

Application of position limits to commodity derivatives

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The European Parliament **rejected three motions for resolutions which aimed to object to the Commission Delegated Regulation 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 to commodity derivatives.

As a reminder, Directive 2014/65/EU of the European Parliament and of the Council introduces a new harmonised position limits regime for derivative contracts in relation to commodities.

Directive 2014/65/EU empowers the European Securities and Markets Authority (ESMA) to develop draft regulatory technical standards, and delegates power to the Commission to adopt such standards, in order to determine the methodology for calculation that competent authorities are to apply in establishing the spot month position limits and other months' position limits for physically settled and cash settled commodity derivatives based on the nature of the relevant derivative.

Commission Delegated Regulation of 1 December 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council sets out the methodology for calculating position limits. This methodology sets a baseline figure for the spot month position limit in a commodity derivative of 25 % of the deliverable supply for that commodity derivative, and for other months a position limit of 25 % of open interest in that commodity derivative.

The methodology includes a derogation for any derivative contract with an underlying that qualifies as food intended for human consumption with a total combined open interest in spot and other months' contracts exceeding 50 000 lots over a consecutive three-month period. For these contracts the baseline figure for spot month position limits is proposed at 20 %, with a baseline within the 2.5 % to 35 % range.

In a first motion for a resolution (tabled by the S&D group and rejected by 339 votes to 339, with 12 abstentions), Members noted that in comparison with the position limits regime in place in the USA, in which 25 % is the upper limit rather than the baseline and average position limits are 10-15 %, the proposed methodology for EU position limits is very permissive.

Members stated that for the most sensitive and highly liquid food contracts, a baseline of 20 % does not fulfil the objective stated in Directive 2014/65/EU of preventing market abuse and supporting orderly pricing and settlement conditions, and therefore **does not amount to the EU meeting the commitments signed up to by G20 leaders in 2009**.

In a second motion for a resolution (tabled by the Greens/EFA group), Members made the same remarks on the baseline figure of 20 %.

They added that the final baseline and overall range for other contracts (5 % to 35 %) which are deemed to be liquid was already assessed to be too broad, bearing in mind that an even more flexible special regime is provided for contracts deemed to be illiquid (5 % to 40 %) and that the definition of an 'illiquid' contract is also potentially too broad. They noted that despite Parliament's negotiating team's explicit request, **volatility has not been included as a factor to be taken into account** when setting position limits at the same level as other relevant factors.

Members at the origin of the two motions for resolutions stated that Parliament's negotiating team made clear that it had significant concerns regarding the draft Regulatory Technical Standards as produced by ESMA, with regard to the baseline figure and a number of other areas and that Parliament acknowledged that some of these concerns have been addressed, but not sufficiently for the Delegated Regulation to be considered to meet the ambitious objectives of the original legislation.

They noted that it should be possible for the Commission to make additional amendments to the draft Delegated Regulation in order to allay the concerns set out in Parliament's letter. If the Commission were to make such changes, Parliament, without foregoing its scrutiny role, would consider the possibility of accelerating the approval procedure for an amended text. They called on the Commission to submit a new delegated act which takes account of the above concerns.

In a third motion for a resolution (tabled by the GUE/NGL group), Members called on the Commission to submit a new delegated act which takes into account the aforementioned concerns and especially to include the following recommendations:

- reduce the 'baseline' position limit for the most sensitive and highly liquid food contracts to a maximum 15%,
- broaden the scope of contracts covered by reduced limits to at least all commodities with indirect effects on the prices of food for human consumption,
- redefine volatility so that it becomes a mandatory parameter in the methodology of setting the position limits.