European Securities and Markets Authority

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OPINION on position limits on OMIP SPEL Base contracts

I. Introduction and legal basis

1. On 20 January 2021, the European Securities and Markets Authority (ESMA) considered that sufficient information was received to assess a notification received from Comissão do Mercado de Valores Mobiliários (CMVM) under Article 57(5) of Directive 2014/65/EU on markets in financial instruments[1] ("MiFID II"). The notification is regarding the exact position limits CMVM intends to set for OMIP SPEL Base Futures and Options commodity contracts in accordance with the methodology for calculation established in Commission Delegated Regulation (EU) 2017/591 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the application of position limits in commodity derivatives[2] ("RTS 21") and taking into account the factors referred to in Article 57(3) of MiFID II.

2. ESMA's competence to deliver an opinion is based on Article 57(5) of MiFID II. In accordance with Article 44(1) of Regulation (EU) 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority)3 ("ESMA Regulation"), the Board of Supervisors has adopted this opinion.

3. On 17 October 2019, ESMA issued an Opinion regarding the exact position limits CMVM intended to set for the OMIP SPEL Base Futures and Options commodity contracts. The position limits considered by CMVM in October 2019 was 10,011,241 MWh for the spot month limit and 5,744,367 MWh, for the other months' limit. In this opinion, ESMA concluded that the position limits considered by CMVM complied with the methodology established in RTS 21 and were consistent with the objectives of Article 57 of MiFID II.

4. According to Article 57(4) of MiFID II, a competent authority shall review position limits where there is a significant change on the market, based on its determination of deliverable supply and open interest and reset the position limit. The CMVM has calculated again the open interest at the end of year 2020 based on position reporting data. The CMVM considered that there had been a decrease in the open interest compared to its initial submission and that that the position limits for both the spot month and the other months had therefore to be reconsidered. ESMA understands that the new position limits will apply

[1] Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).
[2] Commission Delegated Regulation (EU) 2017/591 of 1.12.2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the application of position limits commodity derivatives (OJ L 87, 31.3.2017, p. 479).
[3] Regulation (EU) 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15. 12.2010, p. 84).

after publication of this opinion and replace the previous position limits as determined by the CMVM. In this opinion, ESMA is assessing whether the new position limits the CMVM intends to set for the OMIP Baseload contracts comply with the methodology established in RTS 21 and are consistent with the objectives of Article 57 of MiFID II,

II. Contract classification

Commodity base product: energy (NRGY)

Commodity sub product: electricity (ELEC)

Commodity further sub product: base load (BSLD)

Name of trading venue: MERCADO DE DERIVADOS OMIP (OMIP DERIVATIVES MARKET)

MIC: OMIP

Venue product code: FTB

III.Market description

5. On 1 October 2004, Portugal and Spain signed an agreement in Santiago de Compostela for the creation of the Iberian Electricity Market (Mercado Ibérico da Energia Eléctrica – MIBEL). This agreement defined the basis of a future, single and integrated energy market for Iberia. MIBEL was defined by a set of organised (both the spot and the derivative markets) and non-organised markets where business is conducted on a bilateral basis (OTC).

6. The initial organisation of MIBEL was defined as follows:

   i. Derivatives Market: based in Portugal and managed by OMIP. OMICLEAR has been since the start the central counterparty to all transaction executed and registered on derivative contracts available on OMIP Derivatives Market; and

   ii. Spot Market (day and intraday): based in Spain and managed by OMIE.

7. To supervise and follow the development of MIBEL, the MIBEL Council of Regulators (CR MIBEL) was created with representatives of the competent authorities (“CA”) of both Portugal and Spain which have the responsibility to supervise the market and the financial instruments and the responsibility to supervise the electricity sector:

   i. Portugal: CMVM and ERSE (Portuguese Energy Services Regulatory Authority); and

   ii. Spain: CNMV and CNMC (Spanish National Commission on Markets and Competition).

8. The supervision of MIBEL is performed in a coordinated form by the CR MIBEL without prejudice to the specific competences of each CA.

9. The electricity Market of MIBEL as well as the electricity market on the European Union lies on two basic foundations:

   i. The strong regulation of this sector (legal and regulatory framework well detailed with specific competences given to the assigned CAs);

   ii. Electricity cannot be stored, which is one of the main constraints on this type of commodity.

10. The transportation of the electricity is made through a network system (energy flux), where the TSOs (Transmission System Operator) assume the dominant role. The European market is strongly interconnected through the Multi-regional Coupling.

11. In Iberia, OMIE (OMI-Polo Español S.A.) is responsible for the management of the spot market (day and intraday markets), responsible for the cash delivery as well as the management and potential execution of guarantees in place for the fulfilment of the clients' obligations.

12. OMIE is regulated and subject to the rules of the electricity sector in Spain and the respective European regulations in place.

13. In compliance with the current legislation, all bids and offers on electricity must be submitted into the spot trading platform (those arisen from bilateral agreement, those of the Derivatives Market managed by OMIP or OTC with physical delivery). Only entities that have the ability to physically buy or sell electricity (e.g. are able to acquire or inject electricity into the grid) can trade on the spot market.

14. The access to the market is done through a trading platform via internet, which enables the simultaneous participation of a high number of agents as well as the management of a big volume of bid and offers on electricity on a short period of time. Through this platform, the buyers and sellers acquire the volume they need (MWh) at public and transparent prices. The positions arisen from the derivatives market managed by OMIP with physical delivery are submitted into this platform and then become subject to the rules of this market.

15. On the spot market, it is possible to trade: bilaterally, day-ahead and intraday. The spot market offers daily products for the next day plus an intraday market, where it is possible to re-trade positions previously assumed with high liquidity.

16. As this commodity, cannot be stored (at least in considerable amounts), meaning that it must be used at the production time, the electricity supply is done via the physical delivery model. This model consists of fluxes between its origin (centres where the energy is produced) and the consumers, under the coordination of the TSOs. In Iberia, the responsibility of the physical delivery lies with REN and REE; both assume a central role for the physical delivery: receive the provisional programs from all agents (directly or via the spot market) and upon validation assume the responsibility of receiving the energy from the

producers and its delivery to the consumers and must ascertain, appraise and settle all deviations to the program previously communicated.

17. There are two types of restrictions regarding the underlying market that can be identified:

i. Production restrictions: can have its origin in malfunctions or equipment maintenance of the centres where the energy is produced, or a fail into the provisioning of the primary energy (fuel, water, wind, solar radiation).

   The existing reserves in Portugal and Spain as well as its monitoring at a national level by the respective entities allows to conclude that any production restriction may be overcome using alternative means.

ii. Transportation restrictions: this situation is similar to the productions as the networks that give support to the market are planned and executed with redundancy criteria, which allows the reduction of the impact to a minimum level when an element is withdrawn due to an accident.

18. Upon the foundation of MIBEL, OMIP was assigned as the electricity derivatives market. OMIP manages the regulated market "OMIP Derivatives Market" "Mercado de Derivados do OMIP", where the following financial instruments are listed in what concerns to SPEL Base underlying:

i. Future contracts on SPEL Base, reference price on the Spanish zone (SPEL). These contracts are cash and physically settled or cash settled only. OMIP makes available a wide range of maturities, since daily up to annual (day, weekend, weekly, monthly, quarterly and annual), with delivery periods that include the 24 hours on all week days: Monday to Sunday (Baseload);

ii. Option contracts on SPEL Base cash delivery futures, with physical delivery (delivery of the underlying: future contract) and monthly, quarterly and annual maturities. For the period considered to the calculation of the open interest, there was no open interest on options.

19. It is also possible to register bilateral transactions (OTC) in the OMIP trading platform with a registration in OMICLEAR for all contracts listed on OMIP and tradable in a continuous or auction mode, as well as the following contracts:

i. Forward contracts with physical delivery, with the reference price of the Spanish zone (SPEL); and

ii. Swap contracts with only cash delivery on SPEL.

20. OMICLEAR is the central counterparty of all transactions held on Derivatives Market OMIP in relation to all OTC business registered through OMIP.

21. All contracts are subject to a cash delivery that is processed through OMICLEAR. Whenever a contract is also subject to physical delivery, OMICLEAR calculates the balance of the final positions to deliver in the Spanish zone in relation to the transactions booked in each Physical registration account (Conta de Registo Física) and determines the net value (buyer/seller) of electricity.

22. OMIClear makes this information available to the Physical Settlement Agents (Agentes de Liquidação Física) and communicates to OMIE the net balance so it can be integrated into the spot market as an order. After introducing the orders in the spot market, the orders become subject to the rules of this market (spot market – OMIE). To be noted that nor the Clearing Members of OMICLEAR nor OMICLEAR are responsible for the physical delivery of the positions as this subject is ruled by the rules of OMIE (the physical settlement agents are responsible for guarantying the delivery).

23. The seasonality influences the prices and its fluctuations. However, and considering the existing overcapacity (market value vs capacity of production) it does not seem necessary to make an adjustment due to the volatility of the electricity prices.

24. There are less than three investment firms acting as market makers.

IV. Proposed limit and rationale

Spot month position limit

Deliverable supply

25. Deliverable supply amounts to 81,800,980 MWh.

26. The Spanish electricity physical market is part of the Iberian Electricity Market (MIBEL); therefore, the net figure for the total Delivery Supply volume is achieved by adding Spain's own self-electricity generation capacity to its import capacity.

27. The Net Generating Capacity (in MW) in 2020 for Spain was 107,392 MW. The quantity of the power that can be used to fulfil delivery requirements of the Spanish power contracts should also take into account the import capacity that Spain can obtain from both France and Portugal, which amounts to 4,664 MW, coming up to a total Deliverable Supply of 112,056 MW.

28. As the Delivery Supply is to be calculated in MWh, this figure has been converted from MW to MWh per year. The overall value was then divided by the factor of 12 in order to align the deliverable supply to the time frame of one calendar month for the spot month period, resulting in a Deliverable Supply of 81,800,980 MWh.

Spot month position limit

29. Spot month limit amounts to 10,225,123 MWh, which represents 12,5% of deliverable supply.

Spot month position limit rationale

30. Considering the amount of deliverable supply compared to a significantly lower open interests in OMIP SPEL Base contracts, CMVM has decided to adjust the spot month limit down by 12,5% points compared to the baseline based on a reverse interpretation of Article 18(3) of RTS 21.

31. All other factors have been considered by CMVM and have not been regarded as material or relevant to require any adjustments, either up or down, from the baseline. In considering the volatility in the contract, as required by Article 21 of RTS 21, there has been some variation in the price of the commodity derivative but CMVM has not found evidence that this is excessive or that lower position limits would reduce volatility.

32. Based on the above, CMVM has set the spot month limit at 12,5% of deliverable supply, i.e. at 10,225,123 MWh.

Open interest

33. Open interest amounts to 11,130,222 MWh.

34. Open interest has been calculated on basis of the reports of daily net positions submitted to CMVM and by aggregating all the net single sided positions considering each member account between November 2019 and October 2020 (please note that this is virtually equivalent to sum all daily net positions [in absolute terms] and divide by a factor of 2). More specifically, the number provided is the average size of daily open interest during the respective period.

35. All maturities of the contracts which underlying is the SPEL Base electricity have been aggregated, in units of underlying MWh. The open positions in Futures contracts resulting from transactions executed in the Trading Platform (continuous and auction) of the Derivatives Market of OMIP and also from OTC transactions registered in OMIP were considered.

36. Considering that Futures contracts on SPEL Base are cash and physical settled or cash settled only, according to the nature of the trading account where the open position is registered at the last trading day, both cash and physical contracts are considered to achieve the open interest in SPEL Base.

Other months' position limit

37. The other months' limit amounts to 4,452,089 MWh, which represents 40% of open interest.

Other months' position limit rationale

38. CMVM has considered the following factors relevant for adjusting the baseline for the other months' limit upwards:

39. Article 18 (3) of RTS 21: The open interest (11,130,222 MWh) is substantially lower than the deliverable supply (81,800,980 MWh);

40. Article 16 (2) of RTS 21: The SPEL base commodity derivative has a large number of separate expiries (for example, for the trading session of 8 December 2020, there were 32 expiries regarding futures).

41. All other factors have been considered by CMVM and have not been regarded as material or relevant to require any adjustments, either up or down, from the baseline. In considering the volatility in the contract, as required by Article 21 of RTS 21, there has been some variation in the price of the commodity derivative but CMVM has not found evidence that this is excessive or that lower position limits would reduce volatility

42. Based on the above, CMVM made a total upward adjustment of 15 percentage points to the baseline, resulting in another months' limit of 4,452,089 MWh, which represents 40% of open interest.

V. ESMA's Assessment

43. This Opinion concerns positions held in OMIP SPEL Base futures and options.

44. ESMA has performed the assessment based on the information provided by CMVM.

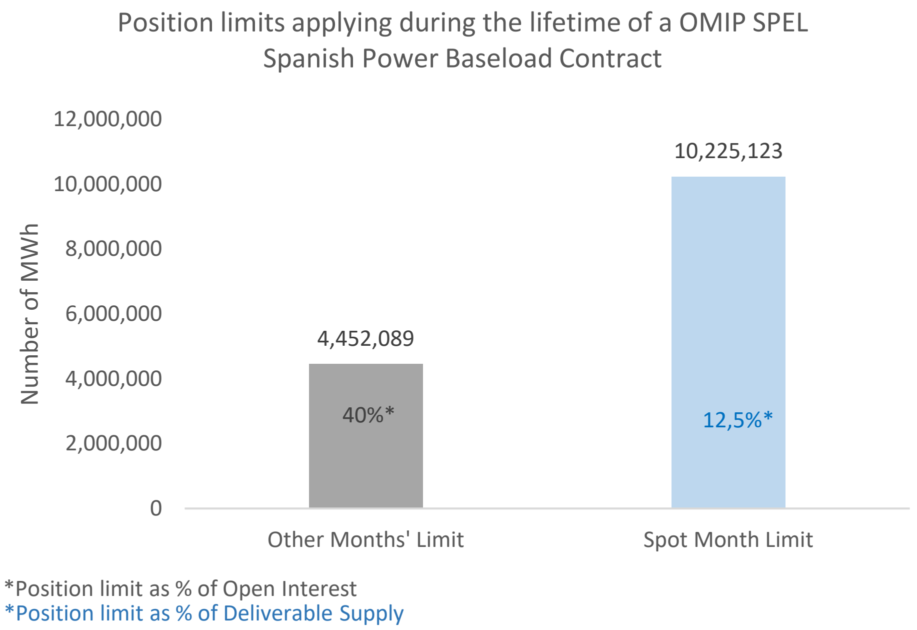
45. For the purposes of this Opinion, ESMA has assessed the compatibility of the intended position limits with the objectives of Article 57(1) of MiFID II and with the methodology for calculation of position limits established in RTS 21, in accordance with Article 57(3) of MiFID II.

46. The overall open interest for the contract amounts to 11,130,222 MWh, which translates into 15,458 lots. Since the level of open interest is between 10,000 lots and 20,000 lots, the limit shall be set between 5% and 40% of the reference amount, according to Article 15(1)b) of RTS 21.

47. When performing this assessment, ESMA also took into account the need to ensure that the methodology set out in RTS 21 promotes a consistent application of position limits across competent authorities including when commodity derivatives are based on the same underlying such as Spanish power in this case.

Compatibility with the methodology for calculation of position limits established in RTS 21 in accordance with Article 57(3) of MiFID II

48. The CMVM has set one position limit for the spot month and another limit for the other months.



<u>Spot month position limit</u>

49. The deliverable supply was estimated based on ENTSO-E (European Network of Transmission System Operators for Electricity) data. It is composed of the average Spanish domestic Net Generating Capacity (NGC) and Spain yearly power import capacity for the year 2020. ESMA agrees with using data from ENTSO-E data to calculate deliverable supply as this ensures publicly available figures consistent at the European level.

50. ESMA considers that the methodology used to calculate deliverable supply is consistent with Article 10(1) of RTS 21 that sets out that deliverable supply shall be calculated "by identifying the quantity of the underlying commodity that can be used to fulfil the delivery requirements of the commodity derivative."

51. The monthly deliverable supply figure has been calculated by converting the capacity (expressed in MW) to MWh per month.

52. This approach is consistent with Article 10(2) of RTS 21, which sets out that "Competent authorities shall determine the deliverable supply […] by reference to the average monthly amount of the underlying commodity available for delivery over the one-year period immediately preceding the determination".

53. ESMA agrees that the rationale underpinning Article 18(3) of RTS 21 with respect to the spot month enables the national competent authority to adjust the spot month limit downwards in case the deliverable supply is significantly higher than the open interest.

ESMA therefore considers that a downward adjustment of the spot month limit for the Spanish power Future contracts is reasonable under Article 18(3) of RTS 21.

<u>Other months' position limit</u>

54. The open interest has been calculated by CMVM as the daily average of total open interest in OMIP SPEL Baseload contracts from 1 November 2019 to 30 October 2020 based on position reporting data by aggregating all the net single sided positions considering each member account, where the result of such approach is equivalent to the "net approach". ESMA considers that such calculation of open interest by the competent authority provides the most accurate and reliable figure and promotes convergence in the setting of position limits by competent authorities. ESMA is also of the view that taking 1 November 2019 to 30 October 2020 as a reference period is sensible in this case as an average for a period of time gives a more stable measure of open interest and considers such approach consistent with Article 12 of RTS 21.

55. ESMA considers it a reasonable approach to have adjusted the other months' limit upwards under Article 16(2) of RTS 21 due to the large number of separate expiries.

56. The other months' limit has been adjusted upwards to take into consideration the fact that the amount of open interest is significantly lower than the deliverable supply. ESMA considers that such adjustment is consistent with Article 18(3) of RTS 21.

57. Consequently, these position limits have been set following the methodology established by RTS 21.

58. ESMA also notes that, overall, the position limits set result in a consistent and harmonised approach in the application of position limits for derivatives contracts based on Spanish power.

Compatibility with the objectives of Article 57(1) of MiFID II

59. Under Article 57(1) of MiFID II, the objectives of the position limits are to prevent market abuse and support orderly pricing and settlement conditions including preventing market distorting positions.

60. With respect to the spot month limit, ESMA notes, based on the information provided by CMVM, that the limit is substantially higher than open interest in the spot month throughout 2020.

61. ESMA understands the need to avoid the risk of unduly constraining trading in this commodity derivative market where participants in the underlying markets have a key presence. However, there is a risk that the objectives set out in Article 57(1) of MiFID II may not be achieved where the limit set for the spot month is well above the positions held by market participants in the spot month.

62. In light of the assessment above, ESMA considers that the position limit set for the spot month and the other months, overall appear to achieve a reasonable balance between the need to prevent market abuse and to ensure an orderly market and orderly settlement while ensuring that the development of commercial activities in the underlying commodity market and the liquidity of the OMIP SPEL Base contracts are not hampered,

63. However, to help ensure that the risk of not achieving the objectives set out in Article 57(1) of MiFID II does not materialise, ESMA considers that trading patterns in the OMIP SPEL Base contracts should be carefully monitored by the competent authority, in particular during the spot month, and that the spot month limit should be reviewed on a timely basis.

VI. Conclusion

64. Based on all the considerations and analysis presented above, it is ESMA's opinion that the revised spot month position limit does comply with the methodology established in RTS 21 and is consistent with the objectives of Article 57 of MiFID II. The other months' position limit does also comply with the methodology established in RTS 21 and is consistent with the objectives of Article 57 of MiFID II.

Done at Paris,

Steven Maijoor

ESMA Chair