



## EACT

### Monthly Report on Regulatory Issues

*Date issued: 10 December 2013*





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.

Despite all efforts, some information in this report could contain errors or be subject to interpretation. The EACT or National Treasury Associations should not be held liable.

Any comment or opinion in this report is that of the EACT alone and should not be taken as representing the views of either individual National Treasury Associations or of any of the individual companies with which the EACT discusses regulatory affairs.



## 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>• Six trade repositories have been approved by ESMA and the start of the trade reporting has been confirmed for 12 February 2014</li> <li>• ESMA published an updated Q&amp;A document</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); it is thought unlikely that the Regulation will be adopted during this legislature</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>• Rapporteur presented his draft report; this includes an amendment to delete the ban on external credit ratings but supports the CNAV capital buffer and would force conversion to VNAVs over time</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>• FTT has gained some more attention due to its inclusion in the German coalition government programme. The discussions between the 11 MSs are continuing.</li> </ul>

**Financial Benchmark Regulation:**

- 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

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</li> <li>• Second half of 2014 (TBC): First clearing obligations start (3 year</li> </ul>	<ul style="list-style-type: none"> <li>• ESMA finalised clearing and risk mitigation obligations for non-EU derivatives (<a href="#">press release</a>)</li> <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). This means that the trade reporting obligation starts on 12 February 2014. There are now six approved trade repositories: ICE, CME, DTCC, KDPW, Regis-TR and UnaVista</li> <li>• ESMA published an updated <a href="#">Q&amp;A document</a></li> <li>• ESMA sent a <a href="#">letter</a> to the Commission requesting for the reconsideration of the intended rejection of ESMA's advice to delay the start of the reporting obligation for exchange-traded derivatives by one year</li> <li>• ESMA still 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.</li> </ul>	

Regulatory initiative	Content	Status	Issues from treasury perspective / EACT position
	phase-in for non-financial counterparties exceeding a clearing threshold)	<p>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).</p> <ul style="list-style-type: none"> <li>• The EU Official Journal published on 23 February <a href="#">the six Regulatory Technical Standards (RTS)</a> arising from EMIR.</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 MMFs can invest in</li> <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><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. The Regulation proposal will now enter the ordinary legislative process, however the adoption of the Regulation during this legislature (before March 2014) seems unlikely as the Council is likely to be split between two camps: France and Germany on one hand (against CNAV) and the UK, Luxemburg and Ireland (defending CNAV) on the other.</p> <p>Timetable in ECON:</p> <ul style="list-style-type: none"> <li>- 4 Nov: 1<sup>st</sup> exchange of views</li> <li>- 2 Dec: presentation of draft report</li> <li>- 10 Dec: ddl for amendments</li> </ul>	<ul style="list-style-type: none"> <li>• Impact on future availability of CNAV funds; also uncertainty on whether VNAV funds can be accounted for as cash or cash equivalent</li> <li>• Consequences of ban on external ratings of MMFs</li> <li>• Inconsistency with US approach</li> </ul>

Regulatory initiative	Content	Status	Issues from treasury perspective / EACT position
	<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>- 12 Feb vote in ECON</p> <p><b>The Rapporteur's <a href="#">draft report</a> 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.</b></p>	
<b>Financial Transaction Tax (FTT)</b>	Council agreed to the "enhanced cooperation" procedure between 11 Member States (Belgium, Germany, Estonia, Greece, Spain, France, Italy,	<ul style="list-style-type: none"> <li>• <b>FTT has been included in the programme of the German coalition government. Despite having agreed on a formal</b></li> </ul>	See position paper



Regulatory initiative	Content	Status	Issues from treasury perspective / EACT position
	<p>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>).</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"> <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</li> </ul>	<p>political program, the German coalition government has yet to define the lines along which the FTT will be negotiated. The 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> <ul style="list-style-type: none"> <li>The last meeting at participating Member State level took place in the last week of November and the next meeting will take place on 12 December. While the article by article analysis of the proposal was finalised negotiators initiated a discussion on the substance of the text, including exceptions for specific classes of bonds, derivatives, non-financial companies and pension funds. A possible step-by-step</li> </ul>	

Regulatory initiative	Content	Status	Issues from treasury perspective / EACT position
	<p>different market participants at different stages.</p> <ul style="list-style-type: none"> <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> <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</p>	<p>approach was also discussed.</p> <ul style="list-style-type: none"> <li>• <b>The European Commission's legal services opinion – prepared as a response to the Council's negative legal opinion - was finalised. It dismisses the Council's analysis and advanced the legality of the provision by arguing that the tax does not entail discrimination but simply highlights diversity among national taxation regimes.</b></li> </ul>	

Regulatory initiative	Content	Status	Issues from treasury perspective / EACT position
	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.		
<b>Markets in Financial Instruments Directive (MiFID II) and Regulation (MiFIR);</b>	Commission proposed a review of MiFID / MiFIR on 20 October 2011 European Parliament ECON Committee has adopted their report in October 2012 (see report <a href="#">here</a> ).	The trilogue negotiations between the Commission, the Council and the Parliament are ongoing.	<b>NFC+'s will be captured by certain provisions of MiFID II and therefore it has a consequence on them.</b>

Regulatory initiative	Content	Status	Issues from treasury perspective / EACT position
<b>Banking Union:</b> <ul style="list-style-type: none"> <li>• <b>Single Supervisory Mechanism (SSM)</b></li> <li>• <b>Bank Recovery and Resolution</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) Bank Recovery &amp; Resolution (BRR)</p> <ul style="list-style-type: none"> <li>• <b>Bank Recovery and Resolution Directive</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 published the guidelines of its "<a href="#">comprehensive assessment</a>" of the largest euro-zone banks to be conducted in preparation of assuming full responsibility for supervision as part of the SSM.</p> <p>2) BRR: The EP ECON Committee voted on its position on the BRR Directive in May (report available <a href="#">here</a>). The Council agreed on a <a href="#">General Approach</a> on 27 June, and the trilogues are now ongoing. The parties aim to reach an agreement by the year-end.</p>	

Regulatory initiative	Content	Status	Issues from treasury perspective / EACT position
	<p>The proposed resolution process through 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>Discussions are also ongoing on the proposals on SRM and SRF; contentious issues include the wide powers which would be given to the Commission under the proposal and the way in which the SRF would be funded.</p> <p>3) Deposit Guarantee Scheme (DGS) The Parliament has adopted its negotiating position but the file is stuck at the Council's side.</p>	
<b>Interest rate benchmarks</b>	<p>Two work streams:</p> <ol style="list-style-type: none"> <li>1. The <a href="#">proposal of the European Commission for Regulation on financial benchmarks</a> which</li> </ol>	<p>Commission's proposal has entered the ordinary legislative procedure (Sharon Bowles has been appointed ECON Rapporteur for the file)</p>	<p>Main issues for corporates are:</p>

Regulatory initiative	Content	Status	Issues from treasury perspective / EACT position
	<p>seeks to address concerns about the integrity and accuracy of financial benchmarks and which contains e.g. the following aspects:</p> <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> <p>2. <a href="#">FSB work</a> carried out in the Market Participants Group, which has been tasked to propose options for robust reference interest rates that</p>		<ul style="list-style-type: none"> <li>• Implications of liability burden on contributors in terms of its impact on viability of overall benchmarks</li> <li>• Ensuring contract continuity</li> <li>• Volatility and possible drying up of the unsecured interbank market</li> <li>• Consistency with other initiatives, particularly that of the FSB</li> </ul>

Regulatory initiative	Content	Status	Issues from treasury perspective / EACT position
	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.		
<b>Structural separation of banks (Liikanen report)</b>	The Liikanen report issued in October 2012 proposed to ring-fence investment banking from retail banking into a separate entity if a banks' trading activities exceed a certain threshold (this entity would still be part of the same banking group but would have to hold its own capital)	The Commission ran a public consultation on the reform of the structure of the EU banking sector from May to July). The Commission is considering different types of possibilities, which vary from separating only proprietary trading to separating all investment and wholesale banking activities from the deposit-taking entity. <b>The Commission still confirms that they should issue a legislative proposal but this has to date been delayed several times.</b>	<b>Possible consequences of structural separation on cost, availability of services, market making etc.</b>
<b>Payment Services Directive</b>	The Commission has adopted a proposal for a revised PSD. The main changes in the PSD II will be the following: <ul style="list-style-type: none"> <li>Banning of surcharging on</li> </ul>	The <a href="#">Proposal for PSD II</a> was adopted by the Commission on 24 July (see also Commission's <a href="#">FAQ</a> ). The file has entered the ordinary legislative procedure (ECON Rapporteur is Diogo Feio, EEP,	Certain corporates might be impacted by the following: <ul style="list-style-type: none"> <li>The rules for refund right for direct debits</li> </ul>

Regulatory initiative	Content	Status	Issues from treasury perspective / EACT position
	<p>payment cards covered by the MIF Regulation</p> <ul style="list-style-type: none"> <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 to all currencies</li> </ul>	PT)	<p>will be adapted</p> <ul style="list-style-type: none"> <li>• Corporate treasury centres are not explicitly excluded from the scope</li> </ul>
<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 that these two pieces of legislation would be:</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</li> </ul>	The <a href="#">Proposal for Regulation</a> was adopted by the Commission on 24 July. It will now enter the ordinary legislative procedure.	Positive development is that this should (at least in theory) reduce the costs passed on by payment service providers to merchants.



Regulatory initiative	Content	Status	Issues from treasury perspective / EACT position
	<p>commercial cards.</p> <ul style="list-style-type: none"> <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>		

Regulatory initiative	Content	Status	Issues from treasury perspective / EACT position
<b>SEPA Governance</b>	The ECB is drafting the Statute for the Euro Retail Payments Board (ERPB) which is to replace the SEPA Council.	ERPB to be established in the coming months. A draft was circulated after the September SEPA Council meeting to which the EACT commented by criticising the lack of stakeholder involvement in the new structure.	Ensure EACT's representation in the new body and in general an appropriate level of stakeholder involvement
<b>Transatlantic Trade and Investment Partnership (TTIP)</b>	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.  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.	The first round of negotiations took place in July and the next round will take place in October. Negotiations are expected to take anywhere between two and five years.	<ul style="list-style-type: none"> <li>• Preserving existing exemptions (CVA in CRD IV)</li> <li>• Ensuring regulatory convergence</li> </ul>



## Legislative initiative

## Timeline of next steps and actions

				
		immediate	2013	2014
				2015 and beyond
<b>EMIR</b>			Level 2	Reporting and clearing obligations to start
<b>MMF</b>	Commission adopted a proposal		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		Level 2	Implementation starts
<b>MiFID / MiFIR</b>			Trilogues	Trilogues – earliest possible adoption Q1 2014
			Final adoption	Entry into force mid-2014
<b>Banking Union – Single Supervisory Mechanism</b>				
<b>Banking Union – Bank Recovery and Resolution Benchmarks</b>			Trilogues	Trilogues
			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

				
	immediate	2013	2014	2015 and beyond
<b>Liikanen</b>		Legislative proposal expected in autumn	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
<b>PSD II / SEPA governance changes</b>		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)
<b>Card interchange fee Regulation</b>		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