

Commission Delegated Regulation (EU) 2017/567 of 18 May 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to definitions, transparency, portfolio compression and supervisory measures on product intervention and positions (Text with EEA relevance)

CHAPTER V

SUPERVISORY MEASURES ON PRODUCT INTERVENTION AND POSITION MANAGEMENT

SECTION 2

Position management powers

Article 22

Position management powers of ESMA(Article 45 of Regulation (EU) No 600/2014)

1 For the purposes of Article 45(2)(a) of Regulation (EU) No 600/2014, the criteria and factors determining the existence of a threat to the orderly functioning and integrity of financial markets, including commodity derivative markets in accordance with the objectives listed in Article 57(1) of Directive 2014/65/EU and in relation to delivery arrangements for physical commodities, or to the stability of the whole or part of the financial system in the Union shall be the following:

- a the existence of serious financial, monetary or budgetary problems which could lead to the financial instability of a Member State or a financial institution deemed important to the global financial system, including credit institutions, insurance companies, market infrastructure providers and asset management companies operating within the Union, provided that these problems could threaten the orderly functioning and integrity of financial markets or the stability of the financial system within the Union;
- b a rating action or a default by a Member State or a credit institution or other financial institution deemed important to the global financial system, such as insurance companies, market infrastructure providers and asset management companies operating within the Union, that causes or may reasonably be expected to cause severe uncertainty about their solvency;
- c substantial selling pressures or unusual volatility causing significant downward spirals in any financial instrument related to any credit institution or other financial institutions deemed important to the global financial system, such as insurance companies, market infrastructure providers and asset management companies operating within the Union and sovereign issuers;
- d any damage to the physical structures of important financial issuers, market infrastructures, clearing and settlement systems or competent authorities which may adversely and significantly affect markets in particular where such damage results from a natural disaster or a terrorist attack;
- e a disruption in any payment system or settlement process, in particular where it is related to interbank operations, which causes or may cause significant payments or settlement failures or delays within the Union payment systems, especially when these

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may lead to the propagation of financial or economic stress in a credit institution or other financial institutions deemed important to the global financial system, such as insurance companies, market infrastructure providers and asset management companies or in a Member State;

- f a significant and abrupt decrease in the supply of a commodity or an increase in the demand of a commodity, which disrupts the supply and demand balance;
 - g a significant position in a certain commodity held by one person, or by several persons acting in concert, in one or several trading venues, through one or several market members;
 - h an inability of a trading venue to exercise its own position management powers due to a business continuity event.
- 2 For the purposes of Article 45(1)(b) of Regulation (EU) No 600/2014 the criteria and factors determining the appropriate reduction of a position or exposure shall be the following:
- a the nature of the holder of the position, including producers, consumers or financial institution;
 - b the maturity of the financial instrument;
 - c the size of the position relative to the size of the relevant commodity derivative market;
 - d the size of the position relative to the size of the market for the underlying commodity;
 - e the direction of the position (short or long) and delta or ranges of delta;
 - f the purpose of the position, in particular whether the position serves hedging purposes or whether it is held for financial exposure;
 - g the experience of a position holder in holding positions of a given size, or in making or taking delivery of a given commodity;
 - h the other positions held by the person in the underlying market or in different maturities of the same derivative;
 - i the liquidity of the market and the impact of the measure on other market participants;
 - j the method of delivery.

- 3 For the purposes of Article 45(3)(b) of Regulation (EU) No 600/2014, the criteria specifying the situations where a risk of regulatory arbitrage may arise shall be the following:
- a whether the same contract is traded in a different trading venue or OTC;
 - b whether a substantially equivalent contract is traded on a different venue or OTC (similar and interrelated, but not considered part of the same fungible open interest);
 - c the effects of the decision on the market of the underlying commodity;
 - d the effects of the decision on markets and participants not subject to ESMA's position management powers; and
 - e the likely effect on the orderly functioning and integrity of the markets absent ESMA action.

- 4 For the purposes of Article 45(2)(b) of Regulation (EU) No 600/2014, ESMA shall apply the criteria and factors set out in paragraph 1 of this Article taking into account whether the envisaged measure responds to a failure to act by a competent authority or to an additional risk which the competent authority is not able to sufficiently address pursuant to Article 69(2) (j) or (o) of Directive 2014/65/EU.

For the purposes of the first subparagraph, a competent authority shall be considered as failing to act where, based on the powers conferred to it, it has at its disposal sufficient regulatory powers to fully address the threat at the time of the event without the assistance of any other competent authority, but fails to take such action.

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A competent authority shall be considered as being unable to sufficiently address a threat where one or more of the factors referred to in Article 45(10)(a) of Regulation (EU) No 600/2014 occur within the jurisdiction of a competent authority and in one or more additional jurisdictions.

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Changes and effects yet to be applied to :

- Regulation power to modify conferred by [2023 c. 29 s. 3 Sch. 1 Pt. 13](#)
- Regulation revoked by [2023 c. 29 Sch. 1 Pt. 13](#)
- Art. 22 omitted by [S.I. 2018/1403 reg. 61\(3\)](#)

Changes and effects yet to be applied to the whole legislation item and associated provisions

- Signature words omitted by [S.I. 2018/1403 reg. 61\(4\)](#)
- Art. A1 inserted by [S.I. 2018/1403 reg. 58](#)
- Art. A1 words substituted in earlier amending provision [S.I. 2018/1403, reg. 58](#) by [S.I. 2020/1301 reg. 3Sch. para. 12\(v\)](#)
- Art. 5(1)(b) words substituted by [S.I. 2018/1403 reg. 59\(2\)\(a\)\(iii\)](#)
- Art. 5(1)(c) words substituted by [S.I. 2018/1403 reg. 59\(2\)\(a\)\(iii\)](#)
- Art. 5(1A)-(1C) inserted by [S.I. 2018/1403 reg. 59\(2\)\(b\)](#)
- Art. 5(1A) word substituted by [S.I. 2023/1410 reg. 20\(a\)](#)
- Art. 5(1A)-(1C) words substituted in earlier amending provision [S.I. 2018/1403, reg. 59\(2\)\(b\)](#) by [S.I. 2020/1301 reg. 3Sch. para. 12\(w\)](#)
- Art. 5(3)(b)(iii) word substituted by [S.I. 2018/1403 reg. 59\(2\)\(d\)\(ii\)](#)
- Art. 5(4)-(6) inserted by [S.I. 2018/1403 reg. 59\(2\)\(e\)](#)
- Art. 5(6) word omitted by [S.I. 2023/1410 reg. 20\(b\)](#)
- Art. 14(1)(a) words substituted by [S.I. 2018/1403 reg. 60\(a\)](#)
- Art. 14(1)(d) words substituted by [S.I. 2018/1403 reg. 60\(b\)](#)
- Art. 21(2)(b) words substituted by [S.I. 2018/1403 reg. 61\(2\)\(c\)\(ii\)](#)
- Art. 21(2)(s) words substituted by [S.I. 2018/1403 reg. 61\(2\)\(c\)\(iii\)](#)