EACT

Quarterly Report on Regulatory Issues

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THE
EUROPEAN
ASSOCIATION
OF
CORPORATE
TREASURERS

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THE 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 on OTC derivative reporting, central clearing and risk mitigation • Corporates' hedging transactions exempted from clearing obligation but subject to reporting, portfolio reconciliation, portfolio compression and dispute resolution obligations • The European Commission has adopted a review proposal (EMIR Refit) in order to revise certain aspects of EMIR, for instance some relief on NFC reporting obligations	• **The European Parliament has adopted its position on EMIR Refit,** • **The trilogue negotiations between the Parliament, the Council and the Commission have started** • **ESMA issued a statement confirming that national competent authorities should not prioritise the enforcement of the clearing obligation for Pension Scheme Arrangements (PSA) that should start under EMIR 1 in August, as the exemption from central clearing for PSAs is likely to be extended by the ongoing EMIR Refit review**
<u>**CRD / Basel:**</u> • International and EU-level rules on capital, liquidity and leverage requirements for banks	• **European Parliament has finalised its position on CRD V**
<u>**Money Market Funds (MMF) Regulation:**</u> • The MMFR establishes common rules for MMFs, in particular with regard to the composition of their portfolio, valuation and liquidity of their assets.	
Capital Markets Union: • 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.	• **The European Commission adopted its first concrete proposals for sustainable finance and appointed an expert group**

<u>Financial Benchmarks:</u> • EU Regulation on financial benchmarks regulates administrators, contributors and users of benchmarks. Corporate treasurers are not directly impacted but might be indirectly impacted due to the changes, for instance with regard to the availability of non-EU benchmarks • Alternatives to ‘IBORs’ are being developed and the transition to risk-free rates is being prepared	• **EMMI, the Euribor administrator, announced the termination of three Euribor tenors**

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List of ongoing consultations:

Title	Website	Deadline
ESMA consultation on the clearing obligation under EMIR (the treatment of intragroup transactions with a third country group entity)	**Consultation page**	**30 August**
ESMA consultation on risk factors under the Prospectus Regulation	**Consultation page**	**5 0ctober**
ESMA consultation on minimum information content for Prospectus exemption	Consultation page	**5 October**

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

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<tr><td><u>EMIR REFIT review:</u>
On 4 May the European Commission adopted an EMIR REFIT proposal. One key aspect of the proposal is to make the requirements on corporate end-users more proportionate, more efficient and less costly, without impacting financial stability. With regard to non-financial counterparties (NFCs) the Commission is proposing the following changes:
For NFC-s (those that are under the clearing thresholds), the financial counterparty would be responsible for reporting transactions to the Trade Repository
For all NFCs, the obligation to report intragroup transactions would be removed
The obligation to report historic transactions ('backloading', i.e. transactions that were entered into after the date of application of EMIR but before the start date of the reporting, and which were still outstanding at the start of the reporting obligation) would be removed for all counterparties
The obligation to centrally clear transactions would apply on an asset class by asset class</td><td><u>EMIR REFIT</u>

European Parliament ECON Committee voted on its <u>final report</u> on EMIR review. The report contains many positive developments for non-financial counterparties, including:
Shifting the reporting obligation (including full legal liability) to financial counterparties; however NFCs are free to continue to report themselves of they so wish
Exemption for reporting intragroup transactions for all NFCs, regardless of the location of the other part of the group
Clearing obligation and bilateral margining obligation to be applied to NFCs only in the asset class where the clearing threshold has been exceeded
Supporting that variation margin requirements for physically-settled FX forwards and swaps should only apply to the most systemic counterparties (FCs) and not to NFCs
Extension of the current exemption from central clearing for pension fund arrangements (PSAs)</td><td></td></tr>
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OTC Derivatives - European Market Infrastructure Regulation (EMIR)		
basis; currently when the clearing threshold is exceeded in one asset class, transactions in all asset classes are subject to the central clearing obligation • The hedging exemption is maintained All the relevant documentation on the proposal can be found on the Commission website on EMIR review. EMIR – CCP location proposal: • On 13 June the Commission adopted a separate EMIR review proposal, that concentrates on the topic of CCP oversight and location, and in particular on the issue of third country CCPs, considering the fact that post-Brexit the biggest CCPs will be outside the EU. The proposal introduces a new "two tier" system for classifying third-country CCPs. Non-systemically important CCPs will continue to be able to operate under the existing EMIR equivalence framework, while systemically important CCPs will be subject to stricter requirements and will have to comply with EU requirements for CCPs and joint supervision by ESMA. However, if the third country CCP is deemed systemically very	**EU Member States in the Council have already previously agreed on their position on the Commission's proposal for EMIR REFIT review.** **The trilgoues (final negotiations between the Council, the Parliament and the Commission) started on 4 July.** **EMIR clearing obligation for PSAs:** **ESMA published a statement according to which ESMA does not expect national competent authorities to prioritise the enforcement of the clearing obligation for Pension Scheme Arrangements(PSAs) that would start mid-August. The EMIR Refit review is likely to extend the exemption from clearing obligation and therefore it would not make sense to enforce the clearing obligation while awaiting for EMIR Refit to be finalised.**	

OTC Derivatives - European Market Infrastructure Regulation (EMIR)		
important, the Commission has the possibility of deciding that the CCP is only able to provide services in the Union if it establishes itself in the EU.		

Key documents:

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

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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 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.		
Key documents: • Commission CMU website (all relevant documents are available here)		

Bank prudential requirements (Basel III / CRD IV/V)		
Content and legislative status	**Latest developments**	**Issues from treasury perspective / EACT position**
Legislation on bank capital, liquidity and leverage	• **The European Parliament has finalised its position on the Commission proposal for 'CRD V' implementing the leverage ratio, Net Stable Funding Ratio (NSFR) and the Fundamental Review of the Trading Book (FRTB).**	
Key documents: • Commission CRD IV website		

Money Market Funds (MMFs) Regulation		
Content and legislative status	**Latest developments**	**Issues from treasury perspective / EACT position**
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. MMFR will have implications for corporate end-users investing in MMFs, but many of the initial concerns voices by the EACT and other MMF end-users have been taken into account in the final compromise as: - there is no ban on external credit ratings for MMFs and funds will continue be able to sollicitate 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 Other changes relevant to corporate treasures include: - 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 - Both Public Debt CNAV funds and LVNAV funds can under certain conditions impose	The European Commission has sent a letter to ESMA stating that it considers that reverse distribution mechanism (RDM) is not compatible with the MMF Regulation. RDM is a practice used by stable-priced funds to deal with negative yield, where units of shares are cancelled. The Commission is requesting ESMA to develop guidance on the issue in order to ensure supervisory convergence.	Prohibiting the practice of RDM is very likely to have consequences on the availability of CNAV and future LVNAV funds denominated in euro (and in other negative-yielding currencies) as it will be difficult for them to deal with negative yields in other way than by RDM.

Money Market Funds (MMFs) Regulation		
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: • Text of Regulation		

Financial Transaction Tax (FTT)		
Content and legislative status	**Latest developments**	**Issues from treasury perspective / EACT position**
Council agreed to the "enhanced cooperation" procedure between 10 Member States (Belgium, Germany, 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 combination of the residence principle and the location of the where the financial instrument is		

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Financial Transaction Tax (FTT)		
Content and legislative status	**Latest developments**	**Issues from treasury perspective / EACT position**
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**
Benchmark Regulation: 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 requirement, 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. 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.	• **EMMI, the administrator if Euribor, has announced that the publication of the 2 week, 2 month and 9 month tenors will be terminated as of 3 December 2018.**	
Key documents: Benchmark Regulation		

Markets in Financial Instruments (MiFID / MiFIR 2)		
Content and legislative status	**Latest developments**	**Issues from treasury perspective / EACT position**
MiFID and MiFIR are a comprehensive set of rules governing the provision of investment services and activities in the EU		
Key documents: • Commission MiFID/MiFIR page		

Payments and SEPA		
Content and legislative status	**Latest developments**	**Issues from treasury perspective / EACT position**
	• **The Council has established its position on the Commission's legislative proposal on fees for cross-border transactions** • The European Commission has published a legislative proposal on fees on cross-border payments denominated in euro. The legislation in force foresees that fees for cross-border payments in euro in Eurozone countries should be the same of the fees for domestic payments denominated in euro. The aim of the proposal is to enlarge this scope also to EU member states that are not in the Eurozone, where the fees will have to be the same for cross-border euro payment and a domestic payment of the same value in local currency. The proposal does not cover other (EU) currencies than the euro however.	
Key documents: Payment Services Directive 2 Regulation on interchange fees for card-based payment transactions		

Payments and SEPA
[SEPA Regulation]()

FinTech		
Content and legislative status	**Latest developments**	**Issues from treasury perspective / EACT position**
The European Commission is developing its policy approach to technological innovation in financial services. To this end, it held a public consultation to seek input from stakeholder on future policies in this area. The EACT's contribution to the consultation can be found here.	• The European Commission published its Fintech Action Plan • The European Commission launched a Blockchain Observatory and Forum • The EBA has published its FinTech Roadmap	

Sustainable Finance		
Content and legislative status	**Latest developments**	**Issues from treasury perspective / EACT position**
The European Commission published its [Action Plan] on sustainable finance that is based on the [final report] of the High Level Expert Group on sustainable finance. The recommendations of the Action Plan include: • Establishing an EU classification system on what is sustainable • Developing EU labels for green financial products, such as green bonds • Ensuring that asset managers and institutional investors take sustainability into account in their investment processes • Enhancing transparency in corporate reporting	**The European Commission has adopted a [package of proposals] as a follow-up to the Action Plan on sustainable finance released earlier this year. The measures proposed include the following:** • **An EU taxonomy of sustainable activities: the Commission is proposing to established harmonized criteria for defining sustainable activities. This taxonomy may serve as a basis for instance to different labels as announced in the Action Plan (EU green bond label for instance)** • **Investors' duties and disclosures: the proposal clarifies how institutional investors have to include ESG factors in their investment decisions** • **Low-carbon benchmarks: the Commission is proposing to establish a new category of benchmarks, that would allow investors to compare the carbon footprint of their investments** **The Commission has also announced the composition of its [sustainable finance expert group] that will further work on the development of the taxonomy and the green bond standard.**	

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Regulation on reporting and transparency of securities financing transactions		
Content and legislative status	**Latest developments**	**Issues from treasury perspective / EACT position**
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. The regulation also imposes increased transparency and conditions on rehypothecation (reuse of collateral by the collateral-taker for their own purposes)	The SFT Regulation was published in the Official Journal. The reporting regime will be put in place gradually, from May 2018 to February 2019.	
Key documents: • Text of the Regulation in the Official Journal		

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		
Key documents: • ESMA technical advice on competition, choice and conflicts of interest in the CRA industry • ESMA technicla advice on reducing sole and mechanistic reliance on credit ratings • Commission CRA page		