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*Plenary sitting*

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**B8-0147/2017**

8.2.2017

## **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)4362) (2016/3017(DEA))

**Fabio De Masi, Rina Ronja Kari, Marisa Matias, Paloma López Bermejo, Merja Kyllönen, Sabine Lösing, Tania González Peñas, Miguel Urbán Crespo, Lola Sánchez Caldentey, Xabier Benito Ziluaga, Estefanía Torres Martínez**

on behalf of the GUE/NGL 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)4362) (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)4362),
  - having regard to Article 290 of the Treaty on the Functioning of the European Union,
  - having regard to Directive 2014/65 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, and in particular Article 57 (3) and (12) thereof<sup>1</sup>,
  - 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/EC<sup>2</sup>,
  - having regard to the European Securities and Markets Authority (ESMA) draft RTS of 28 September 2015,
  - having regard to the letter of 27 November 2015 sent by its rapporteur and the Chair of its Economic and Monetary Affairs Committee to Commissioner Hill,
  - having regard to Rule 105(4) of its Rules of Procedure,
- A. whereas the deregulation of financial markets prior to the financial crisis of 2007/08 has significantly contributed to speculation with all types of financial instruments, including commodity derivatives;
- B. whereas there is a clear correlation between the financialisation of commodity markets and commodity prices, especially for foodstuffs; whereas the activities of financial participants tend to drive commodity prices away from levels justified by market fundamentals, with negative effects both on producers and consumers, especially the poorest;
- C. 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

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<sup>1</sup> OJ L 173, 12.6.2014, p. 349.

<sup>2</sup> OJ L 331, 15.12.2010, p. 84.

derivative contracts in relation to commodities in order to curb excessive speculation with commodity derivatives;

- D. 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;
- E. whereas Article 57(3) of Directive 2014/65/EU empowers the European Securities and Markets Authority (ESMA) to develop draft regulatory technical standards (RTS), 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;
- F. whereas ESMA issued the relevant RTS on 28 September 2015 ('RTS 21');
- G. whereas the objective of this RTS is to provide national competent authorities with the methodology for the calculation of position limits with the aim of establishing a harmonised position limit regime for derivatives traded on trading venues and their economically equivalent OTC contracts;
- H. whereas the European Parliament's MiFID II Negotiation Team has expressed serious concerns about ESMA's proposal both in writing and in public in the Economic and Monetary Affairs Committee (ECON Committee);
- I. whereas, as a response to some of these criticisms, on 1 December 2016 the Commission adopted the draft RTS proposed by ESMA on 28 September 2015 with changes;
- J. whereas Article 57(3) of Directive 2014/65/EU of the European Parliament and of the Council instructs ESMA to take into account the volatility of the relevant markets, including substitute derivatives and the underlying commodity markets, when drafting the RTS;
- K. whereas, with the RTS adopted by the Commission, competent authorities are still not obliged to take volatility into account to reduce limits, but have to use it only after they have established a situation of 'excessive volatility'; whereas a clear definition of 'excessive volatility' is missing;
- L. whereas the baseline position limit was reduced by the Commission as compared to the earlier ESMA proposal, but only for a very restricted number of food-related contracts, and only for the final (spot) month;
- M. whereas the national competent authority can still, at its own discretion, modulate the baseline figures within the range of 2.5% to 35%; whereas no provisions are made for the 'other months' phase of derivative contracts;

- N. whereas position limits for non-spot months are still based on open interest rather than deliverable supply as called for by the European Parliament in order to ensure a closer alignment of market prices with the underlying economic commodities;
- O. 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;
- P. whereas the aforementioned points imply that significant discretion remains for the competent authorities, thus potentially endangering the whole position limits regime agreed in level 1 MIFID II;
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 into account the aforementioned concerns and especially to include the following recommendations:
    - (a) reduce the ‘baseline’ position limit for the most sensitive and highly liquid food contracts to a maximum 15%,
    - (b) 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,
    - (c) redefine volatility so that it becomes a mandatory parameter in the methodology of setting the position limits;
  4. Instructs its President to forward this resolution to the Council and to the governments and parliaments of the Member States.