European Securities and Markets Authority

Date: 29 January 2020
ESMA70-155-8839

OPINION on position limits on OMIP SPEL Base contracts

I. Introduction and legal basis

1. On 17 October 2019, the European Securities and Markets Authority (ESMA) received a revised notification 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") 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 issued a first Opinion regarding the exact position limits CMVM intended to set for the OMIP SPEL Base futures and options commodity contracts. The position limit considered by CMVM was 20,082,483 MWh for the spot month[3] limit and 5,043,993 MWh for the other months' limit[4]. In this opinion, ESMA concluded that the spot position limit considered by CMVM was not consistent with the objectives of Article 57(1) of MiFID II.

3. Under Article 57(5) of MiFID II,"The competent authority concerned shall modify the position limits in accordance with ESMA's opinion or provide ESMA with justification why the change is considered to be unnecessary." In accordance with Article 57(5) of MiFID II, CMVM has notified ESMA of the revised position limits it intends to set to set for OMIP SPEL Base Futures and Options commodity contracts.

4. In this Opinion, ESMA is assessing whether the revised position limits CMVM intends to set for the OMIP SPEL Base futures and options commodity contracts comply with the methodology established in RTS 21 and are consistent with the objectives of Article 57 of MiFID II.

5. 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

[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] 25% of the deliverable supply.in 2017
[4] 30% of the open interest in 2017.

Securities and Markets Authority)[5] ("ESMA Regulation"), the Board of Supervisors has adopted this opinion.

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

6. On the 1st 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).

7. 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.

8. 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).

[5] 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).

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

10. 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.

11. 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.

12. 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.

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

14. 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.

15. 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.

16. 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. In 2015, the activity on the Spanish spot market represented 71% of the total demand of electricity and the activity on the Portuguese spot market represented 63% of the total demand of electricity.

17. 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.

18. 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.

19. The production of electricity is heavily linked to seasonality elements due to the mix of production in the Iberian zone, where the hydroelectric and wind power have a considerable share in the production of electricity in both countries. In Spain, in the year 2016, the structure was: In Spain, in the year of 2016, the structure was 38,9% fossil (coal and natural gas), 21,4% Nuclear, 24,8% renewable energy and 14,9% hydroelectric power. In Portugal: 42,2% fossil, 29,8% hydroelectric power and 28% renewable energy.

20. 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. MIBEL SPEL Base Future contracts, 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. There has been no open interest on options between 2015 and the first quarter of 2017.

21. 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.

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

23. 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.

24. 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.

25. The most traded maturities in the market for SPEL Base are the monthly and quarterly (average weight on the past 4 years (2013 to 2016) 34% and 27% respectively, while the short maturities have lower representability (weeks: 24%, days: 12% and years: 3%).

26. Therefore, the open interest on the SPEL Base contracts is result of the longest maturities: monthly, quarterly and annual.

27. The registration of OTC for SPEL Base in OMIP is different, the maturities where the bulk of the registration happen are the dailies (55%), monthlies (16%) and quarterlies (13%).

28. The open interest of SPEL Base on OMIP is mainly the result of the registration of the OTC transactions: 67% versus 33% on the continuous market, on the first quarter of 2017.

29. The weight of the OTC of the electricity derivatives market in Iberia (Spanish and Portuguese electricity) is quite high with percentages above 80% (analysis conducted between 2010 (91%) and 2015 (82%)). There has been an increase in the use of a CCP for transactions OTC: 11% in 2010 versus 54% in 2015.

30. The trading of electricity derivatives on OMIP represents only 13% of the overall trading of electricity derivatives in Iberia (period of analysis: 2010 to 2015).

31. As per the data of OMIP (in relation to the daily price variation limits that apply) the volatility of the derivative contracts at OMIP Market are low: (i). Day: 7.6% (ii). Year 1 – Year 4: 1.2% - 0.8% and slightly higher for short maturities. As this variable is not considered

critical it does not justify making an adjustment to the position limits to be set due to the volatility.

32. 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.

33. The estimated number of market participants is 62 and there are less than 3 investment firms acting as market makers.

IV. Proposed limit and rationale

Spot month position limit

Deliverable supply

34. Deliverable supply amounts to 80,089,930 MWh.

35. 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.

36. The Net Generating Capacity (in MW) in 2017 for Spain was 105,429 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 up to 4,289 MW, coming up to a total Deliverable Supply of 109,718 MW.

37. 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 80;089,930 MWh.

Spot month position limit

38. Spot month limit amounts to 10,011,241 MWh, which represents 12,5% of deliverable supply.

Spot month position limit rationale

39. Considering the amount of deliverable supply compared to a significantly lower open interests in MIBEL 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.

40. All 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.

41. Based on the above, CMVM has set the spot month limit at 12,5% of deliverable supply, i.e. at 10,011,241 MWh.

Open interest

42. Open interest amounts to 16,412,478 MWh.

43. Open interest has been calculated considering each individual holder, at trading account level, the daily average of the open interest between 01/04/2016 and 31/03/2017. All maturities of the contracts which underlying is the SPEL Base have been aggregated, in units of underlying MWh, for each individual holder. 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.

44. 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, both cash and physical contracts are considered to calculate the open interest in SPEL Base.

Other months' position limit

45. The other months' limit amounts to 5,744,367 MWh, which represents 35% of open interest.

Other months' position limit rationale

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

47. Article 18 (3) of RTS 21: The open interest (16,412,478 MWh) is substantially lower than the deliverable supply (80,094,140 MWh

48. Article 16 (2) of RTS 21: The SPEL base commodity derivative has a large number of separate expiries (on average 28 expiries, depending on the trading date selected).

49. Based on the above, CMVM made a total upward adjustment of 10 percentage points to the baseline, resulting in another months' limit of 5,744,367 MWh, which represents 35% of open interest.

V. ESMA's Assessment

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

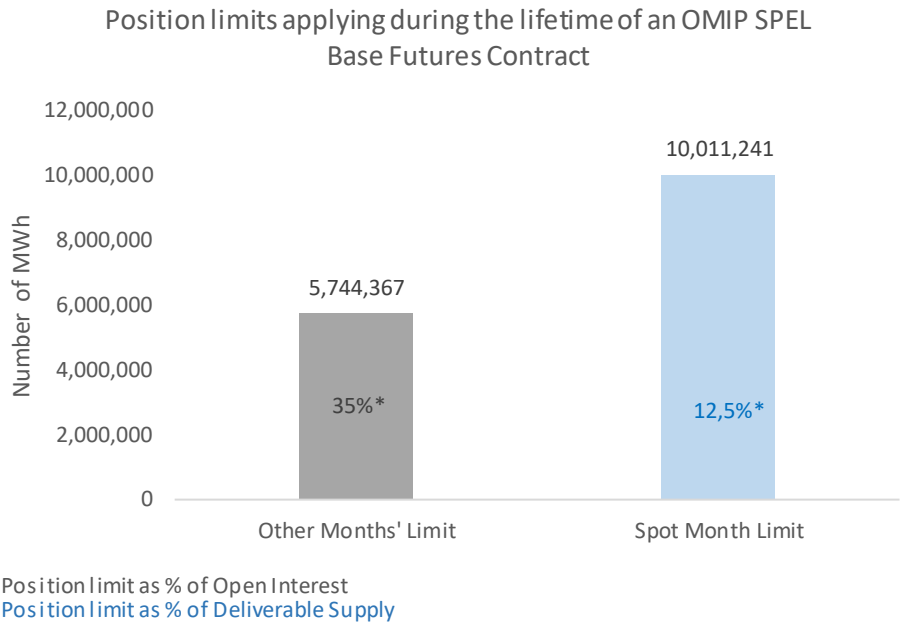
51. ESMA has performed the assessment based on the information provided by CMVM.

52. 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.

53. 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

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



Spot month position limit

55. 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 2017. ESMA agrees with using data from ENTSO-E data to calculate deliverable supply as this ensures publicly available figures consistent at the European level.

56. 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."

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

58. 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".

59. 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.

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

61. 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.[6]

Other months' position limit

62. Under Article 11 of RTS 21, competent authorities shall determine a baseline figure for the other months' position limit in a commodity derivative by calculating 25% of the open interest in that commodity derivative.

63. 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.

[6] Add link to the Opinion on EEX and MEFFPower Spanish Power Base Contracts

64. 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

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

65. 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.

66. With respect to the spot month limit, ESMA notes, based on the information provided by the competent authority, that the limit is substantially higher than open interest in the spot month throughout 2017.

67. 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

68. 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 MIBEL SPEL Base contracts are not hampered

69. 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

70. 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