



EACT

Monthly Report on Regulatory Issues

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Hrvatska udruga
korporativnih rizničara
Croatian Association of
Corporate Treasurers





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Executive Summary

Topic and summary of content and EACT position	Latest developments
<p>European Market Infrastructure Regulation (EMIR):</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"> • The ESAs published the RTSs for margin requirements on non-centrally cleared derivatives • EACT responded to EBA's consultation on CVA risk charge
<p>Money Market Funds (MMF) Regulation:</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 	
<p>Financial Transaction Tax (FTT) :</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"> • No substantial progress despite the announcement made in December



<p>Financial Benchmark Regulation:</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"> • ESMA has launched a first consultation on the level 2 measures for the benchmark Regulation
<p>Bank Structural Separation (Barnier / Liikanen rule)</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's ECON Committee is still in discussions on the file



List of ongoing consultations / surveys / studies:

Title	Website	Deadline
ESMA consultation on benchmarks	Consultation page	29 March
ESMA consultation on discussion paper on draft RTSs and ITs under the Securities Financing Transactions Regulation (SFTR)	Consultation page	22 April

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
<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.</p> <p>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>ESMA/ EBA:</p> <ul style="list-style-type: none"> • The ESAs published the RTSs on margin requirements on non-centrally cleared derivatives. The requirement to post margin only applies to NFC+s. The ESAs are proposing that they enter gradually into force as of September this year, initial margin being implemented the latest by 1 September 2020 and variation margin the latest by 1 March 2017. The RTSs now need to be endorsed by the Commission, after which they will be subject to examination by the Parliament and the Council. • ESMA published updated EMIR Q&As • EBA's consultation on the treatment of CVA under SREP closed. All responses are available here. • ESMA has finalised the reviewed technical standards for trade reporting and forwarded them to the Commission for adoption. • The Regulatory Technical Standards on the central clearing of interest rate derivatives were published in the Official Journal on 1 December. The clearing obligation will be phased in according to the following timetable: <ul style="list-style-type: none"> ○ Category 1 (FCs and NFCs that are direct 	<p>EBA's planned measures on CVA would make the effect of the CVA capital charge exemption less, therefore impacting pricing and potentially the availability of OTC derivatives for NFCs</p>

OTC Derivatives - European Market Infrastructure Regulation (EMIR)

	<p>members of a CCP): 21 June 2016</p> <ul style="list-style-type: none"> ○ Category 2 (FCs and Alternative Investment Funds not included in category 1): 21 December 2016 ○ Category 3 (FCs and Alternative Investment Funds not included in categories 1 and 2 and with a low level of activity in OTC derivatives): 21 June 2017 ○ Category 4 (all NFCs not included in the above categories): 21 December 2018 <ul style="list-style-type: none"> • 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. <p><u>International:</u></p> <ul style="list-style-type: none"> • The European Commission and the US CFTC reached an agreement on a common approach for CCP requirement, which was followed by a formal equivalence decision by the Commission. • BIS published a report on OTC derivatives market activity • The Basel Committee and IOSCO issued a revised timeline for the implementation of margin 	
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OTC Derivatives - European Market Infrastructure Regulation (EMIR)

- 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

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
<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 <p>The Parliament ECON Committee did not reach a compromise on the text. The work will therefore continue in the autumn under the new Parliament. The new ECON committee is not likely to re-start the work on the file before September-October at the earliest. A new Rapporteur will have to be appointed as the previous Rapporteur (Said El Khadraoui) was not re-elected.</p>	<ul style="list-style-type: none"> • There seems to be no progress in the Council discussions • 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 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 	<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

Money Market Funds (MMFs) Regulation

days.

- 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

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
<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 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 settlement and it would be applied on the basis of a 	<ul style="list-style-type: none"> • Despite the agreement in December to continue discussions, the FTT negotiations are stalling and no progress has been reported. 	

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

Financial benchmarks		
Content and legislative status	Latest developments	Issues from treasury perspective / EACT position
<p><u>Benchmark Regulation:</u></p> <p>The Benchmark Regulation aims to improve governance, transparency and calculation methodology for financial benchmarks. The Regulation requires benchmark administrators to obtain authorisation from their competent authority and adhere to different requirements, e.g. concerning internal governance and benchmark methodology. Benchmark contributors will have to make mandatory contributions in some cases (to critical benchmarks) and will have to respect a code of conduct. Users (such as corporates) will only be able to use EU authorized benchmarks. Concerning non-EU benchmarks, these may be used in the EU only if they are based in jurisdictions deemed equivalent by the EU, have been recognised by a Member State or have been endorsed by an EU administrator.</p> <p>The final compromise text of the Benchmark Regulation was adopted in December 2015 but still needs to be published in the Official Journal and will be of application 18 months thereafter.</p> <p><u>Review of LIBOR and EURIBOR:</u></p> <p>Libor and Euribor administrators are reforming the</p>	<ul style="list-style-type: none"> • ESMA started a consultation on the level 2 measures for the Benchmark Regulation. The consultation runs until 31 March. 	

Financial benchmarks		
Content and legislative status	Latest developments	Issues from treasury perspective / EACT position
benchmarks, more information on the EMMI website (euribor) and ICE website (libor)		
Key documents: <ul style="list-style-type: none"> • The final compromise text of the Benchmark RegulationIOSCO 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
<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.) The banking supervisor would monitor banks' activities and could require a separation of these activities into a separate entity. <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 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>The different political groups in ECON have not been able to agree on a compromise text. Commissioner Hill has stated that despite the situation in ECON, he is not planning to withdraw the file.</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 are considered excessive. 	<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)

- As advocated by the EACT, non-cleared OTC derivatives would not be part of the activities subject to a possible separation.

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
<p>SFTR aims to reduce risks and improve the transparency linked to securities financing transactions (includes repos, reverse repos and stock lending). All transactions should be reported to a central database (similarly to EMIR with the details to be defined by ESMA). This obligation applies to both financial and non-financial counterparties.</p> <p>The regulation also imposes increased transparency and conditions on rehypothecation (reuse of collateral by the collateral-taker for their own purposes)</p>	<p>The SFT Regulation was published in the Official Journal. The reporting regime will be put in place gradually, from May 2018 to February 2019. ESMA is mandated to develop the technical and implementing standards for reporting, and is currently holding a public consultation on the topic.</p>	
<p>Key documents:</p> <ul style="list-style-type: none"> • Text of the Regulation in the Official Journal 		



Capital Markets Union		
Content and legislative status	Latest developments	Issues from treasury perspective / EACT position
<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.</p> <p>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 CMU is a multi-year project and is likely to include a variety of legislative and non-legislative measures. The short-term actions include work on securitisation, Prospectus Directive and private placements. The longer term work includes actions on company, insolvency, securities and tax laws.</p>	<p>The Council adopted Conclusions on the Commission's Action Plan on CMU.</p> <p>The Council also reached an agreement on the proposal on a framework for simple, transparent and standardized securitisations.</p> <p>The Commission adopted a proposal for the review of the Prospectus Directive, which is now to become a Regulation.</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,</p>	



	harmonisation of insolvency rules, and work to address the debt-equity bias.	
Key documents: <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
<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. 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>Key documents:</p> <ul style="list-style-type: none"> • ESMA consultation page 		

Payments Package		
Content and legislative status	Latest developments	Issues from treasury perspective / EACT position
<p>Revision of the Payment Services Directive (PSD): The main changes introduced by the revision 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 average for national payments; for credit cards the cap will be 0.3% of the transaction value.</p>	<p>PSD 2 was published in the Official Journal.</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



Transatlantic Trade and Investment Partnership (TTIP)		
Content and legislative status	Latest developments	Issues from treasury perspective / EACT position
<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 		



SEPA		
Content and legislative status	Latest developments	Issues from treasury perspective / EACT position
<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>	<p>As from 1 May 2016 the islands of Jersey, Guernsey, and the Isle of Man ('British Crown Dependencies') will become part of the geographical scope of the SEPA Schemes as defined by the European Payments Council. More information available here.</p>	
<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 		

Markets in Financial Instruments (MiFID / MiFIR 2)		
Content and legislative status	Latest developments	Issues from treasury perspective / EACT position
<p>MiFIR / MiFID 2 have been adopted and currently Level 2 measures are being developed by ESMA.</p>	<p>The Commission has proposed to extend by one year the entry into force of MiFID 2. The proposal is to apply MiFID 2 as of 3 January 2018 instead of 2017.</p> <p>The EACT has raised the possibility of an unintended consequence that non-financial companies using electronic trading platforms would become subject to full MiFID obligation due to the current wording of Article 2 and the exemption on dealing on own account.</p> <p>ESMA published the final RTSs for MiFID/R on 28 September. 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. The final rules come into force in January 2017. MiFID/R II is due to come into effect in January 2017, but both ESMA and the Commission have stated that a year's delay in the implementation would be required in order to allow sufficient time to finalise the remaining legislative aspects and to allow sufficient time for implementation by market participants. A delay would require a legislative proposal from the Commission,</p>	



	<p>and it would need to be approved by the Parliament and the Council. Some MEPs have expressed reservations about amending the implementation date.</p> <p>ECON Committee's MiFID II negotiating team has issued a statement saying that they accept a one-year delay to implementation.</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
<p>Legislation on bank capital, liquidity and leverage</p>	<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.	
Key documents: <ul style="list-style-type: none">• Commission CRD IV website		



EUROPEAN ASSOCIATION
OF CORPORATE TREASURERS

Legislative initiative

Timeline of next steps and actions



	immediate	2015	2016	2017 and beyond
EMIR			Clearing obligation to start mid 2016	
MMF		Council to formulate its position - to be followed by trialogue negotiations	Council to formulate its positions - to be followed by trialogue negotiations	
FTT		Negotiations	Negotiations	Probable implementation (if any) likely not to take place before 2017
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 (delay likely)		
Benchmarks		trilogues agreement		
Bank structural separation		European Parliament to formulate its position - to be followed by trialogue negotiations	European Parliament to formulate its position - to be followed by trialogue negotiations	
PSD II		Agreement reached	Entry into force two years after adoption	