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	Main developments since last report
<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 • Next deadlines: reporting to Trade Repositories likely to start in February 2014	• **ESMA and other ESAs launched a consultation on RTSs for risk-mitigation techniques for OTC derivatives not cleared by a CCP** • **EC is consulting on FX instruments** • **ESMA has updated the list of CCP approved for clearing under EMIR**
<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 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 • EACT position concentrates on the importance of ensuring the availability MMFs (both CNAV and VNAV) and arguing against the ban of credit ratings	• **ECON was unable to reach a compromise on the proposal, therefore the work will continue only under the next Parliament**
<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	• **FTT seems to be gaining momentum again and there seems to be a level of political will to rapidly reach an agreement; however the details of the tax still remain subject to negotiations**

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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	• **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** • **FSB is continuing its work on interest benchmarks and has expanded it to FX benchmarks**
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.	

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

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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:** • **Commission is currently consulting on the definition of FX instruments** • **ESMA, EBA and EIOPA are jointly consulting on the risk mitigation requirements for uncleared OTC derivatives** **ESMA:** • **ESMA has updated the list of approved CCP for central clearing** **International:** • **The OTC Derivatives Regulators Group (ODRG) published its report on cross-border implementation issues. The report states that the groups will try to reach an agreement by November (G20 Brisbane summit) on several cross-border issues, such as how each jurisdiction will regulate its banks' foreign branches and affiliates and foreign trading platforms.** • **The FSB published its seventh progress report on OTC derivatives market reform.**	

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OTC Derivatives - European Market Infrastructure Regulation (EMIR)

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

- ESMA:
  - Questions & Answers (latest version dated 20 March 2014)
  - ESMA letter to the Commission requesting for a clarification on the definition of derivative instruments under EMIR

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 socialist Rapporteur proposed to go further than the Commission proposal as regards the measures on CNAV funds (he proposed to phase-out CNAV funds within a period of five years). Some political groups could not agree to this but proposed liquidity gates and fees for CNAV funds instead. The work will therefore continue in the autumn under the new Parliament.	Parliament has postponed work on the file until the next Parliament is established.	• Impact on future availability of CNAV funds; also uncertainty on whether VNAV funds can be accounted for as cash or cash equivalent • Consequences of ban on external ratings of MMFs • Inconsistency with US approach

Shadow banking / Money Market Funds (MMFs)

Key documents:

- Commission proposal for regulating MMFs
- ECON Draft Report (Rapporteur's amendments)
- ECON amendments 42-211
- ECON amendments 212-433
- IOSCO Policy Recommendations for MMFs

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 debate has been picking up momentum since the Franco-German held in February. The next month – in the run-up to the European Parliament elections, which is putting pressure on the FTT debate, is expected to be crucial for the outcome of the FTT discussions. In the past months there have been a number of meetings of the 11 participating Member States, as well as the wider Council working group but very little progress has been made. Although France and Germany have affirmed their strong political commitment to the introduction of the FTT, no clear decisions were taken on the scope of the tax and all the technical and political details remain to be worked out. It seems that the discussions include a two-step approach and it is being reported that France would favour a rather limited scope (e.g. only equity) at a first stage whereas Germany seems more in favour of including other instruments, such as derivatives right from the beginning. Smaller participating Member States (e.g. Estonia and Belgium) have also voiced criticism against a very limited scope as this would collect very little revenue for them.**	

Financial Transaction Tax (FTT)		
Content and legislative status	**Latest developments**	**Issues from treasury perspective / EACT position**
• The FTT would cover the purchase and sale of the financial instrument before netting and settle ment 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. • 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.	**Earlier this month Spanish officials stated that the 11 Member States had reached an agreement in principle to introduce the tax starting 2015 in a meeting of EU finance ministers that took place beginning of April. This was however later nuanced by the Tax Commissionner Semeta who stated that substantial work remained before reaching an agreement on the tax. Finance minister are due to meet again on 5-6 May.**	

Financial Transaction Tax (FTT)		
Content and legislative status	**Latest developments**	**Issues from treasury perspective / EACT position**
Key documents: • Commission proposal • Commission Impact Assessment; Summary of Impact Assessment • EACT position paper		

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Interest rate 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	**The Parliament decided not to vote on this file under the current legislature; the work will continue in the autumn once the new Parliament is in place.** **Some Member States have recently raised concerns on the third-country regime and the possibility that non-EU financial benchmarks would be prohibited from use in the EU if third countries do not adopt measures equivalent to the IOSCO principles. They have questioned the Commission on whether discussions are taking place with third countries.** **The FSB MPG has finalised its survey on corporate use of interest rate benchmarks and has handed its report to the OSSG. OSSG will now consider the report before suggesting further measures.**	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

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Interest rate benchmarks		
Content and legislative status	**Latest developments**	**Issues from treasury perspective / EACT position**
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. 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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<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></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>
<tr><td colspan="3">Key documents:
Text of the proposal
Impact assessment:
Executive Summary
Full text</td></tr>
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<tr><th colspan="3"><u>Regulation on reporting and transparency of securities financing transactions</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>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.</td><td></td><td>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.</td></tr>
<tr><td colspan="3">Key documents:
<u>Text of the proposal</u></td></tr>
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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 Commission wishes to to regulate the interchange fees for payment cards (both debit and credit) in the EU which would impose a harmonised limit to interchange fees The main changes proposed are: • 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. • The 'honour-all-cards' rule will be removed (retailers can steer consumers away from certain cards) Cross-border acquiring will be facilitated, which should be good for retailers as it brings competition and should bring fees down	**The Parliament voted on its position mid-April; the work is only starting at the Council side. The next Parliament may however introduce changes to the voted position, especially as it is understood that the current Parliament Rapporteur will not seek re-election and a new Rapporteur will have to be appointed.**	**Draft 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**

Payments Package
Key documents: • Commission Proposal for a revised Payment Services Directive (PSD2) • Commission Proposal for a Regulation on Multilateral Interchange Fees (MIFs) • Impact Assessment: Executive Summary ; Full text

Long-term financing		
Content and legislative status	**Latest developments**	**Issues from treasury perspective / EACT position**
Following the Green Paper consultation last year, the Commission published a communication on long-term financing on 27 March. This communication aims to list a set of concrete actions in order to enhance the long-term financing of the European economy. The main topics that the communication covers evolve around the following headlines: 1. Mobilising private sources – some proposed actions: ○ Commission to report on the appropriateness of the new capital requirements (CRR) relating to long-term financing in two steps, in 2014 and in 2015. ○ Commission to assess the impact on long-term financing when preparing the Delegated Acts on LCR and NSFR 2. Making better use of public finance 3. Developing capital markets – some proposed actions: ○ Commission to assess whether further measures are necessary to create a liquid and transparent secondary market for corporate bonds ○ Commission to work on the differentiation of high quality securitization and explore the possibilities for a preferential regulatory	**Communication adopted**	**Certain aspects and actions presented in the communication (evaluation of CRR and implementing further measures under Basel III; development of and access to capital markets; possible changes in accounting standards and changes in taxation of equity vs debt) will impact corporates**

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treatment ○ **Commission to review the treatment of covered bonds in CRR and launch a study on a possible EU framework for these instruments** ○ **Commission to conduct a study on private placements** **4. Improving SME's access to financing** **5. Attracting private finance to infrastructure** **6. Enhancing the overall environment for sustainable finance – some proposed actions:** ○ **In the framework of its endorsement of IFRS9, the Commission will consider if the use of fair value in the standard is appropriate** ○ **Commission to incentivize equity investment in MSs where there is a high debt bias in corporate taxation**		
Key documents: • Text of the communication		

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 negotiations seem to be difficult and not much progress has been achieved; differences of view as regards to financial services remain.**	• Preserving existing exemptions (CVA in CRD IV) • Ensuring regulatory convergence
Key documents: Commission TTIP website		

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.	**EACT nominated its representative for the ERPB (R. Raeburn and M. Battistella as alternate); first meeting of the ERPB is foreseen for May.** **EACT participated in a meeting of the Commission EU Forum of national SEPA Committees**	
Key documents: • SEPA Regulation • Regulation 248/2014 amending the SEPA migration deadline • ECB website on national SEPA migration plans		

Timeline of next steps and actions

Legislative initiative	immediate	2014	2015	2016 and beyond
EMIR		Reporting and clearing obligations to start		
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	Implementation starts / Level 2		
MiFID / MiFIR		Adoption		
Banking Union – Single Supervisory Mechanism		Entry into force November 2014		
Banking Union – Bank Recovery and Resolution		Formal adoption	Entry into force	Entry into force of bail-in provision
Benchmarks		European Parliament and Council to formulate their positions - to be followed by trialogue negotiations	European Parliament and Council to formulate their positions - to be followed by trialogue negotiations	Entry into force probably not before 2016

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

Legislative initiative	immediate	2014	2015	2016 and beyond
Bank structural separation		Legislative proposal adopted by the Commission	European Parliament and Council to formulate their positions - to be followed by trialogue negotiations	The entry into force of any future legislative measure is unknown at this stage
PSD II		European Parliament and Council to formulate their positions - to be followed by trialogue negotiations	European Parliament and Council to formulate their positions - to be followed by trialogue 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 trialogue negotiations	European Parliament and Council to formulate their positions - to be followed by trialogue negotiations	Entry into force not known