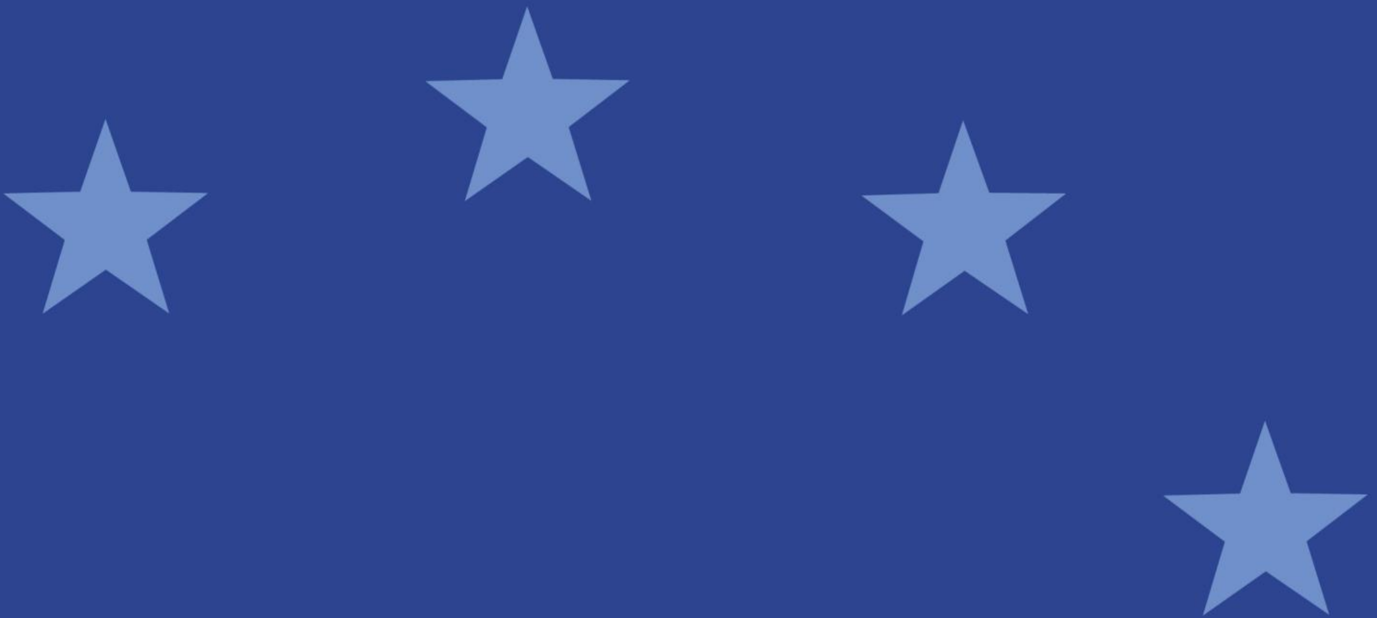
Reply Form to the Consultation Paper

MiFID II review report on position limits and position management
Draft Technical Advice on weekly position reports



5 November 2019

Internal

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 **8 January 2020.**

All contributions should be submitted online at www.esma.europa.eu under the heading 'Your input - Consultations'. Please follow the instructions given in the document 'Reply form for the consultation paper on "MiFID II review report on position limits and position management and draft technical advice on weekly position reports' also published on the ESMA website.

Instructions

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

1. Insert your responses to the questions in the Consultation paper in the present response form.

2. Please do not remove tags of the type <ESMA_QUESTION_WPR_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_WPR_nameofrespondent_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESMA_WPR_ABCD_RESPONSEFORM.

5. Upload the form containing your responses, in Word format, to ESMA's website (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 under the heading 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	Deutsche Börse Group
Activity	Regulated markets/Exchanges/Trading Systems
Are you representing an association?	☐
Country/Region	Germany

Introduction

Please make your introductory comments below, if any

<ESMA_COMMENT_WPR_1>

[Following our contribution to ESMA's Call for Evidence[1], Deutsche Börse Group (DBG) appreciates the opportunity to respond to ESMA's consultation paper on the MiFID II review report on position limits and position management as well as its Draft Technical Advice on weekly position reports.

Generally, we welcome the ideas put forward by ESMA in the consultation paper to recalibrate the MiFID II position limits regime, particularly with regard to addressing the unintended, negative impact on new, illiquid and less liquid contracts, which has proven to be the most substantial effect of the current regime. In our response to the Call for Evidence, we explained in depth that for the development of new products and growth of existing illiquid or less liquid commodity derivative markets, we have observed a stagnation in or even a collapse of markets due to the position limits regime (for details please see DBG's response to the Call for Evidence and to Q4 of this questionnaire).

Most importantly, we believe that limiting the scope of application of the position limits regime to "critical" contracts will address partly or entirely almost all of the issues that are brought forward in the consultation paper, e.g.:

- The need to find a solution to deal with unfair competition resulting from other month position limits being based on the open interest at a given trading venue. (Q1)
- The current position limits regime discouraging more volumes being traded on regulated markets. (Q2)

[1] Deutsche Börse Group response to ESMA's Call for Evidence on MiFID II position limits and position management in commodity derivatives, July 2019.

- The need to refocus the regime to fit the legislative objective and address unintended consequences identified for cash-settled commodities derivatives contracts on broad-based index underlyings as well as securitised derivatives. (Q3)
- The need for a position limit exemption for financial (as well as non-financial counterparties) under mandatory liquidity provision obligations. (Q7)
- The need to make the hedging exemption also available to financial counterparties. (Q8)

Sceptical of the fact that the MiFID II position limits regime contributed to the prevention of market abuse or improved orderly pricing and settlement (as laid down in detail in our response to the Call for Evidence), we believe it might help avoiding excessive speculation adversely affecting prices. From this perspective, it is sufficient to consider only those contracts that are relevant for the price formation in the underlying commodity. This means mature products which serve as a benchmark for the respective market. Internal assessments show that to identify such “critical” contracts it would be appropriate to look at open interest only and that 300,000 lots would be an appropriate threshold to classify these contracts. Less liquid products are not prone to excessive speculation and hence unable to adversely affect prices in the underlying physical commodity markets, thereby negatively impacting consumers. In our response to Q5 and Q6, we explain in detail how such a selection could be achieved.

As stated in our response to the Call for Evidence as well as to Q4, the other (non-significant) contracts would remain subject to the position reporting regime under Art. 58 MiFID II as well as pre-existing market oversight practices of the exchanges’ market supervision and market surveillance departments that apply the principles laid down in the Regulation on Energy Markets Integrity and Transparency (REMIT) and the Market Abuse Regulation (MAR).

As these position monitoring, management and control activities are already subject to REMIT, MAR and MiFID II principles, we are convinced there is already sufficient consistency across trading venues and hence no need for a more convergent understanding and implementation of position management controls (please see our response to Q9.) Accountability levels for example have been implemented by DBG and function properly.

In sum, moving to a more limited scope of the position limits regime would address partly or entirely almost all of the issues addressed in this consultation paper, while not posing any risk to the transparency and functioning of the respective markets. To the contrary, it would even lead to more volumes traded on the regulated markets, contributing to a more transparent trading environment needed for a cost-efficient energy transition. Last but not least, a more proportionate and efficient regime would contribute to the European Commission’s objective to strengthen the competitiveness of European commodity derivatives markets in the context of the international role of the Euro.

DBG remains at the disposal of ESMA for any questions or further information.]

<ESMA_COMMENT_WPR_1>

Questions

Part I

Q1 : Which option (Option 1 or Option 2) do you support for dealing with competing contracts? Please explain why. If you support Option 1, do you have any suggestions for amending the definition of “same contract” in Article 5(1) of RTS 21? If you support another alternative, please explain which one and why.

<ESMA_QUESTION_WPR_1>
[DBG supports Option 2.

First of all, DBG would like to emphasise that this is a problem that is particularly apparent in cases where one contract listed by a given trading venue is very liquid, while another contract with the same underlying listed by a competing venue (though not considered as a “same contract“ under Art. 5(1) of RTS 21) is not and hence suffers from the restraining effect of the position limits regime on new, illiquid and less liquid contracts. We therefore believe that moving to a limited scope of application to “critical” contracts only (see our response to Q4) is the most pragmatic solution to deal with this problem of fair competition.

Should limiting the scope of application to “critical” contracts not be possible for some reason or should there nevertheless be a situation in which two contracts with the same physical underlying are deemed “critical”, then DBG supports Option 2. The open interest figure which serves as a basis for setting the other months limit should be provided by the trading venue with the highest average open interest over a certain period, i.e. one year. The position limit of the most liquid commodity derivative contract should be applied identically to competing contracts that are deemed liquid (or “critical” in the case we move to a limited scope of application to “critical” contracts only) and have the same physical underlying. Such an approach would prevent any discriminatory outcomes of the MiFID II position limits regime towards trading venues with less open interest in a contract with the same physical underlying as a contract listed by another trading venue (which does not fulfil the criteria to be deemed a “same contract”).

So, in the case of Option 2 three different scenarios might arise:

1. If two trading venues list a commodity derivative contract with the same physical underlying, but neither of these contracts meets the criteria to be deemed liquid (or “critical” in the case we move to a limited scope of application to “critical” contracts only) then no position limit applies.
2. If one of the two contracts meets the criteria to be considered a liquid (or “critical”) contract, the position limit should apply only to the venue listing the liquid (or “critical”) contract and not to the venue listing the commodity derivative contract with the same physical underlying that is not deemed liquid (or “critical”).
3. Should both contracts be considered liquid (or “critical”), then the same position limit of the liquid (or “critical”) contract with the highest open interest should apply to the other liquid (or “critical”) contract(s) on other venues with the same physical underlying.

In addition, contrary to Option 1, Option 2 would be a more pragmatic solution given the current set-up of NCAs' position limits reporting and monitoring systems only facilitates the reporting of positions in the contracts listed in its jurisdiction. Moreover, also trading venues only have access to information on the positions in contracts listed at their venue.

Furthermore, Option 1 poses certain issues as contracts with the same physical underlying typically are designed by different trading venues, whereby the rules and conditions, including those related to pricing and settlement, differ across venues. Hence, in practice these commodity derivatives traded on different trading venues cannot be considered as the "same contract", even if they have the same physical underlying. This also implies that commodity derivatives traded on different trading venues cannot and should not be netted against each other for position limits or other purposes. Also for that reason, the removal of the condition for contracts to "form the same pool of open interest" would not remedy the level playing field problem to be solved.]
<ESMA_QUESTION_WPR_1>

Q2 : Do you agree that the C(6) carve-out creates an unlevel playing field across trading venues and should be reconsidered? If not, please explain why.

<ESMA_QUESTION_WPR_2>
[Continuing to support the policy rationale for the exemption of physically-delivered gas and electricity contracts from the rules of EU financial regulation, DBG does not believe that the C(6) carve-out should be reconsidered.

Instead, we believe that the upcoming MiFID II review should focus on making the financial regulatory framework fit for firms trading commodity derivatives classified as financial instruments. For example, both the pre-trade transparency regime as well as the position limits regime, as currently designed, discourage more volumes being traded on the regulated market.

The most pressing element to review would be the position limits regime as advised upon in this response. To give an example, in contrast with MiFID II, we believe that the tailor-made regime to which wholesale energy contracts are subject, i.e. REMIT, offers a much more appropriate framework for preventing market abuse in wholesale energy contracts, as it actually considers trading behaviour. The MiFID II position limits regime does not do so and hence reflects the ambition to limit market power, rather than the ambition to limit market manipulation.]
<ESMA_QUESTION_WPR_2>

Q3 : Do you agree that the position limit framework should not apply to securitised derivatives? If not, please explain why.

<ESMA_QUESTION_WPR_3>
[Yes, DBG agrees with the assessment conducted by ESMA and fully supports the recommendation of excluding securitised derivatives from the scope of position limits in Art. 57 MiFID II.

Also, DBG strongly recommends that cash-settled derivatives on broad-based indices composed of commodities related items should not be included in the scope of the

position limits regime. As stated in our response to ESMA's Call for Evidence, we believe that derivatives on broad-based commodity indices are wrongly captured in the scope of the MiFID II position limits regime which has been introduced with the policy objective to avoid market abuse and ensure orderly pricing and settlement in the commodities derivatives market.

In our response to the Call for Evidence as well as in our response to Q4 and Q9, we have extensively demonstrated that the MiFID II position limits regime did neither contribute to the prevention of market abuse, nor to the improvement of orderly pricing and settlement. Rather exchanges' market oversight systems, including compliance, supervision and surveillance activities have been calibrated prior to the MiFID II position limits regime to effectively prevent market abuse and ensure orderly pricing and delivery while allowing new and illiquid products to develop.

Especially for cash-settled derivatives on broad-based commodities index underlyings, it does not seem reasonable to have an additional limit on the index derivatives, as the individual components are already under position limit regime on the exchanges where these are traded. Moreover, these contracts are cash-settled, and it is not possible to squeeze (corner) a market link in a physically-delivered derivatives contract.

While we acknowledge that regulators and legislators might be concerned that the exclusion from the scope might open opportunity for loopholes, we would like to suggest again that product design and mechanisms of derivatives on broad-based commodity indices - already fulfilling the objectives of the regime - should be taken into consideration when the definition of scope will be revisited. The position limits regime does not provide a reasonable measure for increasing market integrity but impairs the growth of and demotivates clients' flow to shift to transparent and electronically traded markets. It also limits the capability of liquidity providers to fulfil their role and comply with the regulatory requirements, as these are stemming from a mis-categorisation into the scope of the regime.]
<ESMA_QUESTION_WPR_3>

Q4 : Which option do you support to address the negative impact of position limits on new and illiquid commodity derivatives: Option 1 or Option 2? Please explain why. If you support another alternative, please explain which one and why.

<ESMA_QUESTION_WPR_4>
[**To effectively overcome the negative impact of the current regime on new and illiquid commodity derivatives a more fundamental review is needed, i.e. Option 1.**

In practice we believe that to solve the issues we have addressed in our response to the Call for Evidence[2], **we need to move towards a more proportionate and efficient**

[2] In our response to ESMA's Call for Evidence, we explain that for the development of new products and growth of existing illiquid or less liquid commodity derivatives markets, the position limits regime has been a substantial barrier, meaning that we have observed a stagnation in or even a collapse of markets due to the mere existence of the position limits regime. Fast growing markets in particular have suffered from (1) the de minimis limit of 2,500 lots which appears to be too restrictive when a contract comes close to 10,000 lost of open interest, (2) the lack of flexibility in the rules for NCAs to deal with special circumstances (by for example using a more forward-looking approach to the calculation of open interest used as a baseline for setting position limits), (3) the combination of the strict definition of a liquid contract (exceeding 10,000 lots of open interest during three consecutive months) not being appropriate for contracts that are prone to volatility and the slow space with which contracts are

position limit regime. This can be achieved by focusing the application of the position limits regime on a more limited set of important, "critical" commodity derivative contracts. This would not only allow new and nascent products to develop, it would also better fulfil the overall objective of MiFID II to "improve the functioning and transparency of commodity markets and address excessive commodity price volatility".

In our response to the Call for Evidence, we have extensively demonstrated that the MiFID II position limits regime did neither contribute to the prevention of market abuse, nor to the improvement of orderly pricing and settlement.

If preventing the abuse of a dominant position would be considered the objective of the regime, the following aspects should be taken into account when the regime will be revisited: (For details please refer to DBG's response to the Call for Evidence.)

- The position limits regime comes on top of well-established market oversight systems, including compliance, supervision and surveillance activities executed in line with both REMIT and MAR. These activities have been effective in preventing market abuse and excessive speculation. One of the reasons is that, for example, to identify and prevent market abuse, DBG, including its commodity branch EEX Group, market surveillance departments monitor trading behaviour in combination with position size, while the position limits regime only monitors position size.
- Monitoring position size, as aimed for by the MiFID II position limits regime, reflects the ambition to limit market power, rather than the ambition to limit market manipulation. As reflected in the application of the hedging exemption, there is no link between a large position and market manipulation. To investigate a potential market abuse, one has to monitor trading activity.
- Even if limiting market power would be the objective of the position limits regime, then it still would not make sense to set a limit on the energy generation a person can offer to the market over a period of time (as the current limit expressed in MWh). Market power is not reflected in terms of generation, but in terms of the capacity of energy a person can bring to the market (or withhold from the market) at a specific point in time (and hence set a limit in terms of MW).
- Preventing the misuse of market power is only possible in physically-delivered contracts, where there is a possibility to squeeze or corner the market.
- The contracts that are almost always physically-delivered are gas and power contracts. However, both gas and power are goods that are in any case very difficult, if not impossible, for a market participant to control.

If contributing to the orderly pricing and orderly settlement would be considered the objective of the regime, the following aspects should be taken into account when the regime will be revisited as well:

- Ensuring orderly pricing and orderly settlement is one of the key tasks of an exchange and has been achieved already by a broad range of measures to avoid that any factors which might impact the price formation process are prevented.
- Also here, open positions have little impact on trading activities and play therefore only a minor role in orderly pricing and settlement. Of much more importance are

classified from illiquid to liquid and hence receive a bespoke position limit, (4) financial entities mainly engaging in hedging activities, being unable to benefit from the hedging exemption, (5) cases in which the definition of lots does not sufficiently follow economic considerations and hence the position limits might be artificially low, etc.

manipulative patterns stemming from order handling. The settlement price is based on order prices, trade prices or fair values and is entirely independent of members' positions.
- By excluding market participants from trading, the position limits regime limits execution of trades and hence rather has a negative impact on the orderly pricing of contracts, as well as the general transparency in the market.

The only value position limits might have, is to avoid excessive speculation adversely leading to price volatility. First of all, it should be noted that it is not scientifically proven that excessive speculation leads by default to price volatility[3]. While for some (agriculture) contracts, in particular time frames, this has been demonstrated, for others it was price volatility that caused excessive speculation, while in further cases there was a bilateral relationship.

Avoiding excessive speculation is also the main objective of the US position limits regime, which holds that excessive speculation in a commodity traded for future delivery may cause "sudden or unreasonable fluctuations or unwarranted changes in the price of such commodity" and that for the purpose of diminishing, eliminating, or preventing such problems, the CFTC may impose limits on the amount of speculative trading that may be done or speculative positions that may be held in contracts for future delivery[4].

To achieve the objective of avoiding excessive speculation, it is sufficient to consider only those contracts that are relevant for the price formation in the underlying commodity. This means mature products which serve as a benchmark for the respective market. New and nascent products constitute a minor share of commodity markets. Such contracts are unlikely to influence price movements in the underlying physical commodity markets and thus do not negatively impact consumers.

As stated in DBG's response to the Call for Evidence, the other (non-significant) contracts would remain subject to the position reporting regime under Art. 58 MiFID II as well as pre-existing market oversight practices of the exchanges' market supervision and market surveillance departments that apply the principles laid down in REMIT and MAR. Thus, removing position limits for such contracts would not pose any risk to the transparency and functioning of the respective markets. On the contrary, attracting more volume to regulated venues would contribute to a more transparent trading environment.

In our response to Q5 and Q6 we explain how such a selection could be achieved.

However, although we are supportive of Option 1, we believe that there is an urgent need to limit the negative impact the position limits regime in its current form has on new and nascent contracts. For this, **we recommend a two-tier approach whereby Level 2 is**

[3] Algieri, Bernardina, 2012. "Price Volatility, Speculation and Excessive Speculation in Commodity Markets: sheep or shepherd behavior?", Discussion Papers 124390, University of Bonn, Center for Development Research (ZEF). This study aims to investigate the dynamics of primary commodity prices and the role of speculation over time. In particular, the relationship between speculation and price volatility on the one side, and the linkage between excessive speculation and price volatility on the other side, is carefully examined with the scope to establish whether volatility drives speculation or speculation drives volatility, or whether there are no linkages between the two variables. It concludes that only for selected agricultural contracts excessive speculation has driven price volatility and only in particular time frames. See link here.

[4] Section 4a(a) of the CEA, 7 USC 6a(a).

amended immediately, while the more fundamental reform is dealt with as part of the Level 1 review. In this case, it must be ensured that any policy changes suggested under Option 2 can be introduced quickly to provide for short term relief until a more fundamental review is achieved in Level 1.

Such a change of Level 2 should build upon the policy recommendations proposed by ESMA under Option 2. Against this background, we support a transitional period for new contracts during which no position limit shall apply. However, based on our experience, a 12-month period is too short to develop a contract. Therefore, this period should be extended to 24 months. Secondly, we are concerned that a 50% position limit for contracts below 20,000 lots open interest might not be sufficient (and could even represent a tightening of the already very restrictive de minimis regime), especially for contracts with a very low open interest and typically a one-digit figure of market participants. If after 24 months the combined open interest has still not exceeded 20,000 lots, ideally a 10,000 lots limit should apply. Only such an approach can facilitate rapid growth as well as provide sufficient time for NCAs to set a bespoke position limit.

These transitional measures would only require an amendment of Arts. 5 and 15 of the Delegated Act 591/2017. In particular, it should include a revision of the distinction between the “illiquid” (below 10,000 lots) and “less liquid” (below 20,000 lots) categories in Art. 5 while introducing one basic category of “illiquid and less liquid” contracts, i.e. all contracts below 20,000 lots of open interest. In line with this change, Art. 15 should be amended accordingly, i.e. defining a new position limit of 10,000 lots. Art. 15(1) would subsequently become redundant.

Furthermore, to facilitate the growth of fast-moving contracts of both illiquid as well as liquid contracts, we would like to recall our support for the introduction of a forward-looking model in which the position limit is calculated based on a form of extrapolation of the market’s historical development of open interest in the case of other month contracts and deliverable supply in the case of spot month contracts. This approach would be particularly well suited to accommodate for periods of strong market growth and should not only apply to setting the limits, but also to classifying contracts as liquid or not. The approach would also provide for the needed flexibility for special cases such as the index transfer the dry bulk freight market is undergoing, the German-Austrian power bidding zone split and the EEX Group acquisition of the commodities business of Nasdaq Futures, Inc. (NFX).]
<ESMA_QUESTION_WPR_4>

Q5 : If you support Option 1 and would suggest different or additional criteria to determine whether a contract qualifies as a critical contract, please explain which ones.

<ESMA_QUESTION_WPR_5>
[Exchanges use various criteria to assess the liquidity of a market. They include, inter alia, open interest, share of open interest versus deliverable supply, number of active trading participants, churn ratio (for physically-delivered contracts), share of screen execution and average trading horizon. However, based on internal assessments, DBG has come to the conclusion that these parameters are highly correlated and therefore open interest is sufficient to determine whether a contract qualifies as a “critical” contract or not.]
<ESMA_QUESTION_WPR_5>

Q6 : Which open interest and participant threshold would you suggest for qualifying a commodity derivative as a critical one?

<ESMA_QUESTION_WPR_6>

[DBG considers a commodity derivative contract to be "critical" once it has developed into a highly liquid instrument with open interest levels that imply that all the various more detailed liquidity criteria have been met. Furthermore, the price signal of a "critical" contract should be broadly recognised in the wider market as a relevant benchmark price for its underlying commodity.

Based on these criteria which exchanges use to determine which markets should be considered mature and developed, DBG recommends a contract should have at least 300,000 lots of open interest on average over a year to qualify as "critical". For DBG this would lead to the following contracts being deemed "critical":

Trading Venue	Type	Name of the product
EEX AG	Electricity	Phelix DE-Futures
EEX AG	Electricity	Italian Base
EEX AG	Natural Gas	EEX Regulated Market Futures TTF

This approach would produce an outcome broadly comparable with the US regime for position limits, whereby we expect around 20 commodity derivative contracts offered for trading in Europe to be classified as "critical".

In relation to the "type and variety of market participants", we consider this indicator to normally be highly correlated with open interest, though widely diverging across different asset classes. In the interest of transparency and simplicity of the regime, we therefore recommend that this criterion is not considered.

However, should ESMA wish to take it into account in addition to open interest, we recommend that there should be at least 50 active trading market participants in a contract on average over a one-year period. This number of market participants is also a factor to be considered by NCAs when setting position limits under the implementing legislation of Art. 57 MiFID II. As suggested above, to qualify as "critical", a contract would have to breach the thresholds for open interest and actively trading participants.]

<ESMA_QUESTION_WPR_6>

Q7 : Would you support a position limit exemption for financial counterparties under mandatory liquidity provision obligations? If not, please explain why.

<ESMA_QUESTION_WPR_7>

[Yes, DBG supports a position limit exemption for financial counterparties under mandatory liquidity provision obligations, similar to the one outlined in Art. 2(4) of MiFID II.

However, such an exemption should not be limited to financial counterparties only, but expanded to non-financial counterparties too, as in many cases, if not in most cases, non-financial counterparties fulfil mandatory liquidity obligations as well.

The exemption is in particular necessary for new contracts that need financial or non-financial entities to incentivise trading in the contract, at least if the position limit regime continues to include the restrictive 2,500 lots limit on new and illiquid contracts. If no such exemption is available and the 2,500 lots limit continues to apply, exchanges have to contract a "panel" of liquidity providers to ensure that none of these firms exceed the 2,500 lots limit. In nascent markets it is highly possible that there may not be the required number of counterparties to build such a "panel" and even where this is the case, it adds significant costs for the exchange.

In order to avoid such a situation, we recommend that the position limit regime includes such an exemption based on the same conditions as the liquidity provision exemption outlined in Art. 2(4) MiFID II and the ESMA Q&A on MiFID II/MiFIR commodity derivative topics. This exemption should be implemented similarly to the hedging exemption under the position limit regime.]
<ESMA_QUESTION_WPR_7>

Q8 : Would you support introducing a hedging exemption for financial counterparties along the lines described above? If not, please explain why.

<ESMA_QUESTION_WPR_8>
[Yes, DBG supports introducing a hedging exemption for financial counterparties and is doubtful that the compliance monitoring of such exemptions by regulators would not be possible or efficient.

As stated in our response to the Call for Evidence, exchanges have extensive experience with operating a position management system allowing for exemptions from limits of positions held for genuine hedging purposes by market participants, regardless of their legal status and nature of business. This approach allows commodity market participants to manage their risks efficiently.

We believe a similar system, inclusive of financial counterparties, could be operated by financial regulators across the EU all the more given the amount of information they receive about the activities of such entities.]
<ESMA_QUESTION_WPR_8>

Q9 : Do you agree with ESMA's proposals to amend Article 57(8)(b) of MiFID II and to introduce Level 2 measures on position management controls? If not, please explain why.

<ESMA_QUESTION_WPR_9>
[No, DBG does not believe that Level 2 measures are necessary for a more convergent understanding and implementation of position management controls.

As position reporting, monitoring, management and control activities are already subject to REMIT, MAR and MiFID II principles, we are convinced there is already sufficient consistency across trading venues.

To recall from our response to the Call for Evidence, besides being subject to the MiFID II position management regime, exchange-traded gas and power derivatives markets are also under close scrutiny of the exchanges' market supervision and market surveillance departments. The departments apply the principles set out in REMIT and MAR, which

both apply to gas and power derivatives markets. While REMIT introduces a sector-specific legal framework for identifying and penalising insider trading and market manipulation in wholesale energy markets across Europe, MAR establishes a pan-European regime to prevent and detect market abuse, market manipulation and insider dealing in financial markets, including in energy derivatives markets.

Another example of position management regimes commonly implemented across exchanges before and since MiFID II are accountability levels. DBG, including its commodity branch EEX Group, has successfully implemented accountability levels which trigger an information request from the trading venue to better understand the reason and intention of the position built and the potential risks attached to it. DBG then follows up as appropriate, and potentially asks a person to reduce or terminate a position if no adequate answer is provided.

These pre-existing regulations as well as the work of market supervision and market surveillance departments have been effective in preventing market abuse and excessive speculation.

In sum, DBG is supportive of the current approach whereby a substantial responsibility for position monitoring, management and control is delegated to exchanges. As the nature of membership as well as characteristics of contracts can diverge substantially across individual exchanges, we are generally sceptical of the appropriateness of introducing Level 2 measures on position management controls aimed at increased convergence.

Furthermore, we are doubtful about the practical implementation and legal feasibility of market participants sharing information with trading venues on positions held OTC or at other trading venues.

Finally, we would like to emphasise again that the overall regime needs to be reconsidered for what it concerns cash-settled derivatives on broad-based indices composed of commodities related items (please also see our response to Q3). To our experience, the regime unfolds its value for market integrity in physically-delivered contracts only (please also refer to our response to Q4). The underlying is usually a single instrument or a very narrow defined basket, and not a broad-based index.]
<ESMA_QUESTION_WPR_9>

Part II

Q10 : Do you agree with the revised proposed minimum threshold level for the open interest criterion for the publication of weekly position reports? If not, please state your preferred alternative for the definition of this threshold and explain why.

<ESMA_QUESTION_WPR_10>
[DBG supports the revision of the proposed threshold level for the publication of weekly position reports. However, we believe that the proposed threshold would be too low to prevent that market participants with open positions in a particular contract become easily identifiable. We therefore suggest adjusting the current threshold of the absolute amount

of open interest being four times the size of deliverable supply and to set a new threshold whereby open interest simply equals deliverable supply.]
<ESMA_QUESTION_WPR_10>

Q11 : Do you have any comment on the current number of position holders required for the publication of weekly position reports?

<ESMA_QUESTION_WPR_11>
[DBG supports the current number of position holders required for the publication of weekly position reports, provided that the open interest is higher than the size of deliverable supply. However, the total number of position holders must be combined with a minimum threshold in each category for preserving the anonymity of market participants. Effectively, if the number of position holders in one category is too low, their positions might be deduced by other market players (primarily by others in the same category), putting at risk their strategy and economical position. Accordingly, we consider that for each category of position holders, there must be at least four different entities. This will provide increased transparency, also with regard to contracts that do no longer fall within the scope of the position limits regime, while preventing a situation in which market participants can be easily identified.]
<ESMA_QUESTION_WPR_11>