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Financial reforms and food price speculation: The public vs. the financial sector

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1. Introduction: The gap

The financial crisis has provided the world with many arguments, reasons and sentiments to look for solutions and alternatives in the financial system. In its most modest form, this has been done by advocating new or improved regulation. Strict and transparent legislation should ensure financial stability, which is increasingly considered as a common good in the interest of the public. This public interest often differs from interests pursued by financial players such as banks, pension funds, investment firms etc. Many examples exist where new legislation and financial reforms did not result in protecting the public interest nor in implementing demands by the public but where the interest of the financial sector prevailed.

For example, since the Asian financial crisis of 1997-98, there has been a sustained campaign to introduce a financial transaction tax (FTT). The FTT would be able to serve different public interests. Its purpose is to limit the amount and speed of speculative transactions, including in the commodity derivatives markets, by all kind of speculative financial players (investment banks, hedge funds, institutional investors, etc.). This would be able to prevent financial meltdowns in times of financial market crisis and increase the financial stability. The FTT would also generate much needed resources for crisis-ridden budgets, and sustainable development around the world. The campaign for an FTT resulted in the creation of the ATTAC movement in many countries.[1] In France, for instance, many local member groups were created in which citizens were involved up till now, and meet annually in summer schools. Different NGOs have been working out (in cooperation with some academics) the development of popular as well as very technical demands which were denying the counter arguments against the FTT from neo-liberal politicians and the financial sector. The FTT campaign strengthened and became global after the 2008 financial crisis, as it was one of the easy subjects with important effects to campaign on. Once the financial crisis really hit the budgets of governments, the campaign had contributed to a political will by 11 EU member countries to implement the FTT. However, this process in 2013 was being severely watered down. Instead of imposing a tax of 0,1%, the proposal now includes a much lower percentage of 0,01% to be levied on certain financial transactions. Eventhough the counter-attack from the lobby of the financial sector (banks, hedge funds, traders etc.) started very late, it appears that the lobby of banks is successful in reduce the amount of tax to be paid and therefore to seriously undermine the purpose of the tax to prevent financial instability, stop financial crisis and generate public finances rather than taking them through bail outs.[2]

Five years after the financial crisis erupted in Europe, the slow pace and timid level of financial reforms indicate that there is a serious gap between the interests of the financial sector on the one hand, and what civil society groups demand or what would be generally expected to be the outcome of regulation to avoid another crisis.

This article is focusing on a particular issue in the financial reform and how it was able or not to take into account popular demands. This article describes the way how the financial reform has been dealing with stopping food price speculation on financial commodity (derivatives) markets. It looks particularly at what the role of agency has been and how agents have tried and can try to explore and use possibilities for change, as explained in the next chapter. The goal of this article is also to acquire insights into limiting structures that cause gap between financial reforms and demands from citizens and civil society groups, and to assess what can be done to reduce or eliminate the gap based on the lessons learned from actions to reform the financial system so that financial players cannot speculate on food prices.

This article does not provide the full history of all activities, strategies and tactics by civil society groups and citizens in the course of the EU legislation that would regulate food price speculation on financial

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[1] See: www.attac.org

[2] 'Boost for banks as massive scaleback of financial transaction tax planned', Independent IE, 30 May 2013, http://www.independent.ie/business/world/boost-for-banks-as-massive-scaleback-of-financial-transaction-tax-planned-29309398.html (viewed 4 June 2013).

markets. It tries to provide an overview or identify key moments that can be used to assess the conceptual framework of agency. By not telling the long full story, we hope that we have not missed to identify key moments of agency nor do not justice to some of the hard work by different agents.

2. Conceptual framework

The legislative process of developing new or improved financial regulation is often characterized by opposing interests and other contradictions between groups, such as in size, power, knowledge and money. Groups of activists and civil society encounter many obstacles in the form of opposing groups who have private interests, but also in the form of institutionalized dominant discourses, decision-making processes, and a lack of resources. However, despite limiting circumstances, organisations have been able to advocate for a fairer regulation of financial markets in the case of preventing and stopping food speculation. This paper therefore adopts a framework for analysis that allows us to uncover limiting structures while at the same time recognize moments where agency plaid an important role in influencing legislation. It also enables a focus on the matters where interests between different groups – public and private – diverged the most and consequently triggered the most actions from both groups. The conceptual framework consists essentially of the two concepts of structure and agency.

Robert Cox defines agency as “cumulative actions – not just a single event – that have as consequences either the maintenance or the transformation of structures”.[3] Structures should be seen as a combination of ideological, material and institutional forces, based on, and at the same time constituting, rules. A structure is a configuration of these three categories of forces.[4] These forces are linked, because they serve the interests of a certain group. According to Cox, “Structures do not determine people’s actions in any mechanical sense but constitute the context of habits, pressures, expectations, and constraints within which action takes place”.[5] Structures thus form various circumstances that limit or enable certain actions. Civil society groups, in their efforts to tackle a certain issue, encounter for example dominant ideas that they try to oppose. These are ideological forces, the first category of forces. Ideas can give meaning to everyday life, but they are also “collective images of social order held by different groups of people”.[6] Collective ideas can clash, as they do for example regarding the impact of food and commodity speculation on underlying prices of physical commodities. Instances where collective ideas clash are interesting, because they can point to the emergence of a new conflicting structure.
The second category of forces is of material nature. A good example of the material element of a structure is the presence of natural resources. The presence of natural resources is not a social construct, but a material fact and the wealth that can be earned from it, makes natural resources a powerful force within a structure. Material forces also comprehend the social relations of production. Institutions are made up by ideational and material forces and influence them at the same time. Institutions form the third category of forces. The momentum of power relations is mirrored through institutions and the processes (such as a legislative process) they facilitate.
It should be noted that the three categories of forces cannot be seen as separate, isolated forces, but are always interrelated. Structures enable some people to act while constraining the actions of others. Structures underlie the reality we see. This paper aims to uncover structures that constrain as well as enable agents to act in the case of tackling food speculation and the regulation that can prohibit or allow it.

Agency and structure are constantly challenging each other, because on the one hand agency is the driving force behind action and on the other hand historical concrete circumstances create the conditions for this action. It is of importance to note that structure does not define the action of agents, as this does not comply with the power of agency: agency can transform structures. Structure only opens and limits

[3] R.W. Cox, ‘The Way Ahead: Toward a New Ontology of World Order’, in R.Wyn Jones (ed.) Critical Theory and World Politics, 2001, p. 56.
[4] R.W. Cox, ‘Social Forces, States and World Orders’, in R. O. Keohane (ed.) *Neorealism and its Critics*. New York, 1986, p. 218.
[5] Ibid., p. 217.
[6] Ibid., p. 218.

certain possibilities. This paper aims to show when and where agents such as civil society groups used the possibilities that were open to them. As agents, they are capable of achieving change. Structure is here seen as the means through which action is possible as well as the outcome of action. Even though agents do not have the power to influence all structures that limit their actions, they are in a position to cause structural change through their actions, whether they are intentional or not. Speaking, for example, is an intentional action, but transforming language (a structure) through speaking can be an unintentional by-product. However as an agent, a person who speaks in this example, you make use of already existing structures. To speak and communicate through speech is only possible, because language exists. Language is the means through which speech is possible. When agents speak and write and thus use language, they reproduce and also transform language. This means that "structure both enables action and constrains its possibilities" and that it "is the outcome as well as the medium of action".[7]

Agents can constantly challenge existing structures, which means that conflict can be a positive thing. It can function as a way of changing the status quo and change power relations that currently put some (large) groups at disadvantage. This is exactly what civil society groups aim to achieve when they challenge the premises, content and process of legislations that intend to regulate financial markets. The concepts of structure and agency provide a very useful framework for studying the process of financial reform, because it allows us to see the constraining structures civil society groups deal with, but also shows the power people, groups, and organisations have as agents. Existing power relations, for example between the industry and groups of activists, or between industry and rule makers, form structures that limit actions. Agents have the power however, to continually challenge these structures and through their continuous efforts they can achieve structural change. Activists and campaigners who act as agents aiming to stop food speculation encounter many structures that are part of financial reforms (that perhaps differ from social or environmental reforms) that have made it difficult to achieve their goals. Concepts of structure and agency can help to explain why and to develop recommendations for future endeavours. In the following chapters structure and agency will be central in the analysis of which forces caused limits as well as possibilities for different groups of agents with opposing interests.

3. Broad constraining structures

Once the financial crisis struck and its consequences led to severe economic and social problems, citizens demanded financial reforms. Civil society turned its attention to changing the financial system as part of tackling root causes of not only the economic crisis but also the social crisis (increasing the poor-rich gap), the environmental crisis (climate change, problems of food production and water scarcity) . For years, civil society groups had exposed the risks and problems of the neo-liberal system, which the political and corporate elite had been continuously building on in diverse aspects as explained in this chapter. The financial crisis and its consequences resulted in changes of agency of political authorities. Willingness arose with authorities to intervene in the financial markets, not in the least to avoid the financial system from total collapse. Moreover, it had become clear that the lack of means to intervene in times of crisis came with great risks, which required financial reforms. These risks had been hidden during the neoliberal build-up but were uncovered by the influence of the crisis. However, during the development of financial reforms of banks and financial markets, it became clear that many elements of the (institutionalized) neoliberal discourse and structures were not being questioned. Profound reforms were prevented by financial sector agents. The dominance of neoliberal forces limited actions of citizens, civil society groups and even academics, and allowed for very few possibilities to press successfully for the changes that would restrict the financial markets from causing economic and social havoc and prevent to a certain extent other financial crises.

This chapter discusses two important broader constraining structures that restrict relevant agents to act, in particular in the case of tackling financial food price speculation.

[7] D. Dessler, 'What's at Stake in the Agent-Structure Debate?', in *International Organization*, Vol. 43, No. 3, 1989, p. 452.

3.1. The continuation of the neo-liberal discourse and the idea of an efficient market

Before the financial crisis, neo-liberalism was the underpinning discourse of economic projects in many countries around the world as well as in the EU and international institutions, aiming among other things for "the liberalization and deregulation of economic transactions, not only within national borders but also—and more importantly— across these borders."[8] Politically, this translated into rolling back of state intervention as far as possible. State intervention was only meant to provide conditions for the market to function freely, with a profit maximizing perspective. This resulted in de-regulation of the financial sector, with corporate and, not in the least, the financial lobby successfully arguing for the efficient market paradigm. The paradigm builds on three assumptions: savings will be allocated to the right investment projects, markets are capable of regulating themselves and, lastly, prices of assets reflect the underlying fundamentals.[9] According to neo-liberal economists, a market in which prices always 'fully reflect' available information is called 'efficient'. The paradigm underpins the belief that regulation is not necessary, can even be harmful for the efficiency of a market, and forms a burden to profitability. As a result, the ideas of so-called 'light-touch' regulation and self-regulation in the financial sector were institutionalised. The dominance of neoliberal ideas and corporate and financial interests led to the deregulation of capital flows, and allowed for complexity, large interconnectedness, huge growth based on debt and high risk-taking in the financial sector. These developments were underpinned by huge international competition in the financial sector, financialisation of the economy, and expansion of financial corporations such as banks, insurance companies, and institutional investors. This increased the 'moral hazard' problem because (investment) banks became too-big-to-fail and would need to be bailed out with tax money if they made too many mistakes. Public interests were at risk, but not accounted for in process of deregulation and liberalisation.

At the EU level, amongst other things, belief in an efficient market resulted in a system of scrutinizing regulations for their negative impact on competitiveness of corporations, while ignoring to assess the needs of a broader public. The argument for keeping competitiveness was one of the reasons why, at EU level, the commodity derivatives markets and especially the over-the-counter derivatives markets, which will be further discussed in the following paragraph (3.2), were not regulated.

The financial crisis demonstrated (once again) that the idea of an efficient market did not align with reality. The belief in efficient markets proved to be dangerous, because it played a significant role in creating the crisis, but also because it "blinded many if not most economists to the emergence of the biggest financial bubble in history."[10]

Although the crisis showed flaws in neoliberal thinking, it has not automatically led to change in dominant ideas nor has it led to radical policy changes. Some important neoliberal ideas, structures and institutions have not been, or have hardly been, challenged or changed up till now. The remainder of this paragraph will discuss several characterizing elements of this neo-liberal structure that NGOs need to take into account when they suggest changes in the financial system, and in particular some aspects of it such as food commodity derivatives markets that allow harmful food price speculation. This overview is not meant as an exhaustive overview of all aspects of neoliberal structure:

- **Free movement of capital:** No borders should restrict the free mobility of capital, and "all barriers to that free movement (such as tariffs, punitive taxation arrangements, planning and environmental controls, or other locational impediments) have to be removed".[11] The EU has institutionalised this neoliberal idea in its constitution as well in many of its free trade and investment agreements.[12] It is also part of the

[8] B. Jessop, 'Liberalism, Neoliberalism, and Urban Governance: A State-Theoretical Perspective', in *Antipode*, Vol. 34, No. 3, 2002, p. 454.
[9] P. De Grauwe, 'The Banking crisis: causes, consequences and remedies', CEPS Policy Brief No. 178, 2008, p. 2, http://aei.pitt.edu/11706/ (viewed 4 June 2013).
[10] P. Krugman, 'How Did Economists Get It So Wrong?', in *New York Times,* 2 September 2009.
[11] D. Harvey, 'A brief history of neoliberalism', 2007, p. 66.
[12] European Commission, Provisions of the Treaty on the Functioning of the European Union (TFEU), available at

OECD Code of Liberalisation of Capital Movements.[13] The problem with total freedom of capital became apparent when even the EU had to apply capital controls with third countries, which is possible under the EU constitution only under exceptional circumstances, in the case of bailing out Cyprus banks. The IMF has to a certain extend changed its views and indicated that capital controls could be used in certain circumstances, even arguing the crisis in Greece and Spain would have been less if capital controls were in place.[14]

- **Agreements about free trade in financial services,** such as in General Agreement on Trade in Services (GATS) as part of the WTO, and in bilateral and regional free trade and investment agreements): The financial sector has been heavily lobbying to get de-regulation into these international economic agreements that have precedent over national or EU laws, effectively binding the room of manoeuvre of regulators (governments and parliaments, voices from the public) and financial reforms.[15] Indeed, these agreements contain restrictions on what national or EU regulators can enact (e.g. no restrictions on 100% take-over of national banks, no restrictions on the legal form of financial companies). During negotiations, regulations that limit the access and profitability of foreign service providers have been challenged and as a result often eliminated. Current free trade negotiations continue to use the same de-regulatory articles as before the financial crisis.

- **No legally binding financial sector regulation:** Although international law can and is being used for institutionalising neoliberal ideas, at the same time there is no legally binding international agreement that imposes strict financial regulation on all countries and internationally operating financial service providers, for instance to guarantee sufficient oversight when expanding worldwide. The Basel Committee on Banking Supervision, the International Organisation fo Securities Commissions (IOSCO), the G-20, the Financial Stability Board are only able to issue guidelines or standards, and exert peer pressure. Western countries have torpedoed activities and attempts to bring the discussions about the crisis and the needed reforms to the UN, and moved such decision-making to the G-20.

- **Free markets without global competition policy**: While free markets have been enshrined in many national, EU and international laws, no international competition policy exist that could limit the size of international operating financial corporations and deal with oligopolistic and abuse of market power. This is one of the reasons why banks were able to become too big to fail with a ‘moral hazard’ that has plundered governmental budgets and solutions still need to be found for the problem. In addition, many parts of the financial sector have become hugely and harmfully oligopolistic, for example the few rating agencies, particular segments of investment banking, and the few large accountancy firms. This oligopolistic power allows the financial sector to maintain a grip on governments and making it difficult for alternatives to emerge and agents such as NGOs to find and create openings for change.

- Banks and other financial corporations (insurance companies, hedge funds, etc.) **are private enterprises, not national institutions**: Banks can operate **like other private corporations and be free enterprises.** Even banks that were nationalized after the financial crisis, are to be run as private enterprises and to be sold back to the market. Banks are still able to develop products and expand worldwide with no guarantee or mechanisms that the public interest is being protected and the risks can be contained. They are seen as companies that should go bankrupt, leaving little guarantees for citizens to save their money in safe hands (except for deposit saving guarantee systems). The financial sector is still considered as an important contributor to jobs and the economy and also a contributor to tax for (UK) governments, notwithstanding the trillion of dollars needed to save it, the scandals and the increasing disclosure of tax avoidance and evasion. However, it has always recognized that banks, financial markets and its operators entail risks for which some extra supervision and regulations are needed to ensure overall financial stability and to attempt (so far unsuccessfully) to contain some risks of governments to

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http://ec.europa.eu/internal_market/capital/framework/treaty/index_en.htm

[13] OECD Code of liberalisation of capital movements 2013, available at http://www.oecd.org/daf/inv/investment-policy/CapitalMovements_WebEnglish.pdf.

[14] IMF, The Liberalization and Management of Capital Flows: An Institutional View, 14 November 2012, http://www.imf.org/external/np/pp/eng/2012/111412.pdf (viewed 26 May 2013).

[15] M. Vander Stichele, R. van Os, Business as Usual - How Free Trade Agreements Jeopardise Financial Sector Reform, SOMO, December 2010, http://somo.nl/publications-en/Publication_3611 (viewed 26 May 2013).

bail them out (moral hazard, indirect subsidies). How such supervision and regulation is enacted, has been influenced by the neo-liberal discourse.

- **Corporations act behind a veil of secrecy**: A lot of information about financial corporations is allowed to remain secret and private, based on the argument that disclosing information that would allow competitors to misuse it for their own profit. However, this secrecy has clearly been against the public interest as it hugely hampered swift and effective action by authorities when the crisis broke out, resulting in a credit crunch and deep economic crisis. The lack of transparency, aided by the self-regulated accountancy business remains a big problem, not in the least because it has allowed that "at least $21 to $32 trillion as of 2010 has been invested virtually tax free".[16]

- **Huge international competition and strive for competitiveness**: International competition, according to neoliberal thinking, increases efficiency and productivity, and keeps prices low. Corporate interests heavily reflect the strife for competitiveness. Financial corporations continue to engage in huge competition for profit maximalisation. They act as free enterprises without legal obligations to operate for the public interest and act within a context of international legally binding freedom of capital movements. The need to compete still pushes them to develop risky strategies and products, often imitating others as happened before the crisis, for example buying and selling sub-prime collateral debt obligations (CDOs) which triggered the financial crisis. In the context of this competitiveness discourse, new financial reforms can sometimes actually worsen risky behaviour. One result of the new banking regulations, for example, is that banks cannot make much profit out of lending, and thus are turning to more risky and speculative financial markets products and activities, including commodity derivatives markets (as long as they are profitable). The continued pressing endeavour for international competition leads financial sector players to argue that particular new regulations will stifle competitiveness. Any rule that is stricter than on the market of its main competitors, such as the US, result in the affected financial sector warning about 'regulatory arbitrage' and threatening to leave for the other market. Neoliberal interest for competition is used in this manner by financial agents to prevent any radical reform that might restrict their own interests but would protect public interests. Indeed, the fear that the financial sector will not be able to be competitive and contribute to economic growth is a basic neo-liberal idea that remains officially unquestioned. Governments as well as supervisors defend the corporate interests of the financial sector based in their jurisdictions (even if they are global players). Governments partake in this competition instead of cooperating with each other to develop a safer financial/economic system for the public interest. Through restricting themselves from stringent regulation, governments often act at the expense of their societies. In other words, international competition has allowed to financial sector to have a powerful grip over governments and tax payers' money and it is the interests of the financial sector that drive the current real economy, which is the point of financialisation.

This remaining neoliberal structure in the financial sector five years after the crisis erupted in the EU, is a consequence from the dominance of a neoliberal discourse that continues to guide the main agents of financial reforms, namely the governing policy makers, supported by a strong influence and lobby by the financial sector, and even the media. As a result, financial reforms have failed to stop banks, financial markets and the rest of the financial sector, from being unstable and risky, which affects economies and societies e.g. in Greece. The Euro crisis, after the bail-outs of the banks, has even allowed these governments to reinforce the institutionalisation of neoliberalism and further diminish democracy at the EU level when reforming the economic governance system and transferring decision-making about national budgets to non-elected bureaucrats of the European Commission.

3.2. The complexity of financial food price speculation

The above described neo-liberal construction is the context within which the European institutions and the EU member states negotiated the financial reform which is the focus of this article. Financial reforms that could to tackle financial speculation on food prices via commodity derivatives markets were included in

[16] J. Henry, 'The price of offshore revisited', 2012, http://www.taxjustice.net/cms/upload/pdf/Price_of_Offshore_Revisited_120722.pdf (viewed 4 June 2013).

different EU legislations (see chapter 5). In this chapter we address two particular obstacles NGOs encountered in their endeavours to advocate for reform of these legislations: the complexity of the subject and the lack of transparency of commodity derivatives market.

When civil society groups wanted to respond to the outcry by the public to end food price speculation, and aimed to avoid price spikes that increased prices for the poor in food importing developing countries, they had to find ways to deal with the lack of transparency and complexity. These were used by the financial sector players to enhance their competitiveness and as a lobby tactic to increase the gap between the industry that is knowledgeable and the public that is not. The complexity and technicalities, the jargon and the lack of transparency made it very difficult to have democratic public and political debates about the issue of how to deal with financial food price speculation on derivatives markets. The use of complex language and the technical financial concepts scare off many citizens and civil society groups. It can be a deterrent tactic in the same way as with banking reform, for example, about which Admati and Hellwig state that "the jargon of bankers and banking experts is deliberately impenetrable. This impenetrability helps them confuse policymakers and the public, and it muddles the debate."[17] The technical complex jargon and the lack of transparency were thus important structures that limited the possibilities and actions of others, such as NGOs

The basics of the complex food and commodity price speculation can be explained as follows (the following chapters have some more detail regarding some aspects). Financial speculating on food prices is done by financial players (investment banks, banks, hedge funds, commodity fund managers, pension funds and other institutional investors) via commodity derivatives contracts (futures, options, swaps) in different ways, mainly **through**:

(1) **Commodity exchanges on which standardized futures and options are being traded**: Food commodity futures and options are traded on exchanges that are each specialised in particular commodities. The contracts fix a price for the underlying commodity at the date determined in the contract. Each trade on the exchange needs to be 'cleared', i.e. there is a clearing house (a central counter party) that stands in between the two counter-parties of to each trade. The clearing house pays in case a counter-party does not pay and demands collateral ('margins' calls) that can vary daily in the amount, based on an assessment of the risks of failure to pay. The commodity exchanges are part of large commercial firms, mostly listed on the stock exchange. Those who trade on the exchange have to pay membership, making it expensive to trade on exchanges. Therefore, exchanges are used by mostly large farmers, commodity traders and processors to 'hedge' the prices, i.e. to have a guarantee of the price of the produce at which to sell, respectively buy. The 'hedging' function, the guaranteed future price which is considered as insurance, is a basic function on derivatives markets. The negotiations for the price in the futures are supposed to reflect genuine expectations of prices of the physical commodity at the time of the end of the contract which are only a few months for food commodities related to harvests. Therefore, commodity exchanges are bench marks for prices for those commodities all over the world where price setting is not transparent, including for imports of food. However, the guaranteed price can ultimately differ from the price of the commodity at time of harvest and the expiry of the contract. This entails risks of losing money which originally some financial players (30% of the traders on commodity exchanges) were willing to take. A major problem at which NGOs and some analysts pointed out is that currently on US commodity exchanges, large or specific financial counter-parties are the majority of the traders, buying and selling commodity futures and options contracts mostly for profit making reasons based on all kind of speculative strategies, which can result in price volatility with price spikes not linked to product 'fundamentals' (changes in supply and demand) and thus undermine the integrity of price-discovery and hedging functions of the exchanges.

(2) **Over-the-counter (OTC) commodity derivatives contracts, mostly 'swaps':** OTC derivatives are derivatives not traded on a formal exchange. They are "privately negotiated contracts and any information concerning them is usually only available to the contracting parties" [18]. This lack of

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[17] Admati and Hellwig, 2013, 'The bankers' new clothes', 2013, p. x-xi.

[18] EU, Regulation No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central

transparency conceals the possible risks of derivatives contracts. Traditionally OTC commodity derivatives trade required no clearing, which means risks of non-payment in case of one party defaulting on the contract. The OTC derivatives market is mainly operated by the large investment banks, and other banks. OTC derivatives trade can take place within a network of dealers ('brokers') who negotiate via electronic mediums or telephone. OTC commodity derivatives are often 'tailor made' to meet particular needs (risk aversion) of the customer but can also be used for speculative reasons or to hide particular commodity speculation strategies.

(3) **Different kinds of commodity investment funds** (e.g. commodity index funds (often for institutional investors), commodity exchange traded funds (ETFs whose shares can be bought on stock exchanges by individual investors), etc.): The managers of most of these funds have to buy futures on exchanges or other derivatives contracts with the money of those who invest in the funds. Agricultural commodity index funds mostly speculate on higher prices they buy "long" contracts, i.e. they are the counterparty that according to the contract buys the commodity. Of course, financial parties do not want the commodity to be delivered and they sell the contract at particular times before the contract expires ('rolling over' the contract) and have to buy new contracts. The fund managers have to buy or sell futures contracts depending on how much investors are buying or selling stakes into their funds, which can be dependent on expectancies of how much profit investors they think they can make out of rising commodity prices, but can also dependent on what is happening in other financial markets. There are other kinds of commodity speculative commodity products such as commodity certificates described as "turbo's" that double or triple the speculative effect, even for lowering commodity prices. Also, fund managers can buy and sell OTC derivatives to hedge their risk of to provide 'synthetic' commodity index funds.

The most important financial agents in the commodity derivatives market are investment banks, banks, exchanges, managers and operators of different kind of commodity (index) funds, providers of OTC commodity contracts and trade venues other than exchanges, brokers, clearing house, institutional and individual investors, pension funds, hedge funds (some of which are part of commodity traders such as Cargill or Trafigura)[19] (see also paragraph 4.2 on financial sector agents). Some are combining different roles and are trading mostly for financial speculative reasons, i.e. to get benefit out of rising or even lowering prices without buying or selling the physical commodity or hedging physical commodity trade. In addition, also physical commodity producers or traders can both hedge and speculate on derivatives markets. The fees and profits that can be made out of the financial derivatives design and trade, and the commodity investment funds, have been important drivers of the increase in the financial commodity derivatives trade.[20] The diverse roles of financial players can each have a different impact. The negative impacts of the speculative financial players on food prices, namely high price volatility and price spikes, come from massive demand for "long" futures contracts, which increase the price. Moreover, the massive buying or selling beyond what is needed for hedging and which is not so much linked to production expectations but expectations on higher or lower prices, can also cause high price volatility, as can other events in the financial markets. Manipulation of prices by commodity traders or financial traders using on-exchange and off exchange commodity derivatives, or even physical delivery cannot be excluded.[21]

Before the financial crisis, the commodity exchanges were not regulated at EU level, but to a certain extent self-regulated at national level with no official publication of figures on agricultural commodity derivatives trade. The food commodity exchanges are relatively small in the EU since the Common Agricultural Policy provides for stability in food prices and farmer income. In contrast, in the US commodity exchanges were regulated supervised and the CFTC supervises and imposes position limits. However, deregulation since 1999 relaxed limits and provided no oversight of the OTC derivatives market. The Commodity Futures Trade Commission (CFTC) publishes weekly aggregate figures of

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counterparties and trade repositories, http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:201:0001:0059:EN:PDF (viewed 19 June 2013).

[19] M. Vander Stichele, Challenges to regulators- Financial Players in the (Food) Commodity Derivatives Markets, SOMO Briefing Paper, November 2012, http://somo.nl/news-en/somo-news/challenges-for-regulators (viewed 26 May 2013).

[20] See Ibid.: see graphs p. 2 and 10.

[21] See amongst others: Ibid.

commodity futures and option trades on exchanges divided whether they hedgers or speculators. However, one needs to remember that the global physical commodity trade is not being regulated.

Overall, trade in derivatives based on agricultural or 'soft' commodities (e.g. futures for wheat, soy, maize, cocoa, coffee, 'lean hogs', etc.) for hedging and speculating is relatively small compared to other derivatives, such as interest rate derivatives, foreign exchange derivatives. Derivatives statistics hardly provide detailed information on the smallest part, namely the food or agricultural or soft commodity derivatives trade, and are difficult to find.[22]

The lack of transparency and regulation of the food commodity derivatives markets made it difficult for non-players on those markets to be familiar with those markets and analyse those markets. Especially at the beginning of the reform process in the EU, little was known publicly or in academic world or even by EU legislators (see below). The lack of knowledge was also the result from the enormous complexity of the commodity derivatives contracts and their trade, the difficult jargon and arguments used, the complex strategies and risks underlying the trade, and the diversity of financial players. Also, a distinction was made between keeping the useful functions of the exchanges (hedging, price discovery which had no alternatives) as against the un-useful and speculative parts. This lead to situation whereby simple slogans as "stop the commodity derivatives" were not demands that had much potential to be listened to. Although alternatives to this price setting mechanisms and price insurance mechanisms are also available, they are hardly discussed at public level.
The obstacles of non-transparency and complexity that prevented a public debate to easily arise on the subject of food and commodity speculation, meant that civil society organisations had to operate in a construction in which democratic accountability of the legislative framework to regulate the commodities derivatives trade, was very weak.

4. Agency and existing structures

At the start of the legislative process at the EU level on food price speculation on financial markets, the agency and structure of financial legislation at EU level had not much changed since the financial crisis as described in chapter 3. However, what had dramatically changed was the willingness to implement new rules at EU level on financial markets and banks in contrast with the period before the financial crisis when 'light touch' regulation and self-regulation were being argued for by the financial industry and being accepted and implemented by the regulators and supervisors. Since the neo-liberal idea of free markets was institutionalised at EU level in the Single Market for financial services, many EU financial reforms were undertaken at EU level. Which does not mean that governments or parliamentarians did not attempt to retain power to regulate and supervise 'their' financial industry at domestic level. This was also the case for legislation related to food commodity derivatives markets and investment funds in food commodity prices, which is the focus of this article.

It must be noted that food price speculation and tackling it was also dealt with at the G-20 level by agricultural ministers as well as by finance ministers, showing little clear resolve to stop financial food price speculation but willing to limit food price volatility on commodity derivatives markets. The International Organisation of Securities Commission (IOSCO) was in charge of presenting possible ways to legislate derivatives markets so as to diminish commodity price volatility but in practice did not go much further than the willingness of its member countries, including from the EU. It was difficult for NGOs to be reach out directly at the G-20 and IOSCO level although some efforts were succeeded during the French G-20 Presidency. For the sake of this article, the G-20 and IOSCO level is not discussed although its decisions influenced what EU legislation was being initiated and decided on.

[22] See for global OTC commodity derivatives figures for instance: http://www.bis.org/statistics/dt21c22a.pdf (viewed 24 June 2013).

In order to understand the legislative construction in which civil society and citizens were acting as agents process to tackle food price speculation and how the EU legislative process is working, this article focuses on the three groups of main agents.

4.1. Decision-makers agents: EC, EP, Council, member states, ESMA

The official legislative process

As a background for this article, it is important to understand how the EU legislative process is institutionalised. Each of the new EU financial regulations has to go through the following sequences and decision-making:

1) The European Commission (EC) has the sole right to propose financial regulation, i.e. new financial regulation or to review existing financial regulation: The EC's directorate General (DG) for Internal Market and Services, and the Commissioner heading that DG, is responsible for the proposal. It has the mandate to further the Single Market and the competitiveness of the financial sector as well as to regulate the financial sector - a conflict of interest. Moreover, an agreement of all the Commissioners is needed before any EC legislative proposal is published. Given that each Commissioner also represents the interests of his/her country and his/her party line, compromises have to already be found at this level whose internal dealing and wheeling is not transparent or accessible for outsiders except for corporate lobbyists.This also means that the democratic right of a parliament, the legislative power, to initiate an EU financial law does not exist at EU level.
2) The co-decision process: The EC's legislative proposal has to be agreed upon by both the European Parliament (EP) and the Council of Ministers of Finance (ECOFIN). First, each have to agree on their own position. In the EP, the proposal is first discussed and decided upon in the Economic and Monetary Affairs Committee (ECON) under the responsibility of a selected MEP (the 'rapporteur'), and then in Plenary. The ECOFIN has working groups from technical level (with representatives often coming for meetings from the capitals), up to the highest political level by the permanent representatives in Brussels and the ECOFIN meeting. Once both have decided their position in parallel, a final compromise text has to be agreed at closed door negotiation meetings between the EP (rapporteurs and shadow rapporteurs from different parties), and the ECOFIN (represented by the EU country holding the presidency, which rotates every 6 months), with the support of the EC. The final outcome of this 'trialogue' will constitute the EU law.
3) An EU financial law can be a 'Regulation' that is implemented directly at EU level at a decided time, or a 'Directive' that has to be translated into national law through national parliaments given them some limited leeway of interpreting the implementation of the law. A Directive or Regulation can contain provisions that technical details have to be decided later by the European Supervisory Authority (ESMA) and the EC, which is the so-called 'level 2' decision making process. However, working out technical details at this second level can result in practice result in changes of the law and an institutional conflict among ESMA, the EC, the EP and ECOFIN.

This piece-meal slow legislative process at EU level gives an insight about its complexity. As a result, it is difficulty for citizens, civil society groups and even the media, to monitor and influence the whole process.

Agency and constraining structure

Except for the ECOFIN, each of these institutions have formal and non-formal consultation procedures to support the legislative process, which in principle should allow multiple agents to have an input. For instance, the EC's formal consultations consists of expert groups, written consultations announced on its website and to which can be replied via internet by citizens, registered groups and the business sector, oral hearing sessions at the EC building in Brussels. These are therefore open to the power of agency of NGOs and other civil society groups. However, at the same time, influential informal consultations occur. The informal consulting happens by allowing the financial sector to engage in unregulated lobbying and

informal meetings up to the highest political level, letter writing with particular positions or comments on drafts texts and amendments. In principle, not each changed draft text is available to the public. In practice, special interest groups were allowed to have access to leaked texts during the different drafting processes.
All these EU consultation processes have been, and still are, dominated by the financial industry who has often been the sole participant and counter-party of the decision makers. This was not only a consequence of the continuing neoliberal thinking that the financial sector needed to remain competitive and not be undermined by regulation, nor only due to the sheer massive financial and human resources of the financial lobby. It was also a consequence of the era of self-regulation and 'light touch regulation' which had resulted in a huge lack of knowledge by regulators and supervisors. Lack of knowledge made them susceptible to financial sector interests. Although derivatives markets played an important role in the financial crisis, political decision makers and their staff were willing to continue the cosy close relationship with the financial sector involved in the derivatives markets, order to obtain the information that they needed about the complex and non-transparent derivatives market. This continued regulatory capture also resulted in the EU legislators having no idea of what the public interest or sustainability impacts of legislation about derivatives might be. Consequently, the EC did not start a process of broad assessment of derivatives trading regarding what the goal, usefulness and impact on society is. This, of course, jeopardized democratic values of the EU. Although the compulsory impact assessments of EC legislative proposals need to identify the social, environmental and third country impacts, the assessment papers for the two derivatives legislations (MiFID review and EMIR: see below) that covered food commodity derivatives markets only had a few, identical, lines claiming there was no particular impact.[23] In other words, financial food price speculation on derivatives markets was not on the EC's own radar when starting legislation regulating financial markets and (commodity) derivatives markets in particular.

The imbalance in transparency and access to the financial reform decision making process undermines scrutiny by citizens and undermines democratic decision making in which the interests of all stakeholders are heard and can be taken into account. While the EC and ECOFIN did little to address these problems so as to have more balanced consultation mechanisms, progressive members (Greens, Social Democrats, Christian democrats, GUE(far left)) of the EP had since 2009 raised the problem that no voice was heard from civil society in the financial reforms, which undermined MEPs ability to legislate in a balanced way. After a long process, a lobby group from part of civil European society groups was created. By the time the derivatives legislation started, Finance Watch was up and running to counter arguments by the financial industry and raise public interest concerns.

Given the different elements that created a relationship of dependency by the governments/political decision-makers on the financial industry, the latter's consequential power over governments/politics is another limiting structural force that NGOs and others encounter in their attempts to oppose private interests that are not in line with the public interest. As a consequence citizens and civil society organisations had as agents to take the full own initiative to be heard and interfere with the legislative process to have financial food price speculation being tackled in contrast to the other agents, the financial industry, which had a long standing and continued close relationship with the legislators.

4.2. Financial industry

The financial industry remained well organised and well-resourced (financially, human resources and expertise) to influence the legislative process notwithstanding financial losses due to the financial crises. As agents, the financial industry did not withdraw from lobbying the legislative process although it was discredited by the public as causing the financial and resulting economic crisis. Indeed, before the crisis had allowed (investment) banks, hedge funds, fund managers, brokers, exchanges and other trading platforms, clearing houses, pension funds and other actors in the financial sector to build out very lucrative and large complex speculative derivatives markets without much regulation and supervision due its successful lobbying for deregulation and self-regulation within the neoliberal paradigm.

[23] http://ec.europa.eu/internal_market/securities/docs/isd/mifid/SEC_2011_1226_en.pdf

While the financial sector involvement started as intermediaries for the hedgers, by 2008 the (food) commodity derivatives business was part of the lucrative derivatives business sector. The fees and profits that can be made out of the designing commodity derivatives contracts, funds and indexes, as well as proprietary trade and trade for clients, clearing and safeguarding or even use the collateral, made huge profits. The expansion into even more commodities and other kind of funds, provided the financial industry with the prospect of further profit making. For instance, Barclays Capital was estimated to have been able to get profits from its food commodity derivatives business between £195 million and £340 million in 2010[24] and also for Deutsche Bank[25] and US investment banks Goldman Sachs or JP Morgan operating on European markets, commodity derivatives business was very lucrative. The high profits had made ever more banks, fund managers etc. between 2000 and 2009 getting into the commodity derivatives business which started by a few investment banks (e.g. Goldman Sachs) after they were allowed by governments to trade without links to physical trade. Up to 2007, it also provided interesting returns to all kind of investors in search of high profit margins which were difficult to find after the dot.com crisis in 2001 and it had been successfully advertised as a high return investment that was not linked to the stock market and inflation. This made many allies among investors to defend the financial commodity business. In addition, very large users such as oil and energy companies were also heavily involved in the commodity derivatives trade to manage and reduce their risks, to make money out of speculation or even perhaps to evade taxes through derivatives.

The resulting increasing complexity of the products and the lack of trading was also a means to frighten supervisors away due to the costs of supervising complex financial markets although they were still non-transparent and opaque. The commodity derivatives business had become a market in the investment world, including for pension funds, without little awareness of the governments and parliaments, the academic world, the civil society groups and the public.

As agents, the financial sector decided to fiercely defend its commodity derivatives business as was part of its derivatives business which was one of the few remaining areas for (potentially) making higher profits, amongst others because new banking regulations were reducing profit margins for lending due to higher capital requirements. The actors in the derivatives business had no interest in identifying, letting alone respecting, the public interest or the negative impacts of their business. They has mostly not analysed what the impact of the financial commodity business was on prices and had actually not particular attention to regulating food commodity derivatives markets as being special. On the contrary, the derivatives business lobby used the complexity and secrecy of the derivatives markets to insert their interests in the legislation and even abused it to lie or put wrong arguments in order to weaken the EU legislation.

The derivatives business was well equipped to lobby for its interests. Active participation in the formal and informal lobbying and consultations (see 4.1.) was done through well-organised and well-resourced branch organisations. During the derivatives market regulation process, the following were amongst the very active and aggressive lobbying organisations: the International Swap and Derivatives Association (ISDA)[26], EFAMA representing the EU fund industry[27] and the City of London Corporation.[28] The latter was having close organisational relationships with the UK government civil servants negotiating at EU level. Often staff of banks and other members of the branch organisations would be involved in the lobbying efforts and might equally organise specific informal meetings with decision-makers at different

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[24] B. Scott, Barclays PLCc & agricultural Commodity Derivatives, (Report produced for the World Development Movement: March 2011, p. 18, http://www.wdm.org.uk/sites/default/files/Brett%20Scott%20-%20BarCap%20Report%20March%202011.pdf (viewed 2 June 2013).

[25] Oxfam Deutschland, Don't Gamble with Food ! - How the German Financial Industry Is Making A Business Out Of Hunger, http://www.oxfam.de/sites/www.oxfam.de/files/englische_zusammenfassung_final.pdf (viewed 24 June 2013).

[26] The ISDA lobbying documents can be found amongst others at : http://www2.isda.org/mifid/ and http://www2.isda.org/emir/

[27] See for examples of their lobby documents : http://www.efama.org/Lists/Topics/form/DispItem.aspx?ID=22

[28] See amongst others: http://www.thebureauinvestigates.com/2012/07/09/revealed-the-93m-city-lobby-machine/, http://www.cityoflondon.gov.uk/business/support-promotion-and-advice/eu-and-regulation/irsg/Pages/IRSG.aspx , http://www.cityoflondon.gov.uk/business/support-promotion-and-advice/Pages/supporting-city-competitiveness.aspx, http://www.efama.org/Lists/Topics/form/DispItem.aspx?ID=22

levels to defend a particular interest of their bank or fund (not all interests of the financial sector are the same).
The financial sector is also well informed about the details of the legislative processes through regular information services from consultancies that publish (daily, weekly) newsletters and identify where the interests of the financial sector, their clients, are at stake and what the (negative) impact of the new legislation will be. As the positive impact for the financial system, the economy and the public interest is hardly mentioned in the information exchange and the financial press, the 'avalanche' of new regulations were considered as burdensome against which it needed to be lobbied.
Since the enormous network and capacity of lobbying had been successful before the financial crisis, the financial sector continued to lobby when new regulations were being designed and discussed. Their experience had made them known all the channels, strategies and tricks of formal and informal consultations in "Brussels", knowing all the right people and able to be at the right place and the right time. One of the main instruments had been the capacity of the financial sector to get hold of draft texts which are not publically available, and make comments and amendments to them. "Brussels" had hardly any codes of conduct for lobbyists or regulators and their staff how to deal with lobbying and the financial sector itself had no ethical codes on lobbying. As a result, the regulators and supervisors were very well informed and entrenched about the particular interests of the financial commodity business sector which for years had been their lone interlocutor.

4.3. Civil Society

After the Asian financial crisis of 1997-1998 which had affected many developing countries, only a few civil society organisations worldwide had continued to pay attention to the financial sector as an important agent in development, environmental destruction, abuse of consumer confidence, the financialisation of the economy and natural resources, and the development of speculative bubbles within the neo-liberal paradigm that was destructive for societies and increased the gap between rich and poor. The ATTAC movement in many countries existed in different EU countries and beyond a financial transaction tax (FTT), often dealt with the diverse problems of neo-liberal economies. By 2008, the financial crisis as such was thus not a surprise, but the mechanics, instruments, products, strategies, diverse on and off-shore actors, the (deficient) rules and regulations were not known to most civil society groups. This was also the case about the issue of food price speculation through the financial markets. The complexity of the issues and the lack of resources and long term financing, had made it difficult for most NGOs to invest in a good understanding and a strategy to get grip on the financial sector as a whole and the issues which undermined their interests. In addition, only in 2008 did a study by a consortium of a few European NGOs clarify the EU legislation and decision-making process about the financial sector.

However, in Europe civil society groups had an extensive network including with colleagues around the world, working on diverse issues that had involved them in legislative processes at the EU level, e.g. on trade, environment, development, consumer interests, etc. They had used diverse strategies from knowledge building to alliance building and cooperation, from lobbying to public campaigning, using the different channels at national en EU level, including during legislative EU processes. From their experience, some NGOs were or had become reluctant to engage in the consultative processes that the European Commission had set up in response, because they feared to be, or felt, co-opted while their point of views were not taking into account. They act within a context constant tension between wanting to change the system and the decision-making process, and trying to change regulations through participating within the same system. Moreover, experience had learned that efforts and resource put into influencing the legislative process could be fruitless. The increased concern about the dominant influence of the business sector, which undermined civil society voices and public interest arguments, was reinforced by the creation of an NGO solely devoted to exposing the corporate lobby (Corporate Europe Observatory).

Once the crisis had erupted, NGOs in Europe were willing to push for change and used the existing networks to bring NGOs and trade unions together in different informal meetings and NGO forums to

focus on the financial crisis and the reform of the financial sector as well as the neoliberal paradigm in which the financial sector had been flourishing, as the underlying problem of many societal problems (see also below). However, lack of resources to get organised and mobilise more citizens, deal with the complexities of the financial sector that were exposed by the financial crisis while keeping the fundamental messages that required radical reforms was a too daunting task. After a while, different informal networks among these NGOs were formed to cooperate on particular issues, such as the FTT and food speculation, which allowed them to enter into technical details, resist arguments against their demands and attempt to enter the political decision-making sphere on financial issues, which was new. In parallel, since civil society voice was not present on financial reforms while civil society groups had had an input in in many other issues, progressive European Parliamentarians had supported the creation of Finance Watch as an organisation in Brussels that would have the capacity to bring the civil society perspective into the legislative discussions of financial reform. Although there were consultations with the whole of the interested NGOs in the EU, quite a group of them did decide not to be member of Finance Watch because the constitution allowed the staff to decide on its views independently of its members, which was contrary to democratic principles of many groups, and to have a reformist strategy. Once up and running, Finance Watch was having the capacity to monitor and have technical expertise about the diverse financial reform legislative processes, to position itself and use the same lobby strategies as the financial sector.

On a more general level, and in parallel with more professionalised NGOs, the Occupy movement arose as a grass roots citizen movement that wanted to make a clear signal of protest and pressure for real and radical changes without getting into the technical discussions or getting organised professionally, although contacts and knowledge sharing with some NGOs did occur. This citizen movement was able to express some of the anger in society and put pressure on the EU legislator or more particular the European Parliamentarians, without being linked to the political moments of decision-making.

As a result, as agents there was a diverse strategy to deal with the financial crisis issues. The complexity of the financial sector had made it difficult to use the strategies they had been using on different other issues. The dominance of the financial sector lobbying limited the possibilities to get a status to be heard during the legislative processes that reflected the complexity of the financial sector while regulators had ignored to ask for the fundamental questions. How this played out for NGOs tackling financial food price speculation, is explained below.

5. Food price speculation and agency: strategies, tactics and activities

5.1. Intro

At the same time that food prices rose in 2008 (just before the financial crisis exploded in the EU) to such level that a lot of food riots broke out in developing countries, some banks started to do marketing of financial products by which clients could benefit from higher prices in food commodities. Some spontaneous citizen campaigns, e.g. against the Belgian KBC[29], arose against such products, by making the link with too high prices for poor people and the foot riots.
The financial crisis had made it clear that more regulation was needed. However, this did not happen immediately as the (ultra neo-liberal) EU Commissioner (Mr McGreevy) responsible for the EU financial sector and financial regulation first wanted to leave the markets on their own, allowing them to collapse, having heard for years from the financial lobbyists that no regulation was needed and believing the neo-liberal theory of efficient markets so that markets would find an equilibrium.

[29] 'Speculeren met voedselprijzen is onethisch en verwerpelijk', Gazet van Antwerpen, 29 May 2008, http://www.gva.be/nieuws/binnenland/speculeren-met-voedselprijzen-is-onethisch-en-verwerpelijk.asp (viewed 26 June 2013).

This chapter provides examples of the dynamics between different groups of agents within the given construction and whose interests were able to prevail.

5.2. The Grand Vision vs. the concrete reforms

For NGOs, it was clear that the financial crisis was part of a larger phenomenon that also lead to the food/agricultural crisis, the climate crisis, the increasing gap between rich and poor, etc. European NGOs interested in tackling the financial crisis met for the first time in Paris, January 2009. Quite symbolically, this was at the same time that the CEOs of the world's biggest (investment) banks were meeting behind closed doors with the Basel Committee of Banking Supervisors, the key global decision makers on bank reforms. European NGOs also met in Frankfurt in 2010. One of the themes around which they strategized to take action was about 'closing the casino' part of which was stopping speculating on food and commodity prices and financialisation of commodities. At global level, at the World Social Forum in Belem (Brazil), end of January 2009, there were sessions to come to a declaration on the financial crisis, financial reforms and the needed alternatives. Regarding food speculation, there were statements to stop food price speculation but discussions whether or not to call for a total closure of commodity derivatives markets. Also, 31 January 2009 was the deadline for submitting input to the EC's official consultation about for the first time regulating hedge funds, which are also active in speculating on food prices. Only Eurodad[30] and SOMO[31] made a submission to this consultation, among the other 82 submissions from registered organisations which were by a large majority from the financial sector except for a few trade unions.[32]

However, after some time it became clear that it was difficult to win the battle against the constraining structure based on the macro ideas for reforms and alternatives. Regulators thought the problems would be easy to fix and only the financial sector had been their inter-locuteurs. They had not heard or were not interested in NGO views.

Tackling the food commodity derivatives market would not result in closing the whole 'casino' in the financial sector. However, NGOs were having little ways to press their structural demands onto the political agenda and were reluctant to connect with politicians out of fear of cooptation or getting involved in neo-liberal policies, and disillusionment due to past disappointing experiences of unwilling or weak politicians. Some NGOs such as Corporate Europe Observatory (CEO), Friends of the Earth Europe (FoEE), World Development Movement (WDM), SOMO (Centre for Research on Multinational Corporations) and World Economy Ecology and Development (WEED) were foreseeing that campaigning against food speculation, which was affecting the poor in developing countries, was possible from a public attention and media point of view, and therefore had the possibility to have at least a political impact. This explored one way of having civil society demands to be included in the financial reforms, a method that had been sometimes successfully worked in other areas of campaigning such as trade policy and internet freedom. However, NGOs had no experience in intervening in the EU decision-making processes on financial regulation. SOMO and WEED had received subsidies from the EC public awareness programme to raise understanding about the impact of EU financial reforms on developing countries. WDM knew that the UK government would be the most forceful against limiting commodity derivatives trade to prevent the perceived harming of the City, and started to campaign early based on research and exposing the banks involved in food price speculation, in order to influence the position of the UK government early before the actual legislative decision-making process. Except for CEO, these NGOs were member of Finance Watch that had a strategy of counter-balancing the arguments/lies of the financial sector, and to heavily lobby the EU decision-making processes as well. Inspiration for the alliance of European NGOs also came from

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[30] https://circabc.europa.eu/sd/d/257e9177-a22a-4edb-943e-1f0ec91a0ad2/EURODAD%20.pdf.

[31] https://circabc.europa.eu/faces/jsp/extension/wai/navigation/container.jsp?FormPrincipal:_idcl=FormPrincipal:libraryContentList:pager&page=2&FormPrincipal_SUBMIT=1&org.apache.myfaces.trinidad.faces.STATE=DUMMY: see "SOMO" submission.

[32] https://circabc.europa.eu/faces/jsp/extension/wai/navigation/container.jsp?FormPrincipal:_idcl=FormPrincipal:libraryContentList:pager&page=0&FormPrincipal_SUBMIT=1&org.apache.myfaces.trinidad.faces.STATE=DUMMY

a small group of US non-profit organisations that had linked up with some small commercial groups to fight for improvement in the Dodd-Frank Act, regarding limiting financial players on exchanges (especially commodity index funds) through limiting their number of contracts ('position limits'): the Institute for Agriculture and Trade Policy (IATP) had kept European NGOs interested in the matter informed. Indeed, the US (food) commodity exchanges were important world pricing setting benchmarks for food imports into developing countries but also for EU farmers. Moreover, if new EU legislation would become weaker than US legislation, the derivatives markets and their risks would flow to the EU. This is called 'regulatory arbitrage' which was an important issue in the discussion about new legislation. On both side of the Atlantic, the financial lobby was using the threat of losing competitiveness due to stricter rules as compared to the other side of the Atlantic, as a way to weaken rules. In contrast, NGOs were connecting on both side of the Atlantic to cooperate and be able to push that the strictest rule on one side was also adopted on the other side of the Atlantic, and exchanging expertise and arguments against the financial lobby.

The NGOs identified the following legislation as regulating the food commodity derivatives markets:

1) European Market Infrastructure Regulation (EMIR): Regulates the OTC (commodity) derivatives market to make it more safe (by clearing), and regulates the clearing houses (Central Clearing Parties/CCPs), the supervision and the reporting to the supervisors and the public.
2) The revision of the Market in Financial Instruments Directive (MiFID-II), and the new Market in Financial Instruments Directive (MiFIR) which were going through the legislative process together: Regulates financial markets on and off exchanges, the marketing of financial investment products, commodity markets (was not the case for MiFID I), the reporting, and the supervision and powers of supervisors.

Other legislations that also deal with parts of the commodity derivatives markets and their agents were the following, about which NGOs have not been involved or ad hoc basis (e.g. request for input by MEPs or EC consultation):

3) Market Abuse Directive (MAD) and Market Abuse Regulation (MAR): For the first time, ensuring that abuses on commodity markets are defined and seen as offences, and provided with good supervision and sanctions.
4) Capital Requirement Directive (CRD IV): Amongst others, sets the amount of capital banks have to put aside when trading on (commodity) derivatives markets
5) The revisions of the 'Undertakings of Collective Investment in Transferable Securities' (UCITS): deals amongst others with commodity index investments funds through which institutional investors can speculate on food prices.
6) PRIPS: deals amongst others with commodity index investments funds through which individuals can speculate on food prices.
7) Benchmarks: legislation on how and which commodity indexes are being designed, calculated, and used for payment to clients.

5.3. A case of public reporting in EMIR and MiFID II

The first EU legislation NGOs identified as being important for tackling food price speculation was a new EU law called European Markets Infrastructure Regulation (EMIR). This legislation intended to bring transparency in the market of the over-the-counter (OTC) derivatives (see above). The OTC derivatives trade remained unregulated which meant that during the crisis supervisors and authorities had no information about who was trading and holding which derivatives contracts. As former EU Commissioner for Internal Market and Services, said in 2009: "When the crisis started, neither the market nor supervisors knew who was bearing what risk in the economy."[33] This was especially worrying since at

[33] European Commission, 'Mr. Charlie McCreevy European Commissioner for Internal Market and Services Derivatives and Risk

least 75% of the derivatives trade is OTC, resulting ca. US$ 600 trillion notional amount outstanding[34] of derivatives every year to be traded at unregulated OTC markets, amongst others credit derivatives (the credit default swaps) which were are the heart of the financial crisis in 2007-2008. The lack of transparency in OTC derivatives trade resulted in a credit crunch, because banks and lenders were unsure which banks were in trouble and distrusted each other for interbank lending.

Lacking transparency also meant that it was unclear how much OTC food commodity derivatives were being traded, and by whom and with what purpose, and which impact it had on food commodity prices. NGOs were interested in making this OTC trading in food commodity derivatives transparent. Food commodity swaps, a certain kind of derivatives, play an important part in relation to commodity index funds which speculate on food prices. NGOs were aware, however, of the interests of financial players such as investment banks, brokers/dealers, and hedge funds to have unregulated OTC markets. This powerful group of agents would make a call for a total stop on OTC food commodity derivatives trade very difficult to say the least. Taking into account their opposition, NGOs instead asked for a limit to this kind of derivatives trade.

In addition, it was EC's intention that EMIR was to prevent a new crisis by introducing mandatory clearance by central counterparty clearing facilities (CCPs). Indeed, the G-20 meeting in Pittsburgh has declared to improve OTC derivatives markets by proclaiming that "All standardized OTC derivative contracts should be traded on exchanges or electronic trading platforms, where appropriate, and cleared through central counterparties by end-2012 at the latest. OTC derivative contracts should be reported to trade repositories. Non-centrally cleared contracts should be subject to higher capital requirements." OTC derivatives trade functioned mostly and traditionally without any form of clearing in these OTC markets and were thus very risky in case of default, which became painfully clear during the crisis. As clearing is accompanied by costs, trading on OTC markets was thus assessed to be cheaper than trading on exchanges. Financial market agents as well commercial users (e.g. oil and energy users, pension funds) therefore resisted clearing of OTC markets. Lack of regulation and transparency also meant that prices for the different OTC derivatives contracts and trade were not well known among the users. This allowed investment banks and others who developed and traded OTC derivatives contracts to make huge profits, also based on OTC commodity derivatives. Lobbying of financial players was thus aimed at watering down legislative proposals in order to prevent the increase the costs of this OTC derivatives trade. In other words, the firm belief in de- and unregulated market and competitive pressure to make huge profits, and the consequential lobby of the financial sector against proposals for more clearance functioned as a structure that limited the possibilities for NGOs as agents who advocated for stricter control and rules.

The European Commission (EC) who has the sole right to propose an EU legislation had not regulated the OTC derivatives market before the financial crisis of 2008 under pressure from the powerful financial lobby, not in the least the aggressive well-resourced International Swap and Derivatives Association (ISDA), which the EC had been in regular contact amongst others in the advisory groups.[35] In 2009, the crisis made the EC table a proposal to increase the much needed transparency through reporting to supervisors and trade repositories, make trade in OTC derivatives more safe, i.e. less vulnerable in times of crisis, and more "efficient" by compulsory clearing or other safety measures, ensuring the good governance of the clearing houses (called central counter parties or CCPs) and regulating the access to CCPs –the latter constituted a huge conflict of interest among the CCPs represented by their home governments and MEPs, which NGOs did not comment on.

Friends of the earth, SOMO, WEED, WDM and CEO all showed interested in engaging in the legislative process since they identified some shortcomings in the new proposed legislation to effectively stop financial food speculations through OTC derivatives. They decided not to wait until the proposal was voted in plenary in the European Parliament (EP) who was the co-decision-maker together with the Council. They analyzed the first draft of the 'rapporteur' of the Economic and monetary committee

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Allocation Derivatives Conference Speakers' Dinner Brussels, Press Release, 24 September 2009, http://europa.eu/rapid/press-release_SPEECH-09-410_en.htm?locale=en (viewed 19 June 2013).

[34] See for instance: http://en.wikipedia.org/wiki/Derivative_%28finance%29

[35] Corporate Europe Observatory, DG Internal Market's expert groups: More needed to break financial industry's stronghold, December 2011, http://corporateeurope.org/sites/default/files/publications/dg_markt_expert_groups.pdf (viewed 20 June 2013).

(ECON) and shared analysis of the legislative process, the discussions and the hundreds of amendments on which the ECON would vote. One of the problems was that in the beginning it was not clear whether EMIR would cover only OTC derivatives or all derivatives trade (also those on exchanges). This is one of many instances where complexity of the technical nature of the subject and the lack of transparency in lobbying and the decision-making process countered efforts of NGOs to call for improved regulation (see also below). An important missing element identified was the fact that the reporting about OTC (commodity) derivatives would only be done towards supervisors, with no reporting to the public as was being done in the US by the CFTC in aggregate terms in weekly reports. Such public reports in due format would allow all agents, including academics, farmers, parliamentarians and civil society organisations to have a good insight into the OTC derivatives trade and how it can cause price volatility, harmful speculation and crisis.

The small group of NGOs monitoring the legislation wrote a letter to members of the European Parliament (MEPs) with their proposals for change in the draft legislative proposal of EMIR. In addition, the NGOs directly contacted the MEPs and their assistants from parties that were open to civil society voices (especially the Greens and the left (GUE/NGL), but also the social democrats, and the Christian democrats which was the party of the rapporteur) regarding the major problems they identified in the text and suggested text changes for the amendments. Regarding the omission in the text to include public reporting in due aggregate format, about which the NGOs had given advice, was first only picked up and proposed as an amendment for the ECON vote by the MEP from the GUE/NGL while the Greens, who had adopted the strategy to not be seen as a radical party, ignored the NGO proposed amendment at first. Once the amendment proposed, and NGOs continue to raise it in their lobby efforts, the Greens were contacted by the GUE and found it important to support the amendment, after which some social democrats and the Christian democrat MEPs followed as well. In the end, the text on public reporting was voted on favourably in the ECON committee as well in the EP plenary after it was somewhat watered down and the technical details left to the second level[36] of decision-making.

The core NGOs active on EMIR also reached out to those NGOs who had since the crisis been interest to critique the crisis and its reforms, and who had formed several mailing list once the financial crisis broke out. Some of them wrote through existing mailing lists and the Newsletter issued by SOMO and WEED, to the interested NGOs to inform them about what was happening with a new EU legislation about "derivatives markets, which are mostly highly speculative, which speculate against governments (betting against the Euro, betting that governmental bonds e.g. from Greece, will default, etc.), and with food commodity derivatives and emission allowance derivatives (based on faulty carbon trading etc.!)".[37] This was a letter to announce that a campaign letter would be coming before the ECON vote on 24 May 2010 and gave links to influence the amendments which needed to be submitted the following day (the latter clearly being very late, due to lack of capacity according to SOMO who had itself submitted amendments). At the time of voting in ECON, the core NGOs set up a campaign website (www.makefinancework.org) and those of the NGOs who were campaign organizations used it to reach their members, the public and the media.

The other co-legislator was the Council of Ministers of Finance of the EU members states (ECOFIN), who meet every month and whose decisions are based on qualified majority voting but preferably consensus. The ECOFIN as such is much more difficult to access. It is often approached by the financial lobbies through the Finance Ministry or the permanent representation in Brussels of the country that has the presidency, which rotates every six months (making it resource consuming to each time re-establish contacts). Also lobbying at national level had an important influence on national positions by Finance Ministers. At the time of the EMIR legislative process, the NGOs were very limited in their capacity to approach their domestic Ministries of Finance, and it had not been possible to help launch national actions towards the Finance Ministry, by supporting other NGOs or citizens.

The most non-transparent and inaccessible process for NGOs came once the EP and ECOFIN had each reached their position and had to negotiate a compromise text through the above described 'trialogue'.

[36] http://www.esma.europa.eu/page/European-Market-Infrastructure-Regulation-EMIR
[37] M. Vander Stichele, SOMO, letter emailed on 19 April 2010.

Moreover, NGOs had already to use their small capacity to focus on the next legislation (review of MiFID: see below). At the end if this legislative process, the outcome was that the public reporting obligation (Art. 81) was even further watered down and the details left to the technical level regulators: ESMA and the EC. The core NGOs had no time nor capacity to follow up the technical discussions and decisions at ESMA, based in Paris, where also a written and consultative processes took place dominated by the financial sector. As a result, the final EMIR details on public reporting laid down what categories of aggregated information would need to be reported[38], but there was no guarantee that the date would be organised in an easy accessible and meaningful matter which would make an effective of information and analysis for relevant stakeholders and civil society groups.

One of the conclusions is that lack of transparency in OTC derivatives markets was one of the major reasons for NGOs and other agents to ask for better, more, improved regulation on OTC trading and public reporting. At the same time, lack of transparency in the decision-making process and lobby of financial sector was also one of the limiting structures NGOs encountered during their efforts to have effective laws that would make OTC (commodity) derivatives markets transparent in a meaningful way for all stakeholders.

5.4. The fight about position limits

The legislation that would be key to deal excessive financial speculation on food prices was identified by legislators and NGOs as the legal review of the Markets in Financial Instruments Directive (2004), the so-called MiFID. However, MiFID deals with many different aspects of the financial markets from regulating how to trade on trading platforms to protecting investors. The review needed to deal with "the rapid technological advances, the complexity and changing make-up of financial markets and the lessons of the financial crisis", and therefore address "all of the areas where shortcomings have been revealed or improvements are needed".[39] One of the shortcomings was the lack of transparency, reporting, regulation and supervision of commodity derivative markets given the concerns "relating to their functioning and their impact on commodity price volatility." [40] In other words, there were many diverse financial interests at stake for the financial industry and particularly those in the financial markets and derivatives or fund business, while civil society groups were focusing on one aspect of the MiFID review with the aim to stop speculation on food prices as much as possible.

Only in 2010 did the process of reviewing MiFID officially start, after different EC advisory groups that were totally dominated by the financial sector had over several previous years informed the EC about particular issues that were being covered by MiFID.[41] By mid-2010, several NGOs had invested time, human and financial resources to build up their understanding of how food price speculation was happening on food commodity markets, how commodity derivatives and exchanges were working, who were major players and what were their strategies, and what were ways to avoid. The small groups of NGOs who had started to work on financial food speculation and the legislative process of EMIR - the core being WDM, SOMO, WEED, CEO - started to also network and cooperate on the MiFID legislative process with input from US colleagues who had fought for limiting commodity speculation during the legislative process of the Dodd-Frank Act.
One of the regulatory measures that the NGOs aimed to have included in the legislation in order to effectively deal with food price speculation within the new MiFID was to make sure that at least the law would include strict, legally binding and ex ante 'position limits', i.e. clear measures that would restrict the number and/or the value of commodity derivatives contracts ('positions') held by financial player. The aim of restricting the volume of the financial players, is to ensure that the commodity exchanges and the

[38] http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:052:0033:0036:EN:PDF
[39] Press Release, 'Financial services: improving European rules for a more robust framework for all financial actors and instruments', 12 August 2010, http://europa.eu/rapid/press-release_IP-10-1677_en.htm?locale=en (viewed 20 June 2013).
[40] Ibid.
[41] Corporate Europe Observatory, DG Internal Market's expert groups: More needed to break financial industry's stronghold, December 2011, http://corporateeurope.org/sites/default/files/publications/dg_markt_expert_groups.pdf

commodity derivatives markets is are not dominated by speculative players who make prices volatile and cause price spikes due to their mass buying and selling, which undermines commodity exchanges functions of setting prices which are used around the world.

The MiFID review started with the usual consultation procedures at the EC, which NGOs (especially SOMO as part of writing the calendar in the SOMO-WEED Newsletter on EU financial reforms) had been monitoring in order to participate. First, the EC organized a public hearing on 20-21 September 2010 where various stakeholders should in principle be presenting their views. In practice, the draft programme made it quite clear that, us usual, the speakers and even the chairs of the panels at the hearing would be representatives from the financial sector. The informal network of core NGOs agreed to contact the EC and press for a NGO speakers to be part of the panels. After the EC refused a speaker from a US NGO who had the experienced how to get position limits in the US legislation, NGOs succeeded to have two of them, from SOMO and Re-define, to speak. For the first time, and one of the exceptional times, NGOs spoke (on 21 September) in the panels at an EC hearing (room of around 400 people) on financial reform and were also visibly present in the meeting room, while the programme and the meeting room was still dominated by financial sector agents.[42] The core NGOs had strategically decided to organize an educative workshop for other NGOs on 20 September, so that many NGOs could continue to stay and be present at the hearing of 21st September. This enabled NGOs during the limited question and answer time after each panel of speeches to give a clear signal, by raising questions, to the EC that NGOs were watching and really wanted food commodity derivatives to be regulated so as to stop excessive harmful speculation. Knowing that the financial industry would conceal or deny that food commodity derivatives traded by financial parties would affect prices, the speaker from SOMO did not only warn about the harmful effects of the growth of unregulated non-hedging food commodity derivatives trading on volatility of real prices, but also tried to step above the yes-no debate by arguing for the precautionary principle in the light of the right to food and prevent unstable market conditions, an argument that in the concluding remarks by the EC at the end of the hearing was taken over.[43]

NGOs provided also input for the usual written consultation for the review of MiFID, launched in December 2010 and open for 2 months at the EC website.[44] The questions to be answered in the consultation text were very technical and particularly addressed to the financial industry ("what do you think…"). Clearly, the financial industry had already had many exchanges on information about what needed to be in the new law. Regarding commodity derivatives markets and trading, the consultation text did not mention 'position limits' nor the specificities of the food commodity markets, and had only a few questions about reporting (questions 60 to 66, 7 questions out of 146 questions). In total the EC received 4200 responses for its consultation, of which very few NGOs and individuals who demanded to act against food commodity speculation through e.g. position limits, were officially recognized.[45]

After the consultation process was over, the EC only published its proposal to replace MiFID on 20 October 2011.[46] The EC proposed to have a new directive (MiFID-II) as well as a regulation (MiFIR), the latter dealing among others with the powers to be given to supervisors at national and EU level. The proposed draft MiFID–II text had only a few articles (art. 59 and 60) specifically devoted to limiting commodity derivatives trading. The EC did not propose to have strict position limits, but proposed to have position 'management', meaning that supervisory authorities could choose when and how to impose position limits, and not having the obligation to always have position limits in place ex-ante. This proposal clearly reflected demands from the financial industry not to restrict commodity derivatives trade and to have the least possible intervention.

Because the legislative proposal from the EC was too weak to effectively limit let alone stop financial food price speculation, NGOs decided to take actions in order to improve the proposal. Given that many

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[42] http://ec.europa.eu/internal_market/securities/isd/mifid/index_en.htm .
[43] http://ec.europa.eu/internal_market/securities/docs/isd/20100920/somo_m_vander_stichele_en.pdf .
[44] http://ec.europa.eu/internal_market/consultations/2010/mifid_en.htm .
[45] http://ec.europa.eu/internal_market/consultations/2010/mifid_en.htm and https://circabc.europa.eu/faces/jsp/extension/wai/navigation/container.jsp .
[46] http://ec.europa.eu/internal_market/securities/isd/mifid/index_en.htm

activities were undertaken at different points of the decision-making process, in this article we summarize below the strategies, tactics and activities as follows:

-Cooperation among NGOs: the core NGOs who had set aside resources to tackle the EU law that would block food price speculation were cooperating, and dividing labour among themselves, in an informal open network to do research, build-up their own technical expertise to deal complexities that arose from new draft proposals (see below), to organise conference calls and meetings for developing strategies, to exchange information through email lists on political processes as well as (academic) research and media articles, and to do a division of labour between campaigning, advocating towards other NGOs and lobbying.

-Lobbying activities: The lobbying to improve the legislative process was also done in a cooperative way, based on day to day monitoring and information exchange, which focused on writing amendments to several draft legislative text as was seen necessary in the leaked texts. The enormous amount of lobby activities towards the European Parliament and the Council of Ministers of Finance included joint and individual writing of letters sent through email, meetings and telephone calls with policy makers and their staff, not only at EU level but also at national level, sending research materials and publications. The hereunder described activities were reinforcing the active lobbying practices.

-Research and publications: The core NGOs published several detailed research reports and publications on how speculating on food commodity derivatives markets work in general, how financial players had an impact on prices, who were the financial players in the food commodity derivatives markets and how these financial players were involved in speculative food commodity derivatives and what their estimated profits were. Another part of the research was to prove how financial players on food commodity derivatives markets (trade, OTC, different kind of commodity funds, etc.) were part of the cause of food price volatility and food spikes that were harming food importing countries and their poor population, as well as farmers. On all kind of public, political and corporate platforms, there were huge debates which the financial sector tried to win by arguing that there was no conclusive evidence that their activities had a (negative) influence on food prices. Given the lack of transparency (available data) and the technicalities, the research and information gathering to argue why and how to stop financial commodity price speculation, was a daunting task. In addition, to explain the food speculation complexities to the wider public in campaign materials based on the research also needed special efforts and resources. Continuously, NGOs have been building up their technical expertise on the several aspects of the issue. The focus was increasingly on ensuring that position limits would be included, would be effective. For instance, they continued to monitor the increasing research being published on the subject, and WEED regularly put on its website an update of an overview of all research on the issue.[47] All this research, information and analysis sharing and publications allowed the core NGOs to respond to proposals of changes in leaked draft texts, and to be considered to have expertise to write technical amendments to the text or to explain to MEPs and their assistants why the NGO proposal for change in the text was important. In order to keep the NGOs informed who were not able to follow the legislative process closely, the Newsletter on EU financial reforms issued by SOMO and WEED with input from other NGOs.[48] An unexpected consequence of the Newsletter was that it kept some academics and developing country experts updated on the EU financial reforms.

-Capacity building of other civil society groups: In order to enhance the number of NGOs, trade unions and farm organisations, joining the activities, lobbying or/and campaigns on the issue of food price speculation and legal reforms to stop it, the core NGOs organised capacity building workshops and spoke at NGO meetings and summer schools to explain the working of food speculation on derivatives markets and the EU decision making process to regulate food price speculation. Also, information exchange was organised through email list with a wide range of NGOs working on diverse financial system issues (e.g. members of ATTAC). A special website for more popular materials (www.makefinancework.org/foodspeculation) adapted to non-experts was set up (linked to a website that was set up by a larger group of NGOs pushing for financial reforms). It was targeting those groups who

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[47] http://www2.weed-online.org/uploads/evidence_on_impact_of_commodity_speculation.pdf

[48] See: http://somo.nl/dossiers-en/sectors/financial/eu-financial-reforms/newsletters

wanted to join in for campaigning and advocacy around important decision making moments. For lobbying purposes, draft letters to policy makers were circulated through emails and that the popular website so that they could be used by NGOs willing to join actions, without having to campaign on a constant basis. One of the results was for instance that OXFAM EU office, OXFAM UK, Friends of the Earth and FoodWatch (Germany) joined the core group of NGOs at EU level. In several countries, Oxfam and other NGOs became active at the domestic level to put pressure on banks or pension funds and on national policy makers who were influential on how their Finance Ministry would position itself, e.g. in Germany, France, and Denmark. Given the activities of some of its members on food price speculation in the context of the MiFID review, Finance Watch included the issue in its position document on MiFID. After that, during the whole process of the review of MiFID, Finance Watch was crucial for lobby activities in Brussels towards all EU institutions, sharing information about the positions taken by different parties and decision-makers, the progress and nitty-gritty of the legislative process and not in the least to get the leaked text of the different stages of the decision making process. Finance Watch was in the mean time also addressing some other non-commodity related issues.

-Outreach to the public and providing opportunities to act: The campaigning NGOs that were part of the core group of active NGOs organised different campaigns to encourage citizens and NGOs to take action, and organised media stunts at important moments to put pressure on MEPs and the Ministries of Finance. NGOs used their own websites and membership contacts as well as the public information and campaign website (www.makefinancework.org/food speculation). They also initiated a Facebook page focused on food prices speculation These instruments were used to make appeals and provide (https://www.facebook.com/makefinancework) and twitter (https://twitter.com/makefinancework). easily accessible instruments to have citizens and members of NGOs to contact directly the decision-makers (MEPs, EC, Ministries of Finance) before the identified key moments of consultation and decision making. After strategic discussions among the NGOs, it was decided that even the popular materials would have concrete proposals for changing draft legislation. In order to explain the issue of food speculation in general, several popular materials including YouTube footage[49] and cartoons were being designed and distributed. These campaign strategies and instruments resulted amongst others in around 13,049 emails[50] sent by UK activists, and many more to the MEPs just before voting in the ECON, and around 50,000 emails to the MEPs before voting in plenary, urging them to tackle food speculation. Also, around 11,000 signatures were gathered and submitted to the MEPs.

Joint public campaign with pots & pans in front of the EP, before key EP decision making to press to stop food price speculation in new legislation that covered food commodity derivatives (MiFID II and MiFIR) and to submit the signatures gathered in the course of the campaign, 24 October 2012 (Source : http://www.wdm.org.uk/action/meps-food-speculation).

-Campaigns towards the banks: Through own and commissioned research, NGO publications revealed per country which banks, investments banks, hedge funds, commodity index funds, pension funds were involved in financial food commodity derivatives trading in order to make a profit (not for hedging in the name of small farmers). WDM (UK) and Oxfam Germany organised active public campaigns against the banks making the most profit, respectively Barclays (UK), Deutsche Bank, Allianz and other German

[49] See for instance: http://www.youtube.com/watch?v=rpM9XxJ-vo4
[50] http://www.wdm.org.uk/action/meps-food-speculation

banks, amongst others making estimates how how much profits the banks were making and how much assets were involved. These campaigns were also later on happening in France and in Belgium. In the Netherlands, a documentary for which SOMO provided input, revealed amongst others that the pension funds of charities included UNICEF, who has to pay for food aid on international markets, had 7% of its assets 'invested' in commodity derivatives. This made the Dutch charities start a difficult dialogue with the pension funds who heavily lobbied for exemptions from clearing and position limits. These revelations and direct campaigns were especially useful to put pressure –together with other national activities- on the national decision-makers, including for instance the agricultural ministry and the national parliamentarians, who influenced the position of a country in the ECOFIN. An important consequence of these public and often playful campaigns was, that large financial players such as Barclays, Allianz and German banks, BNP ParisBas shut their commodity funds and commodity derivatives trading, except Deutsche Bank (who withdrew an announcement to halt new commodity funds after a fierce public campaign).[51] Some of this closing down of trade and commodity funds was accompanied by admitting by some banks that their financial activities in commodity derivatives markets had an undue influence on commodity prices, while others wanted to avoid reputational damage from NGO campaigns, or wanted to avoid financial loss since commodity prices started to be very volatile and prices quickly going down since 2012.

-Media attention: NGOs did not only produce some press releases to raise awareness of the press of their views. The public campaigns and outdoor stunts were also used to get the attention of the media. Due to the attention to the issue, the media also contacted the NGOs to explain how the food commodity derivatives markets work and affect food prices, and also to expose who the financial players were. This resulted in several articles on food speculation in mainstream media and reporting on the NGO positions on the MiFID review, up to the Financial Times.[52] Some interesting documentaries were made for instance on German and Dutch television to which several NGOs devoted their time and resources.

In all the above activities, strategies and tactics, NGOs focused especially, but not only, in the consecutive leaked draft texts on article 59 and 60 of the draft MiFID-II and 34 and 35 in draft MiFIR. In order to guarantee that positions limits would be set and be efficient without loopholes, their demands for changes in the draft texts for the European Parliament as well as the Council of Ministers, included the following. In strategy session, NGOs would prioritise which demands to be made at particular moments to the relevant EU decision-makers:

- Position limits are to be set ex-ante, i.e. not position 'management' that would for instance only impose position limits once a problem or abnormal trade or price movements ('disorderly markets') were being disclosed.
- Limits were to be set on all positions, not on 'net' positions whereby contracts to sell commodities and the contracts to buy the same commodity would cancel out each other ("netting long and short contracts" results in reporting having no contract !).
- Position limits have to be set on all commodity derivatives contracts: not only physically settled (i.e. the commodity is supposed to be delivered to the buying party) but also cash settled (contracts with no trade in physical commodities related to it.)
- Position limits are needed during the whole duration of the commodity contracts, i.e. not only during the last period ('settlement month') when financial traders, who have no interest in getting delivery of the physical commodities, are selling their contracts ('rolling over' the contract and buying new contract related to the next harvest)
- Position limits do need to be set not only per financial trader, or per hedging trader (from a certain benchmark onwards) but also per group of traders ('asset class') who have more or less the same strategy or risks (e.g. hedge funds, investment banks) can hold at one particular time or within a certain period.
- Position limits also need to be set on OTC food commodity derivatives.
- Position limits need to be set by regulators, not by the commercial commodity exchanges themselves.

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[51] E. Kelleher, Food price speculation taken off the menu, Financial Times, 3 March 2013, http://www.ft.com/intl/cms/s/0/c4813446-7f5e-11e2-97f6-00144feabdc0.html#axzz2XAyecSIs (viewed 24 June 2013)

[52] See for instance: Ibid.

- Position limits need to be set at EU level and not by national regulators, in order to avoid regulatory arbitrage.
- As little as possible exemptions for any player on commodity derivatives markets from position limits and reporting.
- Reporting of all trade in commodity derivatives on exchanges and other trading venues need to be reported in real time or at least all trading information should be available to the supervisors, not only on a weekly basis and not when supervisors ask for it.
- Reports with aggregate information on food commodity trade needs to be published at least every week, in order to allow all stakeholders, parliamentarians and academics to have access to information for analysis, not only the supervisors.
- Strong powers for supervisors to intervene and uphold implementation, not to be left to the managers of the (commercial) commodity exchange. Supervisors of financial commodity markets should have strong cooperative links with authorities responsible and supervising physical commodity markets (for which on a global level no regulation exists).

In addition to defining and advocating for the changes they wanted, NGOs started to more and more publicly denounce the continuous huge influence of the lobbyists of the financial sector. They experienced, through monitoring the particular articles in the leaked texts, how the financial lobby time and again was able to insert new and weaker wording in the draft texts. For instance, in the final difficult-to-influence stage of the EP decision-making, i.e. the EP plenary vote, the main aim of the NGO lobby and public campaign was to change especially one word, namely that position limits would not be set on "net" positions as this could mean that an large amount contracts would not be reported and no limits would apply.[53]

The most important moments during which the NGOs were able to raise their specific demands through the above described activities, lobbying, advocacy and public campaigns for NGOs and citizens organised campaigns were: the EC consultation in December 2010-February 2011, the voting in the EP committee on Economic and Monetary Affairs (ECON) on the amendments to the EC proposal on 26 September 2012, and the unexpected quite unusual vote in plenary on 26 October 2012 by the EP on its position in preparation of its negotiation with the Council of Finance Ministers. Important were also several joint letters being written to the ECOFIN through the EU presidency (Finance Minister) and to each of Finance Ministers at national level.

There were also strategies and tactics that NGOs did not, or hardly, use mainly due to lack of resources, but which had been used in other issue campaigns were for instance:

- Building an alliance and cooperating with commercial parties that were against excessive speculation by financial players on (food) commodity derivatives, e.g. as done in the US by the Commodity Markets Oversight Coalition (CMOC).
- Analysing the positions of the financial sector as written on their in their papers submitted to EC consultations and being published on EC websites and on the websites of the diverse branch organisations who were known to closely lobby (e.g. ISDA)[54]. This would have allowed to make detailed arguments against what the financial was arguing in their lobby while the NGOs chose to argue for what they wanted.
- Identifying and monitoring the opposition against position limits from unsuspected players, namely large physical traders like Shell and other energy companies that were strong lobbyists against being subject to position limits and other measures that would make their hedging and speculative commodity derivatives trade more expensive.
- Direct contacts with the lobbyists of the financial sector to oppose their positions in face to face discussions. NGOs who did research about and campaigned against banks or pension funds that were buying a large amount of food commodity derivatives or that were managing important commodity investment funds (see above), were having direct contacts with those banks or pension funds.

[53] As explained above: a buy commodity derivatives contract and a contract selling the same commodity (i.e. 'long' and 'short' contracts) would be able to cancel each other out ('netting') so that a net position would report no position, and there would be little positions left on which to impose limits.

[54] http://www2.isda.org/mifid/

- Close links with academics, especially those who were informing NGOs and citizens during NGO events or informally linking up with NGOs or who were doing research exposing the impact financial speculative commodity derivative trade had on prices. For instance, those academics could have been encouraged to more engage in the consultative processes at EU level (while they were mostly unaware of any announcements made by the EC for consultations or calls for participation in consultation groups).

Regarding the contents of the campaign, the food speculation NGOs ignored many aspects of the draft MiFID II and MiFIR text, including those that could somewhat be important for commodity derivatives trading such as:

(1) The shrinking high frequency trading, i.e. the speculative trading during micro seconds with computerised models, about which there are indications that HFT is being applied at some large commodity exchanges;
(2) The development of less regulated trading venues such as ‘organised trading facilities’ or platforms (OTFs) and Multilateral Trading Facilities (MTFs) which eventual could be trading venues for commodity derivatives;
(3) The obligation to enforce standardised OTC derivatives trade on trading venues, which would in the case of OTC commodity derivatives trade provide more transparency in the (food) commodity derivatives trade overall.

By 27 June 2013, the cut-off date for this article, the Council of Ministers had finally just officially decided on its position on the MiFID review at their ECOFIN meeting of 23 June 2013.[55] There had been months of delay to come to a final agreement among the EU member states due to some clashing interests, mainly between the City of London and Deutsche Boerse, regarding access to clearing houses. This had delayed the ECOFIN decision for many months without negotiations to improve the part of the texts about commodity derivatives trading and position limits. From July 2013 onwards, the final process of the EU legislation starting, namely negotiating a compromise final law text between the Council and the EP representatives, during behind closed doors ‘trialogues’ facilitated by the EC. This long process to review MiFID was not foreseen and seriously overstepped the G-20 imposed deadline of end 2012 to legislate on certain aspects of OCT derivatives which were included in EMIR.

At the time of the ECOFIN decision in June 2013, most of the core NGOs released a press release that deplored that in both the EP and ECOFIN draft texts, there were serious loopholes that could make the implementation of position limits not sufficiently effective.[56] NGOs published in addition a good overview[57] of the loopholes and the differences in the texts, on which they had worked on together. For instance, the overview paper exposes the loophole in the EP text to propose position limits on net positions, and the loophole in the ECOFIN text that proposes that position limits would not be set at EU level (by ESMA and the EC) but at national level based on common criteria which would allow traders to move trade to the lowest level of legislation (regulatory arbitrage).

As conclusion of the process so far, both the EP and ECOFIN texts were proposing to set ex-ante position limits which was a request that civil society groups had strongly made through all their activities, which is stronger wording than the first draft text by the EC proposing ‘position management’ with no guarantees when and how position limits would be set. Through continued activities, civil society groups will continue to press for elimination of the most important remaining loopholes.

5.5. Limiting OTC

[55] For an overview of the important dates and documents of the whole legislative process, see : http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?lang=en&reference=2011/0298(COD)
[56] http://www.oxfam.org/en/grow/pressroom/pressrelease/2013-06-21/eu-ministers-leave-door-open-harmful-food-speculation
[57] www.foeeurope.org/sites/default/files/makefinancework_mifid_loopholes_june2013.pdf#sthash.5No2VJiZ.dpuf

During the above described monitoring, lobbying and campaign activities around the EMIR and MiFID (see above 5.3. and 5.4.), the NGOs also demanded that OTC[58] derivatives would be subject to limitations should also be subject to position limits. In general, the huge amount of all OTC derivatives[59] was considered by regulators to be part of the cause of the financial crisis and in need of being reduced in numbers but also to be made less problematic in case of default (which was tackled in EMIR: see above). The G-20 had decided that OTC derivatives could be limited by forcing more standardized OTC derivatives to be traded on exchanges, which makes such trade more transparent (e.g. exchanges report on the prices) and more expensive (e.g. because exchanges require membership fees). Based on the neo-liberal thinking of regulators and the logic of the financial world, making it more expensive was a means to reduce the amount since profit margins shrink or disappear. However, this method of limitation did not clarify how much OTC derivatives trade would be reduced nor guarantee that it would happen as there are many technical means around it.

Given that it OTC (food) commodity derivatives had not been transparent and traded in parallel with commodity exchanges, which made it unclear how and by whom they were being traded and how they were connected with the speculative commodity index funds and commodity exchange traded funds (ETFs), ensuring the limitation of OTC commodity derivatives was a demand NGOs were making.

For the financial industry, the OTC (commodity) derivatives business was very lucrative and this market had hugely expanded after it was deregulated in the US in 1999/2000. OTC derivatives trade had remained unregulated in the EU due to the successful lobby efforts of the derivatives industry (ISDA, AFME) who were the sole participants in the expert groups set up by the EC.[60] In contrast, the US had legislated to limit OTC commodity derivatives ("swaps") in the Dodd-Frank act and if the EU would not follow suit it would facilitate dangerous regulatory arbitrage and advantages for OTC derivatives trading in the EU as compared to the US. Noteworthy, the US derivatives business lobby (including ISDA) had find a new method to stop legislation that limited their business, and had in 2012 successfully challenged the implementation of the swap legislation part of the Dodd-Fank Act in a US court ! This made EU regulators worry that the US would have weak legislation as ISDA made sure the message was distributed in the EU. However, the procedure of the appeal by the CFTC is still in process at the time of writing.

The first EMIR legislative proposals by the EC did not include limitations on OTC derivatives. During the beginning of the legislative process at the EP, there was uncertainly whether EMIR was dealing with OTC derivatives markets and CCPs only, or with all derivatives. If the proposed text would be changed to cover all derivatives then clearly 'position limits' on commodity derivatives was missing from the proposal. This seemed to be a technical method to avoid that any other successive legislation (the review of MiFID was at that time already expected) would be imposing position limits since there would be already new legislation on commodity derivatives trade, EMIR, even though it would be without position limits. It was not clear to NGOs what was happening and who was behind these manoeuvres, but it seemed as a trick from the financial industry. After some time, MEPs explained to NGOs that the obligation to have more OTC derivatives on exchanges was the means to limit OTC derivatives and was part of the MiFID review (making OTC legislation again very complex). After lobbying and advocacy (see 5.3.), the MEPs agreed to put in the pre-amble of EMIR that this would be done in the legislation reviewing MiFID.

When the EC proposed its draft legislative texts for MiFID II-MiFIR in October 2010, no position limits for OTC derivatives was included. The draft MiFIR text did, however, include legislation to impose that more standardized OTC derivatives be traded on exchanges, which would make this trade more costly and more transparent. During their different activities as described above, NGOs focused on their demand for position limits but also included the demand to limit OTC derivatives. However, the MEPs who were in favour of position limits were not willing to take up the demand to limit OTC commodity derivatives. One clue about this refusal was given during an informal conversation at a conference about MiFID II-MiFIR organized by Finance Watch (which had to purpose of bringing legislators, the industry and NGOs

[58] As explained above, OTC derivatives are derivatives not traded on a formal exchange and are privately negotiated contracts.
[59] http://www.bis.org/statistics/dt1920a.pdf: the current values are similar to those before the financial crisis at US$ 632.5 trillion $ notional amount outstanding by end 2012, or US$ 24.7 trillion market value.
[60] Corporate Europe Observatory, DG Internal Market's expert groups: More needed to break financial industry's stronghold, December 2011, http://corporateeurope.org/sites/default/files/publications/dg_markt_expert_groups.pdf.

together and exposed to arguments that counter the financial lobby). When questioned by the SOMO senior researcher about the lacking OTC derivatives limits, the EP rapporteur responsible for MiFID-II and MiFIR responded that ESMA had strongly advised him not to include OTC derivatives position limits. In other words, the EU supervisor authority was influencing the legislator and was in practice admitting that supervisors would not have the capacity to supervise the OTC commodity derivatives business. Indeed, ESMA is not intended to have much staff.

Given the NGO focus on the EP legislative procedure and their limited capacity, NGOs had not paid much attention in the beginning to the EMIR and MiFID review process of the co-legislators, the Ministers of Finance in ECOFIN and their working groups. Once the leaked and official draft texts were available, the wording indirectly referred to position limits on OTC commodity derivatives. During a meeting by the representative of the German NGO WEED with the German Ministry of Finance, the latter confirmed that the Ministers intended to limit OTC commodity derivatives. In their activities towards the Council on MiFID-II and MiFIR (see above), the NGOs therefore did not focus on the demand to limit OTC commodity derivatives but monitored each draft text whether the text had not been weakened. The text remained as such (i.e. including indirect references to OTC commodity position limits) when the ECOFIN Council, through technical working groups up to the highest levels, agreed on 21st June 2013 its standpoint.

After 27 June 2013, the cut-off date for this article, the MEPs responsible for the MiFID review legislation and representatives of the ECOFIN, will engage in the so-called ‘trialogue’, the behind closed doors compromise process facilitated by the European Commission. The question is how such a compromise will be reached between the EP text that has no reference to limits on OTC derivatives and the indirect reference to such limits in the EDOFIN text. How much trading off between different interests will happen, how much negotiators will be more willing to press through interests of the financial industry above those of civil society, and how civil society can still play a role to advocate for strict limits and regulations to commodity derivatives.

6. Conclusion and lessons

6.1. What was the result from agency of the NGOs and civil society?

Dealing with financial reforms that followed the financial crisis in the EU in 2008, was new for citizens and all kind of civil society groups and NGOs. It followed a long period in which the financial industry had successfully pleaded towards regulators to leave the financial sector to self- regulation and ‘light touch’ regulation. This had allowed the financial industry to effectively hide all major risks and complex structures, while being aware of the indirect guarantee that authorities would intervene if the risks resulted in a crisis. Civil society has not been aware of this moral hazard and many governments believed the efficient market would never create a big crisis. There had been quite some attention to financial markets and monetary issues during the 1997-1998 Asian financial crisis, but the attention to financial system problems by civil society, as well as regulators, quickly waned in the context of neo-liberal policies.

This paper has described the strategy used by a group of NGOs who linked up with citizens during the EU reform process of the food commodity derivatives markets in order to stop financial food price speculation. Scholte[61] identifies three strategies: conformist, reformist and transformist. The described actions in case of regulating food price speculation might be defined as reformist. But we propose that there is an in-between phase. This strategy explores possibilities of change and exposes the mechanisms of reform processes, while at the same time trying to improve existing regulation and closing harmful

[61] J.A. Scholte, Civil society and Financial Markets: What Is Not Happening and Why, Journal of Civil Society, vol. 9, no. 2, June 2013, pp. 129-47.

loopholes in a defensive strategy. In order to deal with financial food speculation regulation, NGOs had to deal with the issues of financial markets and derivatives, etc. which are new topics for civil society, very complex and not transparent. NGOs had to acquire an understanding of the topics, the structure and processes, and the actors and interests involved. Increased understanding (learning by doing) allows to assess what is necessary for transformational change. A reformist strategy is described by Scholte as pressing "for more ambitious regulatory change in respect for financial markets". However, a strategy of exploring methods to have civil society heard, have public interests taken into account in the actual nitty gritty of the financial reform legislation, and looking into compromises or (ab)using the neo-liberal rhetoric -, rather than general calls for stopping food price speculation and strict financial reforms or radical financial sector transformation, provides an insight to identify useful and non-useful strategies, and what are the obstacles to changes and transformist change.

The result of this exploring strategy used in the case of the EMIR and MiFID II-MiFIR legislative process to stop financial food price speculation was:

- Against the dominant arguments by the financial sector that financial speculative players had no influence on food price volatility and food price spikes, NGOs were able to argue that there are figures and research and non-financial players indicating the opposite. Although many authorities then concluded that there was no convincing evidence of huge influence of financial speculation on food price spikes, the legislators were willing to admit that there was more and more food price volatility and willing to use position limits. By 21 June 2013, this resulted in the texts of each of the co-legislators, EP text and the Council of Finance Ministers, to include position limits that restricted financial players' commodity derivatives trade. This was an important improvement of what the EC had proposed, namely the weak 'position management' regime. In general terms position limits is what NGOs had demanded and had strongly opposed a position management regime.
- The NGOs who had invested human and financial resources to increase their understanding of the food commodity derivatives market, were able to make very concrete alternative proposals to very technical language proposed by the financial sector to weaken the legislation. For instance, one word proposed and inserted in the EP text regarding position limits, namely limits on "net" positions, would be able to almost eliminate the effectiveness of the legislation to impose position limits. The result of the MiFID II-MiFIR legislative process before it enters its final phase from July 2013 onwards, is that some loopholes have been avoided while some others are still remaining in each of the EP and Council texts: These loopholes are different and can reinforce each other if they all remain or they can cancel each other out if the best part of the text is adopted. At the cut-off date of this article, 27 June, it is now not clear in how far the 'trialogue' will be able to reduce the loopholes and whether the voice of public interest groups and citizens who have taken action over the years will be heard or if this public interest will be traded off against concessions to the interest of the financial industry.
- Input from NGOs was being accepted and even sought after by progressive members of the European Parliament (MEPs), and often included in the text or amendments. It was recognized that NGOs and their civil society backing were legitimate as well as reliable sources to be able to argue against the financial industry and increase the expertise of the overstretched regulators.
- Following NGO activities to raise public awareness and the public debate, the academic world also became more active with a series of research using different kind of methodologies and data, discovering much more relationships between food or commodity prices on exchanges and (food) commodity derivatives trade by financial players. However, in the case of Germany, a group of Professors publicly argued against the NGO arguments and basically supporting Deutsche Bank which is one of the few European banks still denying the problems of financial commodity derivatives trading and commodity funds. It is not clear whether there is a link between Deutsche Bank or the financial sector and the position taken by this academic group. Indeed, some large German farmers expressed fear that there would not be enough 'liquidity', i.e. financial players willing to take on risk by trading on commodity exchanges.
- After several NGOs organised well documented public campaigns against several major European (investment) banks that heavilty involved in the financial commodity derivatives business, several banks have stopped financial commodity trading and funds including Barclays, BNP Paribas, Credit Agricole, and Commerzbank. Deutsche Bank and Dutch pension funds in contrast continued to manage respectively invest in commodity (index) funds.

- MEPs were aware of the public attention and monitoring of their positions knowing they could not get away with general remarks while the technical details were not right. They were referring to civil society pressure to justify their stance in favour of position limits.
- The mainstream media was willing to report on the views taken by NGOs and provided well-documented articles or documentaries about how financial food speculation works and what the impact is on the poor. The media used the expertise of NGOs to produce their own materials.
- Members of parliament in different countries were asking questions or submitted motions etc. forcing the government to support the introduction of position limits in the legislation. They knew which NGOs they could ask for technical advice but were also able, from some point onwards, to take action on their own.

What the many activities by NGOs and citizens have not been able to achieve, is:

- Getting rid of all food price speculation on food commodity derivatives markets, or at least of all negative impacts of financial food speculation;
- Deal with the problems of speculation on all commodities through derivatives markets and reduce speculation of the financial markets on the whole, which are covered in EMIR, MiFID-II/MiFIR, and MAD/MAR;
- Linking up with farmers organisations, who were pre-occupied with the reform of the CAP. The progressive farmers organisations were interested but found the NGO strategy still too much reformist by keeping a speculative instrument (commodity derivatives) and wanted emphasis on other measures to stabilise prices and decent farmer income;
- Denounce the neo-liberal model on which derivatives markets are based;
- Ensure that legislative decisions were taken swiftly as a matter of public interest, and not being held up for many months due to some particular clashing financial industry interests which were defended by their home country governments.

6.2. The most important structures facing the agency of the NGOs

Given that NGOs used an exploring strategy, assessing the constraining and contributing structures to change envisaged by the agency of NGOs or other civil society organisations and citizens, the analysis in previous chapters could provide some lessons for the future.

6.2.1. What were the most constraining structures which prevented the agency of the NGOs

The financial sector was exposed as being a major stumbling block to the agency of NGOs due to following agency and structure of the financial sector:

- The continued belief in efficient markets and therefore the **least regulation possible** and a view that regulation was burdensome and reducing profitability.
- The **strive for competitiveness**, an important aspect of the neoliberal discourse, made the financial industry constantly argue that any kind of strict regulation leads to loss of competitiveness and regulatory arbitrage. This was an important argument to weaken necessary financial reform proposals.
- The availability of the **huge resources** by the financial sector are in stark contrast with those available to other stakeholders. This allows the financial sector to have the human resources and

connections that make its lobbying very effective during the nitty-gritty of the legislative process that ends up as the final law.

- The complexity of the issue made it possible for the financial sector to lobby for a few words that can undermine the whole effectiveness of the legislation, in case the position limits. Different experts confirm that **complexity used as a shield against interference** and a means to get their interests included in legislation. We assess that it is also a way to intimidate and press regulators. For instance, EC officials who are keen to propose smart regulation and are often so entrenched in neo-liberal thinking that they view the technical details as important to protect the interest of the financial sector.
- The **lack of transparency** of the financial sector makes it difficult to challenge its arguments that were for instance used to deny that excessive financial commodity trade had negative impacts on food prices. The structure of self-regulation has resulted in serious lack of publicly available information about the activities, strategies, products, internal dealings and transfers, risks assessment methodologies and decision-making procedures of (investment) banks and other financial companies. This meant there were little academic or official sources and analysis about the food commodity derivatives markets, and especially the over the counter trade, and their effects on the food chain to which the NGOs could turn to in the beginning of the legislative process. The financial sector could make arguments which were difficult to verify or denounce.
- The **political power of the financial sector** during the legislative process of financial reforms has several reasons. The financial sector and derivatives market considered as important contribution to the economy, job creation and tax payments (even if they avoid many taxes!). By the massive size of their lobbying, they reinforced the neo-liberal thinking and achieved that regulators and supervisors consider the interests of the financial sector as the interest of the EU or a particular EU country or the EU or national economy. As a result, governments blocked decisions for a new MiFID legislation that would be too harmful for particular financial industries, even infringing an agreed deadline at the G-20. This contrasts with the little consideration for the fact that this delay was blocking legislation that was demanded from civil society.

An important blocking structure with regulators (EC, EP, ECOFIN) and their staff was the **lack of democracy** in form and in content, because:

- Decision-makers were **going along with unbalanced consultations** and informal meetings hugely dominated by the financial sector, the lack of transparency and regulation about lobbying practices, no democratic accountability of how decisions on legislation is being taken (only comes by voting MEPs every 4 years, and EC Commissioners and staff, and Ministers of Finance are mostly unelected decision makers). Regulators had no mechanisms or willingness to balance different interests so that they did not think, even not in the official impact assessments (!), about for instance the impact of the use of the derivatives market so that in the legislative process, food price speculation was not the main focus and no distinction was made between food commodity derivatives and other commodity derivatives.
- There was, and is, **no clear definition of what is the public interest that regulators need to defend** and balance against corporate interests. Due to lack of a clear view of their mandate, they accepted the interest of the financial sector to be the one to defend. This resulted for instance in no real willingness to shrink the financial sector, and in casu to impose very strict position limits on the food commodity derivatives business. The financial sector arguments for competiveness has made the regulators often compete to defend home financial industries during the legislative process rather than cooperate in the public interest.
- The lack of resources, information, and expertise about the derivatives made the regulators **dependent on the financial sector** to inform them how regulation should not be too harmful to them.

In conclusion, it is worrying that the neo-liberal ideas, the huge lobby capacity of the financial sector, and the fear of loosing competitiveness are still so dominant aspects during the financial reforms, even during those reforms that are about protecting food prices and related societal needs. Regulatory capture and the political power of the financial sector have been identified as a major underlying cause of the financial crisis, e.g. by Prof. J. Stiglitz and Prof. J. Kay, but has not been part of the reforms. In other words, more

democracy (accountability, safeguarding the public interest) and changes in (access to) the decision-making processes themselves of the financial reforms, need to be put on the agenda.

6.2.2. What were the most contributing structures which supported the agency of the NGOs

How the agency of NGOs used the exploring strategy and had some successful results in their defensive strategy, can be assessed as follows:

- **Building up expertise**: The strategy of exploring started with gathering information about the subject, the decision-making process, the most important players and their interests and the impact of the unknown food commodity derivatives on our societies. This allowed to compare the realities of the financial markets with the principles of different NGOs, and to identify key issues in the legislation. Power of agency of NGOs thus allowed them to dive into the subject and formulate their opinion and goals.
- **Raising the public interest in the public debate**: After identifying key issues, NGOs were able to raise their points in public debate. They used their power of agency and reputation as defending the public interest in order to raise awareness among the public, but especially amongst politicians and media through research reports, briefings, letters, petitions, actions and information sharing. Mass mobilisation was especially organised during to very specific important moments in the legislation in a very targeted way. Politicians, although certainly not all, were willing to listen to public interests representatives and citizens joining the public campaigns. However, more public pressure would possibly have helped to have stronger wording against financial food price speculation in the draft legal texts.
- Cooperation: A very important aspect of the successes of NGOs working to counter food price speculation was the **combined power of agents.** A cooperative way of operating made it possible to counteract financial industry interests. Through cooperation, NGOs were able to put time, energy and other costs (such as travel) into their multiple actions against food price speculation despite their very limited resources and small group. NGOs often had different but complementing specialisations and therefore it was possible to have an alliance that carried out different strategies, such as knowledge sharing, networking, lobby, campaigning, mass mobilisation, media work, formulating very specific alternative proposals.
- **Using the financial sector lobby tactics and denouncing it**: By watching the financial sector closely, NGOs also used the tactics of financial sector to lobby many decision makers and obtain leaked texts. However, since the lobbying of the financial sector was many times bigger and more influential, NGOs also denounced the aggressive lobbying by the financial sector. This denouncement increased the willingness of MEPs to listen to other parties on the issue of food and commodity price speculation.
- **Identifying crucial legislative moments:** Crucial was also the ability of NGOs, especially once they were up to date on topic and process, to **identify crucial moments** in decision-making process where it was possible to concretize their aimed changes into very specific amendments in proposed legal texts supported by a campaign in which citizens actively addressed decision-makers. Their power of agency, to identify a possibility and act upon it, became greater when their knowledge increased and shared strategies and goals were clear.

In conclusion, it seems that without the very specific actions during the legislative process and the detailed knowledge of the food commodity derivatives business, if general calls would have been made by civil society to end financial food price speculation these could have been brushed away by the arguments of the financial sector. Also, regulators could have responded to general calls to end food price speculation that they dealt with it in the legislation but the details of the legislation could have undermined any effectiveness of that legislation to really curb food price speculation. The exploring strategy illustrated that public actions directed to decision-making and specific lobbying can result in

making specific financial reforms effective, without being able to change the overall structure of all financial speculation on all commodity markets.

7. Recommendations

Based on the conclusions of the experience of the explorative strategy to deal with the financial reforms that should stop financial food price speculation, recommendations should not only relate to proposals for changes and legislation in the operation and the structure of the financial markets itself. Recommendations should also cover changes in the structure of the decision making process on what this changes should be and how the financial reforms are legislated. The following recommendations should enable the agency of civil society to have more effect and be better equipped to enact the changes that are in the public interest.

7.1. Decision makers

The decision makers are important agents who can change the structure in order to enable citizens and the agents of civil society to be included in the process of change, as both agents have as their goal to defend the public interest and prevent a financial sector from harming society, including no financial or physical speculation that result in undue high food prices and food price volatility.

The following recommendations apply to officials and politicians at the European Commission, the European Parliament and the EU Council of Ministers, national parliaments and ministries, supervisory and regulatory bodies including central banks, etc.:

- Political will to curb the political power of the financial sector and to re-establish democracy: Regulators and supervisors should recognize that the massive financial lobby as one of the causes of financial crises, namely leading to the deregulation and self-regulation and resulting in crises and bail outs with people's tax money. There should be a recognition that this regulatory capture continues today, as former head of the Indian central bank J.V. Reddy explains[62]. Therefore, decision makers need to reverse the huge imbalance in input and consultation capacity among the different stakeholders by opening up many sorts of communication channels for different kind of stakeholders and opinions, including for those calling for radical transformations. In addition, decision makers need to facilitate and provide innovative and more of existing ways to support the building of the independent capacity of civil society and not for profit groups interested to defend the public interests in the financial sector.
- Ensure that fundamental thinking takes place at the start of a legislative process about the role of the financial sector, its impact and what radical changes are required to ensure financial and monetary policy meets the social and economic needs, societal challenges and 'public interest' at national, regional and global level. There should be a clear definition of what the public interest is. This should clarify the understanding that the interest of the financial sector is not the same as the economic interest of a country, let alone the public interest: civil servants should not be corporate servants. This should be one way to expose the neo-liberal capture of the current decision-makers and regulators. This should enable to make changes towards a financial structure in which no longer 'walls of money' are chasing the highest profits around the world (as is currently happening) but that finance is only used for sustainable, socially beneficial financing.
- Legislate effective rules, with sanctions, that at least ensure full transparency of corporate lobbying e.g. through a mandatory register with disclosure of names, budgets , opinions, etc. and the publication of 'lobby footprints' (decision-makers mention each meeting, call or letter etc. by lobbyists). Regulators should only engage with registered lobbyists who are willing to disclose

[62] J.V. Reddy, Economic Policies and India's Reform Agenda - New Thinking, New Delhi, January 2013.

their positions. In addition, there should be strict rules on transparency of draft legislative documents to avoid that some have leaked draft texts while other stakeholders do not have them. The more ideal anti-lobby rules should include limits to how much lobbying is allowed, and oblige decision makers to have inputs from all stakeholders in a way which is not based on lobbying but for instance participatory impact assessment papers for each of the stakeholders.

- Legislate strict rules that eliminate all financial speculative and risky behaviour that are 'socially useless' and are only for financial profit making. This should include strict limits on commodity and all other derivatives markets, reduce the capacity of banks to borrow (leverage ratio), strict regulation of risks management especially in the area of commodity derivatives (trading book). In addition, all financial products that are too complex or not approved by supervisors, should be forbidden.
- A comprehensive approach to ensure good prices to farmers and environmentally and socially sustainable farming, fair and integer price setting worldwide (not to be dependent on US or EU commodity exchanges) and alternative insurance systems against price volatility and uncertainty and miss-harvests. Such an approach includes policies and instruments for full transparency of food commodity production, transport, warehousing and trade, reserve stocks (public or public-private), and allow for state intervention to support sustainable farming (e.g. production quota's, etc.,) .

7.2. Financial industry

The financial industry has a key responsibility to be an agent in structural change but is unwilling to take up that responsibility, but rather defends the operations, the profitability and the size of its industry. Its experience that lobbying, often using neo-liberal arguments, increases their interest has hardened the financial industry in their lobby practice, finding it completely normal and is not at all be concerned of blocking the voice of other stakeholders, not in the least civil society.

In order to provide civil society more chance to be heard and the public interest more a priority, the following recommendations could be a start at this agent to change its structure and to be responsible for integer price setting of food commodities:

- Ensure full responsibility at the highest level of the financial company (bank, hedge fund, etc.) about its lobby positions taken (by the company and by the branch or lobby organisations they belong to) and lobby activities undertaken, as well as accountability towards the shareholders and the public. One way of doing so would be to have a clear code of conduct on lobbying with norms of ethical behaviour and not countering the public interest, as part of the social responsibility (CSR) of the company. This CSR code should be published and its application audited: the costs, names of lobbyists, activities, and positions should be made public.
- Design different strategies and innovations on how to change the business model and operations or products as to reduce or eliminate speculative behaviour and to finance the needs of society and the economy, and the transition towards social and environmental sustainability. During the design, use participatory methods with all stakeholders and ensure that all views on financial sector reforms, thus also the most radical and alternative ones, are being taken into account. One of the outcomes should be that business models, operations, financial products and services are less complex and any complexity that is left should be explained understandably.
- Provide full transparency about the involvement in all kind of activities, products and operations related to food commodity derivatives, food (related) companies and land ownership; this includes avoiding technical language. Publications should include an independent academic research to assess the impact and usefulness of these activities and products on prices, socially and environmentally sustainable agriculture. Based on this assessment and publications, allow public comments through innovative channels of communication. Finally, the decision-makers within the financial company have to decide not to continue or clarify their view why they want to continue their involvement in the food commodity sector and how.
- Make public statements and vows that all staff, managers, traders and board members will adhere to the letter and the spirit of the law and have the public interest as a priority.

7.3. Civil society

As an agent that is facing huge obstacles and challenges to make changes in a political, ideological and economic structure that is clearly against the public interest and causes far reaching diverse crises, including food price spikes and harmful price instability, civil society organisations could:

- Improve the understanding at all levels of civil society organisations of the political and economic power of the financial sector and its destructive effects on many goals and operations of civil society organisations, including agriculture and food. As conclusion, civil society organisations should prioritise more their capacity building (funding, human resources, …) to understand the destructive mechanisms of the financial sector, to tackle the lobby and political power of the financial sector, to communicate the problems to citizens, to be active during political decision making processes, and provide innovative communication channels to allow citizens to express their desire and proposals for change. In any case, civil society should not abandon the legislative forums with some democratic openings, to the financial sector.
- Ensure some common easy to understand statements as a clear message towards policy makers, the media and the public, which denounce the political power and lobby by the financial industry and its acceptance by the political decision-makers, the neo-liberal capture and governance of the financial sector by which more crises will occur (e.g. “not calm the market but control the market”), and the lack of financial sector support and financing for societal needs, public interest and transition to sustainable societies.
- Continue cooperative and alliance-like way of operating and dividing specific tasks at national, regional and international level, from technical research, to designing and arguing for radical changes, to lobby, to mass mobilisation and facilitate to have the citizens voice to be heard. Information sharing and communication with (progressive) academics should also be improved.
- Identify some particular issues that are striking to the public (as was the case with food speculation). On these issues (e.g. hiding behind complexity, too-big-to-fail banks resulted in painful austerity measures), civil society organisations could engage in a cooperative approach with different strategies (from lobbying to public outcries) at political decisions making processes as well as innovative outreach to the financial sector itself.
- Identify and explore innovative ways to have civil society voices and public interest arguments being heard by the financial sector and their corporate decision-makers, including by assessing and improving campaigns against practices of banks.
- Assess among civil society organisations NGOs, and not in the least farmer organisations and organisations from developing countries, the explorative strategy and defensive tactics related to limiting financial food price speculation in EU legislation. In addition, explore how it could be part of a more comprehensive approach to stop any speculation on food prices and food, and towards sustainable food systems.
- Assess how links with the Occupy movement and other grass roots movements around the world, would be desired on this issue by that movement.