



## EACT

### Monthly Report on Regulatory Issues

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## Executive Summary

Topic and summary of content and EACT position	Main developments since last report
<p><b><u>European Market Infrastructure Regulation (EMIR):</u></b></p> <ul style="list-style-type: none"> <li>• Regulation to push derivatives trading on exchanges</li> <li>• Corporates' hedging transactions exempted from clearing obligation but subject to reporting, portfolio reconciliation, portfolio compression and dispute resolution obligations</li> <li>• Next deadlines: reporting to Trade Repositories likely to start in February 2014</li> </ul>	<ul style="list-style-type: none"> <li>• On 18 March the first CCP was declared EMIR compliant which starts the count-down to the start of the clearing obligation, likely to start at the earliest at the end of this year.</li> </ul>
<p><b><u>Money Market Funds (MMF) Regulation:</u></b></p> <ul style="list-style-type: none"> <li>• European Commission proposal to regulate MMFs includes e.g. a mandatory capital buffer for CNAV funds, ban on external credit ratings and limitations to instruments in which MMFs can invest in</li> <li>• The proposal is currently in the early stages of the legislative procedure (Council and Parliament); the Regulation will be adopted during this legislature but at the earliest end of 2014 / beginning of 2015</li> <li>• EACT position concentrates on the importance of ensuring the availability MMFs (both CNAV and VNAV) and arguing against the ban of credit ratings</li> </ul>	<ul style="list-style-type: none"> <li>• ECON was unable to reach a compromise on the proposal, therefore the work will continue only under the next Parliament</li> </ul>
<p><b><u>Financial Transaction Tax (FTT) :</u></b></p> <ul style="list-style-type: none"> <li>• A proposal to tax a large variety of equity and bond transactions in 11 EU Member States under the 'enhanced cooperation' approach</li> <li>• 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</li> <li>• EACT strongly opposed as FTT amounts to a tax on the real economy</li> </ul>	<ul style="list-style-type: none"> <li>• A French-German summit took place on 19 February during which FTT was discussed; there seems to be some political will to agree on an FTT within a relatively short time-frame</li> </ul>



<p><b><u>Financial Benchmark Regulation:</u></b></p> <ul style="list-style-type: none"> <li>• Proposal of the Commission to regulate the administration and the contribution to financial benchmarks</li> <li>• Would impose mandatory contributions to certain benchmarks (EURIBOR and LIBOR) and would impose liability for those contributions in certain cases</li> <li>• EACT position will underline the importance of contract continuity and coherence of EU action with international developments</li> </ul>	<ul style="list-style-type: none"> <li>• Similarly to the MMF file, ECON was unable to reach a compromise on the proposal and therefore further work has been postponed to the next Parliament</li> <li>• FSB is continuing its work on interest benchmarks and has expanded it to FX benchmarks</li> </ul>
<p><b><u>Bank Structural Separation (Barnier / Liikanen rule)</u></b></p> <ul style="list-style-type: none"> <li>• 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.</li> </ul>	<ul style="list-style-type: none"> <li>• Commission proposal adopted on 29 January</li> </ul>



Regulatory initiative	Content	Status	Issues from treasury perspective / EACT position
<b>European Market Infrastructure Regulation (EMIR)</b>	<p>The Regulation on OTC derivatives, central counterparties and trade repositories (EMIR) was adopted on 4 July 2012 and entered into force on 16 August 2012. EMIR 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>Timeline of obligations:</p> <ul style="list-style-type: none"> <li>• 15 March 2013: Timely confirmations, NFC+ notification</li> <li>• 15 September 2013 : Portfolio reconciliation, Portfolio compression and dispute resolution</li> <li>• 12 February 2014 : Reporting obligation to start (ESMA has approved six trade repositories: ICE, CME, DTCC, KDPW, Regis-TR and UnaVista)</li> </ul>	<ul style="list-style-type: none"> <li>• <b>On 18 March the first CCP (Nasdaq OMX) was <a href="#">authorised as EMIR compliant</a>. This means that the count-down to the start of the clearing obligation has started. ESMA will have to draft the related RTSs which need to be approved by the Commission. The earliest possible start date of the clearing obligation is probably at the end of this year.</b></li> <li>• <b>FSB consulted on the approaches to aggregate OTC derivatives data and will report to the G20 Brisbane summit in the autumn on the conclusions.</b></li> <li>• ESMA published an <a href="#">updated Q&amp;A document</a>.</li> <li>• ESMA sent a <a href="#">letter</a> to the Commission requesting for a clarification on the definition of derivative instruments under EMIR</li> <li>• ESMA has finalised clearing and risk mitigation obligations for non-EU</li> </ul>	

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	<ul style="list-style-type: none"> <li>Second half of 2014 (TBC): First clearing obligations start (3 year phase-in for non-financial counterparties exceeding a clearing threshold)</li> </ul>	<p>derivatives (<a href="#">press release</a>)</p> <ul style="list-style-type: none"> <li>ESMA approved the first trade repositories (see <a href="#">press release</a> of 7 November and <a href="#">press release</a> of 28 November).</li> <li>ESMA still needs to issue RTSs on clearing obligation and margining of uncleared derivative transactions based on the BIS-IOSCO <a href="#">final framework for margin requirements for non-centrally cleared derivatives</a>, which exempts forex swaps and forwards from initial margin. The framework applies to financial institutions and systemically important non-financial institutions only (it is left to national authorities to define this more accurately but it is expected that that in the EU this would mean that NFC+'s will be subject to these requirements whereas NFC-'s not).</li> </ul>	
<b>Shadow banking / Money Market Funds (MMFs)</b>	<p>The proposal for Regulation would impose amongst others the following:</p> <ul style="list-style-type: none"> <li>A requirement on CNAV MMFs to have a cash "buffer" equivalent to 3 percent of their assets</li> <li>binding rules on the types of assets</li> </ul>	<p><a href="#">The proposal for MMF Regulation</a> – together with a <a href="#">communication regarding shadow banking</a> - was adopted by the Commission on 4 September.</p> <p>The Regulation proposal is subject to the ordinary legislative process, however the text will not be adopted under the current</p>	<ul style="list-style-type: none"> <li>Impact on future availability of CNAV funds; also uncertainty on whether VNAV funds can be</li> </ul>

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	<p>MMFs can invest in</p> <ul style="list-style-type: none"> <li>• limits on how much business MMFs can do with a single counterparty, and restrictions on short selling</li> <li>• A ban for MMFs to solicitate external ratings</li> </ul> <p>In the US the Securities and Exchange Commission's (SEC) proposal on MMFs include two alternatives:</p> <ol style="list-style-type: none"> <li>1. "Prime" funds (which invest in short term debt issued by banks, companies and governments) be forced to let the share price of each fund "float". Funds that invest the majority of their assets in cash or government debt as well as funds which target retail customers would be exempt from this requirement.</li> <li>2. Or any fund that would not buy primarily government debt would have to charge redemption fees or pose limitations to redemptions in times of extreme withdrawals.</li> </ol>	<p>legislature.</p> <p>The Rapporteur's position includes a deletion of the ban on credit ratings (i.e. MMFs could continue to be rated) but has not moved away from the capital buffer for CNAV's and even suggests that CNAV's should be converted to VNAV's within a five-year period.</p> <p>Over 400 amendments to the proposal were tabled by MEPs. The first list of amendments tabled is available <a href="#">here</a> and the second list <a href="#">here</a>.</p> <p><b>The ECON Committee has not reached an agreement on a compromise text and has therefore decided to postpone further work on the file until the next Parliament. The main contentious issue is the continued role of CNAV's: the left of centre political groups would favour a mandatory capital buffer or an outright ban, and the centre and right-wing groups favour liquidity gates and fees. A compromise text which would have given CNAV funds five years to build up the capital buffer and which included a review clause after three years was proposed by some members but no agreement was reached.</b></p>	<p>accounted for as cash or cash equivalent</p> <ul style="list-style-type: none"> <li>• Consequences of ban on external ratings of MMFs</li> <li>• Inconsistency with US approach</li> </ul>

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		<p>Commissioner Barnier has indicated that he could support such amendments to his proposal.</p> <p>On 3 March Mario Draghi (in his role as the Chair of the ESRB) spoke to the ECON Committee supporting the idea of a capital buffer (previously he has been in favour of an outright ban of CNAVs).</p> <p>The parliamentary work on the file will continue in the autumn and could of course be influenced by the developments in the US, if for instance the SEC adopts more favourable measures on CNAVs by then.</p>	
<p><b>Financial Transaction Tax (FTT)</b></p>	<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 <a href="#">proposal for a Directive</a> on 14 February 2013 (see also the <a href="#">press release</a> and the <a href="#">Questions &amp; Answers</a>). The new proposal is based on the previous text presented in 2011 with some amendments and to have the following main</p>	<p><b>The push for a swifter implementation of the FTT has gained renewed momentum after the Franco-German ministerial meeting which was held on 19 February. French President François Hollande and German Chancellor Angela Merkel discussed a wide range of issues, including the FTT. Both leaders agreed to finalise negotiations on the topic before the European Parliament elections which will be held in May 2014. Hollande declared that he preferred having</b></p>	<p>See position paper</p>



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	<p>aspects:</p> <ul style="list-style-type: none"> <li>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.</li> <li>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 combination of the residence principle and the location of the where the financial instrument is issued.</li> </ul>	<p><b>an imperfect or more limited tax than no tax at all. Despite the will to implement an FTT, France and Germany still have to agree on how a lighter version of the tax would look. From recent reports it looks like the two countries are moving closer to a joint proposal which would include taxing derivatives from the start despite the fact that France has previously indicated that they would want the tax to cover only equity in a first stage. However, a “stamp duty style” tax would raise very little revenue for smaller Member States, some of which already expressed their concerns. Recently, Estonia voiced criticism against a reduced scope and raised the issue of the impact of limited participation on competition. The Austrian finance Minister Michael Spindelegger also declared the he did not expect the tax to be implemented before 2016. The Council’s legal services have also drafted their opinion about the possible inclusion of FX spots within the scope of the FTT. It indicates that while it could not be envisaged</b></p>	

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	<ul style="list-style-type: none"> <li>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.</li> <li>There will be an exemption for primary market transactions (i.e. subscription/issuance).</li> </ul> <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><b>that FX spots are included in the scope of the current proposal (as the Commission proposal only covers the taxing of financial instruments and FX spots are not defined as such in EU law), their inclusion would not necessarily be incompatible with the free movement of capital (as argued by the Commission) and that from this perspective speculative spot transactions – not linked to any underlying transactions – could be included in the scope.</b></p> <p>The German government program document refers to a broad based FTT with a low rate and possibly including all financial instruments, notably shares, bonds, investment certificates, currency transactions and derivatives. The document also calls for a design that prevents avoidance and help reducing undesirable business models but also contains a caveat that FTT's impact on the real economy and pension funds should be taken into account.</p> <p>The Commission seems to be taking a somewhat more flexible approach as the EU Tax Commissioner Algirdas Semeta stated that</p>	



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		the Commission would support a compromise with a more limited remit as long as any loopholes which would jeopardise the main principle of the tax be avoided.	

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<p><b>Banking Union:</b></p> <ul style="list-style-type: none"> <li>• <b>Single Supervisory Mechanism (SSM)</b></li> <li>• <b>Resolution and Recovery</b></li> <li>• <b>Deposit Guarantee Schemes (DGS)</b></li> </ul>	<p>The so called 'Banking Union' includes:</p> <p>1) Single Supervisory Mechanism (SSM), which will put the European Central Bank in charge of the prudential oversight of the 130 biggest banks in the eurozone and will have the power to take over the oversight of smaller banks if needed. National supervisors will be in charge of the rest but under ECB's oversight.</p> <p>2) Resolution and Recovery:</p> <ul style="list-style-type: none"> <li>• <b>Bank Recovery and Resolution Directive (BRR)</b> aims to lay down a common insolvency framework for financial institutions, including harmonized powers and tools to resolve failing banks via bail-in</li> <li>• <b>Single Resolution Mechanism (SRM) and the Single Resolution Fund (SRF)</b> will allow the resolution of failing financial institutions in the Member States participating in the Banking Union.</li> </ul>	<p>1) SSM: The ECB will start its supervisory function in November 2014. ECB will conduct a "comprehensive assessment" of the largest euro-zone banks in preparation of assuming full responsibility for supervision as part of the SSM.</p> <p>2) BRR: On 20 December 2013 the trilogue negotiators reached an agreement on the <a href="#">Directive</a>. The Directive will enter into force on 1 January 2015. Bail-in provisions, which are one of the tools for resolution, will enter into force in January 2016.</p>	

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	<p>The proposed resolution process though the SRM entails the following steps: after an ECB opinion, a Single Resolution Board (including representatives from ECB, Commission and relevant national authorities) will prepare the resolution of the bank. On the basis of a Single Resolution Board's recommendation (or at its own initiative) the Commission would take the final decision of placing a bank under resolution. National authorities will implement the resolution plan. A Single Resolution Fund will be created with contributions from the industry.</p> <p>3) Deposit Guarantee Scheme: a Directive to harmonise the different national schemes. The Directive includes the harmonised coverage level of € 100 000 per depositor and per bank. The guarantee will continue to be offered in the form of repayment in case of a bank's liquidation where deposits would become unavailable.</p>	<p><b>SRM: A provisional agreement was reached in the negotiations between the Parliament and the Council on 20 March – this means that if the deal holds the plenary of the Parliament will be able to vote on the file in its last plenary session of April.</b></p> <p>3) DGS: an agreement in trilogue discussions was reached in December</p>	

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<b>Interest rate benchmarks</b>	<p>The are two work streams:</p> <ol style="list-style-type: none"> <li>1. The proposal of the European Commission for Regulation on financial benchmarks which seeks to address concerns about the integrity and accuracy of financial benchmarks and which contains e.g. the following aspects: <ul style="list-style-type: none"> <li>• Benchmark administrators will be subject to authorisation and supervision (prohibition of the use of unauthorised benchmarks within the EU)</li> <li>• Mandatory contributions to “critical” benchmarks (such as LIBOR and EURIBOR)</li> <li>• Equivalence requirement for non-EU benchmarks (third countries must have a legal framework in place which is in line with the IOSCO principles)</li> <li>• Mandatory code of conduct for administrators and contributors</li> </ul> </li> </ol>	<ol style="list-style-type: none"> <li>1. <b>The Parliament’s ECON Committee could not reach an agreement on the Commission’s proposal and therefore it has been decided to delay further work on the file until the new Parliament is in place.</b></li> <li>2. Market Participants’ Group to issue final report by Mid-March on interest rate benchmarks. Report on FX benchmarks is due in November 2014.</li> </ol>	<p>Main issues for corporates are:</p> <ul style="list-style-type: none"> <li>• Ensuring contract continuity</li> <li>• <b>The EU Regulation proposal includes the prohibition to use non-EU benchmarks if an equivalence decision by the Commission is not taken (i.e. of the third country is not in line with the IOSCO principles); this could be problematic if no grandfathering clauses are introduced</b></li> </ul>

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	<p>2. FSB work carried out in the Market Participants Group, which has been tasked to propose options for robust reference interest rates that could serve as potential alternatives to the most widely-used, existing benchmark rates and propose strategies for any transition to new reference rates and for dealing with legacy contracts. This group should provide its final report by mid-March 2014.</p> <p>Given the recent allegations of FX rate manipulations, the FSB has decided to incorporate an assessment of FX benchmarks into its ongoing programme of financial benchmark analysis and has established a Foreign Exchange Benchmark Group for this work.</p>		
<p><b>Regulation on structural measures improving the resilience of EU credit</b></p>	<p>The Commission has adopted a proposal for Regulation, which contains the following main aspects:</p> <ul style="list-style-type: none"> <li>• Banning of proprietary trading</li> </ul>	<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</p>	<p>Possible consequences of structural separation on cost, availability of services, market making</p>

Regulatory initiative	Content	Status	Issues from treasury perspective / EACT position
<b>institutions (structural separation of banks)</b>	<ul style="list-style-type: none"> <li>• 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.</li> </ul> <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>apply as of 1 January 2017 and the separation of other trading activities as of 1 July 2018.</p>	<p>etc.</p>
<b>Regulation on reporting and transparency of securities financing transactions</b>	<p>Together with the proposal on structural separation of banks (see above) the Commission has adopted a proposal for increasing transparency of securities financing transactions. This includes a variety of secured transactions such as lending or borrowing securities and commodities, repurchase or reverse repurchase transactions and buy-sell back or sell-buy back transactions.</p> <p>The proposal includes the following elements:</p>	<p>The Commission adopted its proposal on 29 January; the proposal will be subject to the ordinary legislative procedure. According to the proposal the reporting obligation would start 18 months after the entry into force of the Regulation.</p>	<p>Reporting of repo trades; it needs to be assessed how important an issue this would be for corporates.</p>



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	<ul style="list-style-type: none"> <li>• All transactions should be reported to a central database (similarly to EMIR with the details to be defined by ESMA). This obligation would apply to both financial and non-financial counterparties.</li> <li>• Transparency requirements for investment funds engaged in such transactions</li> <li>• Increased transparency on rehypothecation (use of collateral by the collateral-taker for their own purposes)</li> </ul>		
<b>Payment Services Directive</b>	<p>The Commission has adopted a proposal for a revised PSD.</p> <p>The main changes in the PSD II will be the following:</p> <ul style="list-style-type: none"> <li>• Banning of surcharging on payment cards covered by the MIF Regulation</li> <li>• Inclusion of third-party payment service providers in the scope</li> <li>• Extension of the scope of the PSD e.g. where at least the payer's PSP is acting from within the EEA / extension</li> </ul>	<p>The <a href="#">Proposal for PSD II</a> was adopted by the Commission on 24 July (see also Commission's <a href="#">FAQ</a>). <b>ECON has agreed on its position on the text but the negotiations with the Council will not start before the new Parliament has taken over.</b></p>	<p>Certain corporates might be impacted by the following:</p> <ul style="list-style-type: none"> <li>• The rules for refund right for direct debits will be adapted</li> <li>• Corporate treasury centres are not explicitly excluded</li> </ul>



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	to all currencies		from the scope
<b>Regulation on card interchange fees</b>	<p>The Commission issued a legislative proposal in order to regulate the interchange fees for payment cards (both debit and credit) in the EU which would impose a harmonised limit to interchange fees</p> <p>The main changes proposed are:</p> <ul style="list-style-type: none"> <li>• That the MIF regulation will apply to all consumer card transactions, domestic and cross-border and it is a per transaction cap (percentage). This Regulation will not apply to commercial cards.</li> <li>• The ‘honour-all-cards’ rule will be removed (retailers can steer consumers away from certain cards)</li> <li>• Cross-border acquiring will be facilitated, which should be good for retailers as it brings competition and should bring fees down</li> </ul>	<p>The <a href="#">Proposal for Regulation</a> was adopted by the Commission on 24 July. <b>ECON has agreed on its position on the text but the negotiations with the Council will not start before the new Parliament has taken over.</b></p>	<p>Positive development is that this should (at least in theory) reduce the costs passed on by payment service providers to merchants.</p>

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SEPA	<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; the latest national migration plans are available on the <a href="#">ECB website</a>.</p> <p>Regarding SEPA governance, the ECB has established the <a href="#">European Retail Payments Board</a> (ERPB) which replaces the former SEPA Council. <b>The EACT has been invited to nominate a representative for the group.</b></p>		
<b>Transatlantic Trade and Investment Partnership (TTIP)</b>	<p>Trade agreement currently being negotiated between the EU and the US. The aim is to remove trade barriers (tariffs, unnecessary regulations, restrictions on investment etc.) in a wide range of economic sectors. Financial services have been included in the negotiations, however the main counterparties in the US (Treasury, Fed, CFTC) whereas the EU is in favour of covering financial services in the agreement.</p>	<p><b>The fourth round of negotiations took place in Brussels on 10-14 March.</b></p> <p>The Commission published in January its <a href="#">position on financial services</a> in the TTIP. The Commission proposes to establish a framework for regulatory cooperation in financial services. The Commission however underlines that the objective of the TTIP negotiations is not to discuss the content or</p>	<ul style="list-style-type: none"> <li>• Preserving existing exemptions (CVA in CRD IV)</li> <li>• Ensuring regulatory convergence</li> </ul>



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	<p>It is not clearly defined as yet what the negotiations regarding financial services will cover, but issues such as making substituted compliance / equivalence work better, formalisation of the existing dialogue and market access could be on the table.</p>	<p>the implementations of different ongoing regulatory reforms.  <b>It seems that the US officials are still very much opposed to the EU proposals as they are viewed as undermining the Dodd-Franck Act; the US side wants trade negotiations strictly separated from financial services.</b></p>	



**Legislative initiative**

**Timeline of next steps and actions**



		immediate	2014	2015	2016 and beyond
<b>EMIR</b>			Reporting and clearing obligations to start		
<b>MMF</b>			European Parliament and Council to formulate their positions	European Parliament and Council to formulate their positions - to be followed by trilogue negotiations	
<b>FTT</b>			Negotiations	Negotiations	Probable implementation (if any) likely not to take place before 2016
<b>CRD IV</b>	Level 2		Implementation starts / Level 2		
<b>MiFID / MiFIR</b>			Adoption		
<b>Banking Union – Single Supervisory Mechanism</b>			Entry into force November 2014		
<b>Banking Union – Bank Recovery and Resolution Benchmarks</b>			Formal adoption	Entry into force	Entry into force of bail-in provision
			European Parliament and Council to formulate their positions - to be followed by trilogue negotiations	European Parliament and Council to formulate their positions - to be followed by trilogue negotiations	Entry into force probably not before 2016



**Legislative initiative**

**Timeline of next steps and actions**



**Bank structural separation**

Legislative proposal adopted by the Commission

European Parliament and Council to formulate their positions - to be followed by trilogue negotiations

The entry into force of any future legislative measure is unknown at this stage

**PSD II / SEPA governance changes**

European Parliament and Council to formulate their positions - to be followed by trilogue negotiations

European Parliament and Council to formulate their positions - to be followed by trilogue negotiations

Entry into force two years after adoption (2016 the earliest)

**Card interchange fee Regulation**

European Parliament and Council to formulate their positions - to be followed by trilogue negotiations

European Parliament and Council to formulate their positions - to be followed by trilogue negotiations

Entry into force not known