



EACT

Monthly Report on Regulatory Issues

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Executive Summary

Topic and summary of content and EACT position	Latest developments
<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 	<ul style="list-style-type: none"> • EACT will meet with the Commission and ESMA to discuss EMIR review and the ESMA report on NFCs' use of OTC derivatives • EACT is planning to draft a letter concerning EBA's plans to impose additional capital requirements for CVA-exempted transactions by NFCs
<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 was adopted by the Commission in September 2013. The Parliament has now agreed on its position (which relaxes some of the requirements in the original Commission proposal) but the Council still needs to agree on its position. • 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"> • There has been no major progress recently; the Council is holding discussions in order to find a compromise agreement between Member States. The trilogues between the Parliament, the Council and the Commission can start only once the Council has adopted its negotiating position.
<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 	<ul style="list-style-type: none"> • The file has become more politicised in recent weeks and there is increased pressure to find an agreement. However, there is still no agreement on the core elements of the tax so therefore it seems unlikely that a political agreement would



<p>restricted in scope than originally proposed</p> <ul style="list-style-type: none"> • EACT strongly opposed as FTT amounts to a tax on the real economy 	<p>be reached in the near future.</p>
<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 	<ul style="list-style-type: none"> • Trilogues are ongoing
<p><u>Bank Structural Separation (Barnier / Liikanen rule)</u></p> <ul style="list-style-type: none"> • 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. 	<ul style="list-style-type: none"> • The Parliament is still in the process of negotiating a compromise position within the ECON Committee



List of ongoing consultations / surveys / studies:

Title	Website	Deadline
ICE Consultation on second position paper on the evolution of ICE LIBOR	Consultation paper	16 October 2015
ESMA consultation on draft technical standards for MiFID 2 regarding trading suspensions, data service providers and derivatives reporting	Consultation page	31 October 2015
Commission call for evidence on EU Regulatory Framework for Financial Services	Consultation paper	6 January 2016
Commission study (undertaken by London Economics) on CRR's impact on access to finance and long-term financing	Information page	February 2016

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	Actions
<p>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. Central clearing should gradually start as of April 2016, with NFC+s having a three-year phase-in period.</p>	<p><u>ESMA/ EBA:</u></p> <ul style="list-style-type: none"> • EBA is expected to publish within weeks a consultation on the planned additional capital requirements for banks for CVA-exempted OTC derivatives transactions by NFCs • ESMA published updated EMIR Q&A • ESMA has informed the Commission that it intends to delay the EMIR and MIFID RTSs for indirect clearing until a further consultation is held • The Commission has adopted a delegated act on central clearing of certain interest rate derivatives; this is the first delegated act on central clearing and will be followed by others. NFC+s will have a three-year phase-in period. • On 5 June 2015, the European Commission adopted a Delegated Act extending transitional relief from central clearing requirements for Pension Scheme Arrangements until 16 August 2017. • EBA published its advice to the Commission 		<ul style="list-style-type: none"> • Follow-up on EMIR consultation response and ESMA report (meeting with Commission 15 October) • Meeting with Steven Maijoor • Draft a letter on the consequences of EBA's work on CVA

OTC Derivatives - European Market Infrastructure Regulation (EMIR)

	<p>on CVA risks. The EBA states that while it currently has no legal mandate to propose the deletion of the CVA exemptions included in CRD IV, it considers that the exemptions leave material risks uncovered and therefore overall the exemptions should be removed or reconsidered in the future, as part of the Basel Committee review of the CVA framework. In the meanwhile the EBA will draft guidance for national supervisors to monitor excessive CVA risks and to address them. A consultation on this topic is expected later this year.</p> <p><u>International:</u></p> <ul style="list-style-type: none"> • The Basel Committee and IOSCO issued a revised timeline for the implementation of margin requirements for non-centrally cleared derivatives • IOSCO has published its final report on risk mitigation standards for non-centrally cleared OTC derivatives which will apply to financial entities and systemically important non-financial entities 		
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OTC Derivatives - European Market Infrastructure Regulation (EMIR)

Key documents:

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



Money Market Funds (MMFs) Regulation			
Content and legislative status	Latest developments	Issues from treasury perspective / EACT position	Actions
<p>The Commission 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 solicit external ratings 	<ul style="list-style-type: none"> • The Council is holding informal discussions in order to find a compromise position; the trilogues can only start once the Council has adopted its position • The Parliament Plenary approved the report proposed by the ECON Committee • The main elements of the compromise are as follows: <ul style="list-style-type: none"> ○ CNAV funds would be allowed in two cases only: those with retail investors only (not open for subscription by corporates) and those which invest in EU government debt ○ In addition to this a new category of 	<ul style="list-style-type: none"> • It should be ensured that LVNAV funds can have same day liquidity • Sunset clause on LVNAV funds which would make fund managers reluctant to offer such a product 	<ul style="list-style-type: none"> • Maintain contacts with the Council and the Commission

Money Market Funds (MMFs) Regulation

	<p>funds will be created called Low Volatility NAV funds which would also be allowed to show a stable share price. These funds would be allowed to use amortised cost accounting only for assets of maturity up to 90 days.</p> <ul style="list-style-type: none"> ○ For both CNAV funds and LVNAV funds there will be redemption gates and fees. ○ External credit ratings would be allowed, contrarily to what was originally proposed by the Commission 		
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Money Market Funds (MMFs) Regulation

Key documents:

- [Commission proposal for regulating MMFs](#)
- [IOSCO Policy Recommendations for MMFs](#)
- [Parliament position on MMFs](#)

Financial Transaction Tax (FTT)			
Content and legislative status	Latest developments	Issues from treasury perspective / EACT position	Actions
<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. 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 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 	<ul style="list-style-type: none"> • In recent weeks the FTT has become more politicised as there is pressure in particular on France to reach an agreement ahead of the climate conference starting at the end of November. Following the finance ministers’ meeting in mid-September, some ministers stated that an agreement was close and could be reached within weeks. However, it seems that these statements were exaggerated as in the technical discussions all the core questions still remain open. Furthermore, it seems that certain Member States continue to have 		<p>Mobilise NTAs and individual corporates from Member States that continue to have reservations</p>

Financial Transaction Tax (FTT)			
Content and legislative status	Latest developments	Issues from treasury perspective / EACT position	Actions
<p>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.</p> <ul style="list-style-type: none"> • 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). <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>	<p>reservations about some aspects of the tax, as groups of Member States presented documents on the tax's impact on the real economy and on pension funds and insurers in a recent meeting.</p>		



<u>Financial Transaction Tax (FTT)</u>			
Content and legislative status	Latest developments	Issues from treasury perspective / EACT position	Actions
Key documents:			
<ul style="list-style-type: none">• Commission proposal• Commission Impact Assessment; Summary of Impact Assessment• EACT position paper			

<u>Financial benchmarks</u>			
Content and legislative status	Latest developments	Issues from treasury perspective / EACT position	Actions
<p>The are 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 aspects: <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 2. FSB which has published its proposals for reforming major benchmarks. The FSB 	<p>The European Parliament Plenary approved the text on financial benchmarks. Trilogues with the Council and the Commission are ongoing.</p>	<p>Main issues for corporates are:</p> <ul style="list-style-type: none"> • 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 	

<u>Financial benchmarks</u>			
Content and legislative status	Latest developments	Issues from treasury perspective / EACT position	Actions
<p>proposes on one hand to develop the existing benchmarks such as LIBOR and EURIBOR so that they are more based on market data and on the other hand to develop at least one alternative to the existing benchmarks by 2016, a so-called "nearly risk free reference rates," which would be entirely based on verifiable market transactions.</p>			
<p>Key documents:</p> <ul style="list-style-type: none"> • Text of the Commission proposal • Impact assessment: <ul style="list-style-type: none"> ○ 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	Actions
<p>The Commission has adopted a proposal for Regulation, which contains the following main aspects:</p> <ul style="list-style-type: none"> • Banning of proprietary trading • Potential separation of certain trading activities (market making, OTC derivatives trading, complex securitized products etc.) <p>The banking supervisor would monitor banks' activities and could require a separation of these activities into a separate entity.</p> <p>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.</p>	<p>The Parliament is still in discussions in order to adopt its position for the trilogues.</p> <p>The Council has adopted its negotiating position. The Council position proposes substantial changes to the original Commission proposal, and would apply only to banks deemed of global systemic importance or banks that exceed certain thresholds for trading etc. The Council position includes amongst others the following:</p> <ul style="list-style-type: none"> • Mandatory separation of proprietary trading • Other trading activities would be subject to an assessment by competent supervisors who could request a separation to a trading unit or additional prudential measures, if risks 	<ul style="list-style-type: none"> • 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 	

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	Actions
<p>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.</p>	<p>are considered excessive.</p> <ul style="list-style-type: none"> As advocated by the EACT, non-cleared OTC derivatives would not be part of the activities subject to a possible separation. <p>Commissioner Hill generally welcomed some of the changes brought to the original proposal as being more favourable to growth and jobs.</p>		
<p>Key documents:</p> <ul style="list-style-type: none"> Text of the proposal Impact assessment: <ul style="list-style-type: none"> 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	Actions
<p>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:</p> <ul style="list-style-type: none"> • 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 	<p>The Council, the Parliament and the Commission have reached a political agreement on the text. The Regulation should enter into force in early 2016.</p>	<p>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.</p>	<p>The EACT is represented in the ECB's SFT Data Store Advisory Group</p>



<p>engaged in such transactions</p> <ul style="list-style-type: none"> • Increased transparency on rehypothecation (use of collateral by the collateral-taker for their own purposes) 			
<p>Key documents:</p> <ul style="list-style-type: none"> • Text of the proposal 			



Capital Markets Union			
Content and legislative status	Latest developments	Issues from treasury perspective / EACT position	Actions
<p>The Capital Markets Union (CMU) is a plan of the European Commission that aims to create deeper and more integrated capital markets in the 28 Member States of the EU. With the CMU, the Commission will explore ways of reducing fragmentation in financial markets, diversifying financing sources, strengthening cross border capital flows and improving access to finance for businesses, particularly SMEs.</p>	<p>The Commission adopted the CMU Action Plan on 30 September. The Action Plan contains some immediate actions, such as a legislative proposal on securitisations and amendments to Solvency II. The Commission also opened public consultations on venture capital, covered bonds and the cumulative impact of financial reform. Other areas of work include the review of the Prospectus Directive, review of the functioning of the EU corporate bond market, harmonisation of insolvency rules, and work to address the debt-equity bias.</p>		<ul style="list-style-type: none"> • Draft response to the consultation on the cumulative impact of financial regulation • Monitor work by the Commission on areas most relevant to treasurers (e.g. work on corporate bonds)
<p>Key documents:</p> <ul style="list-style-type: none"> • Commission CMU website (all relevant documents are available here) 			



Credit Rating Agencies			
Content and legislative status	Latest developments	Issues from treasury perspective / EACT position	Actions
<p>ESMA consulted on competition, choice and conflicts of interests in the credit rating industry. This consultation starts the formal review of the CRA Regulation currently in place and ESMA is expected to draft a report to the Commission in the autumn with its recommendations. The Commission could then propose a legislative review in 2016.</p>	<p>ESMA published its technical advice and a report to the Commission on the regulation of credit rating agencies. ESMA does not seem to make specific recommendations on issues such as mandatory rotation of agencies and business model. ESMA also published a report on reducing mechanistic reliance on credit ratings, and recommends that rather than removing all references to credit ratings in EU and national legislation, future action should focus on improving information, data and tools so that rating users can carry out their own assessments, therefore reducing mechanistic reliance on ratings.</p> <p>Based on the ESMA report and other inputs, the Commission is due to report at the beginning of next year on the CRA Regulation to the Parliament and the Council.</p>		<p>Monitor</p>



Key documents:

- [ESMA technical advice on competition, choice and conflicts of interest in the CRA industry](#)
- [ESMA technical advice on reducing sole and mechanistic reliance on credit ratings](#)

Payments Package			
Content and legislative status	Latest developments	Issues from treasury perspective / EACT position	Actions
<p>Revision of the Payment Services Directive (PSD): The main changes introduced by the Commission proposal are 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>Regulation on card interchange fees: The Regulation will impose mandatory caps for card interchange fees: for debit card payments, the cap will be 0.2% for crossborder transactions and 0.2% of weighted</p>	<p>An agreement was reached in the trilogue negotiations on PSD2; the final compromise text is available here.</p> <p>The MIF Regulation was published in the Official Journal.</p>	<p>EACT position paper on PSD concentrates on the following issues:</p> <ul style="list-style-type: none"> • 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 	



<u>Payments Package</u>			
Content and legislative status	Latest developments	Issues from treasury perspective / EACT position	Actions
average for national payments; for credit cards the cap will be 0.3% of the transaction value.			
Key documents: <ul style="list-style-type: none"> • Commission Proposal for a revised Payment Services Directive (PSD2) • MIF Regulation text adopted by the Parliament • Impact Assessment: Executive Summary ; Full text • EACT Position Paper 			

Transatlantic Trade and Investment Partnership (TTIP)			
Content and legislative status	Latest developments	Issues from treasury perspective / EACT position	Actions
<p>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.</p>	<p>The EU and the US negotiators remain divided on the inclusion of financial services in TTIP – the EU wishing to extend the discussions to regulatory convergence and the US side prepared to discuss only issues concerning market access. Recently the EU negotiator stated that the EU would possibly propose a “negative list” approach where newly developed products and services get a low tariff treatment.</p>	<ul style="list-style-type: none"> • Preserving existing exemptions (CVA in CRD IV) • Ensuring regulatory convergence 	
<p>Key documents:</p> <ul style="list-style-type: none"> • Commission TTIP website • Commission negotiating position on financial services 			

<u>SEPA</u>			
Content and legislative status	Latest developments	Issues from treasury perspective / EACT position	Actions
<p>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.</p>	<ul style="list-style-type: none"> • The ERPB working group on SEPA post-migration issues published its final report. • The ERPB has established a working group (in which the EACT is represented) on instant payments 		
<p>Key documents:</p> <ul style="list-style-type: none"> • SEPA Regulation • Regulation 248/2014 amending the SEPA migration deadline • ECB website on national SEPA migration plans 			



<u>Markets in Financial Instruments (MiFID / MiFIR 2)</u>			
Content and legislative status	Latest developments	Issues from treasury perspective / EACT position	Actions
MiFIR / MiFID 2 have been adopted and currently Level 2 measures are being developed by ESMA.	<p>ESMA published the final RTSs for MiFID/R on 28 September.</p> <p>One of the most controversial aspects of the RTSs are the position limits imposed for commodities trading, which would in effect mean that many commodity traders would need to become MiFID-compliant, having to hold extra regulatory capital. The Commission now has three months to endorse the rules before a final approval by the Parliament and the Council.</p> <p>The final rules come into force in January 2017.</p>		
<p>Key documents:</p> <ul style="list-style-type: none"> • MiFIR text • MiFID text 			



Basel III / CRD IV			
Content and legislative status	Latest developments	Issues from treasury perspective / EACT position	Actions
Legislation on bank capital, liquidity and leverage	<p>The Commission and the EBA have started to review certain aspects of CRD IV:</p> <ul style="list-style-type: none"> EBA opened a call for evidence on bank capital requirements' impact on SME lending. The final document, which will inform the European Commission's own report on the impact of own funds requirements on lending to SMEs, is expected to be published in the first quarter of 2016. The consultation runs until 1 October 2015. The European Commission has appointed London Economics to carry out a study on the impact of CRR on access to finance and long-term financing. The study is expected to be finalised by February 2016. 		EACT to submit feedback to the study on CRR impact on access to finance
<p>Key documents:</p> <ul style="list-style-type: none"> Commission CRD IV website 			



Legislative initiative

Timeline of next steps and actions



	immediate	2015	2016	2017 and beyond
EMIR		Clearing obligation should start by April 2016		
MMF		Council to formulate its position - to be followed by trilogue negotiations	Council to formulate its 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 measures under development	Implementation starts / Level 2		
MiFID / MiFIR	Level 2 measures under development	Level 1 text adopted – applicable as of January 2017		
Benchmarks		trilogues	Entry into force?	
Bank structural separation		European Parliament to formulate its position - to be followed by trilogue negotiations	European Parliament to formulate its position - to be followed by trilogue negotiations	
PSD II		Agreement reached	Entry into force two years after adoption (2016 the earliest)	