

## **MiFID II position limits on non-critical commodity derivatives no longer enforced by BaFin**

BaFin confirms it will follow ESMA supervisory approach to position limits following MiFID II Quick Fix

Dear trading participants,

We would like to inform you about a statement ([Link](#)) from the German Federal Financial Supervisory Authority (Bundesanstalt für Finanzdienstleistungsaufsicht, BaFin), which acts as the national competent authority (NCA) for the supervision of the position limits regime imposed by Directive 2014/65/EU ("MiFID II") on EEX commodity derivative contracts. By this, **BaFin confirms it will no longer enforce the position limits on EEX commodity derivative contracts that are neither critical, nor agricultural.**

**Concretely, this means that for all EEX commodity derivatives, except for German Power Base and the agricultural commodity derivatives, trading participants and clients thereof do no longer have to take into account the MiFID II position limits applicable to these contracts.** This is also valid for future revisions of the limits: Legally, the position limits continue to apply and hence will also continue to be reviewed in line with the harmonized open interest calculation methodology. However, they will no longer be enforced.

The BaFin statement follows a statement from ESMA on the supervisory approach to position limits (Link ESMA). This statement clarifies that pending the application of the position limits reforms introduced by the Directive 2021/338/EU (“MiFID II Quick Fix”), ESMA expects NCAs “to no longer prioritise their supervisory actions towards:

- natural or legal persons holding positions in commodity derivatives, other than agricultural commodity derivatives (including seafood derivatives), with a net open interest below 300,000 lots.
- 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.”

The scope reduction and liquidity provision exemption aim at creating a more favourable environment for the development of non-critical commodity derivatives, particularly in light of the recovery from the COVID-19 pandemic.

Please do not hesitate to contact EEX Market Operations by phone +49 341 2156 222 if you have any further questions.

Yours sincerely,

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