



Plenary sitting

B9-0345/2022

29.6.2022

MOTION FOR A RESOLUTION

pursuant to Rule 111(3) of the Rules of Procedure

on the Commission delegated regulation of 20 April 2022 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 and procedures for applying for exemption from position limits
(C(2022)02314 – 2022/2640(DEA))

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on behalf of the Verts/ALE Group

European Parliament resolution on the Commission delegated regulation of 20 April 2022 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 and procedures for applying for exemption from position limits (C(2022)02314 – 2022/2640(DEA))

The European Parliament,

- having regard to the Commission delegated regulation (C(2022)02314),
- 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/EU, in particular Article 57(1), sixth subparagraph, Article 57(3), fifth subparagraph, Article 57(6), Article 57(12) and Article 89(5),
- having regard to Directive (EU) 2021/338 of the European Parliament and of the Council of 16 February 2021 amending Directive 2014/65/EU as regards information requirements, product governance and position limits, and Directives 2013/36/EU and (EU) 2019/878 as regards their application to investment firms, to help the recovery from the COVID-19 crisis,
- having regard to the outcome of the G20 summit in Pittsburgh of 24-25 September 2009,
- having regard to the study prepared by the secretariat of the United Nations Conference on Trade and Development (UNCTAD) 2011 on Price Formation in Financialized Commodity Markets: The role of information,
- having regard to the European Securities and Markets Authority final report on technical standards for commodity derivatives published on 19 November 2021,
- having regard to DG Taxud Management Plan 2021 on the modernisation of the EU Customs Union outlining the vision of an economy that works for the people,
- having regard to the speech by President Von der Leyen at the European Parliament plenary on the preparation of the European Council meeting of 21-22 October 2021,
- having regard to the G7 Agriculture Ministers statement of 11 March 2022,
- having regard to Rule 111(3) of its Rules of Procedure,
- A. whereas the G20 Summit in Pittsburgh of 24-25 September 2009 committed to tackle excessive commodity price volatility, especially in the food markets, including by reforming the functioning of the international financial markets and agreed that transparency on OTC markets could be improved by registering contracts in a trade

repository¹ to address dangerous imbalances in the global economy;

- B. whereas the Food and Agriculture Organisation of the United Nations (FAO) is the main international source for data, market analysis and monitoring of market fundamentals for agricultural commodities; whereas the ability of any supervisor to intervene effectively depends upon the ability to collect reliable qualitative and quantitative data; whereas, at present, comprehensive data is not available particularly for off-exchange derivatives trading; whereas while traders on OTC commodity markets benefit from information that traders on organised futures exchanges provide for price discovery, they do not provide comparable information;
- C. whereas jurisdictions have adopted measures to increase the transparency of markets, such as the Dodd-Frank Act in the United States and the Markets in Financial Instruments Directive in the Union, with the Markets in Financial Instruments Directive introducing a harmonised position limits regime for derivative contracts in relation to commodities;
- D. whereas the financialisation of commodity trading has made the functioning of commodity exchange controversial; whereas the traditional functioning that facilitates price discovery and removes the risk from producers and consumers has been impaired to the extent that trading by financial investors has increased price volatility and driven up prices above levels that would have been determined by a physical commodity supply and demand relationship;
- E. whereas prices can move far from the levels justified by fundamentals for extended periods, leading to an increased risk of price bubbles and market distortion and, consequently, commodity prices do not always provide the correct signals thereby impairing the allocation of resources, leading to food crises and insecurity for the poorest;
- F. whereas a recent study² has pointed out that the net churn rate of the TTF traded gas hub, the primary gas pricing hub for the European gas market, has increased steadily over the past decade from 13,9 in 2011 to 114,5 in 2020, which suggests that the volumes of gas traded on that contract may be 114 times more important than related consumption; whereas commodities prices have been increasing over the past few years, in particular there has been a sharp increase in energy prices, with an unprecedented increase of 170 % in gas prices on global markets over the course of 2021³ and an increase of 200 % in wholesale electricity prices⁴;
- G. whereas the President of the European Commission at Parliament's plenary of October 2021 confirmed the links between the activities of financial markets and the price increase in the energy market and asserted that the Union 'must end speculation on

¹ Paragraph 13, Leaders' Statement of G20 Summit in Pittsburgh, September 2009.

<http://www.g20.utoronto.ca/2009/2009communiqué0925.html>

² The Oxford Institute for Energy Studies, *European Traded gas hubs: German hubs about to merge*, July 2021

³ <https://www.consilium.europa.eu/en/policies/energy-prices/>

⁴ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2021%3A660%3AFIN&qid=1634215984101#footnoteref2>

energy markets’;

- H. whereas the Russian aggression in Ukraine has further exacerbated the increasing trend in rapidly rising commodities prices, in particular food commodities prices, including as regards sunflower oil and wheat for which Russia and Ukraine account for 30 % of global exports; whereas the war has exacerbated existing price pressures and food inflation is accelerating and reached 7,5 % in May 2022⁵ in the euro-area; whereas the increase in prices of food commodities has a dreadful impact on people, especially on the most vulnerable; whereas the World Bank estimates that for each one percentage point increase in food prices, 10 million people are thrown into extreme poverty worldwide;
- I. whereas the G7 Agriculture Ministers’ statement of 11 March 2022⁶ declared that G7 Members ‘will not tolerate artificially inflated prices that could diminish the availability of food and agricultural products’ and committed to ‘fight against any speculative behaviour that endangers food security or access to food for vulnerable countries or populations’;
- J. whereas Parliament in its resolution of 24 March 2022 on the need for an urgent EU action plan to ensure food security inside and outside the EU in light of the Russian invasion of Ukraine⁷ stated that ‘food crises can be provoked by speculation on food commodities’ and called ‘on the Commission and the Member States to closely monitor the markets for agricultural and aquatic food products, paying particular attention to price speculations’;
- K. whereas the share of speculators (i.e. non-commercial financial operators, who do not have a specific interest in the use of the commodity) in the wheat and maize markets has risen sharply since the end of 2020, similarly to their share during the 2007-2008 food crisis, which suggests that prices may be deviating from grain market fundamentals and be more influenced by financial market dynamics⁸; whereas trading on financial markets surged in the immediate aftermath of the Russian attack, with major capital flows into agriculture-linked exchange traded funds (ETF), while some funds, such as Teucrium Wheat Fund, saw their daily trading volume multiplied by 100-fold in a few months and their share price went up and hit records⁹; whereas this intense financial activity led to a sharp increase in food and agricultural commodities prices on future markets, including wheat prices in the few days after the Russian attack, and to an unusually high volatility in the markets;
- L. whereas Directive (EU) 2021/338 of the European Parliament and of the Council¹⁰

⁵ https://www.ecb.europa.eu/pub/economic-bulletin/focus/2022/html/ecb.ebbox202204_06~4e32074619.en.html

⁶ <https://www.fas.usda.gov/sites/default/files/2022-03/g7-extraordinary-meeting-statement.pdf>

⁷ Texts adopted, P9_TA(2022)0099.

⁸ Centre for Development Research, University of Bonn, *Speculation risks in food commodity markets in the context of the 2022 price spikes - Implications for policy*, ZEF policy Brief 40, April 2022.

⁹ International Panel of Experts on Sustainable Food System, *Another perfect storm: How the failure to reform food systems has allowed the war in Ukraine to spark a third global food price crisis in 15 years, and what can be done to prevent the next one*, May 2022.

¹⁰ Directive (EU) 2021/338 of the European Parliament and of the Council of 16 February 2021 amending Directive 2014/65/EU as regards information requirements, product governance and position limits, and Directives 2013/36/EU and (EU) 2019/878 as regards their application to investment firms, to help the recovery

amending Directive 2014/65/EU changes the position limit regime, including by restricting the scope of the position limits regime to agriculture commodity derivatives and critical or significant commodity derivatives and by extending the exemption from the positions limit regime for risk reduction to financial entities;

- M. whereas against that background, the Commission adopted the delegated regulation of 20 April 2022 supplementing Directive 2014/65/EU that sets out the methodology for calculating position limits, including to implement the amendments made to Article 57 of the above mentioned Directive as part of the Capital Markets Recovery Package, without taking into consideration the current market developments, nor assessing the potential impact of the changes of the position limit regime on financial market activities;
- N. whereas this methodology keeps a baseline figure for the spot month position limit in an agricultural commodity derivative or in a critical or significant 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 2,5 % or as high as 35 %; whereas those limits have not been effective in preventing speculation on commodities;
- O. whereas the Union regime for position limits appears to be more permissive in comparison to those applied in other jurisdictions, in particular in the US in which 25 % is the upper limit for the spot market and 10 % the baseline for other months markets;
- P. whereas, for the most sensitive and highly liquid food contracts, the delegated act keeps a baseline of 20 % that does not fulfil the objective stated in Directive 2014/65/EU of preventing market abuse and supporting orderly pricing and settlement conditions, and therefore is not adequate to prevent food speculation in the Union;
- Q. whereas the definition of economically equivalent over-the-counter contracts (EEOTC) and of the 'same commodity derivative' remain excessively restrictive, opening the door to an easy circumvention of the position limits by introducing rather marginal changes such as changing the delivery date by only one day, in the contractual specifications of the commodity derivative; whereas the definition of open interest is broadened as it now includes reported positions in EEOTC and are to be calculated over a representative period of time instead of at a point in time, leading to possible discrepancy of competent authorities' interpretation; whereas the combination of these changes might lead to a significant increase of the position limit for other months' limits;
- R. whereas at the current juncture which is marked by high uncertainty and supply chain disruptions, where it is more important than ever to ensure that European financial markets support the real economy and to prevent shady market participants from making profits out of the war, the Commission has not explored whether more fundamental changes to the position limits regime were warranted and has kept provisions that have proven to be insufficient to put an end to food and energy

from the COVID-19 crisis (OJ L 68, 26.2.2021, p. 14).

speculation;

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 and ESMA to fully evaluate the role and extent of speculation in the determination of commodities prices and raw materials while emphasising the need to urgently enhance financial transparency of the market trading of commodities, especially for food, energy and raw materials for fertilisers against insider dealing, market manipulation and price distortions, by strengthening reporting requirements through public registers of activities of market dealers, brokers and traders;
4. Calls on the Commission to submit a new delegated act which takes account of the above concerns;
5. Instructs its President to forward this resolution to the Council and to the governments and parliaments of the Member States.