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Valdis Dombrovskis
Commissioner-designate for Financial Stability,
Financial Services and Capital Markets Union
European Commission
Rue de la Loi 200
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06.07.2016, Brussels

Dear Commissioner Hill, dear Commissioner-designate Dombrovskis,

In early May ESMA published its opinion containing amended draft standards on position limits (RTS 21) to which we would like to draw your attention as we understand that the related legal acts are to be adopted soon by the Commission. As we understand that the standards referred to in RTS 20 will be adopted by the Commission later on, we will address our concerns on these in a separate letter.

Unfortunately the changes proposed in ESMA's opinion as regards RTS 21 do not address in any substantive way the concerns repeatedly raised by the European Parliament negotiating team and in our view do not even address the intended changes to the adopted RTS notified by the Commission to ESMA.

- The European Parliament had requested that 'the regime sends a clear message to national competent authorities that they should set low position limits wherever liquidity allows'. This is clearly not the case:
 - ESMA modifies the lower limit (from 5% to 2,5%) but leaves the 25% baseline and 35% upper limit unchanged. Moreover, for commodity derivatives traded on a trading venue with a total combined open interest in spot and other months' contracts in excess of 10,000 but not exceeding 20,000 lots over a consecutive three month period, competent authorities shall set the spot and other months' position limit between 5% and 50%;
 - the lower limit would only apply to a limited number of very liquid commodity derivatives: 'contracts exceeding 50,000 lots over a consecutive three month period',
 - these contracts must be linked *directly* to human consumption: the underlying must qualify as 'as food intended for human consumption'; this means that essential commodities to which food prices are very closely correlated, such as feed and energy, are excluded.
 - Raising limits to 50% is unacceptable. Moreover, the way this is framed - "not exceeding 20,000 lots over a consecutive three month period" - means it will apply to a large set of contracts that are in reality liquid.
- The European Parliament had recommended to use deliverable supply as the basis for non-spot months limits. Should ESMA and afterwards the Commission decline to follow this approach then the European Parliament had requested to set open interest based limits



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'considerably lower'. Instead, ESMA has included in the updated drafts a vague recommendation to competent authorities to adjust position limits 'downwards' or 'upwards' if the open interest is 'significantly higher/lower' than the deliverable supply. Moreover, ESMA dilutes spot month limits by widening the definition of deliverable supply to include 'any substitute grades or types of a commodity'.

- The EP had demanded that 'contracts with highly correlated economic outcomes count towards the same position limit'. ESMA's revised definition of economically equivalent OTC contracts (EEOC) still means that it is only met by contracts that are identical except for 'different lot size specifications' and 'delivery dates diverging by less than one calendar day'. These changes are so minimal that they cannot prevent the circumvention of limits.
- The EP has repeatedly pointed out that volatility is 'a parameter which needs to be reflected in the standard, in line with the level 1 mandate'. ESMA has once again ignored the explicit legislative mandate it has been given and failed to factor in the volatility of markets in its proposed methodology.

Based on the above, we can only conclude that ESMA has not delivered on the key changes requested by the European Parliament and by the notifications letter of the Commission. This being the case, we strongly urge the Commission to substantially amend the standard 21 as adopted by ESMA so as to integrate the demands outlined above and to engage in discussion on its last draft to the EP before adoption. In the current troubled times the EU has an obligation to deliver tangible proof to its citizens of its commitment to do whatever it takes to fight against excessive speculation on vital commodities which affects the lives of billions of people and we will hold the Commission accountable for the delivery technical specifications which are up to the mandate of the already adopted MIFID legislation. The time of false promises must be over. We appeal to the EU commission to deliver strong standards which limit food and commodity speculation effectively in line with the expectation of the citizens.

Truly yours,

Sven Giegold
Bas Eickhout
Rebecca Harms
Martin Häusling
Eva Joly
Philippe Lamberts
Ulrike Lunacek
Molly Scott Cato
Bart Staes
Ernest Urtasun