



EACT

Monthly Report on Regulatory Issues

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Executive Summary

Topic and summary of content and EACT position	Main developments since last report
<p><u>European Market Infrastructure Regulation (EMIR):</u></p> <ul style="list-style-type: none"> • 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 	<ul style="list-style-type: none"> • On 20 December 2013 ESMA published an updated Q&A document
<p><u>Money Market Funds (MMF) Regulation:</u></p> <ul style="list-style-type: none"> • 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); it is thought unlikely that the Regulation will be adopted during this legislature • EACT position concentrates on the importance of ensuring the availability MMFs (both CNAV and VNAV) and arguing against the ban of credit ratings 	<ul style="list-style-type: none"> • ECON Members have tabled their amendments to the proposal; these will be discussed in ECON on 20 January and the ECON report will be voted mid-February
<p><u>Financial Transaction Tax (FTT) :</u></p> <ul style="list-style-type: none"> • 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 	<ul style="list-style-type: none"> • The Greek Presidency is continuing the discussions at the end of January

<p><u>Financial Benchmark Regulation:</u></p> <ul style="list-style-type: none"> • 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 	
<p><u>Bank Structural Separation (Barnier / Liikanen rule)</u></p> <ul style="list-style-type: none"> • The Commission is planning to adopt a proposal in the coming weeks or months. According to recent reports, the planned legislative act would not automatically force the separation of banks' trading activities but (national) supervisors would have to decide on separation. Proprietary trading would be banned but government bonds would be exempted from trading restrictions. 	<ul style="list-style-type: none"> • The EACT has sent a letter to key decision-makers underlining the importance of maintaining corporates' access to capital market funding and highlighting the inconsistent approach taken by the EU by concurrently stressing the importance of capital markets but at the same time restricting the possibilities for corporate bond issuance

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European Market Infrastructure Regulation (EMIR)	<p>The Regulation on OTC derivatives, central counterparties and trade repositories (EMIR) was adopted on 4 July 2012 and entered into force on 16 August 2012. EMIR requires the central clearing of all standardised OTC derivatives contracts, margins for non-centrally cleared contracts and the reporting of all derivatives contracts to trade repositories.</p> <p>Timeline of obligations:</p> <ul style="list-style-type: none"> • 15 March 2013: Timely confirmations, NFC+ notification • 15 September 2013 : Portfolio reconciliation, Portfolio compression and dispute resolution • 12 February 2014 : Reporting obligation to start • Second half of 2014 (TBC): First clearing obligations start (3 year phase-in for non-financial 	<ul style="list-style-type: none"> • ESMA published an updated Q&A document. <p>The following sections have been updated:</p> <ul style="list-style-type: none"> - OTC Question 3(e) on the netting of positions by NFCs when calculating whether they are above or below the clearing threshold - OTC Question 9 on the calculation of nominal amounts for different instruments - OTC Question 12(h) on delegation of risk management to asset managers or investment firms - OTC Question 14(d) and (e) on portfolio reconciliation - OTC Question 17 on the frontloading requirement for clearing - CCP Question 8(a) on excess 	

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	counterparties exceeding a clearing threshold)	<p>margin</p> <ul style="list-style-type: none"> - CCP Question 16 on transparency measures - TR Question 3(a3) on reporting information on collateral and valuation - TR Question 4 on backloading (answer modified) - TR Question 9(a) on data fields for reporting (answer modified) - TR Question 16 on collateral portfolio code - TR Question 17 on position level reporting - Part V on reporting of exchange-traded derivatives <ul style="list-style-type: none"> • ESMA finalised clearing and risk mitigation obligations for non-EU derivatives (press release) • ESMA approved the first trade repositories (see press release of 7 November and press release of 28 November). This means that the trade reporting obligation starts on 12 February 2014. There are now six 	

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		<p>approved trade repositories: ICE, CME, DTCC, KDPW, Regis-TR and UnaVista</p> <ul style="list-style-type: none"> • ESMA sent a letter to the Commission requesting for the reconsideration of the intended rejection of ESMA's advice to delay the start of the reporting obligation for exchange-traded derivatives by one year • ESMA still to issue RTSs on clearing obligation and margining of uncleared derivative transactions based on the BIS-IOSCO final framework for margin requirements for non-centrally cleared derivatives, which exempts forex swaps and forwards from initial margin. The framework applies to financial institutions and systemically important non-financial institutions only (it is left to national authorities to define this more accurately but it is expected that that in the EU this would mean that NFC+'s will be subject to these requirements whereas NFC-'s not). • The EU Official Journal published on 23 	

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		February the six Regulatory Technical Standards (RTS) arising from EMIR.	
Shadow banking / Money Market Funds (MMFs)	<p>The proposal for Regulation would impose amongst others the following:</p> <ul style="list-style-type: none"> • 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 solicitate external ratings <p>In the US the Securities and Exchange Commission’s (SEC) proposal on MMFs include two alternatives:</p> <ol style="list-style-type: none"> 1. “Prime” funds (which invest in short term debt issued by banks, companies and governments) be forced to let the share price of each fund “float”. Funds that invest the majority of their 	<p>The proposal for MMF Regulation – together with a communication regarding shadow banking - was adopted by the Commission on 4 September.</p> <p>The Regulation proposal will now enter the ordinary legislative process, however the adoption of the Regulation during this legislature (before March 2014) seems unlikely as the Council is likely to be split between two camps: France and Germany on one hand (against CNAV) and the UK, Luxemburg and Ireland (defending CNAV) on the other.</p> <p>Timetable in ECON:</p> <ul style="list-style-type: none"> - 4 Nov: 1st exchange of views - 2 Dec: presentation of draft report - 10 Dec: ddl for amendments - 20 Jan: discussion on amendments - 12 Feb vote in ECON <p>The Rapporteur’s draft report includes a deletion of the ban on credit ratings (i.e.</p>	<ul style="list-style-type: none"> • 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

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	<p>assets in cash or government debt as well as funds which target retail customers would be exempt from this requirement.</p> <p>2. Or any fund that would not buy primarily government debt would have to charge redemption fees or pose limitations to redemptions in times of extreme withdrawals.</p>	<p>MMFs could continue to be rated) but has not moved away from the capital buffer for CNAV's and even suggests that CNAV's should be converted to VNAV's within a five-year period.</p> <p>Over 400 amendments to the proposal were tabled by MEPs. The first list of amendments tabled is available here and the second list here.</p>	
Financial Transaction Tax (FTT)	<p>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.</p> <p>The Commission issued a proposal for a Directive on 14 February 2013 (see also the press release and the Questions & Answers).</p> <p>The new proposal is based on the previous text presented in 2011 with some amendments and to have the following main aspects:</p> <ul style="list-style-type: none"> The scope of instruments covered is very broad including shares and bonds 	<ul style="list-style-type: none"> The Greek Presidency has scheduled four meetings for FTT discussions; the next one will take place end of January. No progress seems to have been achieved in the last meeting of the 11 Members States in December. Despite the push for an FTT being included in the German coalition government agreement it is still unclear what type of FTT Germany will be pushing for. The program document refers to a broad based FTT with a low rate and possibly 	See position paper

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	<p>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.</p> <ul style="list-style-type: none"> • The FTT would cover the purchase and sale of the financial instrument before netting and settlement and it would be applied on the basis of a combination of the residence principle and the location of the where the financial instrument is issued. • The proposal also provides for implementing acts regarding uniform collection methods of the FTT and the participating countries would have to 	<p>including all financial instruments, notably shares, bonds, investment certificates, currency transactions and derivatives. The document also calls for a design that prevents avoidance and help reducing undesirable business models but also contains a caveat that FTT's impact on the real economy and pension funds should be taken into account.</p> <ul style="list-style-type: none"> • The Commission seems to be taking a somewhat more flexible approach as the EU Tax Commissioner Algirdas Semeta stated that the Commission would support a compromise with a more limited remit as long as any loopholes which would jeopardise the main principle of the tax be avoided. 	

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	<p>adopt appropriate measures to prevent tax evasion, avoidance and abuse.</p> <ul style="list-style-type: none"> There will be an exemption for primary market transactions (i.e. subscription/issuance). <p>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.</p>		
Markets in Financial Instruments Directive (MiFID II) and Regulation (MiFIR);	<p>Commission proposed a review of MiFID / MiFIR on 20 October 2011</p> <p>European Parliament ECON Committee has adopted their report in October 2012 (see report here).</p>	The trilogues between the Council, the Parliament and the Commission are ongoing. The trilogue negotiators have not yet reached an agreement on the text; an agreement is however expected in the coming months.	NFC+'s will be captured by certain provisions of MiFID II and therefore it has a consequence on them.

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Banking Union: <ul style="list-style-type: none"> • Single Supervisory Mechanism (SSM) • Bank Recovery and Resolution • Deposit Guarantee Schemes (DGS) 	<p>The so called 'Banking Union' includes:</p> <p>1) Single Supervisory Mechanism (SSM), which will put the European Central Bank in charge of the prudential oversight of the 130 biggest banks in the eurozone and will have the power to take over the oversight of smaller banks if needed. National supervisors will be in charge of the rest but under ECB's oversight.</p> <p>2) Bank Recovery & Resolution (BRR)</p> <ul style="list-style-type: none"> • Bank Recovery and Resolution Directive aims to lay down a common insolvency framework for financial institutions, including harmonized powers and tools to resolve failing banks via bail-in • Single Resolution Mechanism (SRM) and the Single Resolution Fund (SRF) will allow the resolution of failing financial institutions in the Member States participating in the Banking Union. 	<p>1) SSM: The ECB will start its supervisory function in November 2014. ECB published the guidelines of its "comprehensive assessment" of the largest euro-zone banks to be conducted in preparation of assuming full responsibility for supervision as part of the SSM.</p> <p>2) BRR: On 20 December 2013 the trilogue negotiators reached an agreement on the Directive. The Directive will enter into force on 1 January 2015. Bail-in provisions, which are one of the tools for resolution, will enter into force in January 2016. The Directive still needs to be formally approved by the Council and the Plenary of the Parliament.</p>	
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	<p>The proposed resolution process though the SRM entails the following steps: after an ECB opinion, a Single Resolution Board (including representatives from ECB, Commission and relevant national authorities) will prepare the resolution of the bank. On the basis of a Single Resolution Board's recommendation (or at its own initiative) the Commission would take the final decision of placing a bank under resolution. National authorities will implement the resolution plan. A Single Resolution Fund will be created with contributions from the industry.</p>	<p>SRM: At the end of December the EU finance ministers agreed on their approach to the resolution mechanism and fund. The Parliament also adopted their negotiation position and therefore the parties will now be able to start trilogue negotiations.</p> <p>3) Deposit Guarantee Scheme (DGS) The Parliament has adopted its negotiating position but the file is stuck at the Council's side.</p>	
Interest rate benchmarks	<p>Two work streams:</p> <ol style="list-style-type: none"> 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 	<p>Commission's proposal has entered the ordinary legislative procedure (Sharon Bowles has been appointed ECON Rapporteur for the file)</p>	<p>Main issues for corporates are:</p> <ul style="list-style-type: none"> • Implications of liability burden on contributors in terms

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	<p>aspects:</p> <ul style="list-style-type: none"> • 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 <p>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 reference rates and for dealing with</p>		<p>of its impact on viability of overall benchmarks</p> <ul style="list-style-type: none"> • Ensuring contract continuity • Volatility and possible drying up of the unsecured interbank market • Consistency with other initiatives, particularly that of the FSB

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	legacy contracts. This group should provide its final report by mid-March 2014.		
Structural separation of banks (Liikanen report)	The Liikanen report issued in October 2012 proposed to ring-fence investment banking from retail banking into a separate entity if a banks' trading activities exceed a certain threshold (this entity would still be part of the same banking group but would have to hold its own capital)	<p>It has been reported that the Commission is planning to adopt a proposal in the coming weeks or months. According to recent reports, the planned legislative act would not automatically force the separation of banks' trading activities but (national) supervisors would have to decide on separation. Proprietary trading would be banned but government bonds would be exempted from trading restrictions.</p> <p>In the UK the Banking Reform Act came into force on 18 December 2013. The legislation forces amongst other things banks to separate their retail activities from investment banking activities; however it is yet unclear which institutions would need to establish this ringfence as much of the details remain to be fixed in secondary legislation.</p> <p>In the US the Volcker banning proprietary</p>	Possible consequences of structural separation on cost, availability of services, market making etc.


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		trading rule was adopted in December.	
Payment Services Directive	<p>The Commission has adopted a proposal for a revised PSD.</p> <p>The main changes in the PSD II will be the following:</p> <ul style="list-style-type: none"> • 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 	<p>The Proposal for PSD II was adopted by the Commission on 24 July (see also Commission's FAQ). The file has entered the ordinary legislative procedure (ECON Rapporteur is Diogo Feio, EEP, PT)</p>	<p>Certain corporates might be impacted by the following:</p> <ul style="list-style-type: none"> • The rules for refund right for direct debits will be adapted • Corporate treasury centres are not explicitly excluded from the scope
Regulation on card interchange fees	<p>The Commission issued a legislative proposal in order to regulate the interchange fees for payment cards (both debit and credit) in the EU which would impose a harmonised limit to interchange fees</p> <p>The main changes that these two pieces of legislation would be:</p> <ul style="list-style-type: none"> • That the MIF regulation will apply to all consumer card transactions, domestic and cross-border and it is a 	<p>The Proposal for Regulation was adopted by the Commission on 24 July. It will now enter the ordinary legislative procedure.</p>	<p>Positive development is that this should (at least in theory) reduce the costs passed on by payment service providers to merchants.</p>

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	<p>per transaction cap (percentage). This Regulation will not apply to commercial cards.</p> <ul style="list-style-type: none"> • 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 		

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SEPA Governance	The ECB is drafting the Statute for the Euro Retail Payments Board (ERPB) which is to replace the SEPA Council.	ERPB to be established in the coming months. A draft was circulated after the September SEPA Council meeting to which the EACT commented by criticising the lack of stakeholder involvement in the new structure.	Ensure EACT's representation in the new body and in general an appropriate level of stakeholder involvement
Transatlantic Trade and Investment Partnership (TTIP)	Trade agreement currently being negotiated between the EU and the US. The aim is to remove trade barriers (tariffs, unnecessary regulations, restrictions on investment etc.) in a wide range of economic sectors. Financial services have been included in the negotiations, however the main counterparties in the US (Treasury, Fed, CFTC) whereas the EU is in favour of covering financial services in the agreement. It is not clearly defined as yet what the negotiations regarding financial services will cover, but issues such as making substituted compliance / equivalence work better, formalisation of the existing dialogue and market access could be on the table.	The first round of negotiations took place in July and the next round will take place in October. Negotiations are expected to take anywhere between two and five years.	<ul style="list-style-type: none"> • Preserving existing exemptions (CVA in CRD IV) • Ensuring regulatory convergence

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 trilogue negotiations	
FTT			Negotiations	Negotiations	Probable implementation (if any) likely not to take place before 2016
CRD IV	Level 2		Implementation starts		
MiFID / MiFIR			Trilogues – earliest possible adoption Q1 2014 Entry into force November 2014		Entry into force not probable before 2016
Banking Union – Single Supervisory Mechanism					
Banking Union – Bank Recovery and Resolution Benchmarks			Formal adoption	Entry into force	Entry into force of bail-in provision
			European Parliament and Council to formulate their positions - to be followed by trilogue negotiations	European Parliament and Council to formulate their positions - to be followed by trilogue negotiations	Entry into force probably not before 2016



Legislative initiative

Timeline of next steps and actions

				
	immediate	2014	2015	2016 and beyond
Liikanen		Legislative proposal expected in January / February	European Parliament and Council to formulate their positions - to be followed by trilogue negotiations	The entry into force of any future legislative measure is unknown at this stage
PSD II / SEPA governance changes		European Parliament and Council to formulate their positions - to be followed by trilogue negotiations	European Parliament and Council to formulate their positions - to be followed by trilogue negotiations	Entry into force two years after adoption (2016 the earliest)
Card interchange fee Regulation		European Parliament and Council to formulate their positions - to be followed by trilogue negotiations	European Parliament and Council to formulate their positions - to be followed by trilogue negotiations	Entry into force not known