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| Reply Form to the Consultation Paper |
| MiFID II review report on position limits and position management  Draft Technical Advice on weekly position reports |

**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](http://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](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**

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| --- | --- |
| Name of the company / organisation | Izba Energetyki Przemysłowej i Odbiorców Energii |
| Activity | Non-financial counterparty |
| Are you representing an association? |  |
| Country/Region | Poland |

**Introduction**

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

<ESMA\_COMMENT\_WPR\_1>

**Izba Energetyki Przemysłowej i Odbiorców Energii (The Chamber of Industrial Power and Energy Consumers) is an organization associating firms from energy-intensive industries as well as industrial entities generating electricity and heat mainly for their own consumption.**

<ESMA\_COMMENT\_WPR\_1>

**Questions**

**Part I**

1. : 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>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_WPR\_1>

1. : 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>

The C (6) carve-out was created in order to avoid physically settled REMIT wholesale energy products (which are used to hedge commercial risks related to underlying physical assets by energy producers and industrial firms and hence, fundamentally different than financially settled listed commodity derivatives used by financial institutions for speculative purposes) being unduly and contrary to their nature considered financial instruments. Such an ill-constructed extension to the scope of the definition of financial instruments would bring about a series consequnces far more serious than any concerns about level playing field across trading venues, especially given the fact that operators of regulated markets (RMs) or MTFs are entitled to operate an OTF as well. Those consequences include i.a.:

1. threat to security of supply on the Internal Energy Market (IEM) in relation to position limits for (physically settled) derivative contracts for energy and natural gas contracts and an increase in the costs of concluding and settling such contracts;
2. increased costs of energy trading on trading venues and the resulting preference for OTC contracts, which would not reinforce transparency on the IEM;
3. less competition among energy traders owing to increased trading and settlement costs;
4. a resulting (from the afore-mentioned reasons) increase in energy prices for energy consumers, which reduces funds necessary to finance a transmission to a climate neutral economy, especially aggravating in case of energy intensive industries, which are at risk of carbon leakage;
5. an increase in systemic risk in the financial sector due to regulation-led financialisation of an important sector of the real economy.

Therefore, if ESMA was to conclude that the C (6) carve-out creates an unlevel playing field across trading venues nothwithstanding the fact that operators of RMs and MTFs are entitled to operate an OTF as well, we urge ESMA to reconsider excluding all physically settled contracts relating to energy or natural gas from the definition of financial instruments.

<ESMA\_QUESTION\_WPR\_2>

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

<ESMA\_QUESTION\_WPR\_3>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_WPR\_3>

1. : 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>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_WPR\_4>

1. : 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>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_WPR\_5>

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

<ESMA\_QUESTION\_WPR\_6>

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<ESMA\_QUESTION\_WPR\_6>

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

<ESMA\_QUESTION\_WPR\_7>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_WPR\_7>

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

<ESMA\_QUESTION\_WPR\_8>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_WPR\_8>

1. : 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>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_WPR\_9>

**Part II**

1. : 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>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_WPR\_10>

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

<ESMA\_QUESTION\_WPR\_11>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_WPR\_11>