EACT

Monthly Report on Regulatory Issues

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EUROPEAN ASSOCIATION
OF CORPORATE TREASURERS

Executive Summary

Topic and summary of content and EACT position	Latest developments
<u>**European Market Infrastructure Regulation (EMIR):**</u> • 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	• **Basel Committee has launched a consultation on CVA** • **EBA is continuing its work on challenging the NFC CVA exemption under CRD IV**
<u>**Money Market Funds (MMF) Regulation:**</u> • 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 • The proposal was adopted by the Commission in September 2013. The Parliament has now agreed on its position (which relaxes some of the requirements in the original Commission proposal) but the Council still needs to agree on its position. • EACT position concentrates on the importance of ensuring the availability MMFs (both CNAV and VNAV) and arguing against the ban of credit ratings	•
<u>**Financial Transaction Tax (FTT) :**</u> • 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	• **Discussions on the tax are continuing and finance ministers met recently but no agreement has been announced yet**

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	•
Bank Structural Separation (Barnier / Liikanen rule) • 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.	• **The Council has agreed on its position that would bring several positive amendments to the original Commission proposal** • **Parliament now has to agree on its position before trilogue negotiations can start**

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

OTC Derivatives - European Market Infrastructure Regulation (EMIR)		
Content and legislative status	**Latest developments**	**Issues from treasury perspective / EACT position**
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. EMIR contains different start dates for the various obligations and the obligations for NFC- (portfolio compression, trade reporting) are already in place. On 18 March 2014 ESMA authorised the first CCP for the clearing obligation, which kick-starts the countdown to the start of the clearing obligation. ESMA has six months, until 18 September 2014, to submit the RTSs on the clearing obligation for Commission approval. FSB has consulted on the approaches to aggregate OTC derivatives data and will report to the G20 Brisbane summit in the autumn on the conclusions. EACT response to the consultation is available here.	Consultations: ○ **Basel Committee is consulting on CVA** ○ **The ESAs are consulting until 10 July on the margin requirements for uncleared OTC derivatives transaction (this is the second consultation on the topic). The ESAs have amended their approach as a result of the feedback on the first consultation, and for instance third country NFC-s will not be in scope of the requirements, as initially proposed (the requirements will also not apply to EU NFC-s).** ○ The Commission has launched a public consultation on EMIR. The consultation covers a wide range of issues and will run until 13 August. Following the consultation, the Commission will draft a report on EMIR later this year. ESMA/ EBA: • **ESMA updated its list of registered trade repositories** • **On 5 June 2015, the European Commission adopted a Delegated Act extending transitional relief from central clearing requirements for Pension Scheme Arrangements until 16 August 2017.**	

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OTC Derivatives - European Market Infrastructure Regulation (EMIR)		
	• ESMA is consulting until 15 July on the draft RTS for the clearing obligation of interest rate swaps. It is now expected that the first clearing obligation will start at the earliest in April 2016, with the three-year phase-in period for NFC+s. • ESMA published an updated Q&A document • ESMA has launched, at the request of several national competent authorities, centralised data projects for EMIR and MiFID. For EMIR, the aim is to create a single access point for trade repository data to ESMA and national supervisors. ESMA expects this to be implemented in 2016. • EBA published its advice to the Commission on CVA risks. The EBA states that while it currently has no legal mandate to propose the deletion of the CVA exemptions included in CRD IV, it considers that the exemptions leave material risks uncovered and therefore overall the exemptions should be removed or reconsidered in the future, as part of the Basel Committee review of the CVA framework. In the meanwhile the EBA will draft guidance for national supervisors to monitor excessive CVA risks and to address them. A consultation on this topic is expected later this year. International:	

OTC Derivatives - European Market Infrastructure Regulation (EMIR)		
	• The Basel Committee and IOSCO issued a revised timeline for the implementation of margin requirements for non-centrally cleared derivatives IOSCO has published its final report on risk mitigation standards for non-centrally cleared OTC derivatives which will apply to financial entities and systemically important non-financial entities	

Key documents:

- EMIR Regulation
- Regulatory Technical Standards
  - Regulatory technical standards on capital requirements for central counterparties
  - Regulatory technical standards on requirements for central counterparties
  - Regulatory technical standards on indirect clearing arrangements, the clearing obligation, the public register, access to a trading venue, non-financial counterparties, risk mitigation techniques for OTC derivatives contracts not cleared by a CCP
  - Regulatory technical standards on the minimum details of the data to be reported to trade repositories
  - Regulatory technical standards specifying the details of the application for registration as a trade repository
  - Regulatory technical standards specifying the data to be published and made available by trade repositories and operational standards for aggregating, comparing and accessing the data
- Implementing Technical Standards
  - Implementing technical standards on requirements for central counterparties
  - Implementing technical standards on the minimum details of the data to be reported to trade repositories
  - Implementing technical standards specifying the details of the application for registration as a trade repository
- IOSCO information repository for central clearing requirements for OTC derivatives in different jurisdictions

Shadow banking / Money Market Funds (MMFs)		
Content and legislative status	**Latest developments**	**Issues from treasury perspective / EACT position**

The Commission proposal for Regulation would impose amongst others the following:
• A requirement on CNAV MMFs to have a cash “buffer” equivalent to 3 percent of their assets
• binding rules on the types of assets MMFs can invest in
• limits on how much business MMFs can do with a single counterparty, and restrictions on short selling
• A ban for MMFs to solicit external ratings
The Parliament ECON Committee did not reach a compromise on the text. The work will therefore continue in the autumn under the new Parliament. The new ECON committee is not likely to re-start the work on the file before September-October at the earliest. A new Rapporteur will have to be appointed as the previous Rapporteur (Said El Khadraoui) was not re-elected.
	• The Parliament Plenary approved the report proposed by the ECON Committee
	• The main elements of the compromise are as follows:
	  ○ CNAV funds would be allowed in two cases only: those with retail investors only (not open for subscription by corporates) and those which invest in EU government debt
	  ○ In addition to this a new category of funds will be created called Low Volatility NAV funds which would also be allowed to show a stable share price. These funds would be allowed to use amortised cost accounting only for assets of maturity up to 90 days.
	  ○ For both CNAV funds and LVNAV funds there will be redemption gates and fees.
	  ○ External credit ratings would be allowed, contrarily to what was
		• It should be ensured that LVNAV funds can have same day liquidity
		• Sunset clause on LVNAV funds which would make fund managers reluctant to offer such a product

Shadow banking / Money Market Funds (MMFs)		
	originally proposed by the Commission • The Council has not made any progress on the file recently and now has to start the discussions again	
Key documents: • Commission proposal for regulating MMFs • IOSCO Policy Recommendations for MMFs • ECON report tabled for Plenary		

Financial Transaction Tax (FTT)		
Content and legislative status	**Latest developments**	**Issues from treasury perspective / EACT position**
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. The Commission issued a proposal for a Directive on 14 February 2013 (see also the press release and the Questions & Answers). The new proposal is based on the previous text presented in 2011 with some amendments and to have the following main aspects: • 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	• **Pierre Moscovici, Commissioner in charge of taxation, has stated that he sees an agreement on FTT in the near future after a meeting of finance ministers mid-June.**	

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Financial Transaction Tax (FTT)		
Content and legislative status	**Latest developments**	**Issues from treasury perspective / EACT position**
combination of the residence principle and the location of the where the financial instrument is issued. • 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). 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.		
Key documents: • Commission proposal • Commission Impact Assessment; Summary of Impact Assessment • EACT position paper		

Financial benchmarks		
Content and legislative status	**Latest developments**	**Issues from treasury perspective / EACT position**
The are two work streams: 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: • Benchmark administrators will be subject to authorisation and supervision (prohibition of the use of unauthorised benchmarks within the EU) • Mandatory contributions to "critical" benchmarks (such as LIBOR and EURIBOR) • Equivalence requirement for non-EU benchmarks (third countries must have a legal framework in place which is in line with the IOSCO principles) • Mandatory code of conduct for administrators and contributors 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	The European Parliament Plenary approved the text on financial benchmarks. Trilogues with the Council and the Commission will follow.	Main issues for corporates are: • Ensuring contract continuity • 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

Financial benchmarks		
Content and legislative status	**Latest developments**	**Issues from treasury perspective / EACT position**
reference rates and for dealing with legacy contracts. This group should provide its final report by mid-March 2014. 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.		

Key documents:

- Text of the Commission proposal
- Impact assessment:
  - Full text
  - Executive Summary
- IOSCO Principles for financial benchmarks

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<table>
<tr><th colspan="3"><u>Regulation on structural measures improving the resilience of EU credit institutions (structural separation of banks)</u></th></tr>
<tr><th>Content and legislative status</th><th>Latest developments</th><th>Issues from treasury perspective / EACT position</th></tr>
<tr><td>The Commission has adopted a proposal for Regulation, which contains the following main aspects:
• Banning of proprietary trading
• Potential separation of certain trading activities (market making, OTC derivatives trading, complex securitized products etc.) The banking supervisor would monitors banks' activities and could require a separation of these activities into a separate entity.
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.

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.</td><td>The Council has adopted its <u>negotiating position</u>. 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:

• 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 the activities subject to a possible separation.

Commissioner Hill generally <u>welcomed</u> some of the changes brought to the original proposal</td><td>• 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</td></tr>
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Regulation on structural measures improving the resilience of EU credit institutions (structural separation of banks)

	as being more favourable to growth and jobs. **The Parliament will now have to agree its position before the trilogue discussions can start.**	

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**
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. The proposal includes the following elements: • 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. • Transparency requirements for investment funds engaged in such transactions • Increased transparency on rehypothecation (use of collateral by the collateral-taker for their own purposes) 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.	**The Council, the Parliament and the Commission have reached a political agreement on the text.**	Reporting of repo trades by non-financial counterparties (however the proposal states that this can be delegated); it needs to be assessed how important an issue this would be for corporates.
Key documents: • Text of the proposal		

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Capital Markets Union		
Content and legislative status	**Latest developments**	**Issues from treasury perspective / EACT position**
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. 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 CMU is a multi-year project and is likely to include a variety of legislative and non-legislative measures. The short-term actions include work on securitisation, Prospectus Directive and private placements. The longer term work includes actions on company, insolvency, securities and tax laws.	The consultation closed on 13 May (EACT response here). The Commission is expected to publish the roadmap for CMU in the autumn, together with legislative proposals for securitisations and the Proscpectus Directive. **The Commission published the responses received for the CMU consultation, the Prospectus Directive consultation and the securitisation consultation.**	
Key documents: • Commission CMU website (all relevant documents are available here)		

Credit Rating Agencies		
Content and legislative status	**Latest developments**	**Issues from treasury perspective / EACT position**
ESMA consulted on competition, choice and conflicts of interests in the credit rating industry. This consultation starts the formal review of the CRA Regulation currently in place and ESMA is expected to draft a report to the Commission in the autumn with its recommendations. The Commission could then propose a legislative review in 2016.	ESMA published the responses received to the consultation.	The consultation paper raises many of the issues the EACT has previously sought to tackle e.g. mandatory rotation
Key documents: • ESMA consultation page		

Payments Package		
Content and legislative status	**Latest developments**	**Issues from treasury perspective / EACT position**
Revision of the Payment Services Directive (PSD): The main changes introduced by the Commission proposal are the following: • 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 **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.	**An agreement was reached in the trilogue negotiations on PSD2; the final compromise text is available here.** The MIF Regulation was published in the Official Journal.	EACT position paper on PSD concentrates on the following issues: • Need for a clear exemption for intra-group transactions in order to maintain corporate in-house banks outside the scope of the PSD • Arguing against the proposed changes to the unconditional right to refund for direct debits

Key documents:

- Commission Proposal for a revised Payment Services Directive (PSD2)
- MIF Regulation text adopted by the Parliament
- Impact Assessment: Executive Summary ; Full text
- EACT Position Paper

Transatlantic Trade and Investment Partnership (TTIP)		
Content and legislative status	**Latest developments**	**Issues from treasury perspective / EACT position**
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 EU and the US negotiators remain divided on the inclusion of financial services in TTIP – the EU wishing to extend the discussions to regulatory convergence and the US side prepared to discuss only issues concerning market access. Recently the EU negotiator stated that the EU would possibly propose a “negative list” approach where newly developed products and services get a low tariff treatment.	• Preserving existing exemptions (CVA in CRD IV) • Ensuring regulatory convergence
Key documents: • Commission TTIP website • Commission negotiating position on financial services		

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SEPA		
Content and legislative status	**Latest developments**	**Issues from treasury perspective / EACT position**
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.	• The ERPB working group on SEPA post-migration issues published its final report.	

Key documents:

- 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**
MiFIR / MiFID 2 have been adopted and currently Level 2 measures are being developed by ESMA.	**The final RTSs for MiFID 2 are expected to be submitted shortly by ESMA.** ESMA has consulted on the level 2 measures; EACT contribution is available here	
Key documents: • **MiFIR text** • **MiFID text**		

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Timeline of next steps and actions

Legislative initiative	immediate	2015	2016	2017and beyond
EMIR		Clearing obligation should start by end-2015		
MMF		European Parliament and Council to formulate their positions	European Parliament and Council to formulate their positions - to be followed by trialogue negotiations	
FTT		Negotiations	Negotiations	Probable implementation (if any)likely not to take place before 2016
CRD IV	Level 2 measures under development	Implementation starts / Level 2		
MiFID / MiFIR	Level 2 measures under development	Level 1 text adopted – applicable as of January 2017		
Benchmarks		European Parliament and Council to formulate their positions	European Parliament and Council to formulate their positions - to be followed by trialogue negotiations	Entry into force probably not before 2016
Bank structural separation		European Parliament and Council to formulate their positions	European Parliament and Council to formulate their positions - to be followed by trialogue negotiations	

Legislative initiative | **Timeline of next steps and actions**

Legislative initiative	immediate	2015	2016	2017and beyond
PSD II		trilogues		Entry into force two years after adoption