

**Review of the Markets in Financial Instruments Directive
Questionnaire on MiFID/MiFIR 2 by Markus Ferber MEP**

The European Flour Millers' association is the voice of the European flour milling industry both at European and international level. With some 45 million tonnes of soft wheat and rye processed each year, the industry is the largest single food user of EU domestic wheat and rye. Current members are the national flour milling associations from 26 European countries. In representing over 90% of the milling capacity in Europe, it is able to reflect credibly and authoritatively the interests of the industry.

Objectives and expectations of the flour milling industry regarding commodity derivatives - The European flour milling industry uses commodity derivatives for price discovery, for hedging purposes regarding its supply in wheat and for setting up market prices.

To ensure that commodity derivatives answer European flour millers' needs, there is an obvious need for:

- As much transparency as possible
- A high-degree of robustness in representing market fundamentals
- The conditions for fair competition with neither abuse of dominant position or manipulation
- Security vis-à-vis risks of counterparties

Name of the person/ organisation responding to the questionnaire	The European Flour Millers Laurent Reverdy, Secretary-General Avenue des Gaulois 9 B-1040 Brussels Tel: +32 2 736 53 54 E-mail : secretariat@flourmillers.eu www.flourmillers.eu EU Registration number: 81318861355-20	
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Theme	Question	Answers
Scope	1) Are the <u>exemptions</u> proposed in Directive Articles 2 and 3 appropriate? Are there ways in which more could be done to exempt corporate end users?	The exemptions proposed in Directive Articles 2 and 3 are appropriate. They will exempt primary food processors, which hedge their price risks, from MiFID obligations.
	2) Is it appropriate to include emission allowances and structured deposits and have they been included in an appropriate way?	Not applicable
	3) Are any further adjustments needed to reflect the inclusion of custody and safekeeping as a core service?	Not applicable
	4) Is it appropriate to regulate third country access to EU markets and, if so, what principles should be followed and what precedents should inform the approach and why?	Not applicable
Corporate governance	5) What changes, if any, are needed to the new requirements on corporate governance for investment firms and trading venues in Directive Articles 9 and 48 and for data service providers in Directive Article 65 to ensure that they are proportionate and effective, and why?	Not applicable
Organisation of markets	6) Is the Organised Trading Facility category appropriately defined and differentiated from other trading venues and	Not applicable

and trading	from systematic internalisers in the proposal? If not, what changes are needed and why?	
	7) How should OTC trading be defined? Will the proposals, including the new OTF category, lead to the channelling of trades which are currently OTC onto organised venues and, if so, which type of venue?	Not applicable
	8) How appropriately do the specific requirements related to algorithmic trading, direct electronic access and co-location in Directive Articles 17, 19, 20 and 51 address the risks involved?	Not applicable
	9) How appropriately do the requirements on resilience, contingency arrangements and business continuity arrangements in Directive Articles 18, 19, 20 and 51 address the risks involved?	Not applicable
	10) How appropriate are the requirements for investment firms to keep records of all trades on own account as well as for execution of client orders, and why?	Not applicable
	11) What is your view of the requirement in Title V of the Regulation for specified derivatives to be traded on organised venues and are there any adjustments needed to make the requirement practical to apply?	The European Flour Millers consider that the requirement for specified derivatives to be traded on organised venues is a step in the right direction as it will reduce systemic risk, ensure a better control of derivatives markets and therefore reduce possibilities

		for market manipulation.
	12) Will SME gain a better access to capital market through the introduction of an MTF SME growth market as foreseen in Article 35 of the Directive?	Not applicable
	13) Are the provisions on non-discriminatory access to market infrastructure and to benchmarks in Title VI sufficient to provide for effective competition between providers? If not, what else is needed and why? Do the proposals fit appropriately with EMIR?	Not applicable
	14) What is your view of the powers to impose <u>position limits</u> , alternative arrangements with equivalent effect or manage positions in relation to commodity derivatives or the underlying commodity? Are there any changes which could make the requirements easier to apply or less onerous in practice? Are there alternative approaches to protecting producers and consumers which could be considered as well or instead?	<p>The European Flour Millers share European Commission's approach in relation to position limits or alternative equivalent arrangements. Our sector particularly welcomes the graduated approach empowering the Commission to determine position limits or alternative arrangements taking precedence over any measures imposed by competent authorities. This harmonised approach will be particularly relevant for markets active on commodities (like for example cereals) located in different Member States.</p> <p>However, these provisions should not hamper the food industry's need to hedge its risk on derivatives markets. Commercial undertakings, such as the primary food</p>

		<p>industry, should by default be exempt from position limits. Indeed, they can justify their net positions on derivatives markets according to their needs.</p> <p>As an alternative proposal, position limits by category of operators could be considered in certain cases.</p>
Investor protection	15) Are the new requirements in Directive Article 24 on independent advice and on portfolio management sufficient to protect investors from conflicts of interest in the provision of such services?	Not applicable
	16) How appropriate is the proposal in Directive Article 25 on which products are complex and which are non-complex products, and why?	Not applicable
	17) What if any changes are needed to the scope of the best execution requirements in Directive Article 27 or to the supporting requirements on execution quality to ensure that best execution is achieved for clients without undue cost?	Not applicable
	18) Are the protections available to eligible counterparties, professional clients and retail clients appropriately differentiated?	Not applicable
	19) Are any adjustments needed to the powers in the	Not applicable

	Regulation on product intervention to ensure appropriate protection of investors and market integrity without unduly damaging financial markets?	
Transparency	20) Are any adjustments needed to the pre-trade transparency requirements for shares, depositary receipts, ETFs, certificates and similar in Regulation Articles 3, 4 and 13 to make them workable in practice? If so what changes are needed and why?	Not applicable
	21) Are any changes needed to the pre-trade transparency requirements in Regulation Articles 7, 8, 17 for all organised trading venues for bonds, structured products, emission allowances and derivatives to ensure they are appropriate to the different instruments? Which instruments are the highest priority for the introduction of pre-trade transparency requirements and why?	The European Flour Millers understand that the pre-trade transparency requirements apply to commodity derivatives markets and that commodity markets are excluded from the scope of this provision . In this case, the European Flour Millers definitely agree with pre-trade transparency requirements.
	22) Are the pre-trade transparency requirements in Regulation Articles 7, 8 and 17 for trading venues for bonds, structured products, emission allowances and derivatives appropriate? How can there be appropriate calibration for each instrument? Will these proposals ensure the correct level of transparency?	The European Flour Millers understand that the pre-trade transparency requirements apply to commodity derivatives markets and that commodity markets are excluded from the scope of this provision . In this case, the European Flour Millers agree with pre-trade transparency requirements.
	23) Are the envisaged waivers from pre-trade transparency requirements for trading venues appropriate and why?	The current wording which allows for deferred publication of pre-trade transparency (Article 10§1 of

		MiFIR) is to be considered as a step back from current industry practices . The authorisation for deferred publication should only apply for illiquid markets.
	24) What is your view on the data service provider provisions (Articles 61 - 68 in MiFID), Consolidated Tape Provider (CTPs), Approved Reporting Mechanism (ARMs), Authorised Publication Authorities (APAs)?	Not applicable
	25) What changes if any are needed to the post-trade transparency requirements by trading venues and investment firms to ensure that market participants can access timely, reliable information at reasonable cost, and that competent authorities receive the right data?	<p>The European Flour Millers agree with post-trade transparency requirements.</p> <p>In any case, the current wording which allows for deferred publication of pre-trade transparency will be a step back from current industry practices. The authorisation for deferred publication should only apply for illiquid markets.</p>
Horizontal issues	26) How could better use be made of the European Supervisory Authorities, including the Joint Committee, in developing and implementing MiFID/MiFIR 2?	<ul style="list-style-type: none"> - The new regulatory framework will lead to additional competences for ESMA. The European Flour Millers support strengthening the role of ESMA as the European supervisory body to ensure greater coherence between Member States. ESMA should be given the budgetary and technical means

		<p>for fulfilling its obligations.</p> <ul style="list-style-type: none"> - Permanent dialogue between competent authorities, ESMA, trading venues and operators is essential for ensuring an appropriate implementation of the legislation and a good functioning of derivatives markets. <p>Moreover, international cooperation, notably under the leadership of the G20 as regards regulatory action, is important to avoid regulatory arbitration.</p>
	<p>27) Are any changes needed to the proposal to ensure that competent authorities can supervise the requirements effectively, efficiently and proportionately?</p>	<ul style="list-style-type: none"> - The proposals do not provide for the establishment of user groups. The European Flour Millers consider that the opinions of users, including market participants that are active in the underlying physical market such as food manufacturers, should be taken into account. In particular, the views of commercial users are important in view of establishing well-designed contracts, which are essential for ensuring effective price convergence. <p>Therefore, the role of user groups should be formalised in the legal proposal.</p>

		<p>- The European Flour Millers welcome the powers allocated to the competent authorities including the possibility to ask market participants to reduce the size of their position or exposure (Art.59§3). Effective enforcement and sanctions are indeed key to ensure compliance.</p>
	<p>28) What are the key interactions with other EU financial services legislation that need to be considered in developing MiFID/MiFIR 2?</p>	<p>The European Flour Millers urge policy-makers to ensure consistency between the different legal proposals (MiFID, MiFIR, MAD and MAR, EMIR) and the IOSCO report endorsed by the Cannes G20 Summit. Policy coherence is indeed indispensable to address the key challenges linked to agricultural commodities and a better functioning of the food supply chain. Gathering all these legal proposals in a single text (such as the Dodd Frank Act) would have been welcome by European operators.</p>
	<p>29) Which, if any, interactions with similar requirements in major jurisdictions outside the EU need to be borne in mind and why?</p>	<p>Not applicable</p>
	<p>30) Is the sanctions regime foreseen in Articles 73-78 of the Directive effective, proportionate and dissuasive?</p>	<p>Not applicable</p>

	31) Is there an appropriate balance between Level 1 and Level 2 measures within MIFID/MIFIR 2?	Level 1 measures within MiFID should include all the important definitions. In particular “commercial undertakings” are defined in EMIR but, for the sake of clarity, the term should also be defined in the MiFID proposal.
Detailed comments on specific articles of the draft Directive		
Article number	Comments	
Article 60:	Position reporting The Commission Proposal to introduce a position reporting obligation (weekly publication) with aggregated positions by category of trader is welcome to increase transparency of trading activity on organised trading venues. The European Flour Millers agree with the proposed categories which will be used for weekly reporting. Over the long term, it encourages authorities to reach harmonised categories of trader at international level.	
Article ... :		
Detailed comments on specific articles of the draft Regulation		
Article ... :		
Article ... :		

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