

2024-N-067
12 November 2024

Amendments to the Euroclear Bank contractual documentation

Target audience

- All clients

Effective date

26 November 2024

Highlights

We are amending the [Terms and Conditions governing the use of the Euroclear](#) and [The Operating Procedures of the Euroclear System](#).

In this Newsletter, we:

- explain the rationale behind the changes
- describe the amendments

Amendments to our contractual framework

Why are we amending our contractual framework?

The need for this update derives from:

- Belgian legislative changes
- business resilience initiatives
- management of long cash balances
- the evolving geopolitical landscape
- Euroclear Bank Cash Accounts/Cash Wallets



Overview of the amendments

1. Belgian legislative changes (update of Book 6 of the Belgian Civil Code)

On **1 January 2025**, the new Book 6 of the Belgian Civil Code on extra-contractual liability will enter into force allowing for contractual liability and extra-contractual liability for a same breach to co-exist (which is not the case today).

This new rule de facto abolishes the current quasi-immunity of so-called auxiliaries (e.g., employees, directors and other entities) typically used by us to perform contractual obligations such as Euroclear SA (ESA).

As this new rule might multiply claims, complexify proceedings and expose auxiliaries to new tort claims, we have excluded in Section 12 (c) to the [Terms and Conditions governing use of Euroclear](#) the possibility for Participants (and their Underlying Clients) to bring extra-contractual claims, in addition to contractual claims, against us, ESA and our auxiliaries.

This amendment maintains the current position under the old code, resulting in no effective change for Participants (and their Underlying Clients).

2. Business resilience initiatives

In the context of our **Operational Resilience** programme, we have developed new capabilities to detect, respond and recover from any type of incident that would cause a major disruption in the functioning of the Euroclear System.

The new **Section 18 on Contingency Measures** will complement the existing **Section 12 (g) on Force Majeure**, with contingency measures that we can apply in a crisis context to ensure business continuity and the resumption of services after an incident or outage has occurred.

Details on how activating a contingency capability will affect a Participant's activity will be further described in operational guidance available on [Euroclear Bank business resilience - What you need to know](#) on MyEuroclear.

3. Management of long cash balances

We have introduced two new sections with respect to the **management of long cash balances**:

1. **Section 12(a)** clarifies the status of Euroclear Bank as a CSD operating a securities settlement system, but also as a credit institution, providing limited banking services directly related to the core or ancillary CSD services
2. **Section 16(a)** clarifies the purpose of Cash Account and expressly indicates that Participants should only hold cash balances in Euroclear Bank in relation to its role as securities settlement system and for the related services. It furthermore allows Euroclear Bank to ask Participants to take out cash not related to Euroclear Bank's activities and clarifies that the credit risk vis-à-vis Euroclear Bank's Cash Correspondents on non-activity related cash balances lies with the non-compliant Participants

4. Evolving geopolitical landscape

We are making the following changes in response to the recent market challenges:

Introduction of **two new definitions**:

1. **Countermeasures** are defined as measures designed to counter, disapply, or disregard Sanctions that are applicable to Euroclear Bank and its branches and nominee companies. When using Euroclear Bank services, compliance with Sanctions is mandatory, and adhering to the aforesaid Countermeasures is not in line with our contractual framework.
2. **Restriction Order** is defined as any law, judgement or other similar order from a government or regulatory body that, amongst other things:
 - limits the ability to deliver cash or securities or make credits and credits to an account
 - compels to reverse or correct transactions
 - allows or compels the seizure or transfer of assets to a third party

A Restriction Order includes amongst others asset seizures, attachments, confiscations, or other restrictive measures imposed by third parties. By adding this definition, we clarify that upon the adoption of such an order, we may take actions such as invoking a Force Majeure Event or implementing a Securities or Currency Loss Sharing.

Additionally, we are making the **following clarifications**:

- **Force Majeure (Section 12(g))**: Sanctions, Countermeasures, Restriction Orders and other similar measures are now expressly listed as Force Majeure Events.
- **Indemnification (Section 15(a)(iii)(j))**: We can seek indemnification from Participants if their actions or those of their Underlying Clients have led to the occurrence of a Restriction Order (e.g., asset seizure), Securities Loss, or Settlement Currency Unavailability.
- **Forex rate calculation (Section 16(c))**: We bring clarity in the way we can calculate the applicable Forex rate in case of a Force Majeure Event. If an exchange rate is imposed on us by a third party, we may use the imposed exchange rate or the rate that was applicable on the day the Force Majeure Event occurred.
- **Currency Loss Sharing (Section 16(h))**: If cash balances in a certain currency become unavailable due to a law/regulation/Restriction Order or similar event, we have the option to pass on the effect of such event to Participants. This is consistent with our role to act as a neutral intermediary.
- **Gradual release of blocked cash (Section 16(q))**: If Sanctions are lifted, we may need some time to reconcile cash balances and ensure sufficient liquidity to release the previously sanctioned cash. Therefore, we have included a provision allowing for the gradual release of previously blocked cash balances as necessary. This will only affect Participants with cash currently blocked due to sanctions.



Impact on other contractual rights and obligations

- **Section 12(b)** furthermore clarifies that we have no duties towards Underlying Clients of Participants. Underlying Clients are prohibited from initiating legal proceedings against us. Participants are responsible for informing their Underlying Clients hereof.
- **Section 15(a)**, final paragraph, clarifies how we calculate the indemnification amounts owed to us e.g., due to the seizures of assets.
- The Participant's duty to inform, as set out in **Section 15(b)**, has been reinforced to ensure that Euroclear Bank is notified in case a Participant and/or its Underlying Clients obtain authorisations for the release of assets previously blocked.
- **Section 23(c)** has been amended to clarify that only the courts of Brussels, Belgium have jurisdiction over claims or disputes arising between Euroclear Bank and its Participants.

5. Euroclear Bank Cash Accounts/Cash Wallets

We are updating **Sections 3.7.2 (Cash), 5.4.2.1 (Cash Correspondents) and 5.4.2.5.4.2 (Funds not preadvised or incorrectly preadvised)** of the [Operating Procedures of the Euroclear System](#). The amendments clarify the obligations Participants must comply with when funding their Euroclear Bank Cash Account/Cash Wallet and outline the consequences of non-compliance.

If Participants do not comply with these obligations, Euroclear Bank will not bear any liability. In such situations, if the Cash Correspondent is, for any reason, unable to return funds Euroclear Bank holds with them, Euroclear Bank will not be obliged to return to non-compliant Participants the corresponding cash amount they hold with Euroclear Bank.

When will the amendments come into effect?

In accordance with Section 20 of our Terms and Conditions, the amendments will come into effect on **Tuesday, 26 November 2024** (i.e., ten days after the publication date of this Newsletter).

Who to contact?

If you have any questions about the content of this Newsletter, please contact your Relationship Manager.