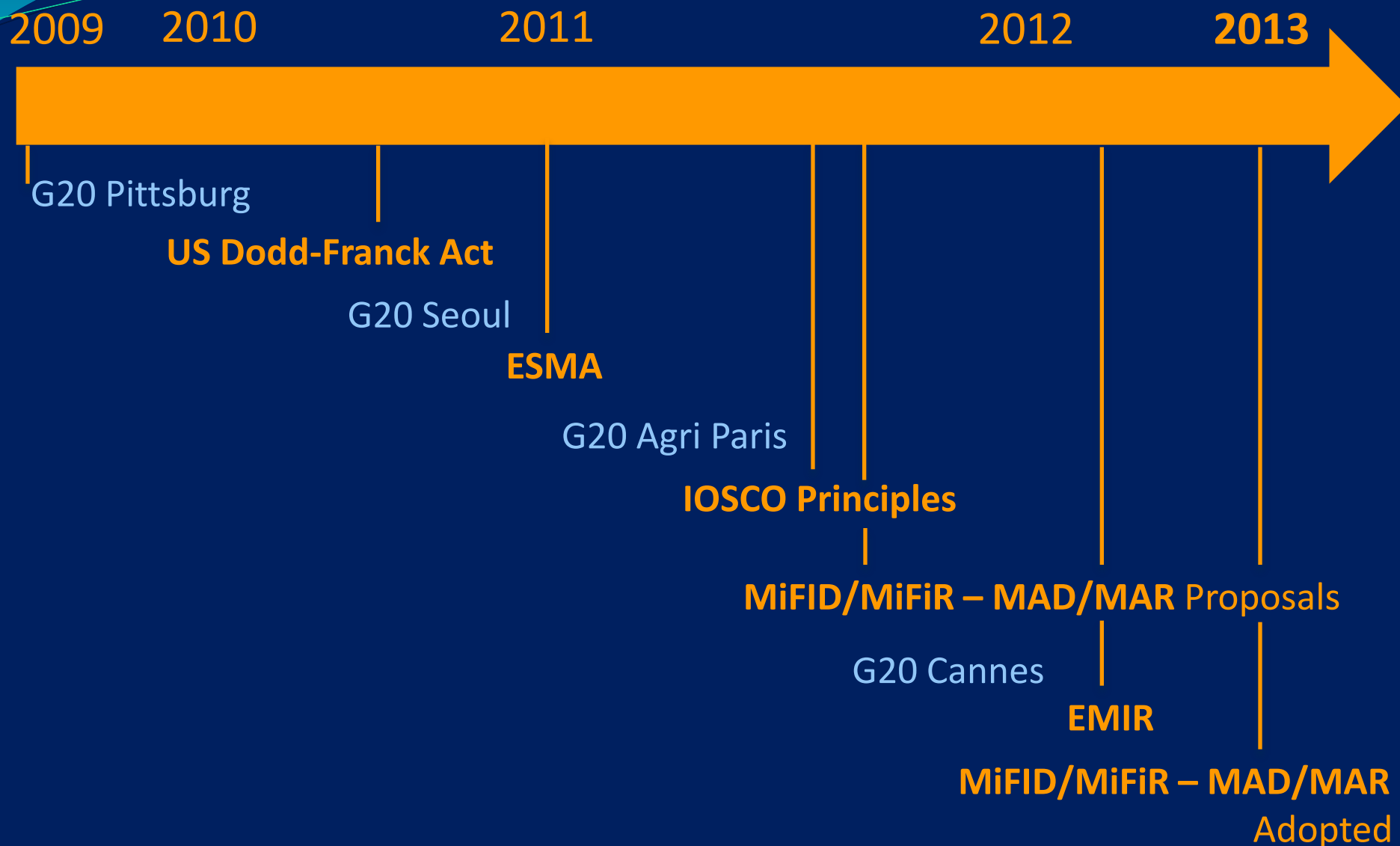


# **The role of a potential European Agricultural Market Authority**

## **Suggested Guidelines**

# From the 2008's crisis to the financial reform



# Features of commodity markets (1)

## Segmentation of global commodity markets

	Cash markets	Financial markets	
		Futures & Options market	OTC derivatives market
Contracts	Specific contract forms & rules	Standard contracts	Standard & non-standard OTC derivative contracts
Regulations	Sector policies	Financial Regulations	
Surveillance & control	(Few market Regulations)	Financial Market Authorities	

## Features of commodity markets (2)

### Commodity markets transparency

	Cash markets	Financial markets	
		Futures & Options market	OTC derivatives market
<b>Public Information</b>	Prices, quantities under contract, inventories & stocks +/-	Prices, open interest, net open interest +++	Prices, open interest, net open interest ---
<b>Information to market authorities</b>	Prices, volumes, inventories & stocks +/-	Prices, open interest, breakdown individual position +++	Standard derivatives & non standard derivatives -

# **Need for cash markets regulation according to the IOSCO principles**

## Need for cash markets regulation according to IOSCO principles (1)

→ **Objectives** of financial reforms applied to commodity derivative markets:

- **systemic risk**
- **improving transparency and integrity**

→ **Implementation** of financial reforms applied to commodity derivative markets: implementation of « Principles for the regulation and supervision of commodity derivative markets »

(Final report of IOSCO Technical Committee – September 2011)

## Need for cash markets regulation according to IOSCO principles (2)

### Contract design principles:

- **Accountability**

Market Authority should have power to prevent manipulative or disorderly conditions

- **Economic utility**

Contracts should meet the risk management needs of potential users and promote price discovery of the underlying commodity

- **Correlation with physical market**

Contract terms and conditions generally should reflect the operations of the underlying physical market and avoid impediment to delivery

## Need for cash markets regulation according to IOSCO principles (3)

### Contract design principles:

- **Promotion of price convergence:** settlement and delivery procedures should reflect the underlying physical market and promote reliable pricing relationships and price convergence
- **Transparency:** information concerning...as other relevant information concerning delivery and pricing should be readily available to market authorities



## Need for cash markets regulation according to IOSCO principles (4)

### Principles for surveillance of commodity derivatives:

- **Framework for undertaking market surveillance:** a market surveillance program should take account of trader's related derivatives and physical market positions & transactions. Market surveillance programs should be supported by sufficient resources, access to physical market data analytical capabilities
- **Authority to access information:** Market Authorities should have the authority to access information and underlying physical commodity market

## Need for cash markets regulation according to IOSCO principles (5)

### Principles to address disorderly commodity derivatives markets:

#### Intervention powers in the market

Market Authorities should have and use formal positions management powers:

- requiring owners of positions to specify delivery intentions
- requiring traders to disclose related OTC derivatives and large physical market positions

## Need for cash markets regulation according to IOSCO principles (6)

### Principles for enforcement and information sharing (1)

**Rules and compliance programs:** Market Authorities should have rules , compliance programs, sanctionning policies to prohibit, detect, prevent and ...abusive practices on their markets including manipulations or attempted manipulations of the market. Specific practicies... disseminating false or misleading information in respect of any commodity. Creating or attempting to create a corner or squeeze...

## Need for cash markets regulation according to IOSCO principles (7)

### Principles for enforcement and information sharing (2)

- **Framework for addressing multimarket abusive trading:** the overall framework for market surveillance and enforcement...should be structured to provide for active and coordinated manipulative or abusive schemes that might affect... as well as the underlying physical commodity markets
- **Information sharing:** market authorities should have arrangements to allow them to share information on large exposures in linked markets and on supplies relative to these markets.

## Need for cash markets regulation according to IOSCO principles (8)

- Financial Markets authorities on commodity derivative markets need to refer to Physical Regulation Authorities
- **Inventories and stocks data** are sensitive information for the physical market situation (supply-demand, pricing) and for the delivery conditions of commodity derivatives contracts

# **Need for cash markets regulation according to MAR**

## Need for cash markets regulation according to MAR (1)

### Article 2§3 + Articles 8 & 10 shall also apply to:

- (a) Spot commodity contracts, which are not wholesale energy products, where the transaction, order or behaviour has or is likely to have an effect on the price or value of a financial instrument referred to in paragraph 1 of this Article; or
- (b) Types of financial instruments, including derivative contracts or derivative instruments for the transfer of credit risk where the transaction, order, bid or behaviour has or is likely to have an effect on the price or value of a spot commodity contract where the price or value depends on the price or value of those financial instruments.

## Need for cash markets regulation according to MAR (2)

### Article 6 §4

**ESMA** shall issue guidelines to establish a on exhaustive indicative list of information which is reasonably expected or required to be disclosed in accordance with legal or regulatory provisions at the Union or national level, market rules, contracts, practices or customs, on the relevant commodity derivatives or spot markets as refered to in paragraph 1(b) of this Article

**ESMA** shall duly take into account specificities of these markets



## **Need for cash markets regulation according to MAR (3)**

### **Article 8 §1**

(c) Disseminating information through the media, including the Internet, or by any other means, which gives, or is likely to give, false or misleading signals as to the supply of, demand for, or price of, a financial instrument or a related spot commodity contract or secures, or is likely to secure, the price of one or several financial instruments or a related spot commodity contracts at an abnormal or artificial level including the dissemination of rumours where the person who made the dissemination knew, or ought to have known, that the information was false or misleading.

# **Need for cash markets regulation according to MIFID and MIFIR**

## **Need for cash markets regulation according to MIFID**

### **Article 83.7.**

In relation to commodity derivatives, competent authorities should report to and cooperate with public bodies competent for the oversight, administration and regulation of physical markets under Regulation 1234/2007/EC.

## **Need for cash markets regulation according to MIFIR (1)**

### **Article 31-3 (c) [ESMA powers to temporarily intervene]**

When taking actions under this article, ESMA shall ensure that the action :  
(c) has been taken after consultation with the public bodies competent for the oversight administration and regulation of physical agricultural markets under 1234/2007/EC in case the measure relates to agricultural commodities derivatives.

## Need for cash markets regulation according to MIFIR (2)

### Article 32.2 (f) [Product intervention by competent authorities]

2. A competent authority may take the action referred to in paragraph 1 if it is satisfied on reasonable grounds that :

(f) it has properly consulted with public bodies

- competent for the oversight, administration and regulation of physical agricultural markets under Regulation 1234/207/EC, in case
- a financial instrument or activity or practice poses a serious threat to the orderly functioning and integrity of the physical agricultural market.

A prohibition or restriction may apply in circumstances or be subject to exception by the competent authorities.

## Need for cash markets regulation according to MIFIR (3)

### Article 35.3 (e) [Position management powers of ESMA]

3. When taking measures referred to in paragraph 1, ESMA shall ensure that the measure :

(e) has been taken after consultation with the public bodies competent for the oversight, administration and regulation of physical agricultural markets under Regulation 1234/2007/EC, in case the measures related to agricultural commodity derivatives.

# **The design of a competent European Authority for Agri-Commodity Derivative Markets**

# Design of a competent European physical market authority (1)

## Scope of a Physical Market Authority (PMA)

- A mirror institution to Financial Market Authority structured to **collect and to provide relevant information about physical market situations** (supply/demand data including inventories & stocks, prices) & about undertaking positions (trading positions, location and ownership of stocks)
- **Worldwide** as commodity markets are global
- Should be **defined in respect to Financial Markets Authority perimeter** (regional or national)



## Design of a competent European physical market authority (2)

### Mission of a PMA

To provide **transparency of physical markets**: releasing largely all relevant macro-economic markets' information. The PMA should have authority to collect, centralize and compute all markets situations data.

**Integrity of physical markets**: providing confidentially to Financial Market Authorities all relevant individual information about transactions and stocks

# **Perspectives for a European Authority for Agri-Commodity Derivative Markets**

## Perspectives for a PMA for Agri-Commodity markets (1)

Today, Financial Market Authorities should refer to different non-exhaustive sources of data:

- **World market data**

- Agricultural Market Information System (AMIS)
- International Grain Council (IGC)
- United States Department of Agriculture (USDA)
- Regional or national market data
- Governmental bodies (Secretariat of Agriculture or specific agencies)
- Regional entities (DG Agri for EU)

- **Commercial undertaking data:** no reporting obligations

## Perspectives for a PMA for Agri-Commodity markets (2)

### To be developed in the future:

- **[Worldwide]** To enlarge AMIS missions to all significant commodities used as underlying of commodities derivatives contracts and to improve quality of data (stocks)
- **[At national or regional level]** To create a « Physical Market Authority » able to centralize the existing information about supply/demand market situation, to improve the price information system and to register confidentially information about transactions (above threshold to be determined) & stocks

## Perspectives for a PMA for Agri-Commodity markets (3)

### The PMA and stocks information

- **Stock information:** one of the most sensitive information to be collected. Nevertheless, agricultural policy regulations give the opportunity to collect stocks data on monthly or annual basis
- **Inventories information:** on delivery points should be collected with detailed information about control of storage capacities and stocks ownerships.

# **Suggestions for a European Authority for Agricultural Commodity Derivative Markets**

## Suggestions for a European Authority for Agri-Commodity derivative markets (1)

### Use the Energy scheme reference...

- Regulation EC 1227/2011 « Ensuring Energy Market Integrity and Transparency » - REMIT
- The Agency for the Cooperation of Energy Regulators (ACER)
- National Regulatory Authorities
- Agreement ACER-ESMA

## Suggestions for a European Authority for Agri-Commodity derivative markets (2)

### Use the US experience...

- Futures markets: **CME, KC, Minneapolis**
- Supervision and surveillance of futures markets: **CFTC**
- Supervision and surveillance of agriculture cash market: **USDA**



## Suggestions for a European Authority for Agri-Commodity derivative markets (3)

### A suggested scheme for Agriculture:

- A legal basis « Regulation establishing the Agricultural Commodity Derivative Markets Authority » or « RAMA »
- DG AGRI or a European Agency benefiting the DG AGRI experience and expertise as the European competent authority
- Agriculture Ministries/secretariats or competent Agricultural Agencies with experience and expertise in markets supervision as National Competent Authorities

# Conclusions

## European and National Physical Market Authorities:

- are needed as part of a robust system of regulation & supervision of Commodity Derivatives Markets
- should enable Financial Market Authorities to achieve their missions to prevent market abuses (intervention *a priori*) rather than the imposition of sanctions (actions *a posteriori*)