



EACT

Monthly Report on Regulatory Issues

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Executive Summary

Topic and summary of content and EACT position	Main developments since last report
<p>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 • Next deadlines: reporting to Trade Repositories likely to start in February 2014 	<ul style="list-style-type: none"> • On 11 February 2013 ESMA published an updated Q&A document • On 14 February ESMA sent a letter to the Commission requesting a clarification on the definition of derivative instruments under EMIR. Avisa will raise this issue in a meeting with the Barnier cabinet on 19 February; EACT's reaction to be prepared (and the possibilities of pushing for the exclusion of FX forwards to be assessed)
<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 is currently in the early stages of the legislative procedure (Council and Parliament); it is thought unlikely that the Regulation will be adopted during this legislature • EACT position concentrates on the importance of ensuring the availability MMFs (both CNAV and VNAV) and arguing against the ban of credit ratings 	<ul style="list-style-type: none"> • ECON rapporteur and shadow rapporteurs are working on a compromise text. A vote in the ECON Committee was originally scheduled for 17 February but this was deferred to a later date as no compromise has been reached yet.
<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 	<ul style="list-style-type: none"> • The Greek Presidency is continuing the discussions but the meeting of end of January seems to have achieved little. • A French-German summit is scheduled for 19 February and the FTT is on the agenda.



<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><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"> • ECON rapporteur and shadow rapporteurs are working on a compromise text. A vote in the ECON Committee was originally scheduled for 17 February but this was deferred to a later date as no compromise has been reached yet.
<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"> • Commission proposal adopted on 29 January • EACT position to be defined



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European Market Infrastructure Regulation (EMIR)	<p>The Regulation on OTC derivatives, central counterparties and trade repositories (EMIR) was adopted on 4 July 2012 and entered into force on 16 August 2012. EMIR requires the central clearing of all standardised OTC derivatives contracts, margins for non-centrally cleared contracts and the reporting of all derivatives contracts to trade repositories.</p> <p>Timeline of obligations:</p> <ul style="list-style-type: none"> • 15 March 2013: Timely confirmations, NFC+ notification • 15 September 2013 : Portfolio reconciliation, Portfolio compression and dispute resolution • 12 February 2014 : Reporting obligation to start (ESMA has approved six trade repositories: 	<ul style="list-style-type: none"> • ESMA published an updated Q&A document. • ESMA has sent a letter to the Commission requesting for a clarification on the definition of derivative instruments under EMIR • ESMA has finalised clearing and risk mitigation obligations for non-EU derivatives (press release) • ESMA has approved the first trade repositories (see press release of 7 November and press release of 28 November). • ESMA still needs to issue RTSs on clearing obligation and margining of uncleared derivative transactions based on the BIS-IOSCO final framework for margin requirements for non-centrally cleared derivatives, which exempts 		<p>Monitor issues arising from implementation of reporting requirements</p> <p>EACT sent a letter on 10 February to Commissioner Barnier highlighting some of the issues that non-financial corporates are facing with EMIR implementation.</p> <p>A reaction to the ESMA request for clarification on definition of derivative instruments will be prepared and the issue will also be raised in a meeting with the Barnier cabinet taking</p>

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	<p>ICE, CME, DTCC, KDPW, Regis-TR and UnaVista)</p> <ul style="list-style-type: none"> • Second half of 2014 (TBC): First clearing obligations start (3 year phase-in for non-financial counterparties exceeding a clearing threshold) 	<p>forex swaps and forwards from initial margin. The framework applies to financial institutions and systemically important non-financial institutions only (it is left to national authorities to define this more accurately but is expected that that in the EU this would mean that NFC+'s will be subject to these requirements whereas NFC-'s not).</p>		<p>place on 19 February.</p>
<p>Shadow banking / Money Market Funds (MMFs)</p>	<p>The proposal for Regulation would impose amongst others the following:</p> <ul style="list-style-type: none"> • A requirement on CNAV MMFs to have a cash "buffer" equivalent to 3 percent of their assets • binding rules on the types of assets MMFs can invest in • limits on how much business MMFs can do with a single counterparty, and restrictions on short selling • A ban for MMFs to solicitate 	<p>The proposal for MMF Regulation – together with a communication regarding shadow banking - was adopted by the Commission on 4 September.</p> <p>The Regulation proposal is subject to the ordinary legislative process, however the text will not be adopted under the current legislature.</p> <p>The Rapporteur's draft report includes a deletion of the ban on credit ratings (i.e. MMFs could continue to be rated) but has not moved away from the capital buffer for CNAVs and even</p>	<ul style="list-style-type: none"> • Impact on future availability of CNAV funds; also uncertainty on whether VNAV funds can be accounted for as cash or cash equivalent • Consequences of ban on external ratings 	<ul style="list-style-type: none"> • Position paper finalised • Stakeholder mapping completed • Meetings have taken place with the rapporteur, shadow rapporteurs and several other stakeholders in the past months

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	<p>external ratings</p> <p>In the US the Securities and Exchange Commission's (SEC) proposal on MMFs include two alternatives:</p> <ol style="list-style-type: none"> 1. "Prime" funds (which invest in short term debt issued by banks, companies and governments) be forced to let the share price of each fund "float". Funds that invest the majority of their assets in cash or government debt as well as funds which target retail customers would be exempt from this requirement. 2. Or any fund that would not buy primarily government debt would have to charge redemption fees or pose limitations to redemptions in times of extreme withdrawals. 	<p>suggests that CNAV's should be converted to VNAV's within a five-year period.</p> <p>Over 400 amendments to the proposal were tabled by MEPs. The first list of amendments tabled is available here and the second list here.</p> <p>The ECON rapporteur and shadow rapporteurs are currently negotiating on a compromise text, the main contentious issue being the CNAV capital buffer. The ECR and ALDE groups do not support the buffer and propose liquidity gates and fees instead; the biggest group EPP is split on this topic.</p> <p>A vote on the ECON report was originally scheduled for 17 February but this has now been deferred to a later date as no compromise has been found so far. As the Council has not established its position on the proposal yet, the Regulation will not be adopted under this legislature.</p>	<p>of MMFs</p> <ul style="list-style-type: none"> • Inconsistency with US approach 	
Financial Transaction	Council agreed to the "enhanced	<ul style="list-style-type: none"> • The Greek Presidency has 	See position paper	

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Tax (FTT)	<p>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. 	<p>scheduled four meetings for FTT discussions. No progress seems to have been achieved in the last meetings however. The Presidency has also scheduled a debate on the FTT as early as the 18 February Ecofin Council: the Presidency wants to obtain input on Member States’ political orientation before proposing a compromise text. A second Ecofin discussion on the FTT has been scheduled at the end of the Presidency mandate. A summit of the French and German governments taking place on 19 February will possibly bring some clarity on what type of a tax the German government would back. The German government program document refers to a broad based FTT with a low rate and</p>		

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

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	<p>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.</p>			
<p>Markets in Financial Instruments Directive (MiFID II) and Regulation (MiFIR);</p>	<p>MiFID II contains the following main aspects:</p> <ul style="list-style-type: none"> • Market structure: trading venues should be captured by MiFIDII as all systems enabling market players to buy and sell financial instruments would have to operate under one of the categories defined in MiFID (Regulated Market, Multilateral; Trading Facility or Organised Trading Facility). 	<p>A compromise was reached mid-January in the trilogue negotiations. The text still needs to be formally adopted.</p>	<p>NFC+'s will be captured by certain provisions of MiFID II (e.g. position limits on derivatives)</p>	



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	<ul style="list-style-type: none"> • Commodities: position limits on the net position that a person is allowed to hold in commodity derivatives. However, these limits will not apply to positions that are used for hedging purposes (“objectively measurable as reducing risk”). • High-frequency trading: new rules for controlling algorithmic trading. • Market transparency: enlarges pre- and post-trade transparency to non-equity instruments (with certain waivers). 			

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<p>Banking Union:</p> <ul style="list-style-type: none"> • Single Supervisory Mechanism (SSM) • Bank Recovery and Resolution • Deposit Guarantee Schemes (DGS) <p>Monthly Report on Regulatory Issues EACT 17 February 2014</p>	<p>The so called ‘Banking Union’ includes:</p> <p>1) Single Supervisory Mechanism (SSM), which will put the European Central Bank in charge of the prudential oversight of the 130 biggest banks in the eurozone and will have the power to take over the oversight of smaller banks if needed. National supervisors will be in charge of the rest but under ECB’s oversight.</p> <p>2) Bank Recovery & Resolution</p> <ul style="list-style-type: none"> • Bank Recovery and Resolution Directive (BRR) aims to lay down a common insolvency framework for financial institutions, including harmonized powers and tools to resolve failing banks via bail-in • Single Resolution Mechanism (SRM) and the Single Resolution Fund (SRF) will allow the resolution of failing financial institutions in the Member States participating in the Banking Union. 	<p>1) SSM: The ECB will start its supervisory function in November 2014. ECB has published the guidelines of its “comprehensive assessment” of the largest euro-zone banks to be conducted in preparation of assuming full responsibility for supervision as part of the SSM.</p> <p>2) BRR: On 20 December 2013 the trilogue negotiators reached an agreement on the Directive. The Directive will enter into force on 1 January 2015. Bail-in provisions, which are one of the tools for resolution, will enter into force in January 2016.</p>		<p>Monitor</p>

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	<p>The proposed resolution process through the SRM entails the following steps: after an ECB opinion, a Single Resolution Board (including representatives from ECB, Commission and relevant national authorities) will prepare the resolution of the bank. On the basis of a Single Resolution Board's recommendation (or at its own initiative) the Commission would take the final decision of placing a bank under resolution. National authorities will implement the resolution plan. A Single Resolution Fund will be created with contributions from the industry.</p> <p>3) Deposit Guarantee Scheme: a Directive to harmonise the different national schemes. The Directive includes the harmonised coverage level</p>	<p>SRM: Both the the Parliament and the Council adopted their positions on the Commission proposal in December. Currently the trilogue negotiations are ongoing but are difficult as the Council's position has significant differences with the Parliament's and the Commission's (including diverging views as to the Commission's powers, the resolution fund and the legal basis). The negotiators are aiming to finalise a compromise before the parliamentary elections in May.</p> <p>3) DGS: an agreement in trilogue discussions was reached in December</p>		

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	of € 100 000 per depositor and per bank. The guarantee will continue to be offered in the form of repayment in case of a bank's liquidation where deposits would become unavailable.			
Interest rate benchmarks	<p>Two work streams:</p> <ol style="list-style-type: none"> 1. The proposal of the European Commission for Regulation on financial benchmarks which seeks to address concerns about the integrity and accuracy of financial benchmarks and which contains e.g. the following 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 	<ol style="list-style-type: none"> 1. The proposal of the Commission is being discussed in the ECON Committee; the Regulation will not be finalised during the current legislature 2. Market Participants' Group to issue final report by Mid-March on interest rate benchmarks. Report on FX benchmarks is due in November 2014. 	<p>Main issues for corporates are:</p> <ul style="list-style-type: none"> • Ensuring contract continuity • Consistency with other initiatives, particularly that of the FSB 	<ul style="list-style-type: none"> • Contribute to the work of the FSB MPG as needed • Define EACT position on the Commission Regulation proposal



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	<p>non-EU benchmarks (third countries must have a legal framework in place which is in line with the IOSCO principles)</p> <ul style="list-style-type: none"> • Mandatory code of conduct for administrators and contributors <p>2. FSB work carried out in the Market Participants Group, which has been tasked to propose options for robust reference interest rates that could serve as potential alternatives to the most widely-used, existing benchmark rates and propose strategies for any transition to new reference rates and for dealing with legacy contracts. This group should provide its final report by mid-March 2014.</p> <p>Given the recent allegations</p>			

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	<p>of FX rate manipulations, the FSB has decided to incorporate an assessment of FX benchmarks into its ongoing programme of financial benchmark analysis and has established a Foreign Exchange Benchmark Group for this work.</p>			
<p>Regulation on structural measures improving the resilience of EU credit institutions (structural separation of banks)</p>	<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</p>	<p>The Commission adopted its proposal on 29 January; the proposal 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>Possible consequences of structural separation on cost, availability of services, market making etc.</p>	<p>Discuss EACT position</p>

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	<p>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>Regulation on reporting and transparency of securities financing transactions</p>	<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.</p> <p>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. 	<p>The Commission adopted its proposal on 29 January; the proposal will be subject to the ordinary legislative procedure. According to the proposal the reporting obligation would start 18 months after the entry into force of the Regulation.</p>	<p>Reporting of repo trades; it needs to be assessed how important an issue this would be for corporates.</p>	<p>Discuss EACT position</p>

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	<ul style="list-style-type: none"> • Transparency requirements for investment funds engaged in such transactions • Increased transparency on rehypothecation (use of collateral by the collateral-taker for their own purposes) 			
Payment Services Directive	<p>The Commission has adopted a proposal for a revised PSD. The main changes in the PSD II will be the following:</p> <ul style="list-style-type: none"> • Banning of surcharging on payment cards covered by the MIF Regulation • Inclusion of third-party payment service providers in the scope • Extension of the scope of the PSD e.g. where at least the payer's PSP is acting from within the EEA / extension to all currencies 	<p>The Proposal for PSD II was adopted by the Commission on 24 July (see also Commission's FAQ). The file has entered the ordinary legislative procedure (ECON Rapporteur is Diogo Feio, EEP, PT)</p>	<p>Certain corporates might be impacted by the following:</p> <ul style="list-style-type: none"> • The rules for refund right for direct debits will be adapted • Corporate treasury centres are not explicitly excluded from the scope 	<p>EACT position will include the following points:</p> <ul style="list-style-type: none"> • Request for an explicit exclusion of treasury centres from the scope • Request to delete the changes to the direct debit refund procedure in Article 67

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<p>Regulation on card interchange fees</p>	<p>The Commission issued a legislative proposal in order to regulate the interchange fees for payment cards (both debit and credit) in the EU which would impose a harmonised limit to interchange fees</p> <p>The main changes proposed are:</p> <ul style="list-style-type: none"> • That the MIF regulation will apply to all consumer card transactions, domestic and cross-border and it is a per transaction cap (percentage). This Regulation will not apply to commercial cards. • The ‘honour-all-cards’ rule will be removed (retailers can steer consumers away from certain cards) • Cross-border acquiring will be facilitated, which should be good for retailers as it brings competition and should bring fees down 	<p>The Proposal for Regulation was adopted by the Commission on 24 July. It will now enter the ordinary legislative procedure.</p>	<p>Positive development is that this should (at least in theory) reduce the costs passed on by payment service providers to merchants.</p>	<p>Monitor</p>

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SEPA	<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; the latest national migration plans are available on the ECB website.</p> <p>Regarding SEPA governance, the ECB has established the European Retail Payments Board (ERPB) which replaces the former SEPA Council.</p>			<p>Monitor and contribute as necessary</p> <p>EACT is planning to co-sign a letter addressed to the ECB with EuroCommerce and possibly other users to point out some of the shortcomings of the newly established ERPB.</p>
Transatlantic Trade and Investment Partnership (TTIP)	<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</p>	<p>The fourth round of negotiations will take place on 10-14 March in Brussels.</p> <p>The Commission has published its position on financial services in the TTIP. The Commission proposes to establish a framework for regulatory cooperation in financial services.</p>	<ul style="list-style-type: none"> • Preserving existing exemptions (CVA in CRD IV) • Ensuring regulatory convergence 	<p>Contact NACT with a view to possibly co-signing a letter on the importance of including financial services in the TTIP.</p>



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	<p>covering financial services in the agreement.</p> <p>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 Commission however underlines that the objective of the TTIP negotiations is not to discuss the content or the implementations of different ongoing regulatory reforms.</p>		



Legislative initiative

Timeline of next steps and actions



		immediate	2014	2015	2016 and beyond
EMIR			Reporting and clearing obligations to start		
MMF			European Parliament and Council to formulate their positions	European Parliament and Council to formulate their positions - to be followed by trilogue negotiations	
FTT			Negotiations	Negotiations	Probable implementation (if any)likely not to take place before 2016
CRD IV	Level 2		Implementation starts		
MiFID / MiFIR			Adoption		
Banking Union – Single Supervisory Mechanism			Entry into force November 2014		
Banking Union – Bank Recovery and Resolution Benchmarks			Formal adoption	Entry into force	Entry into force of bail-in provision
			European Parliament and Council to formulate their positions - to be followed by trilogue negotiations	European Parliament and Council to formulate their positions - to be followed by trilogue negotiations	Entry into force probably not before 2016



Legislative initiative

Timeline of next steps and actions



Bank structural separation

Legislative proposal adopted by the Commission

European Parliament and Council to formulate their positions - to be followed by trilogue negotiations

The entry into force of any future legislative measure is unknown at this stage

PSD II / SEPA governance changes

European Parliament and Council to formulate their positions - to be followed by trilogue negotiations

European Parliament and Council to formulate their positions - to be followed by trilogue negotiations

Entry into force two years after adoption (2016 the earliest)

Card interchange fee Regulation

European Parliament and Council to formulate their positions - to be followed by trilogue negotiations

European Parliament and Council to formulate their positions - to be followed by trilogue negotiations

Entry into force not known