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| Reply Form to the Call for Evidence  |
| Position limits and position management in commodity derivatives |

**Responding to this paper**

ESMA invites comments on all matters in this paper and in particular on the specific questions summarised in Annex 1. Comments are most helpful if they:

* respond to the question stated;
* indicate the specific question to which the comment relates;
* contain a clear rationale; and
* describe any alternatives ESMA should consider.

ESMA will consider all comments received by **5 July 2019.**

All contributions should be submitted online at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading ‘Your input - Consultations’. Please follow the instructions given in the document ‘Reply form for the call for evidence on position limits and position management controls in commodity derivatives’ also published on the ESMA website.

**Instructions**

In order to facilitate analysis of responses to the Call for Evidence, respondents are requested to follow the below steps when preparing and submitting their response:

1. Insert your responses to the questions in the Call for Evidence in the present response form.
2. Please do not remove tags of the type <ESMA\_QUESTION\_PLPM\_1>. Your response to each question has to be framed by the two tags corresponding to the question.
3. If you do not wish to respond to a given question, please do not delete it but simply leave the text “TYPE YOUR TEXT HERE” between the tags.
4. When you have drafted your response, name your response form according to the following convention: ESMA\_PLPM\_nameofrespondent\_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESMA\_PLPM\_ABCD\_RESPONSEFORM.
5. Upload the form containing your responses, in Word format, to ESMA’s website ([www.esma.europa.eu](http://www.esma.europa.eu) under the heading “Your input – Open consultations” 🡪 “Call for Evidence on Position limits and position management in commodities derivatives”).

**Publication of responses**

All contributions received will be published following the close of the consultation, unless you request otherwise. Please clearly and prominently indicate in your submission any part you do not wish to be publically disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. A confidential response may be requested from us in accordance with ESMA’s rules on access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by ESMA’s Board of Appeal and the European Ombudsman.

**Data protection**

Information on data protection can be found at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading [Legal Notice](http://www.esma.europa.eu/legal-notice).

**Who should read this paper**

All interested stakeholders are invited to respond to this consultation paper. This consultation paper is primarily of interest to trading venues, investment firms and non-financial counterparties trading in commodity derivatives, but responses are also sought from any other market participant including trade associations, industry bodies and investors.

**General information about respondent**

|  |  |
| --- | --- |
| Name of the company / organisation | Eurelectric |
| Activity | Non-financial counterparty |
| Are you representing an association? |[x]
| Country/Region | Belgium |

**Introduction**

***Please make your introductory comments below, if any***

<ESMA\_COMMENT\_PLPM\_1>

TYPE YOUR TEXT HERE

<ESMA\_COMMENT\_PLPM\_1>

**Questions**

1. : In your view, what impact, if any, did the introduction of position limits have on the availability and liquidity of commodity derivative markets? What are in your views the main factors driving this development, e.g. the mere existence of a position limit and position reporting regime, some specific characteristics of the position limit regime or the level at which position limits are set? Please elaborate by differentiating per commodity asset class or contract where relevant and provide evidence to support your assessment.

<ESMA\_QUESTION\_PLPM\_1>

The introduction of position limits has increased uncertainty in commodity derivative markets which in turn can lead to reduced liquidity.

As an example, the impact of the introduction of position limits can been observed in the Nordic Power market in the electricity price area differential contracts. One of two market-makers in this product has ceased operating, which leaves a sole market-maker in the contract. All things being equal, managing the remaining market participant’s position has become more challenging than previously.

<ESMA\_QUESTION\_PLPM\_1>

1. : Have you identified other structural changes in commodity derivative markets or in the underlying markets since the introduction of the MiFID II position limit regime, such as changes in market participants? If so, please provide examples, and where available data, and differentiate per commodity derivative asset class where relevant.

<ESMA\_QUESTION\_PLPM\_2>

As mentioned above, some market participants have ceased to perform a market-maker role partly due to the increased risk of breaching a limit, especially in non-liquid contracts..

<ESMA\_QUESTION\_PLPM\_2>

1. : Do you consider that position limits contribute to the prevention of market abuse in commodity derivatives markets? Please elaborate by differentiating per conduct, per commodity asset classes or contract where relevant and provide evidence to support your assessment when available.

<ESMA\_QUESTION\_PLPM\_3>

Position limits contribute to the prevention of market abuse, concretely in relation to price manipulation conducts. However, we consider it is not a determinant element of market abuse prevention, while MAR should be considered the more adequate tool for the prevention of market abuse.

<ESMA\_QUESTION\_PLPM\_3>

1. : In your view, what impact do position limits have on the orderly pricing and orderly settlement of commodity derivative contracts? Please elaborate by differentiating per asset class or per contract where relevant and provide evidence to support your answer when available.

<ESMA\_QUESTION\_PLPM\_4>

So far we have not noticed any significant impact of position limits on orderly pricing and orderly settlement in commodity derivative markets; but there is also only a 18-month experience so far which may not allow to draw firm conclusions.

<ESMA\_QUESTION\_PLPM\_4>

1. : More generally, and beyond the specific items identified above, what would be your overall assessment of the impact of position limits on EU commodity derivatives markets since the application of MiFID II?

<ESMA\_QUESTION\_PLPM\_5>

We believe that, with the exception of the limits applied to new and illiquid contracts, the position limit regime introduced by MiFID II is generally working well. Also in the light, that there is still limited experience, it seems appropriate to only refocus of the way the rules are applied rather than an overhaul of the system .

At the same time, the position limits regime has introduced a significant level of complexity in the commodity derivatives markets. In general, rules for the calculation of position limits are not clear enough, which leads to increased uncertainty for market players. Beside this, it is necessary to harmonize the spot month/ other month criteria between the different EU trading venues to facilitate reporting activities; we observe diverting interpreration /implementation across trading venues.

ESMA & NCAs should take into account that different methodologies could favor some TVs over others, disrupting the internal market for financial services. <ESMA\_QUESTION\_PLPM\_5>

1. : Do you consider that position management controls have an impact on the liquidity of commodity derivatives markets? If so, please elaborate, differentiating per commodity derivative trading venues or contract where appropriate.

<ESMA\_QUESTION\_PLPM\_6>

We consider that position management controls do not have an impact on liquidity of commodity derivative markets.

<ESMA\_QUESTION\_PLPM\_6>

1. : Do you consider that position management controls adopted by commodity derivative trading venues have a role on the prevention of market abuse? If so, please elaborate, differentiating per commodity derivative trading venues or contract where appropriate.

<ESMA\_QUESTION\_PLPM\_7>

In our view there are better tools to prevent market abuse as position limits are effective to prevent only certain types of market abuse.

<ESMA\_QUESTION\_PLPM\_7>

1. : Do you consider that position management controls adopted by commodity derivative trading venues have a role on orderly pricing and settlement conditions? If so, please elaborate, differentiating per commodity derivative trading venues or contract where appropriate.

<ESMA\_QUESTION\_PLPM\_8>

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<ESMA\_QUESTION\_PLPM\_8>

1. : If you are a commodity derivative trading venue, please explain how you have been exercising your position management controls since MiFID II application. In particular, how frequently did you ask further information on the size or purpose of a position, on beneficial owners or assets and liabilities in the underlying commodity under Article 57(1)(b) of MiFID II, require a person to terminate or reduce a position under Article 57(1)(c) of MiFID II, require a person to provide liquidity back into the market under Article 57(1)(d) of MiFID II or exercise any of your additional position management controls?

<ESMA\_QUESTION\_PLPM\_9>

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<ESMA\_QUESTION\_PLPM\_9>

1. : Do you have any general comment on the position limit regime and associated position reporting introduced by MiFID II?

<ESMA\_QUESTION\_PLPM\_10>

We believe that, with the exception of the limits applied to new and illiquid contracts, the position limit regime introduced by MiFID II is generally working well. Also in the light, that there is still limited experience, it seems appropriate to only refocus of the way the rules are applied rather than an overhaul of the system We would like to propose that Trading Venues are obliged to monitor the limit of market participants and provide respective information to market participants. This seems more efficient than that each market participants sets up his own monitoring system.

<ESMA\_QUESTION\_PLPM\_10>

1. : In your view, how will EU commodity derivatives markets be impacted by the UK leaving the EU? What consequences do you expect from Brexit on the commodity derivatives regime under MiFID II?

<ESMA\_QUESTION\_PLPM\_11>

There is concern about the current expectations on market shares for various markets (e.g. CO2, coal, oil.) without the granting of equivalence. A number of commodities have their primary market in the UK and, because trading is global, it is unlikely trading would migrate to EU venues. If the UK market size is excluded from the calculations of EU market size for purposes of calculating the Ancillary Activity Exemption, for example, that would have a significant impact on market participants’ ability to avail themselves of the exemption.

<ESMA\_QUESTION\_PLPM\_11>

1. : Taking into consideration the intended purposes of position limits, do you consider that they deliver the same benefit across all commodity asset classes and across all types of commodity derivatives? Please explain.

<ESMA\_QUESTION\_PLPM\_12>

We believe that the application of position limits to a large number of contracts is redundant and argued for a more focused scope of application.

<ESMA\_QUESTION\_PLPM\_12>

1. : Would you see benefits in limiting the application of position limits to a more limited set of commodity derivatives? If so, to which ones and on which criteria?

<ESMA\_QUESTION\_PLPM\_13>

Potentially, yes. A better way of handling position limits could be making more market specific, targeted limits which recognise the specific characteristics of certain markets. For example, the focus could be reduced to only commodities which have a particular impact upon the wellbeing of end consumers (e.g. agricultural products)..

<ESMA\_QUESTION\_PLPM\_13>

1. : More specifically, are you facing any issue with the application of position limits to securitised derivatives? If so, please elaborate.

<ESMA\_QUESTION\_PLPM\_14>

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<ESMA\_QUESTION\_PLPM\_14>

1. : Do you consider that there would be merits in reviewing the definition of EEOTC contracts? If so, please explain the changes you would suggest.

<ESMA\_QUESTION\_PLPM\_15>

We support the existing EEOTC definition and we see no need to reconsder it.

<ESMA\_QUESTION\_PLPM\_15>

1. : In your view, would there be a need to review the MiFID II position limit exemptions? If so, please elaborate and explain which changes would be desirable.

<ESMA\_QUESTION\_PLPM\_16>

We consider it would be beneficial to reduce or simplify the process for requesting the hedging exemption under art. 8(1) of CDR 2017/591.

<ESMA\_QUESTION\_PLPM\_16>

1. : Would you see merits in the approach described above and the additional flexibility provided to CAs for setting the spot month limit in cash settled contracts? Please explain.

<ESMA\_QUESTION\_PLPM\_17>

. From our point of view, it would be convenient to harmonize the criteria of determination of the calendar, referring to the Trading Venues consideration of spot and other month´s contracts, fixing a unique criterion around the different Trading Venues in Europe.

<ESMA\_QUESTION\_PLPM\_17>

1. : Would you see benefits to review the approach for setting position limits for new and illiquid contracts? If so, what would you suggest?

<ESMA\_QUESTION\_PLPM\_18>

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<ESMA\_QUESTION\_PLPM\_18>

1. : Would you see merits in a more forward-looking approach to the calculation of open interest used as a baseline for setting position limits? Please elaborate.

<ESMA\_QUESTION\_PLPM\_19>

We do not see the need for changes in the existing methodologies.

<ESMA\_QUESTION\_PLPM\_19>

1. : In your view, are there other specific areas where the methodology for calculating the position limits set out in RTS 21 should be reviewed? If so, what would you suggest, and why?

<ESMA\_QUESTION\_PLPM\_20>

From our point of view, we would like to highlight that ESMA and the NCAs should take into account that different methodologies could favour some TVs over others, disrupting the internal market for financial services.

o Position Reporting L calculation methodology used by the Trading Venue (TV) should be publicly and freely available. Among other measures, information should be publicly available on TV website.

o TV should effectively disclose in advance any changes on the Position Reporting methodology. TV’s should also notify both market participants and the NCAs of any changes

o In the calculation methodology, TV should include, per each instrument and maturity:

 the period of time when it will be included in the Position Reporting as other-month and the volume affected.

 the period of time when it will be added on spot-month position and the volume affected.

 the period of time when it will be excluded by the Position Reporting, because the TV considers it has expired. Specifically, today some TV’s include Calendar 2019 positions on their spot-month/other-month while others consider it expired in Dec-2018. As January, Q1 and Cal contracts expire in Dec-19 this definition could lead to an artificial PL spike on the spot-month by the end the year.

A more clear differentiation between those methodologies applicable to NCA’s and those applicable to market players would facilitate the activities related to position limits calculation and would improve the level of certainty in the market. Similarly, as financial instruments are traded on different Trading Venues, MP’s do not always know how much volume will be traded on each Trading venues. For example, a MP could have a natural exposure of 10 TWh for TTF natural gas, but the MP ignores the share of volume that will be hedged on ICE ENDEX (NL) and/or also using XPSF (Powernext SAS) (FR). Moreover, the MP could decide to hedge some of its original exposure using PEG natural gas negotiated in XPOW (FR) which may not be covered by the TTF French hedging exemption and may require a new notification to the same French NCA (partially contradictory with the previous).

NCAs should clearly describe the methodology used for the PL calculations. When the methodology is coincident with the Position Reporting should be explicitly mentioned. .

Changes on the Position Limits methodology or the PL values should be effectively disclosed in advance and clearly specify when they come into force. These disclosures could constitute inside information under MAR, as big and unexpected changes to Position Limits values or methodology could force MPs to urgently reduce positions and thus have a sensible impact in the prices of the related Financial Instruments. When the Position Limits and Position Reporting methodologies are coincident, Trading Venues should also consider that changes on the PR methodology could constitute inside information under MAR. NCA’s should also consider using Official Journal for publishing the Position Limits values as methodology so it will give greater legal certainty than just publishing on a website.

<ESMA\_QUESTION\_PLPM\_20>

1. : How useful do you consider the information on position management controls available on ESMA’s website?

<ESMA\_QUESTION\_PLPM\_21>

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<ESMA\_QUESTION\_PLPM\_21>

1. : Do you consider that there is a need to review the list of minimum position management controls to be implemented by commodity derivatives trading venues under Article 57(8) of MiFID II? If so, please explain the changes you would suggest.

<ESMA\_QUESTION\_PLPM\_22>

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<ESMA\_QUESTION\_PLPM\_22>