Brussels, 23 April 2015

MiFID II and agricultural commodities

Joint views of the EU agricultural supply chains on the level 2 legislation

To: Members of the European Parliament;

European Commission;

Ministers of Finance;

Ministers of Agriculture;

ESMA Board of Supervisors.

Our organisations, representing the EU agricultural supply chains, support the declared objectives of MiFID II to provide for more transparency in the markets, to reduce volatility and to guarantee that financial markets support hedging the risks connected to the uncertainties of agricultural production, trading and related activities. In this crucial phase when the implementing rules for MiFID II are being decided upon, our organisations would like to express their views, share concerns and propose solutions to ensure that agricultural commodity markets continue to function well and to fulfil the objectives laid out by MiFID.

Our members are farmers, cooperatives, collectors, traders and food and feed processors that use derivatives to manage risks for their own physical operations and for their customers to the benefit of, maintaining stable food prices for consumers and to offer food, feed and non-food products at a reasonable cost to customers and consumers. We are very concerned about the potential for unintended consequences of the proposed approach for the level 2 legislation, i.e. Regulatory Technical Standards to be drafted by ESMA, in particular concerning the definition of hedging and the application of the thresholds for ancillary activity.

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The current approach as proposed by ESMA would subject participants in the agricultural supply chain, such as farmers, collectors and food/feed processors, to the financial regulation burden. This would in turn have negative impact on market liquidity and a commensurate increase in volatility – the very outcome the legislation is seeking to avoid, as its primary impact would be on the costs of risk management for farmers, traders and food/feed producers.

We have a very real concern that the impact on farmers and collectors of the legislation is reduced opportunity for price risk management and increased market volatility. This would force economic operators to develop buffer tools to cope with volatility, which will increase operating costs and ultimately prices for consumers. Moreover, our members operate in a globalised market for agricultural commodities; if EU rules are disconnected from those of other jurisdictions, EU operators will be hindered by a competitive disadvantage. Small and medium-size players that cannot chose hedging tools outside the EU will be the first victims of this approach.

The members of our associations call upon the EU decision-makers and ESMA to carefully consider the consequences that a short-sighted approach could bring to the agricultural markets and to European consumers. We trust that the concerns of our sectors will be taken into account.

Thanking you in advance for your consideration, we would like to draw your attention to the annex, where more specific information is provided on the crucial issues that the MiFID II regulatory technical standards need to address.

Yours sincerely,

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Annex

Agricultural market operators consider paramount that ESMA provides for a sensible and workable definition of hedging, i.e. of derivatives objectively measureable as reducing risk directly related to commercial activity.

We understand the need for consistency with the EMIR definition, which we consider appropriate. However, the clarification to the definition provided today in the EMIR Q&A is rather unhelpful and creates practical problems in being able to achieve hedging status. Risk management systems are based around an analysis of positions and not transactions. Positions are created through transactional activity but the character of an individual position and the transactions that led to it can change over time. The key measure for commercial firms is whether the portfolio of positions is risk reducing.

If operators cannot demonstrate that their positions are risk-reducing because of an inappropriate hedging definition and process, then they will not be able to demonstrate the ancillary nature of their financial activity due to the low thresholds currently proposed. The results will be a classification of the great majority of actors in the agricultural markets as financial operators: they will not be able to properly hedge their risks anymore and will be subject to the costly burden of financial regulations, the consequence of which will be suffered over the whole supply chain, from the farmers to the consumers.

As an alternative to demonstrate hedging status, we propose to develop a process as it already exists with the US CBOT for the US agricultural contracts. The US contracts are the most liquid and widely traded contracts in the agricultural markets globally and have been subject to a position limit framework that has been in place for many years. Most firms active in the agricultural markets will utilise these US markets as part of their global risk management activities. It is strongly preferable for the approach to consider hedging to be as consistent globally as possible.

Our members are also very concerned about the potential for unintended consequences of the proposed application of the ancillary activity thresholds.

This issue stems from the definition of hedging, as described above. If risk-reducing positions cannot be considered as hedge, then the ancillary activity thresholds as they are currently proposed are extremely too low. They would subject participants in the agricultural supply chain to the financial regulation burden.

Our organisations recommend that ESMA considers the specific characteristics of each commodity asset class as they differ by nature and number of participants. The threshold for the agricultural commodity asset class should be increased to avoid a large number of agricultural market participants to be excluded from the exemption for ancillary activity. We also believe that the most appropriate way to deal with freight is to subsume it within one of the other categories. A possible approach for this would be to allow a firm to determine which is the primary commodity category for that firm before considering freight. If this is not possible, then the threshold for freight needs to be significantly higher.

COCERAL is the European association of cereals, rice, feedstuffs oilseeds, olive oil, oils and fats and agrosupply trade. It represents the interest of the European collectors, traders, importers, exporters and port silo storekeepers of the above mentioned agricultural products. COCERAL's full members are 26 national associations in 18 countries, and 1 European association [Unistock]. With about 2500 companies as part of COCERAL national members, the sector trades agricultural raw materials destined to the supply of the food and feed chains, as well as for technical and energy uses.

Copa-Cogeca is the united voice of farmers and agri-cooperatives in the EU. Together, they ensure that EU agriculture is sustainable, innovative and competitive, guaranteeing food security to half a billion people throughout Europe. Copa represents over 23 million farmers and their families whilst Cogeca represents the interests of 22,000 agricultural cooperatives. They have 66 member organisations from the EU member states.

FEDIOL, the EU vegetable oil and proteinmeal industry association, represents the interests of the European seed and bean crushers, meal producers, vegetable oils producers, refiners and bottlers. FEDIOL's members are 12 national associations and associated company members in 5 other EU countries. With about 150 facilities in Europe the sector provides 20.000 direct employments. Its members process approximately 36 million tonnes of basic products a year, both of EU origin and imported from third country markets.

FEFAC is the European Compound Feed Manufacturers' Federation. FEFAC represents 24 national Associations in 23 EU Member States as well as Associations in Switzerland, Turkey, Croatia, Serbia, Russia and Norway with observer/associate member status, and is the only independent spokesman of the European Compound Feed Industry at the level of the European Institutions. The European compound feed industry employs over 110,000 persons on app. 4,000 production sites often in rural areas, which offer few employment opportunities.

FoodDrinkEurope represents the European food and drink industry, the largest manufacturing sector in the EU in terms of turnover and employment. It aims to promote the industry's interests to European and international institutions, contributing to a framework addressing, inter alia, food safety and science, nutrition and health, environmental sustainability and competitiveness.

Starch Europe is the trade association which represents the interests of the EU starch industry both at European and international level. Its membership comprises 24 EU starch producing companies, together representing more than 95% of the EU starch industry, and in associate membership, 7 national starch industry associations. Before October 2014 Starch Europe was called the AAF.

ASSUC is the European Association of Sugar Traders. Founded in 1959, it is the voice of the European Sugar Traders. Through its membership today ASSUC represents over 60 sugar trading companies across the EU. Through regular contacts with the different EU institutions ASSUC is able to make its views heard by providing expertise on market issues and promoting its opinions on intended legislation.