RTS 29: Draft regulatory technical standards on methodology for calculating position limits for commodity derivatives traded on trading venues and economically equivalent OTC contracts

COMMISSION DELEGATED REGULATION (EU) No …/..

of [date]

supplementing Directive 2014/65/EU [MiFID II] of the European Parliament and of the Council with regard to regulatory technical standards on methodology for calculating position limits for commodity derivatives traded on trading venues and economically equivalent OTC contracts

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Directive 2014/65/EU [MiFID II] of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments, and in particular Article 57 (3).

Whereas:

(1) Article 57(1) of Directive 2014/65/EU requires that Member States shall ensure that competent authorities, in line with the methodology for calculation determined by ESMA, 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 OTC contracts.

(2) Article 57(3) of Directive 2014/65/EU requires the methodology for calculation to take into account at least the following factors: the maturity of the commodity derivative contracts; the deliverable supply in the underlying commodity; the overall open interest in that contract and the overall open interest in other financial instruments with the same underlying commodity; the volatility of the relevant markets, including substitute derivatives and the underlying commodity markets; the number and size of the market participants; the characteristics of the underlying commodity market, including patterns of production, consumption and transportation to market; and the development of new contracts.

(3) The methodology shall ensure a consistent approach for the calculation of position limits by national competent authorities in order to establish a harmonised position limits regime across commodity derivatives traded on trading venues and economically equivalent OTC contracts across different markets. However, the methodology shall also enable national competent authorities to take into account the specific characteristics of the market in question, by applying the relevant factors for calculating position limits in a manner that takes into account appropriately the impact and significance of the different characteristics of the relevant commodity derivative, commodity, and its underlying market and which can therefore meet the objectives of supporting orderly pricing and settlement conditions, the integrity of the market and the underlying commodity, and price discovery on the market for the underlying commodity.

(4) The methodology will apply separate calculation factors based on the maturity of the commodity derivative in order to establish the position limit for the spot month and the position limit for other months.

(5) The national competent authority shall base deliverable supply in the underlying commodity on the measure of deliverable supply that is calculated by the trading venue for that commodity derivative for both physically settled and for cash settled commodity derivatives. However, as that measure of deliverable supply might not reflect accurately the wider deliverable supply in the underlying commodity, the national competent authority shall be able adjust the measure of deliverable supply calculated by trading venues, to take into account deliverable supply held outside trading venues and other factors relating to that commodity and its market such as capacity constraints on production or delivery that could determine the deliverable supply.

(6) The national competent authority shall base overall open interest in a commodity derivative contract and the overall open interest in other financial instruments with the same underlying commodity on the open interest on the volume of open interest calculated by the trading venue for that commodity derivative. The national competent authority may use open interest in other commodity derivatives that have the same underlying to more appropriately reflect the activity in that contract.

(7) The national competent authority shall consider the volatility of the relevant market in a commodity derivative by receiving information on the price movements for that commodity derivative from the trading venue for that commodity derivative, as well that of any substitute derivatives and their underlying commodity. The national competent authority will also take into account volatility in its consideration of the other factors such as deliverable supply, the maturity of the contract, and the characteristics of the underlying commodity market which may impact on the volatility of the commodity derivative.

(8) The national competent authority shall consider broadly the characteristics of the underlying commodity market, including patterns of production, consumption, and transportation to the market. Different bespoke features of different commodity markets and their underlying commodities could have a significant impact on the functioning of the commodity derivative and its market and the positions taken in those markets. Therefore, the national competent authority shall take into account a wide range of potential factors and ensure that their impact and significance is taken into account appropriately when calculating position limits in order to ensure that all relevant factors are addressed.

(9) Position limits should not create barriers to the development of new commodity derivatives. The national competent authority shall apply position limits that are sufficiently high to support the development of a new commodity derivative by ensuring that position limits do not constrain liquidity for new commodity derivatives or adversely impact on the orderly pricing and settlement conditions for that commodity derivative. Position limits should take into account the time required to develop and attract liquidity on both new and existing commodity derivatives, and in particular such commodity derivatives that may be supporting bespoke or immature markets or be seeking to develop new hedging arrangements in new commodities.

(10) The national competent authority of the trading venue for the commodity derivative will calculate a baseline position limit for the commodity derivative based on 25% of the deliverable supply for the contract or contracts to which the position limit shall apply. The baseline shall be specified in the number of lots of the relevant commodity derivative.

(11) The national competent authority shall apply the relevant factors in Article 57(3) of Directive 2014/65/EU to the baseline position to ensure that the position limit takes into account appropriately the impact and significance of specific characteristics of that commodity derivative, the relevant commodity market, and the underlying commodity.

(12) The national competent authority shall be able to vary the application of the relevant factors and the relationship between those factors across different commodity derivatives to reflect appropriately the different features, functioning, and characteristics of that commodity derivative, commodity market, and the underlying commodity.

(13) National competent authorities shall be able to either increase or decrease the baseline position by an additional 15% so that no position limit is higher than 40% of deliverable supply or by lowering the baseline by no more than an additional 15% so that no position limit is lower than 10% of deliverable supply, based on its consideration of the relevant factors.

(14) National competent authorities shall take into account the experience of trading venues that commodity derivatives are traded on to ensure that national competent authorities'

position limits and the trading venues position management regime are complementary in order to support orderly pricing and settlement conditions, the integrity of the market and the underlying commodity, and price discovery on the market for the underlying commodity.

(15) National competent authorities shall periodically review the methodology used to calculate a position limit for a commodity derivatives to ensure that the methodology sufficiently and appropriate takes into account the specific features, functions, and characteristics of specific commodity derivatives, commodity markets, and the underlying commodity and supports orderly pricing and settlement conditions, the integrity of the market and the underlying commodity, and price discovery on the market for the underlying commodity.

(16) This Regulation is based on the draft regulatory technical standards submitted by the European Securities and Markets Authority to the Commission.

(17) In accordance with Article 10 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council, the European Securities and Markets Authority has conducted open public consultations on the draft regulatory technical standards, analyzed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group established in accordance with Article 37 of that Regulation.

HAS ADOPTED THIS REGULATION:

Article 1

The methodology for the calculation to be applied in establishing position limits

[Article 57(3) of Regulation (EU) No 600/2014]

(1) The competent authority, or central competent authority as specified in Article x, shall calculate a spot month positon limit and an other months' position limit for each commodity derivative traded on a trading venue for which it is the competent authority, or central competent authority as specified in Article x, based on the methodology for calculation set out in this Regulation. The position limits shall apply to both physically settled and cash settled commodity derivatives.

(2) The competent authority shall, for each commodity derivative traded on a trading venue for which it is the competent authority, or central competent authority as specified in Article x, determine a baseline figure on the basis of the deliverable supply for that commodity derivative. The deliverable supply shall be that which is used either as settlement for, or a pricing reference to, that commodity derivative.

(3) The baseline figure shall be 25% of the deliverable supply for the commodity derivative to which the position limit shall apply. The baseline figure shall be specified in the number of lots of the relevant commodity derivative with the definition of lot being the unit of quantity used by the trading venue on which the commodity derivative contract trades

(4) The competent authority, or central competent authority as specified in Article x, shall assess the potential impact of each of the factors specified under Articles 2 to 8 on the trading of the commodity derivative when determining the exact size of the position limits for the spot month and for other months.

(5) Where the competent authority, or central competent authority as specified in Article x, assesses that one or more of the factors specified under Articles 2 to 8 may have such an impact that the baseline figure for the position limit requires adjustment, the competent authority, or central competent authority as specified in Article x, may vary the baseline by either increasing it by no more than an additional 15% so that no position limit is higher than 40% of deliverable supply or by lowering the baseline by no more than an additional 15% so that no position limit is lower than 10% of deliverable supply.

(6) The position limits shall be specified in lots with the definition of lot being the unit of quantity used by the trading venue on which the commodity derivative contract trades.

Article 2

The maturity of the commodity derivatives contracts

[Article 57(3)(a) of Regulation (EU) No 600/2014]

1. The competent authority, or central competent authority as specified in Article x, shall assess whether the maturity of the commodity derivative is such that the baseline figure for the position limit for other months' requires adjustment. Any adjustment made to the baseline figure for the position limit shall be based on the principle that there is a commonality between the length of the maturity of a commodity derivative and the level of the position limit so that the longer the maturity of a commodity derivative, the higher the overall position limit.

2. The competent authority, or central competent authority as specified in Article x, shall also have regard to the frequency of expiries of the commodity derivative contract and take into consideration whether expiration occurs on a daily, monthly or less frequent basis. Any adjustment made to the baseline figure for the position limit in relation to the frequency of expiry of the commodity derivative contract shall be based on the principle that there is a correlation between the frequency of expiry of a commodity derivative contract and the level of the position limit so that the greater the frequency of expiry of a commodity derivative contract, the higher the overall position limit.

Article 3
The deliverable supply in the underlying commodity

[Article 57(3)(b) of Regulation (EU) No 600/2014]

1. The competent authority, or central competent authority as specified in Article x, shall assess whether the deliverable supply in the underlying commodity is such that the baseline figure for the position limit requires adjustment. The deliverable supply shall be that which is used either as settlement for, or a pricing reference to, a commodity derivative contract.

2. Where relevant to the activity of the underlying markets, the competent authority, or central competent authority as specified in Article x, may decide to take into consideration the capacity to take or make delivery. Any adjustment made to the baseline figure for the position limit shall be based on the principle that there is a commonality between the quantity of the deliverable supply in the underlying commodity and the level of the position limit so that the greater the quantity of deliverable supply in the underlying commodity, the higher the overall position limit.

Article 4
The overall open interest

[Article 57(3)(c) of Regulation (EU) No 600/2014]

1. The competent authority, or central competent authority as specified in Article x, shall assess whether the overall open interest in the commodity derivative and the overall open interest in other financial instruments with the same underlying commodity markets is such that the baseline figure for the position limit requires adjustment. Any adjustment made to the baseline figure for the position limit shall be based on the principle that there is a commonality between the volume of overall open interest in the commodity derivative and the overall open interest in other financial instruments with the same underlying commodity markets and the level of the position limit so that the greater the volume of overall open interest, the higher the overall position limit.

2. Financial instruments which are merely linked to the commodity derivative will not be included for the purposes of the calculation of the volume of the overall open interest of that commodity derivative.

Article 5
The volatility of the relevant markets

[Article 57(3)(d) of Regulation (EU) No 600/2014]

The competent authority, or central competent authority as specified in Article x, shall assess whether the volatility of the relevant markets in the commodity derivative is such that the baseline figure for the position limit requires adjustment. Any adjustment made to the baseline figure for the position limit shall be based on the principle that there is a commonality between the level of volatility in the markets relevant to the commodity derivative and the level of the position limit so that the greater the level of volatility, the lower the overall position limit.

Article 6
The number and size of market participants

[Article 57(3)(e) of Regulation (EU) No 600/2014]

1. The competent authority, or central competent authority as specified in Article x, shall assess whether the number and size of market participants that hold a position in the commodity derivative is such that the baseline figure for the position limit requires adjustment. Any adjustment made to the baseline figure for the position limits shall be based on the principle that there is a commonality between the number and size of market participants that hold a position in the commodity derivative and the level of the position limit so that the greater the number of position holders, the lower the overall position limit.

2. The competent authority, or central competent authority as specified in Article x, shall also have regard to whether the proposed level of position limits may result in increased volatility.

Article 7
Characteristics of the underlying commodity market

[Article 57(3)(f) of Regulation (EU) No 600/2014]

1. The competent authority, or central competent authority as specified in Article x, shall assess whether the characteristics of the underlying commodity market is such that the baseline figure for the position limit requires adjustment. Any adjustment made to the baseline figure for the position limit shall be based on the principle that there is a commonality between the flexibility of the underlying commodity market and the level of the position limit so that the greater the flexibility of the underlying commodity market, the higher the position limit.

2. In considering the extent to which the underlying commodity market is flexible, the competent authority, or central competent authority as specified in Article x, shall have regard to:

(a) Whether there are restrictions on the supply of the commodity including but not limited to;

(i) The perishability of the deliverable commodity;

(b) The method of transportation and delivery of the physical commodity including but not limited to;

   (i) Whether the commodity can be delivered to specified delivery points only; and

   (ii) The capacity constraints of specified delivery points; and

(c) The structure and the operation of the market, including but not limited to:

   (i) The seasonality present in extractive and agricultural commodity markets whereby physical supply fluctuates over the calendar year;

(d) The features of the underlying commodity.

Article 8
Development of new contracts

[Article 57(3)(g) of Regulation (EU) No 600/2014]

1. The competent authority, or central competent authority as specified in Article x, shall assess whether the development of a new commodity derivative contract is such that the baseline figure for the position limit requires adjustment. Any adjustment made to the baseline figure for the position limit shall be based on the principle that there is a correlation between the development of a new commodity derivative contract and the level of the position limit so that the position limit shall be set at a higher level for new contracts. In undertaking this assessment, the competent authority, or central competent authority as specified in Article x shall take into account the commonality between the development of a new commodity derivative contract and the number and size of market participants that hold a position in the commodity derivative as specified under Article 6 and the amount of the overall open interest as specified under Article 4.

2. The competent authority, or central competent authority as specified in Article x, shall review the level of trading in the new commodity derivative contract regularly and adjust the position limits for the spot month and the other months when it judges that the commodity derivative contract is established.

Article 9
Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

It shall apply from 3 January 2017.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the Commission

The President

On behalf of the President

[Position]