



EACT

Monthly Report on Regulatory Issues

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Hrvatska udruga
korporativnih rizničara
Croatian Association of
Corporate Treasurers





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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Executive Summary

Topic and summary of content and EACT position	Latest developments
European Market Infrastructure Regulation (EMIR): - 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	- The Commission is planning to review certain aspects of EMIR - A report discussing the review is expected in the coming months and a formal legal proposal will follow up later
Money Market Funds (MMF) Regulation: - 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	The Council has re-started discussions on the file but has not yet reached an agreement
Financial Transaction Tax (FTT) : - 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	Discussions between participating Member States are still ongoing, however little progress seems to have been made



<u>Financial Benchmark Regulation:</u> • Proposal of the Commission to regulate the administration and the contribution to financial benchmarks • Would impose mandatory contributions to certain benchmarks (EURIBOR and LIBOR) and would impose liability for those contributions in certain cases • EACT position will underline the importance of contract continuity and coherence of EU action with international developments	• ESMA is consulting on implementing measures
<u>Bank Structural Separation (Barnier / Liikanen rule)</u> • Proposal of the Commission to ban proprietary trading and to have the possibility of separating banks' other trading activities into a separate entity; separation would not be automatically forced but bank supervisors would have to decide case by case. The planned Regulation would only apply to the biggest banks.	• The file is still in a deadlock at the Parliament's ECON Committee



List of ongoing consultations / surveys / studies:

Title	Website	Deadline
BCBC consultation on reducing variation on credit risk-weighted asset	Consultation document	24 June
ESMA consultation on technical advice on the benchmark regulation	Consultation page	30 June
EPC consultation on changes to SEPA credit transfer and direct debit payment schemes	Consultation page	4 July
BCBS consultation on revisions to the Basel III leverage ratio framework	Consultation document	6 July
EPC consultation on SEPA instant credit transfer payment scheme	Consultation page	10 July

Note: For ease of reading, updates compared to the previous report are in bold font.

OTC Derivatives - European Market Infrastructure Regulation (EMIR)		
Content and legislative status	Latest developments	Issues from treasury perspective / EACT position
EMIR was adopted on 4 July 2012 and entered into force on 16 August 2012. It requires the central clearing of all standardised OTC derivatives contracts, margins for non-centrally cleared contracts and the reporting of all derivatives contracts to trade repositories. EMIR contains different start dates for the various obligations and the obligations for NFC- (portfolio compression, trade reporting) are already in place. Central clearing should gradually start as of April 2016, with NFC+s having a three-year phase-in period.	EMIR review: • Commissioner Hill has indicated that the Commission will be proposing a review of EMIR with the aim of making some requirements more proportionate and less burdensome. It is expected that a report (part of the call for evidence report) discussing the EMIR review will be published in the coming months. A legislative proposal for review will follow at a later stage. ESMA/ EBA: • ESMA published a new EMIR Q&A document • ESMA fined DTCC for negligently failing to put in place systems capable of providing regulators with direct and immediate access to derivatives trading data • 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	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

OTC Derivatives - European Market Infrastructure Regulation (EMIR)

	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: ○ Category 1 (FCs and NFCs that are direct members of a CCP): 21 June 2016 ○ 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 NFC+s not included in the above categories): 21 December 2018 • On 5 June 2015, the European Commission adopted a	
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OTC Derivatives - European Market Infrastructure Regulation (EMIR)

[Delegated Act](#) extending transitional relief from central clearing requirements for Pension Scheme Arrangements until 16 August 2017.

International:

- 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 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
The Commission proposal for Regulation would impose amongst others the following: • A requirement on CNAV MMFs to have a cash “buffer” equivalent to 3 percent of their assets • binding rules on the types of assets MMFs can invest in • limits on how much business MMFs can do with a single counterparty, and restrictions on short selling • A ban for MMFs to solicit external ratings The Parliament ECON Committee did not reach a compromise on the text. The 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.	• The Council has re-started discussions on the file in order to find a compromise. The Dutch Presidency has recently issued compromise proposals, which suggest that CNAV funds would be given two years to either become public debt funds, or convert into Low Volatility NAV (LVNAV) or VNAV funds. There would be no automatic ‘sunset cause’ on LVNAV funds (contrarily to the Parliament’s position). The use of external credit ratings would be allowed for all MMFs. • The Parliament has already agreed on its position. The main elements of the position are as follows: ○ 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	• 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

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.

- 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
Council agreed to the “enhanced cooperation” procedure between 11 Member States (Belgium, Germany, Estonia, Greece, Spain, France, Italy, Austria, Portugal, Slovenia and Slovakia) at the end of January. The Commission issued a proposal for a Directive on 14 February 2013 (see also the press release and the Questions & Answers). The new proposal is based on the previous text presented in 2011 with some amendments and to have the following main aspects: • The scope of instruments covered is very broad including shares and bonds at 0.1% and derivatives at 0.01%. CFDs, equity derivatives, depository receipts, money market instruments, structured products are also covered. The applicable rates are minimum harmonized rate levels paving the way for individual countries to possibly adopt higher levels. Furthermore, cascade effects could make the effective rate higher as the transactions would be taxed separately from different market participants at different stages. • 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	• 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
combination of the residence principle and the location of the where the financial instrument is issued. - The proposal also provides for implementing acts regarding uniform collection methods of the FTT and the participating countries would have to adopt appropriate measures to prevent tax evasion, avoidance and abuse. - There will be an exemption for primary market transactions (i.e. subscription/issuance). The extra-territorial impact of the FTT could be very wide due to the design of the tax: an FTT Zone financial institution's branches worldwide will be subject to the FTT on all of their transactions and non-FTT Zone financial institutions will be taxed for transactions with parties in the FTT Zone, and whenever they deal in securities issued by an FTT zone entity.		
Key documents: 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
<u>Benchmark Regulation:</u> 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. 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. <u>Review of LIBOR and EURIBOR:</u> Libor and Euribor administrators are reforming the	The Council adopted the Benchmark Regulation on 17 May. It still needs to be published in the Official Journal; entry into force will be 18 months after the publication. ESMA is currently consulting on the implementing measures for the Benchmark Regulation. The LIBOR administrator ICE has published its Roadmap for ICE LIBOR. The main points in the Roadmap of relevance to corporate treasurers are as follows: LIBOR will use a 'waterfall' of submission methodologies to ensure that LIBOR panel banks use real transaction data where possible on one hand and on the other hand ensure that LIBOR will continue to be published regardless of activity levels on a particular day. ICE states that the	

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)	planned measures are unlikely to cause issues of legal continuity. • Transactions with corporations as counterparties to a bank's funding transactions are included in the list of eligible transactions but only for maturities greater than 35 calendar days. Transactions will be used with no premium or discount to adjust the transacted prices. • Transactions from an expanded list of funding centres will be used • Publication time will remain 11.45 London time; the collection window will be the period since the previous submission. The transactions from the previous day will be volume-weighted lower compared to weighting of transactions from the same day. • Minimum transaction size will be: overall minimum thresholds of USD / EUR / GBP / CHF 10m (or JPY 1,000m)	

Financial benchmarks		
Content and legislative status	Latest developments	Issues from treasury perspective / EACT position
Key documents: 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
The Commission has adopted a proposal for Regulation, which contains the following main aspects: • Banning of proprietary trading • Potential separation of certain trading activities (market making, OTC derivatives trading, complex securitized products etc.) The banking supervisor would monitor banks' activities and could require a separation of these activities into a separate entity. The Regulation would apply only to the biggest banks, i.e. those deemed to be of global systemic importance or those exceeding 30 billion euros in total assets and trading activities either exceeding 70 billion euros or 10% of the bank's total assets. The Commission adopted its proposal on 29 January which will be subject to the ordinary legislative procedure. According to the proposal the proprietary trading ban would apply as of 1 January 2017 and the separation of other trading activities as of 1 July 2018.	The different political groups in ECON have not been able to agree on a compromise text. The Council has already 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: • 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. • As advocated by the EACT, non-cleared OTC derivatives would not be part of the activities subject to a possible	• 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)

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
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. The regulation also imposes increased transparency and conditions on rehypothecation (reuse of collateral by the collateral-taker for their own purposes)	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.	
Key documents: • Text of the Regulation in the Official Journal		

Capital Markets Union		
Content and legislative status	Latest developments	Issues from treasury perspective / EACT position
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. 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. As part of the CMU Action Plan, the Commission proposed in November to review the Prospectus Directive (the prospectus regime defines the format and the content of the legal document that has to be drafted by companies wishing to raise funds on capital markets by issuing securities (shares, bonds) that are offered to the public or are admitted to trading on a regulated market). The aim of the Commission is to streamline the prospectus regime and to make the issuance of shares and bonds easier for companies. The main changes compared to the current regime are as follows: the new regime will take the form of a Regulation, which aims at harmonising national differences in application and	The Commission published the first CMU status report. It reports on: - the actions taken actions adopted since the adoption of the CMU Action Plan (legislative proposal on Securitisation, proposal to review the Prospectus Directive, consultation on insolvency, launch of the call for evidence etc; - the key initiatives scheduled over the rest of 2016 (proposal on Common Consolidated Corporate Tax Base, reviewing legal framework for venture capital fund etc); and - the preparation of other CMU actions and closely related measures which will be delivered in 2017-18 (identifying barriers to the development of private placements, comprehensive review of the	

Capital Markets Union		
implementation • “passporting” prospectuses from one Member State to another to become easier • thresholds for exemption are increased: no prospectus would be needed if the securities offering is between 500 000 and 10 million euros • stricter rules concerning the length and the content of the summary • limits to the section concerning risk (risks listed can only be ‘material and specific to the issuer and securities’) • lighter regime for secondary issuances	functioning of the corporate bond market etc.) The Commission also published a summary of responses received to the Call for Evidence on EU financial regulation. The Commission plans to come forward with a full report (including planned actions) this summer. The Prospectus Regulation proposal is currently being discussed within the Parliament and the Council respectively with the objective to finalise discussions this summer. The Council adopted Conclusions on the Commission’s Action Plan on CMU.	
Key documents: • Commission CMU website (all relevant documents are available here)		

Credit Rating Agencies		
Content and legislative status	Latest developments	Issues from treasury perspective / EACT position
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.	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.	
Key documents: • ESMA consultation page		

Payments Package		
Content and legislative status	Latest developments	Issues from treasury perspective / EACT position
Revision of the Payment Services Directive (PSD): The main changes introduced by the revision are the following: • Banning of surcharging on payment cards covered by the MIF Regulation • Inclusion of third-party payment service providers in the scope • Extension of the scope of the PSD e.g. where at least the payer's PSP is acting from within the EEA / extension to all currencies Regulation on card interchange fees: The 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.	PSD 2 was published in the Official Journal. The MIF Regulation was published in the Official Journal.	EACT position paper on PSD concentrates on the following issues: • 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
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.	At the end of April the EU published a ‘state of play’ document on the TTIP negotiations. It states that discussions on financial services continue, the focus being on establishing a framework for regulatory cooperation.	• Preserving existing exemptions (CVA in CRD IV) • Ensuring regulatory convergence
Key documents: • Commission TTIP website • Commission negotiating position on financial services		

SEPA		
Content and legislative status	Latest developments	Issues from treasury perspective / EACT position
The Commission proposed a period of six months (until 1 August 2014) during which non-SEPA formats would still be allowed. The Regulation will have retroactive effect as from 31 January 2014. However, national authorities' approaches to this extension seem to have some differences. Regarding SEPA governance, the ECB has established the European Retail Payments Board (ERPB) which replaces the former SEPA Council.	The European Payments Council started a public consultation on changes to the SEPA credit transfer and direct debit payment schemes. The consultation runs until 4 July. The EPC also started a consultation on the first rulebook for instant SEPA credit transfers. The consultation runs until 10 July. 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.	
Key documents: • SEPA Regulation • Regulation 248/2014 amending the SEPA migration deadline • ECB website on national SEPA migration plans		

Markets in Financial Instruments (MiFID / MiFIR 2)		
Content and legislative status	Latest developments	Issues from treasury perspective / EACT position
MiFIR / MiFID 2 have been adopted and currently Level 2 measures are being developed by ESMA.	The entry into force of MiFID 2 has been delayed until January 2018. As part of postponing the entry into force date, it has been clarified that non-financial companies using Multilateral Trading Facilities (MTFs) for their hedging transactions will continue to benefit from the exemption for dealing on won account, and will therefore not have to be MiFID-licensed. The text of the agreement is available here. ESMA has proposed amendments to its RTSs on non-equity transparency, commodity position limits and the ancillary activity test, as requested by the Commission.	
Key documents: • MiFIR text • MiFID text		

Basel III / CRD IV		
Content and legislative status	Latest developments	Issues from treasury perspective / EACT position
Legislation on bank capital, liquidity and leverage	The Basel Committee is currently holding consultations on: - Revisions to the Basel III leverage ratio framework. The Committee is considering to soften some aspects of the calculation, especially with regard to how cleared derivatives transactions are considered for the leverage ratio. - Reducing variation in risk-weighted assets. The Committee proposes to eliminate the possibility for banks to use internal models for calculating the riskiness of some exposures (including exposures to large corporates), which is likely to push up pricing for corporates.	
Key documents: Commission CRD IV website		

Country-by-country reporting		
Content and legislative status	Latest developments	Issues from treasury perspective / EACT position
Commission adopted a legislative proposal on corporate tax transparency for multinational companies. The proposal applies to both EU and non-EU multinationals operating in the EU with global revenues exceeding 750 million euros per year. The proposal would amend the current Accounting Directive and would oblige these companies to disclose publicly information on profits made and taxes paid on a country by country basis both for EU countries and for tax jurisdictions that do not abide by tax good governance standards (tax havens) and on an aggregated basis for other jurisdictions.	Commission adopted the proposal and it will now be subject to the co-decision process by the Parliament and the Council	
Key documents: • Text of the proposal		

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	