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 published an updated Q&A document** • **ESMA has informed the Commission that it intends to ease the frontloading requirements for the clearing obligation**
<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	• **Work is on hold on the Parliament side; the Council will start discussions during the Italian Presidency (second half of the year)**
<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	• **10 of the 11 participating Member States signed a declaration stating that they will implement a tax which will be gradually phased in as of January 2016 and which will initially have a reduced scope and will apply to equity and some derivatives** **The technical work still has to take place; the aim is to agree on the details by the end of this year**

<u>Financial Benchmark Regulation:</u> • 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	• **Work is on hold on the Parliament side; the Council has started the discussions on the file**
<u>Bank Structural Separation (Barnier / Liikanen rule)</u> • 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.

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:** • ESMA, EBA and EIOPA are jointly consulting on the risk mitigation requirements for uncleared OTC derivatives • **The Commission consultation of FX instruments has closed (see EACT contribution here). The Commission is expected to issue an implementing act during the summer.** **ESMA:** • **ESMA has published updated Q&As for EMIR** • **ESMA has informed the Commission of its intention to ease certain frontloading requirements for contracts subject to the clearing requirement. ESMA states in its letter to the Commission that it is considering to reduce the frontloading requirement so that it would only apply to some contracts contracted between the entry into force of the clearing obligation RTSs and the actual start date of the clearing obligation. ESMA still needs to consult on the draft RTSs, after which they are subject to approval by the Commission and need to obtain non-objection by the Parliament and the Council.** • **ESMA has updated the list of authorised CCPs**	

OTC Derivatives - European Market Infrastructure Regulation (EMIR)		
	International: • **FSB has published the responses to its consultation on aggregation of data collected from trade repositories. It seems that most respondents rejected the current way of collecting data and preferred the option of a central index of global trades stored locally. FSB is expected to come up with recommendations on this topic shortly.** • 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.	

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. **The Council (Permanent Representations) is currently not working on the file as priority is given to other files. Discussions will start under the Italian Presidency.**	• 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.	**On 30 April the EU Court of Justice rejected the complaint issued by the UK against the Council decision allowing for the enhanced cooperation procedure for FTT (The judgment can be found here). The Court considered that the elements brought by the UK concerned the design of the future tax (extraterritorial impacts) and not the actual decision to allow enhanced cooperation. The Court decision clearly however indicates that this rejection does not prevent the UK from introducing another complaint once the Directive on FTT has been adopted; the UK Treasury has stated that this is precisely what they wished to obtain from this complaint as it guarantees that they will not be ruled out of time for introducing a new complaint once the exact design has been agreed.** **On 6 May the finance ministers of 10 FTT zone countries signed a declaration to start with a scaled-back tax on equity and equity-linked derivatives by the start of 2016. According to the statistics of the Commission still would scale back the expected revenues to about 6 billion euros annually down from the original 35 billion-figure. Slovenia did not sign the declaration officially due**	

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.	**to changes in government but there are rumours that Slovenia could be considering leaving the FTT bloc as it estimates that the cost of implementing the FTT would be higher than the potential revenues collected. There are different legal interpretations as to what happens if one country leaves the enhanced cooperation procedure; some argue that in a case where one country decided to leave the FTT bloc, the enhanced cooperation procedure has to start again (i.e. the Council should again issue a decision authorising such a procedure) as the original Council authorisation applies specifically to the current 11 FTT zone Member States and if one of them decided to leave, the Council authorisation would no longer be valid. Others argue that it is needed that the number of participating Member States goes below 9 in order to break the enhanced cooperation.** **Representatives from the UK, Sweden, Denmark and Hungary voiced concerns in the Ecofin meeting of 6 May saying that the tax would have extra-territorial impacts on their companies as the tax would potentially apply to any trade done with a financial institution established in the FTT zone and**	

Financial Transaction Tax (FTT)		
Content and legislative status	**Latest developments**	**Issues from treasury perspective / EACT position**
	to anybody trading a security issued in one of these countries; they also criticized the negotiation process and its lack of transparency. UK will quite likely issue another complaint about the extraterritorial impacts to the EU Court of Justice when the final Directive has been agreed; Sweden has indicated it could join.	

Key documents:

- Commission proposal
- Commission Impact Assessment; Summary of Impact Assessment
- EACT position paper

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 Council is holding discussions on the Commission proposal; currently there are proposals to give national regulators more leeway in defining "critical bnchmarks" (Libor, Euribor etc.)** 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. 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

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		

Regulation on structural measures improving the resilience of EU credit institutions (structural separation of banks)		
Content and legislative status	**Latest developments**	**Issues from treasury perspective / EACT position**
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.		• 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
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.		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		

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 ongoing 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.	**EACT position paper has been finalised (available here)**

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: o 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. o 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: o Commission to assess whether further measures are necessary to create a liquid and transparent secondary market for corporate bonds o Commission to work on the differentiation of high quality securitization and explore the possibilities for a preferential regulatory treatment	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

○ 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 fifth round of discussions have taken place; financial services were not covered.**	• Preserving existing exemptions (CVA in CRD IV) • Ensuring regulatory convergence
Key documents: • Commission TTIP website • Commission negotiating position on financial services		

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 first meeting of the ERPB took place on 16 May. The summary of the meeting is available here and the meeting documents are available here. The EACT was invited to co-chair the ERPB SCT-SDD Steering group.** • **The EPC has opened the annual public consultation on possible changes to be introduced to updated versions of the SCT and SDD schemes (more information here). Main proposals include allowing for longer remittance information, simplifying sequence types and shortening the timelines for direct debit collections. The updated scheme rulebooks will be published in November 2014 and will take effect in November 2015.**	
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.	**ESMA started the public consultation on Level 2 measures; see the consultation paper and the discussion paper and the press release**	
Key documents: • **MiFIR text** • **MiFID text**		

Legislative initiative		Timeline of next steps and actions		
		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)
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
Bank structural		Legislative proposal adopted	European Parliament and	The entry into force of any

Legislative initiative	Timeline of next steps and actions		
	immediate	2014	2015	2016 and beyond
separation	by the Commission	Council to formulate their positions - to be followed by trialogue negotiations	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