

## MiFID II Q&A

Anje Stiers, Raik Dahl, Stefan Kowanda  
09.01.2018  
Leipzig

Ref. 0010A

For information purposes only! This document does not provide or substitute legal advice!

eeX

ECC  
European  
Commodity  
Clearing

powernext

PEGAS

GASPOINT  
NORDIC

EPEXSPOT

› pxe

CLTX

NODAL  
CLEAR

NODAL  
EXCHANGE

## Table of Contents

For information purposes only! This document does not provide or substitute legal advice!

1.	Introduction	3
2.	FAQs	5
2.1	Main changes in MiFID II	5
2.2	Ancillary Activity Exemption	5
2.3	Position limits	7
2.4	Position reporting	9
2.5	Other questions	10
2.6	Data Security	12

---

# 1. Introduction (updated as of 7 December 2017)

The revision of MiFID I, which took the form of a revised Directive, MiFID II, and a new Regulation, MiFIR, is set to change the rules for trading commodity derivatives<sup>1</sup>. The general exemption for commodity trading provided by MiFID I will be repealed and replaced by a so-called ancillary activity exemption. With this change, only traders with ancillary activities in trading commodity derivatives will stay outside the scope of MiFID II. Those who are captured by MiFID II (by exceeding the ancillary activity exemption thresholds) will be categorised as an investment firm, and, as a consequence, will have to comply with many new legal requirements. Moreover, every commodity derivative contract on a regulated market, OTF or MTF will be subject to position limits and trigger the obligation for market participants as well as trading venues to report positions.

Also for firms which are already subject to MiFID I, the scope of requirements is set to increase.

This Q&A aims at providing an insight in the upcoming requirements that will follow from the application of MiFID II as of 3 January 2018.

While the [Deutsche Börse website](#) provides an overview of the general requirements as well as the Deutsche Börse solutions, this Q&A focuses on those requirements particularly relevant for trading in commodity derivatives. More information on how EEX Group will implement the MiFID II reporting requirements can be found on EEX' website in the section [Trading > MiFID II / MIFIR > Reporting](#).

**This Q&A does not provide or substitute legal advice. This Q&A only serves information purposes and is intended to be a first practical guide for firms operating in trading in commodity derivatives that have limited experience with MiFID I and MiFID II/MiFIR.**

---

<sup>1</sup> In this document, "commodity derivatives" refers to commodity derivatives according to the definition of MiFID II, as well as emission allowances and derivatives thereof. Only in the context of position limits, it will refer to only commodity derivatives according to the definition of MiFID II.

**Background information on the different levels of legislation.**

Level	Description	Legal Basis
Level 1	Overarching framework legislation produced using standard co-decision procedure	Directive (EU) No. 2014/65 of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU, or simply the Markets in Financial Instruments Directive (MiFID II) Regulation (EU) No. 600/2014 of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012, or simply the Market in Financial Instruments Regulation (MiFIR). <ul style="list-style-type: none"> <li>- <a href="#">MiFID II</a></li> <li>- <a href="#">MiFIR</a></li> </ul>
Level 2	Secondary legislation containing additional definitions and matters of detail, which is produced separately by the European Commission in consultation with ESMA, following the Level 1 legislation.	<a href="#">EC overview of Regulatory Technical Standards (RTSs) and Implementing Technical Standards (ITSs)</a> . Once published by the Official Journal, RTSs and ITSs are called Delegated and Implementing Regulations respectively. E.g.: <ul style="list-style-type: none"> <li>- <a href="#">Commission Delegated Regulation (EU) 2017/591 on position limits</a>, formerly known as RTS 21.</li> <li>- <a href="#">Commission Delegated Regulation (EU) 2017/592 on the ancillary activity exemption</a>, formerly known as RTS 20.</li> </ul>
Level 3	Guidance designed to ensure that EU legislation is applied by the respective competent authorities in EU Member States as consistently as possible. It follows the Level 1 and Level 2 legislation.	<a href="#">ESMA guidelines and Q&amp;As</a> Example: <a href="#">ESMA Q&amp;A on MiFID II and MiFIR commodity derivative topics</a>

**Examples of national legislation implementing the three levels of legislation:**

Germany: [2. FiMaNoG](#)

France: [French ordinance implementing MiFID II and MiFIR](#)

**Examples of websites of relevant competent financial market regulators**

[BaFin website on MiFID II](#)

[AMF website on MiFID II](#)

[FCA website on MiFID II](#)

## 2. FAQs

### 2.1 Main changes in MiFID II

#### 1. What has been the objective of revising MiFID I?

MiFID I has been reviewed to take into account developments in the trading environment since its implementation in 2007 and, in light of the financial crisis, to improve the functioning of financial markets making them more efficient, resilient and transparent.

#### 2. What are the main changes from MiFID I?

The original scope of MiFID I has been expanded to cover a larger group of companies and financial products. MiFID II will bring the majority of non-equity products into a robust regulatory regime and move a significant part of OTC trading onto regulated platforms. Furthermore, MiFID II strengthens pre- and post-trade transparency requirements, sets new rules for algorithmic trading and introduces position limits for commodity derivatives. Moreover, investor protection has become a key focus of MiFID II.

### 2.2 Ancillary Activity Exemption

#### 3. Do I need to become MiFID II authorised? Do I need to become an investment firm, according to MiFID II?

MiFID II Art. 1 and 2 outline the scope of firms subject to MiFID II and respectively the exemptions that could be applicable. The ancillary activity exemption (MiFID II Art. 2, par. 1(j)) is particularly relevant for firms trading in commodity derivatives. It exempts persons from becoming an investment firm under MiFID II, if they are dealing on own account, or providing investment services to clients, in commodity derivatives, provided this is an ancillary activity to their main business. Delegated Regulation (EU) 2017/592 (RTS 20) outlines what it means for an activity to be considered ancillary to the main business. In essence, a person dealing in commodity derivatives needs to pass two tests: (1) the market share test and (2) the main business test. Both have to be conducted on an asset class basis. Whereas the first test compares the size of a person's trading activity against the overall trading activity in the European Union, the second one compares the size of the trading activity with the size of the main activity undertaken by the group.

Importantly, every market participant has the obligation to annually notify its competent financial market regulator(s) that it will make use of the exemption. Please check with your national regulator for further information.

The ESMA Q&A on MiFID II and MiFIR commodity derivative topics provides further guidance on the tests. [The ESMA opinion on the market size calculation](#) provides more information on the overall EU trading activity, per asset class.

#### **4. Which transactions count towards the ancillary activity exemption? (updated as of 7 December 2017)**

This information can be found in MiFID II Art. 2, par. 1(j), Delegated Regulation (EU) 2017/592 (RTS 20) and the ESMA Q&A on MiFID II and MiFIR commodity derivative topics. In general, the tests (or threshold calculations) need to be conducted per asset class. Only transactions in financial instruments count towards the thresholds. Therefore, transactions in electricity and gas contracts having the characteristic “must be physically settled” within the meaning of Art. 5 of Delegated Regulation (EU) 2017/565 and that are concluded on an OTF will not be considered for the threshold calculation. However, since national legislation implementing MiFID II will only be applicable as of 3 January 2018, the current definition of financial instruments, which is based on MiFID I, applies until 2 January 2018. Therefore, also transactions in electricity or gas derivative contracts that have the characteristic “can be physically settled” and that are concluded on a non-MTF will not be considered for the threshold calculation. Please note that in July 2016 EEX and Powernext have both launched non-MTF trading platforms for electricity and gas contracts, respectively, transactions in which fulfil all the conditions to not be considered for said threshold calculations. As soon as the application process is open, both EEX and Powernext will apply for a license to operate an OTF to ensure that transactions concluded on these trading platforms will continue to not be considered for said threshold calculations, as of 3 January 2018. The non-MTF market will accordingly shut down by the end of 2 January 2018.

Furthermore, transactions resulting from the fulfilment of a genuine obligation to provide a trading venue with liquidity, transactions concluded for hedging purposes and intra-group transactions will be excluded from the threshold calculations, see Art. 2 par. 4 of MiFID II and ESMA Q&A on MiFID II and MiFIR commodity derivative topics for further reference.

The calculation for determining whether the company can benefit from the ancillary activity exemption in 2018 is based on the transactions from 1 January 2015 to 31 December 2017. Please note that there is a derogation from this time period, as outlined in Delegated Regulation (EU) 2017/592 (RTS 20). For more information on EEX's and Powernext's non-MTFs or EEX Group liquidity provision schemes, please contact [mifid@eex.com](mailto:mifid@eex.com) or [regulation@powernext.com](mailto:regulation@powernext.com).

#### **5. As of when can I notify my regulator that I will make use of the ancillary activity exemption?**

Some national regulators have already opened their online notification tools. Please check with your national regulator for further information. A link to the FCA application tool can be found [here](#). Applications to BaFin can be made informal by sending a letter including the company's name, registered seat, an E-Mail contact and the precise naming of the applied exemption. The AMF is providing a downloadable Excel form: [http://www.amf-france.org/en\\_US/Acteurs-et-produits/Produits-derives/Derives-sur-matieres-premieres-agricoles/Presentation-sur-les-derives-sur-matieres-premieres-agricoles](http://www.amf-france.org/en_US/Acteurs-et-produits/Produits-derives/Derives-sur-matieres-premieres-agricoles/Presentation-sur-les-derives-sur-matieres-premieres-agricoles).

## 2.3 Position limits

### 6. I do not need to become a MiFID II investment firm. Do the position limits apply to me? (updated as of 7 December 2017)

Yes. Position limits are linked to the contract traded, not to the participant trading the contract. As of 3 January 2018, every commodity derivatives contract will get a position limit on the size of a net position which a person can hold in that contract. The person in this case refers to the end client holding the position, as well as the group entity of this company, regardless of whether or not they are a MiFID II investment firm. Positions in commodity derivative contracts on a trading venue (RM, MTF, OTF) will be aggregated with positions in contracts listed on other trading venues considered to be the same as well as with positions in economically equivalent OTC (EOTC) contracts.

However, according to the relevant provisions in MiFID II, there won't be position limits for derivatives on emission allowances.

### 7. Are positions held for hedging purposes exempt from position limits?

Yes, non-financial entities can make use of an exemption for those positions that are objectively measurable as reducing risks directly relating to the commercial activity of that non-financial entity. Delegated Regulation (EU) 2017/591 (RTS 21) outlines the hedging exemption as well as the application of the exemption. It states that these risk-reducing positions should be deducted from the short and/or long position before netting the gross position. While Delegated Regulation (EU) 2017/591 (RTS 21) outlines the general rules, national regulators might take different approaches to the concrete implementation of these rules. The FCA and the AMF have already published their exemption forms.

### 8. When and where will the position limits be published? (updated as of 8 December 2017)

ESMA will approve the position limits proposed by national regulators. Following a public statement by ESMA national regulators will publish the limits before they have received the approval from ESMA as it will not be possible to finalise and publish all the position limit opinions for liquid commodity derivative contracts by the end of the year.

On 29 November 2017 German regulator BaFin has published a list of indicative position limits for EEX power contracts under the following [link](#) (only in German). On 7 December 2017 French regulator AMF published limits for the gas contracts traded at Pownext under the following [link](#) (only in French).

EEX Group has published the respective limits (insofar as they are applicable to contracts traded on its platforms) as well under this [link](#). For these limits there is an understanding of using next month as spot month for physical futures and current month as spot month for financial futures.

Contracts listed at EEX and Pownext but not shown by following this [link](#) are considered illiquid and not subject to bespoke limits. The default limit of 2,500 lots applies in this case.

### 9. Who will monitor and manage the position limits?

While regulators are expected to monitor and manage the position limits based on the position reports they receive, EEX Group will set up an early warning system that will send out an alert to the regulator when a position in a relevant contract listed at a trading venue operated by an EEX Group company might be breached. This information will be based on ECC's clearing data and hence does not take into account whether the position is held on behalf of a client, whether the position is held for risk-reducing purposes or whether the

market participant has an open position in the same contracts on other trading venues or in EEOCT contracts. An early warning system to the members is not planned at this point in time.

**10. Which contracts at EEX Group are seen as liquid with a bespoke limit? (updated as of 9 January 2018)**

ESMA has published a list of 106 liquid contracts that will receive a bespoke position limit (as of 24 October 2017). The list can be found on the [ESMA website](#).

For EEX Group, the following contracts will receive a bespoke limit:

**Power**

Venue product code(s)	Trading venue MIC code(s)	NCA	Country	Contract name	Base product	Sub-product	Further sub-product	Unit of measurement (UoM)
F1B	XEEE	Bafin	Germany	Phelix DE/AT Power Future	Energy	Electricity	Base load	MWh
F7	XEEE	Bafin	Germany	French Power Future	Energy	Electricity	Base load	MWh
FC	XEEE	Bafin	Germany	Swiss Power Future	Energy	Electricity	Base load	MWh
FD	XEEE	Bafin	Germany	Italian Power Future	Energy	Electricity	Base load	MWh
FE	XEEE	Bafin	Germany	Spanish Power Future	Energy	Electricity	Base load	MWh
FX	XEEE	Bafin	Germany	Czech Power Future	Energy	Electricity	Base load	MWh
F7	XEEE	Bafin	Germany	French Power Future	Energy	Electricity	Peak load	MWh
F1P	XEEE	Bafin	Germany	Phelix DE/AT Power Future	Energy	Electricity	Peak load	MWh
DEP	XEEE	Bafin	Germany	Phelix DE Power Future	Energy	Electricity	Peak load	MWh
N1B	XEEE	Bafin	Germany	Phelix DE/AT OTF-Future	Energy	Electricity	Base load	MWh

**Gas**

Venue product code(s)	Trading venue MIC code(s)	NCA	Country	Contract name	Base product	Sub-product	Further sub-product	Unit of measurement (UoM)
GPL	XPSF	AMF	France	GPL	Energy	Natural gas	GASPOOL	lots
NCG	XPSF	AMF	France	NCG	Energy	Natural gas	NCG	lots
PEG Nord	XPSF	AMF	France	PEG Nord	Energy	Natural gas	Other	lots
PSV	XPSF	AMF	France	PSV	Energy	Natural gas	Other	lots
TTF	XPSF	AMF	France	TTF	Energy	Natural gas	TTF	lots

**For information purposes only! This document does not provide or substitute legal advice!**



## 2.4 Position reporting

(For more information on the EEX Group solutions with regard to position and transaction reporting please access EEX' website in the section [Trading > MiFID II / MIFIR > Reporting](#).)

### 11. Who needs to report positions? (updated as of 5 January 2018)

The ESMA Q&A on MiFID II and MiFIR commodity derivative topics clarifies that trading venues will report to national regulators positions resulting from transactions concluded on a trading venue, whereas investment firms report to national regulators positions resulting from transactions concluded outside a trading venue. German regulator BaFin has confirmed again in a call that they only see a reporting obligation for trading venues or investment firms operating a trading venue/OTC business, but not for Clearing Members and their NCMs. In order for trading venues and investment firms to fulfil this obligation, their clients - regardless of whether or not these are investment firms-, have to provide the trading venue or investment firm respectively with a complete breakdown of their position. To help non-investment firms (i.e. firms that do not have to be licensed as an investment firm under MiFID II) to fulfil their obligation, EEX Group is building a system that will only require supplementary data from these firms. It is for example planned to enhance the T7 trading system to enable market participants to flag an order as being risk-reducing. This flag will be called the <CommodityHedging> flag.

Moreover, both investment firms and non-investment firms will receive the opportunity to make amendments to the daily position reports on the day following the trading day concerned. For more information see our section on position reporting following this [link](#).

Please note that EEX Group will also accept data deliveries by third party technical service providers subject to the condition that the service provider uses the members credentials to submit the respective member specific report.

#### 12.a Which IT schema will EEX Group use for clients to report positions? (updated as of 5 January 2018)

EEX Group plans to use the [enhanced ITS4 schema](#) agreed upon within the industry-working group led by the Futures Industry Association (FIA) and European Federation of Energy Traders (EFET). Please see to our website in the section [Trading > MiFID II / MIFIR > Reporting](#) for more information on the schema and sample files. Please note that this may still be subject to changes, as discussions with the NCAs on technical aspects of the interface are still ongoing. However with respect to overlapping contracts whose delivery period is not completely included in the spot month will be reported as other months' positions ('OTHR') according to the respective ESMA Q&As.

#### 12b. Does the position and transaction reporting scheme apply for Emission allowances as well?

Yes, in general. Positions in Derivatives on Emission allowances will have to be reported as this is required by law. Legally, there is also an obligation to report positions in Emission allowances, however, as there are no positions in spot trading, nothing will be reported in that respect.

Emission allowances will be financial instruments as of January 3rd, 2018. Therefore, transactions in Emission allowances are also within the scope of Article 26 MiFIR and will have to be reported accordingly. However, such reports are currently technically not accepted by ESMA.

## 2.5 Other questions

### 13. Are there special requirements for third-country investment firms that trade at EEX Group?

ESMA is currently in the process of verifying if and how national competent authorities of third countries are in line with the respective MiFID II requirements. This process is not expected to be finalised before 3 January 2018. Therefore, EU Member States and national competent authorities are requested to put in place transitional arrangements.

The German Banking Act (Section 64v para 8) which will be applicable as of 3 January 2018 stipulates that a third country firm whose activities in Germany will require an investment firm license, may be subject to a preliminary exemption. This exemption will be valid from 3 January 2018 until the date ESMA has filed a decision on the entry of that firm into the register pursuant to Art. 48 of MiFIR, if it has filed a complete application for exemption with BaFin by 2 July 2018. BaFin plans to be ready to accept applications as of the beginning of 2018. So, please ensure that your company provides BaFin with its complete application for this exemption during the first half of 2018, if applicable.

Further information can be found on our website under “Third Country Firms under MiFID II” and on the website of the German authority (German only).

### 14. Will EEX Group provide the possibility to flag market making orders?

It is planned to enhance the T7 trading system to enable market participants who are pursuing a market making strategy to flag an order as market making. The new field will be called <LiquidityProvision>.

### 15a. Will EEX Group impose any additional requirements with regard to algorithmic trading? (updated as of 7 December 2017)

Under Art. 25(2) of Regulation (EU) No 600/2014 and RTS 24 (Delegated Regulation No. 2017/580), trading venues shall keep at the disposal of the competent authority the relevant data to identify the algorithm of the participant primarily responsible for the investment decision or the execution of a transaction.

Participants assign Algo IDs to their respective algorithms, which have to comply with the requirements of Art. 48(6) of Directive 2014/65/EU and Art. 10 of RTS 7 (Delegated Regulation 2017/584). In accordance with these requirements, EEX and Powernext have to request that all participants execute a conformance test for their algorithms in a testing environment before the algorithms are used in production in order to avoid market disturbance. After 3rd January 2018 this is valid for each new algorithm and for substantial changes to existing algorithms; algorithms include Quote Machines and also algorithms already in use.

Each member who intends to use an algorithm has to submit a formal application to EEX or Powernext and return the form with the respective data and duly signed. For EEX, the respective form “T11” can be found under this link <http://www.eex.com/en/access/admission/admission-forms/regulated-market> (“Change in technical connection”). For Powernext, please contact [membership@powernext.com](mailto:membership@powernext.com).

Participants using or intending to use any algorithms have to provide the form by 1 December 2017 at the latest to ensure readiness before the rules of MiFID II come into effect.

EEX will provide a test area for its T7 trading system and has adapted its technical implementation regulations accordingly. The same test area is provided to Powernext clients, since Powernext migrated its derivatives to the T7 backend on the 8<sup>th</sup> of December 2017.

[Algo\\_ID](#)

The Algo\_ID has to be defined by the member. It has to be a numeric value with 19 figures due to technical specification. The value has to be included directly in the respective field within the order form, no short code mapping may be applied. Most of the front end system provider with respective algorithm functionalities will set the Algo ID's. Please contact your provider.

#### Iceberg Orders

EEX and Powernext consider systems that only manage Iceberg Orders not to be systems for algorithmic trading in the sense of MiFID II.

#### **15b. Will EEX Group accept one-off tests of trading algorithms of ISVs that are used by different members of EEX Group?**

Yes, ISVs may organize one-off tests of their trading algorithms (including any subsequent changes) which they offer to their clients and EEX Group will accept such one-off tests and will not require its members to test the respective trading algorithms again, provided that the ISV confirms towards the respective member(s) of EEX Group that a certain trading algorithm with a specified configuration and ID has passed all required conformance tests and the member of EEX Group confirms the same towards EEX Group as part of its application and that it will use the trading algorithm at EEX Group only with the configuration that has been tested and confirmed by the respective ISV.

#### **16. How will EEX Group fulfil the pre-trade control requirements?**

The MiFID II requirements for pre-trade controls for derivatives markets are:

- ) Price collar check, which prevents orders with an excessive price difference to a reference price from entering the order book.
- ) Maximum order quantity validation, which prevents orders with an excessive order size from entering the order book.
- ) Maximum order value validation, which prevents orders with excessive order values from entering the order book.

The price collar check requirement is covered by the existing T7 price reasonability check and extended price range functionality. The maximum order quantity validation requirement is covered by the existing user transaction size limit functionality in the T7 trading system.

With T7 Release 6.0, participants will be able to set maximum order value limits for their users. The trading system calculates the value of each order entered into the order book and compares it to the maximum order value defined at the user level. If the order value exceeds the defined maximum order value, the order is rejected. It will be possible to skip this validation for orders and quotes entered via ETI or FIX gateways. Orders entered via the T7 trading GUI will always be validated against the maximum order value limits.

#### **17. Will EEX Group provide ISINs on contract level?**

As required by MiFID II/MiFIR and MAR, EEX Group has introduced ISINs at contract level to enable a more detailed reporting service based on contract/instrument level instead of product level. (Before, ISINs were only provided at product level.) Customers of EEX Group will receive access to these ISINs as part of the RDI interface (field "SecurityAltID"). Alternatively it will also become possible for members to retrieve the ISIN from a new instrument file EEX Group plans to provide within its regulatory member portal. Please look at the information on our website under the topic "Static data": <https://www.eex.com/en/regulatory-reporting-services/mifid2-mifir/position-reporting>

The ISINs at product level are still valid and serve as a unique EEX Group product identifier.

**18. The position and transaction reporting obligations pursuant to Article 58 par. 1 MiFID II and Article 26 par. 5 MiFIR do not apply to non-investment firms, why do we have to provide EEX and Powernext with the respective LEIs and NATIONAL\_IDs?**

According to Article 26 par. 5 of MiFIR, trading venues are obliged to report certain transactions in financial instruments as well:

“The operator of a trading venue shall report details of transactions in financial instruments traded on its platform which are executed through its systems by a firm which is not subject to this Regulation in accordance with paragraphs 1 and 3.”

Non-investment firms and third country firms are such firms that are not subject to MiFIR. Therefore, EEX and Powernext are obliged to report transactions in financial instruments concluded on their regulated markets for all these members. The details that have to be reported by EEX and Powernext are the same details that an investment firm has to report (see Art. 26 par. 3 of MiFIR in conjunction with Commission Delegated Regulation (EU) 2017/590). Thus, the information to be reported includes inter alia the identification codes of the buyer and the seller as well as the buyer decision maker code. These codes are either the LEI for legal entities or the NATIONAL\_ID for natural persons.

LEIs and NATIONAL\_IDs are further needed to complete the respective fields of the daily position reports sent by EEX and Powernext to the respective competent authority in accordance with respective implementing legislation of Art. 58 MiFID II (e.g., 2. FiMaNoG for Germany) in conjunction with Commission Implementing Regulation (EU) 2017/1093.

In order to enable EEX and Powernext to comply with the obligations, non-investment firms that are active on EEX and/or Powernext need to provide EEX and/or Powernext with the necessary information.

**19. What is EEX’s solution for uploading short codes?**

Details can be found here: <http://www.eex.com/download/en/75658/>

## 2.6 Data Security (updated as of 7 December 2017)

**20. Can you confirm that you will only use the personal data (National\_ID’s) for the purpose for which it has been transmitted to you, being in order to demonstrate compliance with MIFID II?**

Yes we confirm.

**21. Can you confirm that you will be employing technical and organisational measures to ensure that the personal data is protected against unauthorised access, processing or destruction.**

Yes we confirm this.

**22. Can you confirm that the personal data will be deleted as soon as its storage is no longer necessary?**

Confirmed. the data is deleted as soon as it is no longer required. Note: There are several retention periods required by law.

**23. Shall the personal data be transferred outside the European Economic Area?**

**For information purposes only! This document does not provide or substitute legal advice!**

The data will not be transferred outside the European Economic Area.

**24. Which people will have access to the National\_ID's?**

Access is granted following the need to know principle to staff and service providers who require the access to perform their service.