Upon order of the chairman, resolutions may be adopted by votes cast in writing, facsimile, oral (including telephone) or in text form (including email). There is no right to object to this manner of passing the resolution.
- 10.3** The resolution on an agenda item which was not included in the notice of meeting is only permissible if no present Supervisory Board member objects to the resolution and more than half of the Supervisory Board members are present. In such cases, a reasonable period to be determined by the Supervisory Board chairman shall be given to the absent members to have an opportunity to object to the resolution; the resolution shall only become effective if no absent member objected within such period.
- 10.4** The Supervisory Board shall be deemed to have a quorum if all members have been given notice at their last known address and at least half of the members comprising the Supervisory Board participate in passing the resolution.
- 10.5** Resolutions of the Supervisory Board shall be adopted by a simple majority of the votes cast except for the decisions which require a 90% majority as referred to in Clause 7.5.

### **11 Management and Representation**

- 11.1** The Company has one or more Managing Directors. If only one Managing Director has been appointed, this Managing Director shall represent the Company alone. If several Managing Directors have been appointed, the Company shall be represented by two Managing Directors jointly or by one Managing Director together with a procurist.
- 11.2** The Supervisory Board can grant all or individual Managing Directors authority to represent the Company alone, and/or release them from the restrictions of sec. 181 German Civil Code (*BGB*)<sup>1</sup>.
- 11.3** The Supervisory Board can stipulate in the Rules of Procedure for the Management or otherwise that certain legal transactions and measures are subject to its prior consent.
- 11.4** The management must exercise its functions in accordance with the provisions of the law, of these Articles of Association and the general and specific directions of the shareholders and/or the Supervisory Board and is authorised to issue such directions.

### **12 Information and Control Right**

In respect of the information and control right of the shareholders sec. 51a GmbHG shall apply.

### **13 Annual Accounts and Profit Distribution**

- 13.1** The Managing Directors are required to prepare the annual accounts and the management report for the preceding financial year within the first three months following the end of

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<sup>1</sup> Sec. 181 BGB (German Civil Code) [Contracting with oneself] provides:

"An agent may not, unless he is released from such restriction, enter into a legal transaction in the name of his principal with himself in his own name, or as agent of a third party, unless the legal transaction consists exclusively in the fulfilment of an obligation."

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each financial year and present them to the Supervisory Board. If required by law, the Managing Directors shall also present the prepared documents to the auditor for its audit.

- 13.2** The Managing Directors shall submit to the shareholders the annual accounts, the management report and, insofar as an audit is required, the auditor's report without undue delay after completion.
- 13.3** The Supervisory Board shall review the submitted documents (including the auditor's report, if required), prepare a report on its review, and provide this report within one month after receiving the documents to the Managing Directors and the shareholders.
- 13.4** The shareholders shall resolve on the approval of the annual accounts and the use of the Company's financial results within the first eight months following the end of each financial year.
- 13.5** In their resolution on the use of the financial results, the shareholders can place amounts in the profit reserves or carry them forward as profit.

### **14 Disposal of Shares**

Disposals of shares or parts of shares, in particular the assignment and pledging of shares, require the consent of the Shareholders' Meeting in order to be valid. This shall also apply to the granting of sub-participations, transfers within the scope of reorganisations under the Reorganisation Act (*UmwG*), and the establishment of legal relationships by which a shareholder holds his share wholly or partly as trustee for a third party or subjects the exercise of its shareholder rights to the consent of a third party, if such other party is not itself a shareholder. Section 17 GmbHG shall apply.

### **15 Redemption of Shares; Remuneration**

- 15.1** The Company may redeem shares with the consent of the respective shareholder.
- 15.2** Shares can be redeemed, notwithstanding further grounds specified in these Articles of Association, without the consent of the respective shareholder if
  - 15.2.1** they have been seized by a creditor of the shareholder or have otherwise become the object of judicial execution measures, and the judicial execution measures have not been cancelled within six months of the pledging or other judicial execution measure, but at the latest before the realisation of the share;
  - 15.2.2** insolvency proceedings have been commenced relating to the assets of a shareholder, or the commencement of such proceedings has been rejected due to a lack of sufficient assets;
  - 15.2.3** there is an important reason in the person of the respective shareholder which justifies his exclusion from the Company; such important reason being, in particular, if the shareholder grossly violates his duties arising from these Articles of Association.
- 15.3** If several co-owners are entitled to one undivided share, the redemption shall also be admissible if the respective conditions are only fulfilled in the person of one co-owner.

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- 15.4** The redemption of shares shall be declared by the management and shall become effective upon receipt of this declaration by the respective shareholder. Such redemption shall require a shareholders' resolution, which is to be passed unanimously. The shareholder affected by the decision has no voting right at this vote. The payment of remuneration shall not be a precondition for the validity of the redemption.
- 15.5** A shareholder whose share is redeemed, or who is required to assign his share pursuant to Clause 15.7, has a claim to remuneration. The remuneration shall be paid in cash and shall be in the amount of the pro-rata fair market value of the shares being redeemed or assigned. The pro rata fair market value shall be determined in accordance with the capitalised earnings value appraisal method (objectified enterprise value) in accordance with the principles of carrying out enterprise evaluations (IDW S1) stipulated by the Institute of Accountants in Germany (IDW). The respective shareholder may waive its claim to remuneration.
- 15.6** The remuneration which has not yet been paid shall bear interest at a rate of 3% p.a. above the respective basic interest rate pursuant to sec. 247 BGB, from the day on which the redemption pursuant to Clause 15.4 has been declared. The interest shall become due with the corresponding instalments of the remuneration. The Company shall at any time be entitled to pay the remuneration in whole or in part before it becomes due.
- 15.7** Instead of a redemption of a share, a resolution can be passed to the effect that the respective shareholder is obliged to wholly or partly assign his shares to the Company, to one or several co-shareholders or to a third party. In this event the purchaser of the share shall pay the remuneration for the assigned share as specified in Clause 15.5; the Company shall be liable for the payment as a guarantor. Clause 15.6 shall apply accordingly, whereas the day of the effective assignment of the share shall apply instead of the time of the declaration of redemption.

## **16 Announcements**

Announcements of the Company shall exclusively be published in the Electronic Federal Gazette ("*elektronischer Bundesanzeiger*").

## **17 Formation Expenses**

The Company shall bear the formation expenses, in particular the costs of the notary, the registration in the commercial register and the costs of publication up to an amount of Euro 1,500.

## **18 Final Provisions**

- 18.1** Should any individual provision of these Articles of Association be or become wholly or partly invalid, or should a gap arise in these Articles, this shall not affect the validity of the remaining provisions of these Articles which shall remain in full force and effect. In place of the invalid or lacking provision, the shareholders are obliged to agree such provision as they would reasonably have agreed had they recognised the invalidity or the gap at the time of concluding this agreement.

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- 18.2** All agreements between the shareholders or between the Company and the shareholders relating to the corporate relationship shall require the written form in order to be valid, unless notarisation is prescribed by law. This shall also apply to any waiver of the requirement of the written form.
- 18.3** These Articles of Association and all claims connected therewith shall be subject to the law of the Federal Republic of Germany.
- 18.4** Exclusive legal venue for all disputes arising in connection with these Articles of Association shall be the seat of the Company, to the extent legally admissible. This shall apply to disputes between the shareholders and the Company as well as to disputes among the shareholders, to the extent rights and duties arising from these Articles are directly or indirectly are concerned.
- 18.5** Each shareholder is to provide the management with an address under which written notifications and declarations can be made vis-à-vis this shareholder, as well as to inform the management of any change in this address without undue delay. Written notifications and declarations of the Company, or of the shareholders to one another, which relate to the corporate relationship, are to be sent to the last specified address.