

**Submission Date**

23/09/2022

# ESMA\_QA\_1284

Status: Answer Published

## **Additional Information**

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### **Level 1 Regulation**

Markets in Financial Instruments Directive II (MiFID II) Directive 2014/65/EU- Secondary Markets

### **Topic**

Position limits

## **Subject Matter**

Position limits on a trading venue or EEOTC

## **Question**

Do position limits also apply to positions in contracts that have been entered into prior to 3 January 2018 and are traded on a trading venue, including an OTF, or are economically equivalent OTC contracts (EEOTC) to those traded on a trading venue?

23-09-2022

Original language

[ESMA70-872942901-36 Commodity derivatives, Position limits., Q&A 18]

Yes. The position limits regime does apply to all positions in agricultural commodity derivatives and critical or significant commodity derivatives offered by EU trading venues and EEOTC contracts, irrespective of the time when the contracts have been entered into. This is even the case if the relevant financial instrument was not a financial instrument at the time of the contract formation, e.g. prior to the application of MiFID II on 3 January 2018.

This is because all positions in a MiFID II commodity derivative held by a position holder are assessed constantly and from the point of application (see also Q&A 1515). Articles 57 and 58 of MiFID II do not refer to the formation of the contract in any of their provisions. As soon as a financial instrument becomes subject to the position limits regime, the position limits apply to the positions of position holders and are to be reported and monitored against position limits.