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Committee on Development

2011/0298(COD)

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DRAFT OPINION

of the Committee on Development

for the Committee on Economic and Monetary Affairs

on the proposal for a directive of the European Parliament and of the Council
on markets in financial instruments repealing Directive 2004/39/EC of the
European Parliament and of the Council (Recast)
(COM(2011)0656 – C7-0382/2011 – 2011/0298(COD))

Rapporteur: Eva Joly

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SHORT JUSTIFICATION

Commodity markets are fundamentally different from pure financial markets. It is possible to live a life without being exposed directly to the price of shares and bonds but it is not possible to live a life without being exposed to the price of food or energy. Commodity derivatives, in the form of contracts fixing a price for future delivery, pre-date financial markets. Commodity markets arose out of the legitimate needs of producers and consumers of raw materials, agricultural products and energy to protect themselves from the influence on prices of factors beyond their control. However, the growth of financial markets has meant that, over the last decade or so commodities have joined bonds and shares as "investment assets".

Developments in commodity related markets are critical and need to be thoroughly monitored and regulated if the purpose is to prevent dramatic situations such as the hunger riots in 2008 where unprecedented levels of food commodity price volatility created a tangible and immediate threat to fundamental human rights of a significant part of the world population. The exacerbated commodity market volatility and price levels that seem unrelated to fundamental extraction costs and the balance between supply and demand over the last ten years has indeed generated devastating and long lasting negative externalities which are potentially much bigger than the total amount of official development aid over the same period.

It has been often argued that the recent trends related to commodity markets and in particular commodity price dynamics reflect economic fundamentals driven by supply and demand and more specifically a rising demand from fast growing emerging economies, the rapid development of agrofuels as well as exogenous shocks such as droughts, floods or political tensions. According to such a view, speculation and more generally financial markets, play little or no negative role on commodity markets price formation, and on the contrary, provide the necessary liquidity required to ensure a more efficient price discovery process. In sharp contrast with such a view, it has been often claimed that speculation has become the 'key driver' of recent trends observed in commodity prices. Even though the matter of the 'driver' remains controversial in the academic and institutional literature, there is a growing body of evidence corroborated by several of the most recent empirical studies which highlight the major potential distortive and disruptive role played by the financialization of commodity trading irrespective of whether commodity based derivative contracts are assumed to drive 'spot prices' or to be driven by them.

Two patterns provide indeed compelling evidence of the substantial role played by financialisation in commodity markets. As the United Nations Conference for Development and Trade (UNCTAD) has recently pointed out, *"investments in commodities became a common part of a larger investor portfolio allocation which coincides with a significant increase of assets under management of commodity indexes. (...) Consequently, the volumes of exchange-traded derivatives on commodity markets are now 20 to 30 times greater than physical production"*. In addition, over the last ten years price correlations between commodities and equity markets have soared significantly, *providing additional support to the idea that there are financial-based factors behind this structural change*.

Crucially, in spite of the controversy referred to above there is a large consensus on the lack of comprehensive and granular information required in order to build an overall assessment on the effective impact of the rapid financialisation of commodity trading over the last decade. As the G20 has repeatedly acknowledged there is indeed a lack of transparency and oversight on both physical and financial commodity related markets which results in an incomplete view on crucial data required for a better monitoring and regulation of commodity related markets such as inventories levels and the size of financial positions taken by commercial and non commercial players.

Given the critical importance of commodities it is beyond doubt that a comprehensive EU sustainable development cooperation strategy should go hand in hand with more transparent and better regulated commodity related markets in the EU and worldwide. Such a need is particularly relevant in the EU where commodity related financial markets are more lightly regulated than in the US.

The Commission recast proposals on the Markets in Financial Instruments Directive and Regulation (MIFID and MIFIR) include provisions with the explicit purpose of addressing the need to reinforce supervision and regulation in commodity related financial markets. These proposals foresee in particular position limits or alternative arrangements (Article 59) on commodity related derivative financial instruments which is a welcome move if the overall objective is to facilitate price discovery and efficient hedging of the price risks to which producers and consumers are exposed, and therefore, to prevent and correct asset bubbles and other distortions. As a necessary complement to position limits the proposals introduce position reporting requirements by categories of traders to the market and to the regulators (Article 60). It is also worth noting the deletion of the current full exemption from MIFID for commodity traders. These provisions represent steps in the right direction but more needs to and can be done. For that purpose your rapporteur for this draft opinion believes that three general issues need to be addressed by the European Parliament in the framework of the MIFID/MIFIR revision.

- 1. Strict limitation on exemptions from MIFID to include all commodities actors within the scope of the regulation.**
- 2. Strengthening the provisions for position limits (MIFID – Article 59).**
- 3. Strengthening the powers for regulators to intervene in specific products or activities (MIFIR articles 31, 32 and 35).**

The amendments proposed by your rapporteur for this draft opinion intend to address these three issues, with the aim of enhancing the functioning and transparency of the European markets related to commodities, and at the same time provide a valuable contribution to the fulfilment of the overarching objectives of the Union's development cooperation strategy.

AMENDMENTS

The Committee on Development calls on the Committee on Economic and Monetary Affairs, as the committee responsible, to incorporate the following amendments in its report:

Amendment 1

Proposal for a directive Recital 78

Text proposed by the Commission

(78) The introduction of a commercial solution for a consolidated tape for equities should contribute to creating a more integrated European market and make it easier for market participants to gain access to a consolidated view of trade transparency information that is available. The envisaged solution is based on an authorisation of providers working along pre-defined and supervised parameters which are in competition with each other in order to achieve technically highly sophisticated and innovative solutions, serving the market to the greatest extent possible.

Amendment

(78) The introduction of a commercial solution for a consolidated tape for equities should contribute to creating a more integrated European market and make it easier for market participants to gain access to a consolidated view of trade transparency information that is available. The envisaged solution is based on an authorisation of providers working along pre-defined and supervised parameters which are in competition with each other in order to achieve technically highly sophisticated and innovative solutions, serving the market to the greatest extent possible. ***In case commercial solutions fail to provide an effective consolidated tape for equities, the European Commission shall bring forward a public solution for a consolidated tape for equities able to achieve effective post-trade transparency.***

Or. en

Amendment 2

Proposal for a directive Recital 84

Text proposed by the Commission

(84) The powers made available to competent authorities should be complemented with explicit powers to ***demand*** information from any person regarding the size and purpose of a position in derivatives contracts related to commodities and to request the person to take steps to reduce the size of the position in the derivative contracts.

Amendment

(84) The powers made available to competent authorities should be complemented with explicit powers to ***obtain*** information ***on a regular basis*** from any person regarding the size and purpose of a position in derivatives contracts related to commodities and to request the person to take steps to reduce the size of the position in the derivative contracts.

Amendment 3

Proposal for a directive

Recital 85

Text proposed by the Commission

(85) Explicit powers should be granted to competent authorities to limit the ability of any person or class of persons from entering into a derivative contract in relation to a commodity. The application of a limit should be possible both in the case of individual transactions and positions built up over time. In the latter case in particular, the competent authority should ensure that these position limits are non-discriminatory, clearly spelled out, take due account of the specificity of the market in question, and are necessary to secure the integrity and orderly functioning of the market.

Amendment

(85) Explicit powers should be granted to competent authorities to limit the ability of any person or class of persons from entering into a derivative contract in relation to a commodity. The application of a limit should be possible both in the case of individual transactions and positions built up over time. In the latter case in particular, the competent authority should ensure that these position limits are non-discriminatory, clearly spelled out, take due account of the specificity of the market in question, and are necessary to secure the integrity and orderly functioning of the market, ***as well as to eliminate excessive speculation.***

Amendment 4

Proposal for a directive

Recital 86

Text proposed by the Commission

(86) All venues which offer trading in commodity derivatives should have in place appropriate limits ***or*** suitable ***alternative*** arrangements designed to support liquidity, prevent market abuse, and ensure the orderly ***pricing*** and settlement conditions. ESMA should maintain and publish a list containing summaries of all such measures in force. These limits ***or*** arrangements should be

Amendment

(86) All venues which offer trading in commodity derivatives should have in place appropriate limits ***and*** suitable ***additional*** arrangements designed to support liquidity, prevent market abuse, and ensure the orderly ***price discovery function*** and settlement conditions ***as well as to eliminate excessive speculation.*** ESMA should maintain and publish a list containing summaries of all such measures

applied in a consistent manner and take account of the specific characteristics of the market in question. They should be clearly spelled out as regards to whom they apply and any exemptions thereto, as well as to the relevant quantitative thresholds which constitute the limits or which may trigger other obligations. The Commission should be empowered to adopt **delegated acts**, including with a view to avoiding any divergent effects of the limits **or** arrangements applicable to comparable contracts on different venues.

in force. These limits **and** arrangements should be applied in a consistent manner and take account of the specific characteristics of the market in question. They should be clearly spelled out as regards to whom they apply and any exemptions thereto, as well as to the relevant quantitative **and qualitative** thresholds which constitute the limits or which may trigger other obligations. The Commission should be empowered to adopt **regulatory technical standards**, including with a view to avoiding any divergent effects of the limits **and** arrangements applicable to comparable contracts on different venues.

Or. en

Amendment 5

Proposal for a directive

Recital 87

Text proposed by the Commission

(87) Venues where the most liquid commodity derivatives are traded should publish an aggregated weekly breakdown of the positions held by different types of market participants, including the clients of those not trading on their own behalf. A comprehensive and detailed breakdown both by the type and identity of the market participant should be **made available** to the competent authority **upon request**.

Amendment

(87) Venues where the most liquid commodity derivatives are traded should publish an aggregated weekly breakdown of the positions held by different types of market participants, including the clients of those not trading on their own behalf. A comprehensive and detailed breakdown both by the type and identity of the market participant should be **notified** to the competent authority **on a regular basis**.

Or. en

Amendment 6

Proposal for a directive Recital 88

Text proposed by the Commission

(88) Considering the communiqué of G20 finance ministers and central bank governors of 15 April 2011 on ensuring that participants on commodity derivatives markets should be subject to appropriate regulation and supervision, the exemptions from Directive 2004/39/EC for various participants active in commodity derivative markets should be modified to ensure that activities by firms, which are not part of a financial group, involving the hedging of production-related and other risks as well as the provision of investment services in commodity or exotic derivatives on an ancillary basis to clients of the main business remain exempt, but that firms specialising in trading commodities and commodity derivatives are brought within this Directive.

Amendment

(88) Considering the communiqué of G20 finance ministers and central bank governors of 15 April 2011 on ensuring that participants on commodity derivatives markets should be subject to appropriate regulation and supervision, the exemptions from Directive 2004/39/EC for various participants active in commodity derivative markets should be modified to ensure that activities by firms, which are not part of a financial group, involving the hedging of production-related and other risks as well as the provision of investment services in commodity or exotic derivatives on an ancillary basis to clients of the main business remain exempt ***if the size or the impact of this activity is not significant on that market***, but that firms specialising in trading commodities and commodity derivatives are brought within this Directive.

Or. en

Amendment 7

Proposal for a directive Article 2 – paragraph 1 – point i – indent 3

Text proposed by the Commission

– provide investment services, other than dealing on own account, in commodity derivatives or derivative contracts included in Annex I, Section C 10 or emission allowances or derivatives thereof to the clients of their main business,

Amendment

– provide investment services, other than dealing on own account, in commodity derivatives or derivative contracts included in Annex I, Section C 10 or emission allowances or derivatives thereof to the clients of their main business, ***to the extent that the transactions involved in the investment services provided are directly***

related to the hedging of its main commercial business and physical activity,

Or. en

Amendment 8

Proposal for a directive

Article 2 – paragraph 1 – point i – paragraph 1

Text proposed by the Commission

provided that in all cases this is an ancillary activity to their main business, when considered on a group basis, and that main business is not the provision of investment services within the meaning of this Directive or banking services under Directive 2006/48/EC;

Amendment

provided that in all cases this is an ancillary activity to their main business, when considered on a group basis, and that ***the size and characteristics of the ancillary business neither represent a significant proportion of nor have a significant impact on the market in which the business operates, and that*** main business is not the provision of investment services within the meaning of this Directive or banking services under Directive 2006/48/EC;

Or. en

Amendment 9

Proposal for a directive

Article 2 – paragraph 3 – subparagraph 1

Text proposed by the Commission

The Commission shall adopt delegated acts in accordance with Article 94 concerning measures in respect of exemptions (c) and (i), to clarifying when an activity is to be considered as ancillary to the main business on a group level as well as for determining when an activity is provided in an incidental manner.

Amendment

ESMA shall develop draft regulatory technical standards concerning measures in respect of exemptions (c) and (i), to clarifying when an activity is to be considered as ancillary to the main business on a group level ***and specifying a threshold determining the market proportion and impact that shall be considered significant*** as well as for determining when an activity is provided in

an incidental manner.

Or. en

Amendment 10

Proposal for a directive

Article 2 – paragraph 3 – subparagraph 1a (new)

Text proposed by the Commission

Amendment

ESMA shall submit those draft implementing technical standards to the Commission by [31 December 2012].

Or. en

Amendment 11

Proposal for a directive

Article 2 – paragraph 3 – subparagraph 2 – introductory part

Text proposed by the Commission

Amendment

The criteria for determining whether an activity is ancillary to the main business shall take into account at least the following elements:

The criteria for determining whether an activity is ancillary to the main business ***and that the size and characteristics of the ancillary business neither represent a significant proportion of nor have a significant impact on the market in which the business operates*** shall take into account at least the following elements:

Or. en

Amendment 12

Proposal for a directive

Article 2 – paragraph 3 – subparagraph 2 – indent 2 a (new)

Text proposed by the Commission

Amendment

– the market share on the specific market and the size of positions held.

Or. en

Amendment 13

Proposal for a directive

Article 2 – paragraph 3 – subparagraph 3 (new)

Text proposed by the Commission

Amendment

The Commission shall be empowered to adopt delegated acts concerning regulatory technical standards referred to in subparagraph 1 in accordance with Articles 10 to 14 of Regulation (EU) N° 1095/2010.

Or. en

Amendment 14

Proposal for a directive

Article 4 – paragraph 2 – point 33 a (new)

Text proposed by the Commission

Amendment

33a) 'Excessive speculation' means a trading activity in any asset under contracts of sale of such asset for future delivery made on, or subject to the rules of, trading venues or OTC markets with respect to a significant price discovery contract, causing or presenting a significant risk of causing volatility, distortions or unwarranted changes in the orderly price formation of such asset or

causing price formation to diverge from fundamentals.

Or. en

Justification

Speculators are necessary to commodity markets to provide liquidity for bona fide hedging when there is an imbalance between the "long" and "short" hedgers. In some commodity markets, however, the volume of hedgers is less than that of speculators, leading to the risk of price levels and volatilities no longer being driven by the fundamentals. Defining 'excessive speculation' gives supervisory authorities and markets additional justification for intervening to protect the interests of hedgers.

Amendment 15

Proposal for a directive

Article 4 – paragraph 2 – point 33 b (new)

Text proposed by the Commission

Amendment

33b) A 'bona fide hedging transaction' means either:

(a) a transaction or position that

(i) represents a substitute for transactions made or to be made or positions taken or to be taken at a later time in a physical marketing channel;

(ii) is economically appropriate to the reduction of risks in the conduct and management of a commercial firm;

and

(iii) arises from the potential change in the value of

– assets that a person owns, produces, manufactures, processes, or merchandises or anticipates owning, producing, manufacturing, processing, or merchandising;

– liabilities that a person owns or anticipates incurring; or

– services that a person provides, purchases, or anticipates providing or

purchasing;

or

(b) a transaction or position that reduces risks attendant to a position resulting from a derivative that

(i) was executed opposite a counterparty for which the transaction would qualify as a bona fide hedging transaction pursuant to subparagraph (a); or

(ii) meets the requirements of subparagraph (a).

Or. en

Justification

To promote the economic benefits of commodity markets, it is important to have a definition of a hedge. Market supervision should promote the interests of those parties who have an exposure to commodity prices that is an unavoidable consequence of the business and not a bet on prices. Exemptions should be linked to this definition as they are in EMIR and under Dodd-Frank.

Amendment 16

Proposal for a directive Article 4 – paragraph 3

Text proposed by the Commission

3. *The Commission shall be empowered to adopt delegated acts in accordance with Article 94* concerning measures to specify *some* technical elements of the definitions laid down in paragraph 1 of this Article , to adjust them to market developments .

Amendment

3. *ESMA shall submit draft regulatory technical standards to the Commission* concerning measures to specify technical elements of the definitions laid down in paragraph 1 of this Article, *inter alia* to adjust them to market developments.

Or. en

Amendment 17

Proposal for a directive

Article 4 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. The Commission shall be empowered to adopt delegated acts concerning regulatory technical standards referred to in paragraph 3 in accordance with Articles 10 to 14 of Regulation (EU) N° 1095/2010.

Or. en

Amendment 18

Proposal for a directive

Article 59 – paragraph 1 – subparagraph 1 – introductory part

Text proposed by the Commission

Amendment

1. Member States shall ensure that regulated markets, operators of MTFs and OTFs which admit to trading or trade commodity derivatives **apply** limits on the number of contracts which any given **market members** or **participants** can enter into over a specified period of time, **or** alternative arrangements **with equivalent effect** such as position management with automatic review thresholds, to be imposed in order to:

1. Member States, **in close coordination with ESMA**, shall ensure that **competent authorities apply to** regulated markets, operators of MTFs and OTFs which admit to trading or trade commodity derivatives **as well as to OTC dealers ex ante and ex post** limits on the number of contracts **and market and notional values** of contracts which any given **person** or **persons as well as different classes of investors** can enter into over a specified period of time, **as well as additional** alternative arrangements **to complement** such **limits such** as position management with automatic review thresholds, to be imposed in order to:

Or. en

Amendment 19

Proposal for a directive

Article 59 – paragraph 1 – point (a)

Text proposed by the Commission

(a) support liquidity;

Amendment

(a) ***ensure sufficient market liquidity required by bona-fide hedging transactions and reduce volatility;***

Or. en

Amendment 20

Proposal for a directive

Article 59 – paragraph 1 – point (c)

Text proposed by the Commission

(c) ***support orderly pricing*** and settlement conditions.

Amendment

(c) ***ensure that the price discovery function*** and settlement conditions ***of the underlying market are not disrupted;***

Or. en

Justification

The primary aim of commodity market regulation must be to enable real economy producers and consumers to hedge, in an orderly market, at prices that represent, both in terms of level and volatility, the fundamental drivers of supply and demand rather than the volatile interests of the financial speculation.

Amendment 21

Proposal for a directive

Article 59 – paragraph 1 – point c a (new)

Text proposed by the Commission

Amendment

(ca) ***prevent, reduce or eliminate excessive speculation and price volatility.***

Or. en

Amendment 22

Proposal for a directive Article 59 – paragraph 1 – subparagraph 2

Text proposed by the Commission

The limits *or* arrangements shall be transparent and non-discriminatory, specifying the persons to whom they apply and any exemptions, and taking account of the nature and composition of market *participants* and of the use *they* make of the contracts admitted to trading. They shall specify clear quantitative thresholds such as the maximum number of contracts persons can enter, taking account of the characteristics of the underlying commodity *market*, including patterns of production, consumption and transportation to *market*.

Amendment

The limits *and* arrangements shall be transparent and non-discriminatory, specifying the persons to whom they apply and any exemptions, and taking account of the nature and composition of *the* market and of the use *such persons* make of the contracts admitted to trading. They shall specify clear quantitative *and qualitative* thresholds such as the maximum number *and market and notional values* of contracts into which persons *and different classes of investors* can enter, taking account of the characteristics of the underlying commodity *markets and their interaction with other markets*, including patterns of production, consumption, *intermediation* and transportation, *estimated and official levels of inventories including prepaid contracts, spare capacities and long-term supply and demand trends. Limits shall apply to cash and physically settled contracts as well as contracts any person holds in the spot-month and any subsequent delivery or settlement period. In setting the limits ESMA and Member States shall ensure that the legitimate interests of participants conducting bona-fide hedging activities are respected.*

Or. en

Amendment 23

Proposal for a directive Article 59 – paragraph 2

Text proposed by the Commission

2. Regulated markets, MTF **and** OTFs shall **inform** their competent authority of the details of the limits **or** arrangements. The competent authority shall communicate the same information to ESMA which shall publish and maintain on its website a database with summaries of the limits or arrangements in force.

Amendment

2. Regulated markets, MTF, OTFs **and OTC dealers** shall **notify** their competent authority of the details of the limits **and** arrangements. The competent authority shall communicate the same information to ESMA which shall publish and maintain on its website a database with summaries of the limits or arrangements in force. **The competent authority or ESMA may require the regulated markets, MTF, OTFs or OTC dealers to review the details of the limits and arrangements when they consider that the regulated markets, MTF, OTFs or OTC dealers do not satisfy the criteria defined in paragraph 1.**

Or. en

Amendment 24

Proposal for a directive Article 59 – paragraph 3

Text proposed by the Commission

3. **The Commission shall be empowered to adopt delegated acts in accordance with Article 94** to determine the limits **or alternative** arrangements on the number of contracts which any person can enter into over a specified period of time and the necessary **equivalent** effects of the **alternative** arrangements established in accordance with paragraph 1, as well as the conditions for exemptions. The limits **or alternative** arrangements shall take account of the conditions referred to in paragraph 1 and the limits that have been set by regulated markets, MTFs and OTFs. The

Amendment

3. **ESMA shall develop draft regulatory technical standards** to determine the **ex-ante** limits **and** arrangements on the number of contracts which any person can enter into over a specified period of time and the necessary effects of the **additional** arrangements **and the method of calculating positions** established in accordance with paragraph 1, the conditions for exemptions **as well as the relevant ratios of overall positions to aggregate positions resulting from bona fide hedging transactions required for establishing whether a situation of**

limits *or alternative* arrangements determined in the delegated acts shall also take precedence over any measures imposed by competent authorities pursuant to Article 72(1) paragraph (g) of this Directive.

excessive speculation arises or whether there is a significant risk of such situation arising. The limits *and* arrangements shall take account of the conditions referred to in paragraph 1 and the limits that have been set by regulated markets, MTFs and OTFs. The limits *and* arrangements determined in the delegated acts shall also take precedence over any measures imposed by competent authorities pursuant to Article 72(1) paragraph (g) of this Directive.

ESMA shall submit those draft implementing technical standards to the Commission by [31 December 2012]

Or. en

Amendment 25

Proposal for a directive Article 59 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. The Commission shall be empowered to adopt delegated acts concerning regulatory technical standards referred to in paragraph 3 in accordance with Articles 10 to 14 of Regulation (EU) N° 1095/2010.

The relevant ratio of overall positions to aggregate positions resulting from bona fide hedging transactions for establishing whether a situation of excessive speculation arises or whether there is a significant risk of such situation arising, as referred to in paragraph 3, shall be 3. The Commission shall be empowered to adopt delegated acts concerning regulatory technical standards modifying such threshold, taking into account developments in financial markets.

Or. en

Amendment 26

Proposal for a directive Article 59 – paragraph 4 – subparagraph 1

Proposal for a directive

Text proposed by the Commission

Amendment

Competent authorities shall not impose limits or alternative arrangements which are more restrictive than those adopted pursuant to paragraph 3 except in exceptional cases where they are objectively justified and proportionate taking into account the liquidity of the specific market and the orderly functioning of the market. The restrictions shall be valid for an initial period not exceeding six months from the date of its publication on the website of the relevant competent authority. Such a restriction may be renewed for further periods not exceeding six months at a time if the grounds for the restriction continue to be applicable. If the restriction is not renewed after that six-month period, it shall automatically expire.

deleted

Or. en

Amendment 27

Proposal for a directive Article 59 – paragraph 4

Text proposed by the Commission

Amendment

4. Competent authorities shall not impose limits or alternative arrangements which are more restrictive than those adopted pursuant to paragraph 3 except in exceptional cases where they are objectively justified and proportionate taking into account the liquidity of the

4. Competent authorities shall not impose limits or alternative arrangements which are more restrictive than those adopted pursuant to paragraph 3 except in exceptional cases where they are objectively justified and proportionate taking into account the liquidity of the

specific market and the orderly functioning of the market. The restrictions shall be valid for an initial period **not exceeding six months** from the date of its publication on the website of the relevant competent authority. Such a restriction may be renewed for further periods not exceeding six months at a time if the grounds for the restriction continue to be applicable. If the restriction is not renewed after that six-month period, it shall automatically expire.

When adopting more restrictive measures than those adopted pursuant to paragraph 3, competent authorities shall notify ESMA. The notification shall include a justification for the more restrictive measures. ESMA shall within 24 hours issue an opinion on whether it considers the measure is necessary to address the exceptional case. The opinion shall be published on ESMA's website.

Where a competent authority takes measures contrary to an ESMA opinion, it shall immediately publish on its website a notice fully explaining its reasons for doing so.

specific market and the orderly functioning of the market. The restrictions shall be valid for an initial period **duly specified by the competent authority** from the date of its publication on the website of the relevant competent authority. Such a restriction may be renewed for further periods not exceeding six months at a time if the grounds for the restriction continue to be applicable. If the restriction is not renewed after that six-month period, it shall automatically expire.

When adopting more restrictive measures than those adopted pursuant to paragraph 3, competent authorities shall notify ESMA. The notification shall include a justification for the more restrictive measures. ESMA shall within 24 hours issue an opinion on whether it considers the measure is necessary to address the exceptional case. The opinion shall be published on ESMA's website.

Where a competent authority takes measures contrary to an ESMA opinion, it shall immediately publish on its website a notice fully explaining its reasons for doing so.

When adopting more restrictive measures than those adopted pursuant to paragraph 3, competent authorities shall furthermore immediately inform the competent authorities of the home Member States of venues which trade the same relevant asset or class of assets

If a competent authority disagrees with the action taken by another competent authority on a financial instrument traded on different venues regulated by different competent authorities, ESMA may assist those authorities in reaching a diligent agreement in accordance with Article 19 of Regulation (EU) N° 1095/2010.

Or. en

Amendment 28

Proposal for a directive

Article 60 – paragraph 1 – introductory part

Text proposed by the Commission

Member States shall ensure that regulated markets, MTFs, *and* OTFs which admit to trading or trade commodity derivatives or emission allowances or derivatives thereof:

Amendment

Member States *and ESMA* shall ensure that regulated markets, MTFs, *OTFs and OTC dealers* which admit to trading or trade commodity derivatives or emission allowances or derivatives thereof:

Or. en

Amendment 29

Proposal for a directive

Article 60 – paragraph 1 – point a

Text proposed by the Commission

(a) make public a weekly report with the aggregate positions held by the different categories of *traders* for the different financial instruments traded on their platforms in accordance with paragraph 3;

Amendment

(a) make public a weekly report with the aggregate positions held by the different categories of *persons* for the different financial instruments traded on their platforms in accordance with paragraph 3;

Or. en

Amendment 30

Proposal for a directive

Article 60 – paragraph 1 – point a (new)

Text proposed by the Commission

Amendment

(aa) make public any significant gross or open position in the underlying asset or class of assets.

Or. en

Amendment 31

Proposal for a directive

Article 60 – paragraph 1 – point b

Text proposed by the Commission

(b) provide the competent authority with a complete breakdown of **the** positions of any or all **market members or participants, including any positions held on behalf of their clients, upon request**

Amendment

(b) provide the competent authority with a complete breakdown of **all** positions of any or all **position holders at the close of the preceding trading day on a daily basis**

Or. en

Amendment 32

Proposal for a directive

Article 60 – paragraph 1 – subparagraph 2

Text proposed by the Commission

The obligation laid down in point (a) shall only apply when both the number of **traders** and their open positions in a given financial instrument exceed minimum thresholds.

Amendment

The obligations laid down in point (a) **and (aa)** shall only apply when both the number of **persons** and their open positions in a given financial instrument exceed minimum thresholds.

Or. en

Amendment 33

Proposal for a directive

Article 60 – paragraph 2

Text proposed by the Commission

2. In order to enable the publication mentioned in point (a) of paragraph 1, Member States shall require **members and participants of regulated markets, MTFs and OTFs** to report to the respective trading venue the details of their positions in real-time, including any positions held

Amendment

2. In order to enable the publication mentioned in point (a) of paragraph 1, Member States shall require **all persons holding a position in a relevant financial instrument** to report to the respective trading venue **or, in the case of OTC contracts, directly to competent authorities** the details of their positions in

on behalf of their clients.

real-time, including any positions held on behalf of their clients *as well as whether the transaction is a bona fide hedging transaction*.

Or. en

Amendment 34

Proposal for a directive

Article 60 – paragraph 3 – introductory part

Text proposed by the Commission

3. The members, participants and their clients shall be classified by the regulated market, MTF or OTF as traders according to the nature of their main business, taking account of any applicable authorisation, as either:

Amendment

3. Persons holding a position in a relevant financial instrument shall be classified by the regulated market, MTF or OTF *or, whenever appropriate, competent authorities* as traders *following explicit guidelines and criteria defined by ESMA and* according to the nature of their main business, taking account of any applicable authorisation, as either:

Or. en

Amendment 35

Proposal for a directive

Article 60 – paragraph 3 – point d

Text proposed by the Commission

(d) commercial undertakings;

Amendment

(d) commercial undertakings *performing bona fide hedging transactions*;

Or. en

Amendment 36

Proposal for a directive

Article 60 – paragraph 3 – subparagraph 2

Text proposed by the Commission

The reports mentioned in point (a) of paragraph 1 should specify the number of long and short positions by category of **trader**, changes thereto since the previous report, percent of total open interest represented by each category, and the number of **traders** in each category.

Amendment

The reports mentioned in point (a) of paragraph 1 should specify the number **and market and notional values** of **gross and open** long and short positions by category of **position holder**, changes thereto since the previous report, percent of total **short and long** open interest represented by each category, and the number of **position holders** in each category.

Or. en

Amendment 37

Proposal for a directive

Article 60 – paragraph 3 – subparagraph 2 a (new)

Text proposed by the Commission

Amendment

For the purpose of the reports mentioned in points (a), (aa) and (b), the calculation of short and long gross and open positions as well as notional values held by the relevant person directly and indirectly, including through or by way of any index, basket of securities or any interest in any exchange traded fund or similar entity shall take into account whether different investment strategies are pursued in relation to a particular asset or class of assets through more than one separate fund managed by the same fund manager, whether the same investment strategy is pursued in relation to a particular asset and class of assets through more than one fund and whether more than one portfolio within the same entity is managed on a discretionary basis pursuing the same investment strategy in relation to a

particular asset or class of assets.

Or. en

Amendment 38

Proposal for a directive Article 60 – paragraph 4

Text proposed by the Commission

ESMA shall develop draft implementing technical standards to determine the format of the reports mentioned in point (a) of paragraph 1, and the content of the information to be provided in accordance with paragraph 2.

Amendment

ESMA shall develop draft implementing technical standards to determine the format of the reports mentioned in point (a) of paragraph 1, and the content of the information to be provided in accordance with paragraph 2 **and paragraph 1 of Article 59.**

Or. en

Amendment 39

Proposal for a directive Article 60 – paragraph 5 – subparagraph 1

Text proposed by the Commission

The Commission shall be empowered to adopt delegated acts in accordance with Article 94 concerning measures to specify the thresholds mentioned in the last subparagraph of paragraph 1 and to ***refine*** the categories of members, participants or clients mentioned in paragraph 3.

Amendment

ESMA shall develop draft regulatory technical standards concerning measures to specify the thresholds mentioned in the last subparagraph of paragraph 1 and to ***adopt the relevant guidelines, criteria and notification requirements for the specification of the*** categories of members, participants, ***OTC dealers***, or clients mentioned in paragraph 3.

Or. en

Amendment 40

Proposal for a directive

Article 60 – paragraph 5 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

ESMA shall submit those draft regulatory technical standards to the Commission by [31 December 2012].

Or. en

Amendment 41

Proposal for a directive

Article 60 – paragraph 5 – subparagraph 1 b (new)

Text proposed by the Commission

Amendment

The Commission shall be empowered to adopt delegated acts concerning the draft regulatory technical standards referred to in subparagraph 1 a in accordance with Articles 10 to 14 of Regulation (EU) N° 1095/2010.

Or. en

Amendment 42

Proposal for a directive

Article 60 – paragraph 5 – subparagraph 2 a (new)

Text proposed by the Commission

Amendment

For the purpose of paragraph 1 of Article 59, ESMA shall develop, in close coordination with the ESRB and other relevant sectoral supervisors from the Union and third countries, draft regulatory technical standards specifying a set of relevant indicators and thresholds required for the monitoring of the characteristics of underlying commodity

markets as well as the details of the granular and aggregate information to be provided by market participants, regulated markets, MTF and OTFs and trade repositories authorized under Regulation [EMIR] to relevant competent authorities, ESMA and the ESRB.

Or. en

Amendment 43

Proposal for a directive

Article 60 – paragraph 5 – subparagraph 2 b (new)

Text proposed by the Commission

Amendment

These indicators shall, in particular, be used by competent authorities and the ESMA division on commodities established in Article 35 of Regulation XXX [MIFIR] to proceed to a permanent and granular in-depth review of patterns of production, consumption, intermediation, transportation, estimated and official levels of inventories, including prepaid contracts, spare capacities, long-term supply and demand trends of underlying commodity markets as well as market volatility and correlation patterns of underlying commodity markets with other assets and classes of assets.

Or. en

Amendment 44

Proposal for a directive

Article 60 – paragraph 5 – subparagraph 2 c (new)

Text proposed by the Commission

Amendment

ESMA shall submit those draft regulatory

technical standards to the Commission by [31 December 2012].

Or. en

Amendment 45

Proposal for a directive

Article 60 – paragraph 5 – subparagraph 2 d (new)

Text proposed by the Commission

Amendment

The Commission shall be empowered to adopt delegated acts concerning the draft regulatory technical standards referred to in subparagraph 2 a in accordance with Articles 10 to 14 of Regulation (EU) N° 1095/2010.

Or. en