EACT

Monthly Report on Regulatory Issues

April 2013

This report has been designed for, and with the support of, the above National Treasury Associations. Its purpose is to provide information about European financial regulation impacting corporate treasurers.

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Regulatory initiative	Content	Status	Issues from treasury perspective / EACT position
European Market Infrastructure Regulation (EMIR)	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. Timeline of obligations: • 15 March 2013 : Notification of non-financial counterparties whose positions in OTC derivatives exceed a specified clearing threshold, confirmations and mark-to-market/model • Q3 2013: Reporting to trade repositories for interest rate and credit derivatives • 15 September 2013 : Portfolio reconciliation, Portfolio compression and dispute resolution	• The EU Official Journal published on 23 February the six Regulatory Technical Standards (RTS) arising from EMIR. • On February 27, the European Commission extended for four months the deadline for ESMA advise on the equivalence between non-EU legal and supervisory frameworks and EMIR. According to the letter from the Commission, ESMA shall now deliver its advice on Japan and the USA by 15 June 2013 and, for the remaining countries specified in the request by 15 July 2013. The original deadline was 15 March 2013.	

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	• Q4 2013: First CCPs authorised: Clearing member obligations, frontloading periods start • 1 January 2014 : Reporting to trade repositories for other asset classes starts • Summer 2014: First clearing obligations start (3 year phase-in for non-financial counterparties exceeding a clearing threshold)	• The Commission adopted a report on the international treatment of central Banks and public entities managing public debt with regard to OTC derivatives transactions. • **ESMA has published a letter dated 22 April in which the European Commission (EC) asks ESMA to develop, by 25 September 2013, draft Regulatory Technical Standards (RTS) on the cross-border application of EMIR pursuant to Articles 4(4) (Clearing Obligation) and Article 11(14) (Risk Mitigation techniques for OTC derivative contracts not cleared by a CCP) of EMIR. These RTS will rule on the application of EMIR to transactions between "non-EU entities with a direct, substantial and foreseeable effect within the Union".** **The letter states that back in June 2012, ESMA had decided to postpone the development of the RTS to take into account ongoing**	

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		discussions on international level and that the EC thinks sufficient progress has been made since then to allow for developing the RTS by 25 September.	
Shadow banking / Money Market Funds (MMFs)	A leaked draft of the forthcoming Regulation on MMFs (expected to be published beginning of May) indicates that the text will impose e.g.: • 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 The officials have stated (to EACT / Avisa) that they view CNAV MMFs as posing unacceptable systemic risk therefore the legislation would aim at directing the market towards the use of VNAV MMFs.	It is expected that there will be a communication from the Commission at the end of April – beginning of May on shadow banking, including a roadmap in different topics and one legislative proposal, which would most probably be on Money Market Funds. There would be no further consultation on this legislative proposal (as the Green Paper is considered sufficient); the text is now in the last phase of the impact assessment and the EC's internal procedure before adoption by the College of Commissioners.	• Primary concerns are over the impact of regulatory moves on the competitiveness and availability of (CNAV) MMFs • Need also to monitor US initiatives and liaise with counterparts
Financial Transaction Tax (FTT)	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 procedure for adoption of the FTT requires a unanimity vote by the 11 participating countries. **According to sources close to the negotiations in**	• The Impact of the tax on the overall economy • Hidden cost increases

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	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 settlem ent 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 Council there are currently great differences of view between the participating MSs:** • **Germany's position is not clear as it is not very actively participating in the discussions; they are not open as to the content they wish the FTT to have** • **A gradual approach has been advocated by some MSs (e.g. FR) and it would in a first stage introduce a simple tax on which the participating MSs can find a consensus and at a later stage there would be an enlargement of the scope based on an assessment of the first stage. Germany in principle agrees with a gradual approach but wants all the stages to be well defined in advance and not leave them open.** • **Exemption on repos is quite**	for end-users • Drop in trading activity in the FTT zone(ISDA, for example, expects derivatives activities to drop by between 60-90 percent in countries where the tax is introduced)

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	• 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 entity established in the FTT Zone.	**likely to be included; this is the most consensual point concerning exemptions** • **On bonds, the views vary much more: some MSs want them included, some (IT, BE) want only sovereign bonds to be exempted and some MSs, including FR, want all bonds exempted** • **Certain MSs advocate higher FTT rates for OTC transactions** • **Some also suggest minimal capitalisation levels for the emitting company** • **Cascade effect: DE is in favour of taxing both the seller and the buyer whereas FR, IT, ES are in favour of taxing only the buyer** • **So far there has not been a big debate on derivatives** • **FR and DE are in favour of inclusion of FX spots in the scope of the directive**	

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		• **FR is in favour of exempting the buy of UCIT shares** **Next meetings: 7 May between the 11 MSs and 22 May between all the 27 MSs. The topic will not be brought to the ECOFIN under the Irish Presidency.**	

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Capital Requirements Directive (CRD) IV – Capital Requirements Regulation (CRR)	**On 16 April the European Parliament adopted the CRD IV package. The texts (dated 26 March 2013) of the** CRD IV Directive **and** Capital Requirements Regulation **were published together with a** CRD IV/CRR - Frequently Asked Questions**.**	**The adoption of the package will now be followed by a legal/linguist expert review, prior to final adoption by the EcoFIN Council (possibly in May) and then publication in the Official Journal. The text must be published in the Official Journal before the end of June for the new regime to go live on 1 January 2014 (otherwise, the start date will be 1 July 2014).** **The European Banking Authority (EBA) is continuing the drafting of the regulatory technical standards (RTS) underpinning CRD IV.**	CVA exemption: Article 372(3a) excludes transactions with non-financial counterparties as defined in EMIR or with non-financial counterparties established in a third country, where those transactions do not exceed the clearing threshold specified in EMIR. The Article further says that EBA shall conduct a review by 1 January 2015 and every two years thereafter, in the light of international regulatory developments and including on potential methodologies on the calibration and thresholds for application of CVA charges to third country non financial counterparties. EBA in co-operation with ESMA shall, within 6 months of the date of the review, develop draft regulatory technical standards to specify the procedures for excluding transactions with

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			non-financial counterparties established outside the Union in a third country from the own funds requirement for CVA risk.
Credit Rating Agencies (CRA) Regulation	Main provisions concerning the rating of sovereign debt: • CRAs will be required to set up a calendar (at the end of the previous year) for sovereign debt rating which will be limited to three ratings per year for unsolicited sovereign ratings. these ratings could be published only after markets in the EU have closed and at least one hour before they reopen. • sovereign ratings would have to be reviewed at least every six months Rotation requirements (Article 6b): • Rotation for CRAs is limited to new re-securitisations: if a CRA is issuing credit ratings on re-securitisations, it shall issue no credit ratings on new re-securitisations with underlying assets from the same originator for a period equal to the duration of the expired contract though not exceeding four years. • But mandatory rotation will not apply to small CRAs, or to issuers employing at least four CRAs	• Parliament approved the Regulation text on 16 January 2013 (remains to be published in the Official Journal; entry into force on the twentieth day following its publication except some provisions) • ESMA should establish a European Rating Platform where EU registered and authorised CRAs will have to communicate to ESMA all credit ratings they issue. ESMA will make them available to the public on a website.	

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	each rating more than 10% of the total number of outstanding rated structured finance instruments		
Markets in Financial Instruments Directive (MiFID II) and Regulation (MiFIR);	Commission proposed a review of MiFID / MiFIR on 20 October 2011 Presidency compromises on MiFID / MiFIR. European Parliament ECON Committee has adopted their report in October 2012 (see report here). The Council is still working on their negotiation position, see latest Presidency compromise (Directive), Presidency compromise (Regulation).	**At the 25 April Attachés meeting on the access provisions of MiFIR no agreement was reached and the positions continue to be polarized and on a deadlock. Although it was not part of the agenda the issue of pre-trade transparency was discussed at length too. Both access and pre-trade transparency seem to be the most problematic issues preventing attaches from progressing on the file and try to agree on a General Approach.** **The earliest the Council's General Approach could be agreed is on 21 June ECOFIN meeting.**	

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Banking Union: • **Single Supervisory Mechanism (SSM)** • **Bank Recovery and Resolution** • **Deposit Guarantee Schemes (DGS)**	The so called 'Banking Union' includes: 1) Single Supervisory Mechanism; 2) Bank Recovery Resolution regime; 3) Deposit Guarantee Schemes. 1) Single Supervisory Mechanism On 12th September 2012 the Commission issued a proposal for a Single Supervisory Mechanism for credit institutions **with ECB as supervisor of biggest European banks.** 2&3) Bank Recovery and Resolution & Deposit Guarantee Schemes Work on bank recovery and resolution and on deposit and guarantee scheme have already been undertaken prior to the proposal for a Single Supervisory Mechanism. In June-July 2012 the Commission issued two proposals concerning, respectively, bank recovery and resolution and deposit and guarantee schemes. The subsequent work on the 'Banking Union' package is building upon these previous developments with the aim of mowing towards increasingly harmonized and centralized recovery and resolution tools and deposit and guarantee schemes.	1) Single Supervisory Mechanism (SSM): An agreement was reached on 19 March on SSM. The SSM will put the European Central Bank in charge of a unified oversight of 100-200 biggest euro zone banks. National supervisors will be in charge of the rest but under ECB's oversight. 2) Bank Recovery and Resolution The draft foresees the setting up of national resolution authorities and funds with contributions from the banking industry. The Cypriot crisis and the applied levy on large deposits are affecting the discussion on the draft Directive.	

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		The BRR negotiation is a key priority of the Irish Presidency who will most likely focus on this file until the end of its term (June 2013). **Negotiators in the European Parliament (EP) have achieved broad support for a wide scope of what can be bail-in able: only cover bonds, short-term liabilities and deposits of less than 100.000€ would be excluded.** **The EP Econ Committee postponed the vote on bank recovery and resolution which was scheduled for 24 April. Econ members need more time to finalize the details.** **Rapporteur Hökmark stated that they plan to vote asap, most likely in the month of May.Apparently there is a stalemate in the Council over creditors' hierarchy in case of bail-in. In particular, there is an ongoing debate on 'depositor-preference', supported by ECB and IMF. Germany, The Netherlands and Finland favour 'total bail-in' and would like to make**	

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		the solution applied in the Cypriot case the general rule. On the contrary, France is advocating a certain flexibility to apply softer bail-in rules under certain conditions: the resolution funds would thus step in and pay (and not creditors). **A Commission proposal on the creation of a common resolution fund is expected to be published in June/July 2013. Germany and The Netherlands are adamantly opposed.** Pending negotiation between EP and Council, on 11 March 2013 the European Banking Authority (EBA) launched a public consultation on technical standards for recovery plans (link to the consultation page, deadline: 11 June 2013). Next steps: • Possible ECON Committee vote on bank recovery and	

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		resolution: **May** 2013 • Possible EP plenary vote on bank recovery and resolution: 2 July 2013 3) Deposit Guarantee Scheme (DGS) **The debate on the deposit guarantee scheme is also controversial. The main outstanding issue is the harmonization of funding levels (and thus the size of the fund) currently varied across Member States. Germany is resisting DGS mainly because of the Sparkassen issue.**	
Interest rate benchmarks	• Following recent cases of benchmarks manipulation, the Commission proposed an update of its proposal for review of the Market Abuse legislation (MAD-MAR) in order to include benchmarks into the scope of MAD and MAR (see amended proposal for a Regulation and amended proposal for a Directive)The Council reached a General Approach on the topic in December 2012 (text available here). • Commissioner Barnier has stated that the	20 February 2013: published responses to ESMA-EBA public consultation on principles for benchmarks-setting processes in the EU (link to responses). As far as negotiation on the proposed revision is concerned, it appears that the Irish Presidency is willing to prioritize other banking measures	The main issue of concern to treasurers and corporates is the possible modification of LIBOR/EURIBOR setting process which might affect existing (often long-term) contracts negotiated under previous rules.

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	Commission will propose further legislation on benchmarks in the second quarter of 2013 to further clarify the framework under which benchmarks should operate (expected to include the power to impose mandatory submissions for systemic benchmarks such as Euribor)	before dealing with benchmarks. Concerning further legislative action, Commissioner Barnier declared that the Commission will propose further legislation on benchmarks in Q2 2013 (link to statement). The legislation could entail mandatory banks participation in rate-indexes.	
Solvency II	A revision of Solvency II, the Solvency II/Omnibus II package, has been proposed to update the legislation with legislative and institutional developments. Since April 2012 negotiation between the European Parliament (EP) and the Council are deadlocked over the issue of long-term insurance contracts. Life insurance contract do not rely on the prices of options or guarantees. Solvency II-Omnibus II proposes a change towards a market approach, which takes into account the prices of options and guarantees. A study by EIOPA (the European Insurance and Occupational Pensions Authority) has been commissioned in order to unlock the negotiations. The initial expected date for release of the results was March 2013.	On 28 January 2013 EIOPA announced that the result of the study will be released in the second half of June 2013. This seems push back the implementation date (officially set to 1 January 2014) to2016. In addition to the assessment of the long-term guarantee issue, EIOPA has been requested by the Commission to reconsider the treatment of long-term investment within the rules to implement Solvency II.In March 2013, EIOPA launched a public consultation on Guidelines related to the preparation for Solvency II (link to the consultation page, deadline: 19 June 2013)	Higher counter-cyclical capital buffers imposed by Solvency II-Omnibus II to insurers reduces funding available and undermines insurers' ability of investing long-term. This, in turn, makes it more difficult to finance long-term projects and exacerbate financing problems of business, still struggling with the financial crisis. However, the Green Paper on Long-Term Finance published on 25 March 2013 as well as EIOPA's study

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		As requested by the Commission EIOPA also published on 8 April the discussion paper on treatment of long-term investment within the rules to implement Solvency II. The consultation of interested stakeholders is open until 28 May 2013. Next steps: Second half of June 2013 - EIOPA will release the result of its studies on Long-Term Guarantee Assessment (LTGA)and on long-term investment.	on long-term investment partially address this issue
Long-term finance	Commission has published on 25 March a Green Paper consultation entitled "Long-term financing of the European economy"- please see the press release and the Green Paper. The Green Paper focuses on how to foster long-term financing and to improve and diversify the system of financial intermediation in Europe. The consultation has quite a large scope and the questions covered include amongst others: • the impact of the cumulative effects of ongoing financial reforms (especially prudential rules)		To be defined

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	on the financial sector's ability to finance the economy • the capacity of banks / institutional investors to channel financing to long-term investments • the question of whether current tax and accounting rules are appropriate in order to encourage long-term investment • the possible development of specific asset classes and markets such as covered bonds, securitization and a European project bond market • SMEs' access to bank and non-bank finance Deadline for responses is 25 June.		
Liikanen report	The Liikanen report issued in October 2012 proposes 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) • Banks should maintain recovery and resolution plans; if authorities consider some of the a bank's trading activities too risky, the ring-fence could be widened	• **There will be a legislative proposal at the end of summer (most likely in September)** • **As at least 6 months are need to complete the codecision procedure and the last EP's plenary of this legislature will be in April 2014, all legislative acts started after October 2013 will not be concluded**	

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	• Use of designated bail-in instruments in order to ensure that a bank's private creditors share some of the losses in case of a bank's failure • European Commission to assess whether the proposed amendments to capital requirements would be sufficient to keep both investment and retail banks safe and sound; according to the report banks' techniques for assessing how much capital they needed to hold against their trading positions were outdated • Strengthen the governance and control of banks in order to rein in excessive risk-taking Both Germany and France – mirroring the Volcker rule in the US - have ongoing initiatives at national level to separate proprietary trading activities; trades executed on behalf of clients would remain within the retail bank "arm".	• ECON is drafting an own initiative report on this subject	
Anti-Money Laundering Directive and Regulation on information accompanying transfer of funds	Following the publication of the revised set of international standards by the Financial Action Task Force (FATF) – the international body setting recommendations for combating money laundering – in February 2012, the Commission has issued proposal to review these two pieces of legislations. Among the most important changes are:	The two review proposal were issued by the Commission on 5 February 2013 and they now need to be adopted by the Parliament and the Council through the ordinary legislative procedure.	To be analysed

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	• The new Directive clarifies and reinforces the rules on customer due diligence and introduces new provisions to deal with politically exposed persons • Inclusion within its scope of all persons dealing in goods or providing services for cash payment of €7,500 or more • Designation of "Tax Crimes" as a new "predicate offence" (i.e. so that money laundering includes cases where the proceeds of tax evasion were involved). • Introduction of a new requirement for all cross-border wire transfers to include beneficiary information and the expansion of the scope to certain e-money and mobile telephony payment products. • Clarification with respect to EU data protection rules, in particular regarding the ability to transfer information to different parts of an international group (including operating in third countries) for anti-money laundering purposes.		
Payment Services Directive	Currently under review by the Commission. Issues which are being looked at by the Commission include: • Possible extension of the PSD to one-leg transactions (i.e. where at least the payer's PSP is acting from within the EEA / extension to all currencies • Review of the exceptions (negative scope)	Commission expected to issue a proposal in in July 2013	To be analysed

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	• Possible merger of the categories of payment institutions and electronic money institutions • Review of the payment services covered by the Directive • Transparency and information requirements • Surcharging • Refund right • Liability for unauthorized payment transactions • Liability for non-execution		
SEPA Governance	EC and ECB to issue a proposal for the restructuring of SEPA governance: key questions evolve around the status of the SEPA Council and the organization of a multi-stakeholder structure	Awaiting for the EC/ECB to issue a proposal; March SEPA Council meeting was cancelled and the next one is foreseen for September	Ensure a balanced end-user participation