



EACT

Monthly Report on Regulatory Issues

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Hrvatska udruga
korporativnih rizničara
Croatian Association of
Corporate Treasurers





This report has been designed for, and with the support of, the above National Treasury Associations. Its purpose is to provide information about European financial regulation impacting corporate treasurers.

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Executive Summary

Topic and summary of content and EACT position	Latest developments
<p><u>European Market Infrastructure Regulation (EMIR):</u></p> <ul style="list-style-type: none"> • Regulation to push derivatives trading on exchanges • Corporates' hedging transactions exempted from clearing obligation but subject to reporting, portfolio reconciliation, portfolio compression and dispute resolution obligations 	<ul style="list-style-type: none"> • The publication of the legislative proposal for EMIR review has been postponed until June
<p><u>CRD / Basel:</u></p> <ul style="list-style-type: none"> • International and EU-level rules on capital, liquidity and leverage requirements for banks 	<ul style="list-style-type: none"> • EBA has reportedly dropped its work on imposing additional capital requirements on banks for CVA-exempted transactions; the EACT strongly opposed EBA plans to issue guidelines on this topic
<p><u>Money Market Funds (MMF) Regulation:</u></p> <ul style="list-style-type: none"> • The MMFR establishes common rules for MMFs, in particular with regard to the composition of their portfolio, valuation and liquidity of their assets. The Regulation also prohibits any third-party sponsor support. 	<ul style="list-style-type: none"> • The final rules have been agreed and the Regulation should be published in the Official Journal shortly. Application is expected to start in 2018. • Some aspects of the Regulation will have impacts on treasurers investing in MMFs, as new a new fund type (Low Volatility NAV) has been created and there are restriction on CNAV funds; also there will be mandatory application of liquidity fees and redemption gates for these LVNAV and CNAV funds.
<p><u>Financial Transaction Tax (FTT):</u></p>	<ul style="list-style-type: none"> • It has been reported that a final decision on



<ul style="list-style-type: none"> • A proposal to tax a large variety of equity and bond transactions in 11 EU Member States under the ‘enhanced cooperation’ approach • The proposal has been subject to widespread criticism (including its legality) and it is expected that should an FTT be implemented at any stage, it would be much more restricted in scope than originally proposed • EACT strongly opposed as FTT amounts to a tax on the real economy 	<p>whether to pursue the negotiations should come by May; some participating Member States could be close to leaving the enhanced cooperation group</p>
<p><u>Financial Benchmark Regulation:</u></p> <ul style="list-style-type: none"> • Proposal of the Commission to regulate the administration and the contribution to financial benchmarks • Would impose mandatory contributions to certain benchmarks (EURIBOR and LIBOR) and would impose liability for those contributions in certain cases • EACT position will underline the importance of contract continuity and coherence of EU action with international developments 	
<p><u>Bank Structural Separation (Barnier / Liikanen rule)</u></p> <ul style="list-style-type: none"> • Proposal of the Commission to ban proprietary trading and to have the possibility of separating banks’ other trading activities into a separate entity; separation would not be automatically forced but bank supervisors would have to decide case by case. The planned Regulation would only apply to the biggest banks. 	



List of ongoing consultations:

Title	Website	Deadline
European Commission consultation on the operations of the European Supervisory Authorities	Consultation page	16 May 2017
European Commission consultation on EU initiative on restrictions on payments in cash	Consultation page	31 May 2017
European Commission consultation on FinTech	Consultation page	15 June 2017

Note: For ease of reading, updates compared to the previous report are in bold font.



<u>OTC Derivatives - European Market Infrastructure Regulation (EMIR)</u>		
Content and legislative status	Latest developments	Issues from treasury perspective / EACT position
<p>EMIR was adopted on 4 July 2012 and entered into force on 16 August 2012. It requires the central clearing of all standardised OTC derivatives contracts, margins for non-centrally cleared contracts and the reporting of all derivatives contracts to trade repositories.</p> <p>EMIR contains different start dates for the various obligations and the obligations for NFC- (portfolio compression, trade reporting) are already in place. Central clearing should gradually start as of April 2016, with NFC+s having a three-year phase-in period.</p>	<p><u>EMIR review:</u></p> <ul style="list-style-type: none"> • The publication of the legislative proposal for EMIR review has been postponed to 7 June. The proposal was initially tabled for 14 March. • ESMA sent a letter to the European Commission concerning the EMIR review. Concerning NFCs, ESMA reiterates the points made previously, and suggests removing the hedging criteria. ESMA also states that reporting of intragroup transactions should continue, while some relief from dual-sided reporting for small NFCs could be considered. • The Commission published a report on EMIR review. In the report the Commission is referring to the need to assess whether adjustments should be made to EMIR requirements in order to address the challenges 	

OTC Derivatives - European Market Infrastructure Regulation (EMIR)

faced by NFCs. The report also mentions the limited interconnectedness of NFCs and the need to consider whether any NFC should be subject to clearing and margining requirements, but at the same time talks about the possibility to define NFCs subject to such requirements by the volume of their activity. The Commission is expected to adopt a legislative proposal for EMIR 2 at the end of March 2017.

ESMA/ EBA/ Commission:

- The EBA has reportedly abandoned work on the guidelines for addressing 'excessive CVA' risks resulting from the exempted transactions, such as those with NFC-s. The EBA will instead publish a monitoring report later this year so that banks can evaluate their CVA risks against a benchmark. The issue of CVA might however come up again once the Basel review of the CVA framework is finalised and also as part of the CRD V proposal currently being discussed.
- ESMA has issued an updated [EMIR Q&A document](#). The Q&A clarifies questions related to the transition to the revised RTSs on reporting, that are entering

OTC Derivatives - European Market Infrastructure Regulation (EMIR)

- into force on 1 November. ESMA has also published [updated validation rules](#) for the reports submitted under the new rules.
- The ESAs published a [statement](#) regarding the application of variation margin rules that entered into force on 1 March. The ESAs acknowledge that some flexibility could be used national supervisors in the enforcement of the rules in the first months, especially with regard to smaller counterparties. In the US, the CFTC issued a no-action letter giving further six months for achieving compliance with the variation margin rules.
 - EBA published [final draft RTSs](#) on the exclusion from CVA of non-EU NFCs. The RTSs specify the procedures for excluding transactions with third-country NFCs from the calculation of CVA in order to align the treatment of these NFCs with the treatment of EU NFCs that are excluded from the calculation of CVA.

Key documents:

- [EMIR Regulation](#)
- All relevant texts (RTSs, ITSs etc.) are available on the Commission [EMIR website](#)

Money Market Funds (MMFs) Regulation		
Content and legislative status	Latest developments	Issues from treasury perspective / EACT position
<p>The MMFR establishes common rules for MMFs, in particular with regard to the composition of their portfolio, valuation and liquidity of their assets. The Regulation also prohibits any third-party sponsor support.</p> <p>MMFR will have implications for corporate end-users investing in MMFs, but many of the initial concerns voiced by the EACT and other MMF end-users have been taken into account in the final compromise as:</p> <ul style="list-style-type: none"> - there is no ban on external credit ratings for MMFs and funds will continue to be able to solicit external ratings - there will be no capital buffers required for funds, which would have undermined the continued availability of certain types of funds used by corporates <p>Other changes relevant to corporate treasurers include:</p> <ul style="list-style-type: none"> - the MMFR retains three types of funds: Variable Net Asset Value (VNAV) funds, Low Volatility Net Asset Value (LVNAV) funds and Public Debt Constant Net Asset Value (CNAV) funds 	<p>Following the agreement reached between the EU institutions end of November, the Council and the Parliament ECON Committee have approved the agreement internally, and the final publication in the EU Official Journal is now expected in Q2 this year. This would mean that the provision of MMFR would apply to new MMFs as of Q2 2018 and to existing ones as of Q4 2018.</p>	

Money Market Funds (MMFs) Regulation

- Both Public Debt CNAV funds and LVNAV funds can under certain conditions impose liquidity fees and redemption gates to their investors. Application of gates and fees becomes mandatory when weekly liquid assets fall below 10%, prior to that the fund has discretion
- LVNAV funds will have to convert into floating NAV when the mark-to-market value per unit deviates from the constant asset price by more than 20 basis points

The Public Debt CNAV funds will be allowed to hold non-EU public debt also, but in five years the Commission will review whether restrictions to non-EU public debt should be imposed

Key documents:

- [Compromise text](#)



Financial Transaction Tax (FTT)		
Content and legislative status	Latest developments	Issues from treasury perspective / EACT position
<p>Council agreed to the “enhanced cooperation” procedure between 11 Member States (Belgium, Germany, Estonia, Greece, Spain, France, Italy, Austria, Portugal, Slovenia and Slovakia) at the end of January.</p> <p>The Commission issued a proposal for a Directive on 14 February 2013 (see also the press release and the Questions & Answers).</p> <p>The new proposal is based on the previous text presented in 2011 with some amendments and to have the following main aspects:</p> <ul style="list-style-type: none"> • The scope of instruments covered is very broad including shares and bonds at 0.1% and derivatives at 0.01%. CFDs, equity derivatives, depository receipts, money market instruments, structured products are also covered. The applicable rates are minimum harmonized rate levels paving the way for individual countries to possibly adopt higher levels. Furthermore, cascade effects could make the effective rate higher as the transactions would be taxed separately from different market participants at different stages. • The FTT would cover the purchase and sale of the financial instrument before netting and settlement and it would be applied on the basis of a 	<p>It has been reported that a final decision on whether to pursue the negotiations should come by May; some participating Member States (Belgium, Slovenia and Slovakia) could be close to leaving the enhanced cooperation group.</p>	

Financial Transaction Tax (FTT)		
Content and legislative status	Latest developments	Issues from treasury perspective / EACT position
<p>combination of the residence principle and the location of the where the financial instrument is issued.</p> <ul style="list-style-type: none"> • The proposal also provides for implementing acts regarding uniform collection methods of the FTT and the participating countries would have to adopt appropriate measures to prevent tax evasion, avoidance and abuse. • There will be an exemption for primary market transactions (i.e. subscription/issuance). <p>The extra-territorial impact of the FTT could be very wide due to the design of the tax: an FTT Zone financial institution's branches worldwide will be subject to the FTT on all of their transactions and non-FTT Zone financial institutions will be taxed for transactions with parties in the FTT Zone, and whenever they deal in securities issued by an FTT zone entity.</p> <p>Key documents:</p> <ul style="list-style-type: none"> • Commission proposal • Commission Impact Assessment; Summary of Impact Assessment • EACT position paper 		

<u>Financial benchmarks</u>		
Content and legislative status	Latest developments	Issues from treasury perspective / EACT position
<p><u>Benchmark Regulation:</u></p> <p>The Benchmark Regulation aims to improve governance, transparency and calculation methodology for financial benchmarks. The Regulation requires benchmark administrators to obtain authorisation from their competent authority and adhere to different requirements, e.g. concerning internal governance and benchmark methodology. Benchmark contributors will have to make mandatory contributions in some cases (to critical benchmarks) and will have to respect a code of conduct. Users (such as corporates) will only be able to use EU authorized benchmarks. Concerning non-EU benchmarks, these may be used in the EU only if they are based in jurisdictions deemed equivalent by the EU, have been recognised by a Member State or have been endorsed by an EU administrator.</p> <p>The final compromise text of the Benchmark Regulation was adopted in December 2015 but still needs to be published in the Official Journal and will be of application 18 months thereafter.</p> <p><u>Review of LIBOR and EURIBOR:</u></p> <p>Libor and Euribor administrators are reforming the</p>	<p>ESMA has published the final draft RTSs for the Benchmark Regulation.</p> <p>The European Money Market Institute (EMMI), the Euribor administrator, published a position paper on the legal grounds for Euribor reforms. EMMI is currently in a pre-live verification phase, where the changes to the calculation methodology are assessed based on banks' real transaction data.</p> <p>The Benchmark Regulation was published in the Official Journal. The Regulation will apply as of January 2018.</p> <p>The Commission has adopted the first Implementing Regulation establishing a list of critical benchmarks pursuant to the Benchmark Regulation. EURIBOR is the only listed critical benchmark for the moment.</p> <p>The LIBOR administrator ICE published its Roadmap for ICE LIBOR. The main points in the Roadmap of relevance to corporate treasurers</p>	

Financial benchmarks		
Content and legislative status	Latest developments	Issues from treasury perspective / EACT position
<p>benchmarks, more information on the EMMI website (euribor) and ICE website (libor)</p>	<p>are as follows:</p> <ul style="list-style-type: none"> • LIBOR will use a ‘waterfall’ of submission methodologies to ensure that LIBOR panel banks use real transaction data where possible on one hand and on the other hand ensure that LIBOR will continue to be published regardless of activity levels on a particular day. ICE states that the planned measures are unlikely to cause issues of legal continuity. • Transactions with corporations as counterparties to a bank’s funding transactions are included in the list of eligible transactions but only for maturities greater than 35 calendar days. Transactions will be used with no premium or discount to adjust the transacted prices. • Transactions from an expanded list of funding centres will be used • Publication time will remain 11.45 London time; the collection window will 	

Financial benchmarks		
Content and legislative status	Latest developments	Issues from treasury perspective / EACT position
	<p>be the period since the previous submission. The transactions from the previous day will be volume-weighted lower compared to weighting of transactions from the same day.</p> <p>Minimum transaction size will be: overall minimum thresholds of USD / EUR / GBP / CHF 10m (or JPY 1,000m)</p>	
<p>Key documents: Benchmark Regulation</p>		

Regulation on structural measures improving the resilience of EU credit institutions (structural separation of banks)		
Content and legislative status	Latest developments	Issues from treasury perspective / EACT position
<p>The Commission has adopted a proposal for Regulation, which contains the following main aspects:</p> <ul style="list-style-type: none"> • Banning of proprietary trading • Potential separation of certain trading activities (market making, OTC derivatives trading, complex securitized products etc.) The banking supervisor would monitor banks' activities and could require a separation of these activities into a separate entity. <p>The Regulation would apply only to the biggest banks, i.e. those deemed to be of global systemic importance or those exceeding 30 billion euros in total assets and trading activities either exceeding 70 billion euros or 10% of the bank's total assets.</p> <p>The Commission adopted its proposal on 29 January which will be subject to the ordinary legislative procedure. According to the proposal the proprietary trading ban would apply as of 1 January 2017 and the separation of other trading activities as of 1 July 2018.</p>	<p>At this stage it looks unlikely that the Parliament will find a compromise, therefore the file is on hold.</p> <p>The Council has already adopted its negotiating position. The Council position proposes substantial changes to the original Commission proposal, and would apply only to banks deemed of global systemic importance or banks that exceed certain thresholds for trading etc. The Council position includes amongst others the following:</p> <ul style="list-style-type: none"> • Mandatory separation of proprietary trading • Other trading activities would be subject to an assessment by competent supervisors who could request a separation to a trading unit or additional prudential measures, if risks are considered excessive. • As advocated by the EACT, non-cleared OTC derivatives would not be part of 	<ul style="list-style-type: none"> • Impact on market-making • Impact on the availability of OTC derivatives as core (retail) institutions would not be able to offer OTC derivatives to their non-financial customers • Impact on pricing

Regulation on structural measures improving the resilience of EU credit institutions (structural separation of banks)

the activities subject to a possible separation.

Key documents:

- [Text of the proposal](#)
- Impact assessment:
 - [Executive Summary](#)
 - [Full text](#)



Regulation on reporting and transparency of securities financing transactions

Content and legislative status	Latest developments	Issues from treasury perspective / EACT position
<p>SFTR aims to reduce risks and improve the transparency linked to securities financing transactions (includes repos, reverse repos and stock lending). All transactions should be reported to a central database (similarly to EMIR with the details to be defined by ESMA). This obligation applies to both financial and non-financial counterparties.</p> <p>The regulation also imposes increased transparency and conditions on rehypothecation (reuse of collateral by the collateral-taker for their own purposes)</p>	<p>ESMA has published the final draft RTSs for SFTR implementation, including rules for reporting. The European Commission now has three months to decide whether to endorse the RTSs.</p> <p>The SFT Regulation was published in the Official Journal. The reporting regime will be put in place gradually, from May 2018 to February 2019.</p>	
<p>Key documents:</p> <ul style="list-style-type: none"> • Text of the Regulation in the Official Journal 		

Capital Markets Union		
Content and legislative status	Latest developments	Issues from treasury perspective / EACT position
<p>The Capital Markets Union (CMU) is a plan of the European Commission that aims to create deeper and more integrated capital markets in the 28 Member States of the EU.</p> <p>With the CMU, the Commission will explore ways of reducing fragmentation in financial markets, diversifying financing sources, strengthening cross border capital flows and improving access to finance for businesses, particularly SMEs. The Commission adopted the CMU Action Plan on 30 September. The Action Plan contains some immediate actions, such as a legislative proposal on securitisations and amendments to Solvency II. Other areas of work include the review of the Prospectus Directive, review of the functioning of the EU corporate bond market, harmonisation of insolvency rules, and work to address the debt-equity bias.</p>	<ul style="list-style-type: none"> • EACT responded to the Commission's consultation on CMU mid-term review • The Commission adopted a report on addressing national barriers to capital flows • IOSCO published a report on corporate bond market liquidity. According to the report IOSCO did not find substantial evidence of deteriorating liquidity in corporate bond markets. However, IOSCO has mandated further work on post-trade transparency requirements in order to understand better the relationship between transparency and liquidity. 	
<p>Key documents:</p> <ul style="list-style-type: none"> • Commission CMU website (all relevant documents are available here) 		



Credit Rating Agencies		
Content and legislative status	Latest developments	Issues from treasury perspective / EACT position
CRA Regulation and Directive establish the regulatory and supervisory framework for CRAs in the EU	ESMA has published updated Q&As that clarify aspects on the disclosure and presentation of credit ratings. It is clarified for instance that CRAs should notify rated entities minimum 24 hours prior to the publication of a credit rating or a rating outlook.	
Key documents: <ul style="list-style-type: none"> • ESMA technical advice on competition, choice and conflicts of interest in the CRA industry • ESMA technical advice on reducing sole and mechanistic reliance on credit ratings • Commission CRA page 		

<u>Payments Package</u>		
Content and legislative status	Latest developments	Issues from treasury perspective / EACT position
<p>Revision of the Payment Services Directive (PSD): The main changes introduced by PSD2 are the following:</p> <ul style="list-style-type: none"> • Banning of surcharging on payment cards covered by the MIF Regulation • Inclusion of third-party payment service providers in the scope • Extension of the scope of the PSD e.g. where at least the payer's PSP is acting from within the EEA / extension to all currencies <p>Regulation on card interchange fees: The Regulation will impose mandatory caps for card interchange fees: for debit card payments, the cap will be 0.2% for crossborder transactions and 0.2% of weighted average for national payments; for credit cards the cap will be 0.3% of the transaction value.</p>	<p>The EBA published the final draft RTSs on strong customer authentication and common and secure communication. The EBA was mandated under PSD2 to draft these rules.</p> <p>Strong customer authentication means:</p> <ul style="list-style-type: none"> • authentication based on two or more elements categorized as knowledge, possession and inherence that results in the generation of a unique authentication code; • the authentication code will be accepted only once when the payer uses it to access a payment account online, to initiate an electronic payment transaction or to carry out any action through a remote channel which may imply a risk of payment fraud or other abuses. <p>Some exemptions to the mandatory use of SCA are foreseen in the RTS but generally they apply to both customer and</p>	



<u>Payments Package</u>		
	corporate payments.	
Key documents: <ul style="list-style-type: none">• Payment Services Directive 2 Regulation on interchange fees for card-based payment transactions		



<u>SEPA</u>		
Content and legislative status	Latest developments	Issues from treasury perspective / EACT position
<p>The Commission proposed a period of six months (until 1 August 2014) during which non-SEPA formats would still be allowed. The Regulation will have retroactive effect as from 31 January 2014. However, national authorities' approaches to this extension seem to have some differences. Regarding SEPA governance, the ECB has established the European Retail Payments Board (ERPB) which replaces the former SEPA Council.</p>		
<p>Key documents:</p> <ul style="list-style-type: none"> • SEPA Regulation • Regulation 248/2014 amending the SEPA migration deadline • ECB website on national SEPA migration plans 		

Markets in Financial Instruments (MiFID / MiFIR 2)		
Content and legislative status	Latest developments	Issues from treasury perspective / EACT position
<p>MiFID and MiFIR are a comprehensive set of rules governing the provision of investment services and activities in the EU</p>	<p>ESMA has issued Q&As on MiFIR data reporting.</p> <p>The Commission adopted the Regulatory Technical Standards on commodity position limits and ancillary activity.</p> <p>ESMA has published a Q&A document on MiFID II commodity derivatives topics, in particular on position limits and the ancillary activity test.</p> <p>The Council officially approved the delay of entry into force of MiFID/R 2 to January 2018 (Council press release; MiFID text amending the dates; MiFIR text amending the dates)</p> <p>As part of postponing the entry into force date, it has been clarified that non-financial companies using Multilateral Trading Facilities (MTFs) for their hedging transactions will continue to benefit from the exemption for dealing on won account, and will therefore not have to be MiFID-licensed.</p>	
<p>Key documents:</p> <ul style="list-style-type: none"> • Commission MiFID/MiFIR page 		



Basel III / CRD IV		
Content and legislative status	Latest developments	Issues from treasury perspective / EACT position
Legislation on bank capital, liquidity and leverage	<ul style="list-style-type: none"> • The finalisation of the so-called 'Basel 4' rules has again been delayed as the position of the new US administration is not yet defined • The Commission adopted a proposal to review CRD IV / CRR in order to implement some of the remaining elements of the Basel III framework, such as the leverage ratio and the Net Stable Funding Ratio (NSFR) • The European Parliament adopted a Resolution on Basel III, stating that the review of the use of internal models currently ongoing should not result in an overall increase of capital levels and should not penalize European banks 	
Key documents: <ul style="list-style-type: none"> • Commission CRD IV website 		



Country-by-country reporting		
Content and legislative status	Latest developments	Issues from treasury perspective / EACT position
<p>Commission adopted a legislative proposal on corporate tax transparency for multinational companies. The proposal applies to both EU and non-EU multinationals operating in the EU with global revenues exceeding 750 million euros per year. The proposal would amend the current Accounting Directive and would oblige these companies to disclose publicly information on profits made and taxes paid on a country by country basis both for EU countries and for tax jurisdictions that do not abide by tax good governance standards (tax havens) and on an aggregated basis for other jurisdictions.</p>	<p>Commission adopted the proposal and it will now be subject to the co-decision process by the Parliament and the Council</p>	
<p>Key documents:</p> <ul style="list-style-type: none"> • Text of the proposal 		



Common consolidated corporate tax base		
Content and legislative status	Latest developments	Issues from treasury perspective / EACT position
<p>The European Commission has adopted a proposal for common consolidated corporate tax base in the EU. The proposal consists of two parts, first one being the harmonisation of the definition and calculation of taxable profits within EU Member States, and the second (longer term objective) one being the setting up of a system to consolidate corporate tax revenue between Member States. The rules on common tax base would apply to companies with revenues of above 750 million euros per year. Corporate tax rates are not covered by the proposal, as they are a competence of the individual Member States. The proposal also aims to reduce the debt-equity bias.</p>	<p>The proposal will now have to be adopted by unanimity of all the Member States, which means that its adoption could prove very difficult (there have been three similar proposals in the past, and no agreement has been reached). The European Parliament will be consulted on the proposal.</p>	
<p>Key documents:</p> <ul style="list-style-type: none"> • Text of the proposal 		



Legislative initiative

Timeline of next steps and actions

