# PUBLIC STATEMENT

## Supervisory approach to position limits

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Under Article 57 of MiFID II (Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments[1]), competent authorities must establish and apply position limits on the size of a net position which a person can hold at all times in commodity derivatives traded on trading venues and economically equivalent OTC contracts. Commission Delegated Regulation (EU) 2017/591 of 1 December 2016[2] (RTS 21) sets out the methodology to be met by competent authorities when determining position limits, including for new and less liquid commodity derivatives.

Building on the advice in ESMA's MiFID II review report on position limits[3], Directive (EU) 2021/338 of the European Parliament and of the Council of 16 February 2021 amending Directive 2014/65/EU as regards information requirements, product governance and position limits, and Directives 2013/36/EU and (EU) 2019/878 as regards their application to investment firms, to help the recovery from the COVID-19 pandemic ("the amending Directive") substantially reduces the scope of commodity derivatives subject to position limits. Position limits will only continue to apply to agricultural commodity derivatives and critical or significant commodity contracts[4]. An exemption from position limits is also introduced for positions held by financial and non-financial counterparties for positions that are objectively measurable as resulting from transactions entered into to fulfil obligations to provide liquidity on a trading venue. The new provisions will start applying early in 2022.

ESMA appreciates that from a policy perspective position limits, which the co-legislators have decided to amend to help the recovery from the COVID-19 pandemic, may create a burden for market participants in the meantime and would see merit in already having in place a more favourable environment for the development of non-significant commodity derivatives that will no longer be subject to position limits in early 2022. ESMA also notes that liquidity providers play an important role in the development of commodity derivatives and that they should be able to fully play this role to also help the recovery from the pandemic.

ESMA cannot disapply EU law. However, ESMA considers it necessary to take into account the upcoming legislative change mentioned above, as well as the impact of position limits in

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[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 December 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] https://www.esma.europa.eu/sites/default/files/library/esma70-156-2311_mifid_ii_review_report_position_limits.pdf
[4] Critical or significant contracts are defined in the amending Directive as commodity derivatives contracts with "a net open interest at least of 300,000 lots over a one-year period".

particular on the development of new and less liquid commodity derivatives, the role of liquidity providers in the development of those derivatives and the competitive environment in which EU commodity derivatives markets operate. ESMA therefore expects national competent authorities to not prioritise their supervisory actions towards entities holding positions in commodity derivatives, other than agricultural commodity derivatives, with a net open interest below 300,000 lots. In addition, ESMA expects national competent authorities to not prioritise their supervisory actions towards positions that are objectively measurable as resulting from transactions entered into to fulfil obligations to provide liquidity on a trading venue as referred to in point (c) of the fourth subparagraph of Article 2(4) of MiFID II.