



Plenary sitting

B8-0139/2017

7.2.2017

MOTION FOR A RESOLUTION

pursuant to Rule 105(4) of the Rules of Procedure

on Commission Delegated Regulation (EU) No .../... 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 (C(2016)04362) (2016/3017(DEA))

Anneliese Dodds

on behalf of the S&D Group

European Parliament resolution on Commission Delegated Regulation (EU) No .../... 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 (C(2016)04362) (2016/3017(DEA))

The European Parliament,

- having regard to Commission Delegated Regulation (EU) No .../... 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 (C(2016)04362),
- having regard to Article 290 of the Treaty on the Functioning of the European Union,
- having regard to 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/EU¹, in particular Article 57(3) and (12) thereof,
- having regard to Article 13 of Regulation (EU) No 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/EC²,
- having regard to the outcome of the G20 summit in Pittsburgh of 25 September 2009,
- having regard to the Commission communication of 28 October 2009 entitled ‘A Better Functioning Food Supply Chain in Europe’ (COM(2009)0591),
- having regard to the Commission communication of 2 February 2011 entitled ‘Tackling the Challenges in Commodity Markets and on Raw Materials’ (COM(2011)0025),
- having regard to the communiqué of the G20 finance ministers and central bank governors of 15 April 2011,
- having regard to the International Organisation of Securities Commissions’ Principles for the Regulation and Supervision of Commodity Derivatives Markets of 11 September 2011,
- having regard to the letter of 27 November 2015 sent by its rapporteur and the Chair of its Committee on Economic and Monetary Affairs to Commissioner Hill,
- having regard to Rule 105(4) of its Rules of Procedure,

A. whereas G20 leaders met in Pittsburgh on 24-25 September 2009, in response to the

¹ OJ L 173, 12.6.2014, p. 349.

² OJ L 331, 15.12.2010, p. 84.

financial crisis, and committed to improving the regulation, functioning and transparency of financial and commodity markets to address excessive commodity price volatility;

- B. whereas the Commission's communication of 28 October 2009 entitled 'A Better Functioning Food Supply Chain in Europe' acknowledged that in recent years prices along the food supply chain have fluctuated wildly, with these changes having caused considerable hardship for agricultural producers and having implied that consumers are not getting a fair deal, and therefore recommended enabling regulators to set position limits so as to counter disproportionate price movements or concentrations of speculative positions in order to ensure the efficient functioning of these markets;
- C. whereas the Commission's communication of 2 February 2011 entitled 'Tackling the Challenges in Commodity Markets and on Raw Materials' similarly acknowledged that commodity markets have displayed increased volatility and unprecedented movements of prices in recent years, with sharp price swings in all major commodity markets having been reflected in consumer prices and at times having led to social unrest and deprivation; whereas the Commission therefore recommended exploring the need for more systematic and detailed information on the trading activities of different types of market participants in commodity derivatives and more comprehensive oversight by regulators of commodity derivative positions, including the need for imposing position limits where necessary;
- D. whereas the communiqué of the G20 finance ministers and central bank governors of 15 April 2011 welcomed the work of international organisations to address excessive price volatility in food and agricultural markets, and its impact on food security, and called on the International Organisation of Securities Commissions (IOSCO) to finalise recommendations on regulation and supervision in this area, in particular to address market abuses and manipulation, including the authority to set ex ante position limits where appropriate;
- E. whereas IOSCO's Principles for the Regulation and Supervision of Commodity Derivatives Markets of 11 September 2011 state as one of their key objectives that markets should be fair, efficient and transparent, and that this should be achieved by requiring that trading systems be subject to regulatory authorisation and continuing oversight, that regulation be designed to detect and deter manipulation and other unfair trading practices, and that regulation aim to ensure the proper management of large exposures, default risk and market disruption; whereas IOSCO therefore recommended that market authorities should have and use formal position management powers, including the power to set ex ante position limits;
- F. whereas Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (MiFID II) introduces a new harmonised position limits regime for derivative contracts in relation to commodities, representing the EU's implementation of the G20 commitments made in Pittsburgh in 2009;
- G. whereas Article 57 of Directive 2014/65/EU requires Member States to ensure that competent authorities establish and apply position limits on the size of a net position which a person can hold at all times in commodity derivatives traded on trading venues

and economically equivalent over-the-counter (OTC) contracts, in order to prevent market abuse and to support orderly pricing and settlement conditions, including preventing market distorting positions;

- H. whereas Article 57(3) of 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 characteristics of the relevant derivative;
- I. whereas Commission Delegated Regulation (EU) No .../... 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;
- J. whereas 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, and then permits competent authorities to set the spot month and other months' position limits for a commodity derivative by taking that baseline figure and adjusting it, according to the potential impact of certain factors, either as low as 5 % or as high as 35 %;
- K. whereas 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; whereas for these contracts the baseline figure for spot month position limits is proposed at 20 %, and the range is from 2.5 % to 35 %;
- L. whereas 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;
- M. whereas 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;
- N. whereas Parliament's negotiating team made clear in its letter of 27 November 2015 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;
- O. whereas Parliament acknowledges 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;
- P. whereas 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, without the need for any delay in the overall implementation of Directive 2014/65/EU,

which is due to come into effect on 3 January 2018; whereas 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;

1. Objects to the Commission delegated regulation;
2. Instructs its President to forward this resolution to the Commission and to notify it that the delegated regulation cannot enter into force;
3. Calls on the Commission to submit a new delegated act which takes account of the above concerns;
4. Instructs its President to forward this resolution to the Council and to the governments and parliaments of the Member States.