

EACT – Monthly Report on Regulatory Issues – January 2013

Regulatory initiative	Content	Status	Issues from treasury perspective / EACT position	Actions
European Market Infrastructure Regulation (EMIR) - Regulatory Technical Standards (RTS)	<p>The Parliament did not object to the RTS, therefore they will be able to enter into force. This was due to an agreement reached between Commissioner Barnier and the ECON Members pushing for the Resolution on the following aspects:</p> <ul style="list-style-type: none"> • The Commission conceded that compliance with the clearing obligation could be over a period of three years; the precise interpretation of this statement is unclear at the time of writing • A Questions and Answers will be developed by the Commission to clarifying some aspects and to ensure legal certainty 	<p>The likely entry into force of the RTS is around Mid-March (20 days after their publication in the Official Journal); the standards on trade confirmations, mark-to-market requirements and NFC/threshold breach notifications will become law on this date.</p>		<p>Letter addressed to Commissioner Barnier and follow-up</p>
Shadow banking: <ul style="list-style-type: none"> • Money Market Funds (MMFs) • Securities law (including repos) • Exchange-Traded Funds 	<p>On 19th March 2012 the European Commission issued a Green Paper on shadow banking which gives an overview of the policy options on the table. The document paved the way for a public consultation of stakeholders undertaken in March-June 2012. The Commission is expected to propose the</p>	<p>The European Commission seemed initially reluctant to take the lead on MMFs reform ahead of the US. However, after the US's delay in regulating the sector, the Commission appears to be ready to issue a proposal as</p>	<ul style="list-style-type: none"> • Primary concerns are over the impact of regulatory moves on the competitiveness and availability of MMFs • Need also to monitor US initiatives and liaise with 	<p>Confirm EACT position and respond to consultation.</p> <p>Avisa will be able to meet relevant Officials in DG Internal Market and</p>

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(ETFs)	<p>following legislation regulating non-bank credit activity:</p> <p>1) <i>“A Regulation to enhance MMFs as cash management tool for different kind of investors” [DG MARKT Management Plan 2013];</i></p> <p>2) <i>Legislation on securities law.</i></p>	<p>early as March 2013.</p> <p>Next steps:</p> <p>- March 2013: The European Commission is expected to issues a proposal for a <i>“A Regulation to enhance MMFs as cash management tool for different kind of investors”</i></p>	<p>counterparts</p>	<p>Services (DG MARKT) as well as at Commissioner Barnier’s Cabinet level to convey EACT’s position on MMFs and securities law proposal.</p> <p>Upcoming scheduled meetings: 20 February 2012: Bertrand Dumont, Member, Cabinet of Commissioner Michel Barnier</p>
Financial Transaction Tax (FTT)	<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. The Commission is expected to issue a revised text in February.</p> <p>The new proposal is expected to be 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 	<p>Next steps:</p> <p>The Commission plans to adopt the final proposal for a Directive on FTT in February (date tbc). The whole procedure for adoption of the FTT, which would only require a unanimity vote by the 11 participating countries, should take a few months. The Irish Presidency has already allocated a slot in their ECOFIN agenda meeting of 14 May (fastest scenario). The proposal states that the</p>	<ul style="list-style-type: none"> • The Impact of the tax on the overall economy • Hidden cost increases for end-users • Drop in trading activity in the FTT zone (ISDA, for example, expects derivatives activities to drop by between 60-90 percent in countries where the tax is introduced) 	<p>Respond to proposal on publication.</p>

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	<p>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.</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 	<p>Directive would enter into force on 1 January 2014 and that the participating countries would have to adopt their national laws transposing and complying with the FTT Directive by 30 September 2013 at the latest. The Commission also intends to review/improve the Directive by 31 December 2016.</p>		

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	<p>and abuse.</p> <ul style="list-style-type: none"> • 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 entity established in the FTT Zone.</p>			
<p>Capital Requirements Directive (CRD) IV – Capital Requirements Regulation (CRR)</p>	<p>On 6th January 2013 the <u>Basel Committee</u> on Banking Supervision endorsed <u>revised liquidity standards</u> (Liquidity Coverage Ratio-LCR) for banks. Banks will be allowed to hold a wider range of assets in their liquidity buffers; LCR will be phased in from 2015 and fully implemented by 2019. What this revision entails for the CRD IV – CRR is still a matter of discussion.</p> <p>The <u>flexibility package</u> -national regulators' competence to impose additional capital requirements under certain circumstances- is a sensitive and</p>	<p>Trilogue discussions between the Parliament and the Council are ongoing. According to EP sources, the Presidency change has opened certain previously agreed items to re-negotiation.</p> <p>Next steps</p> <p>Given the complexity of the file and the number of outstanding issues to be finalized, negotiations are</p>	<p>CVA exemption proposal</p>	<p>Monitor trilogue and input as possible</p>

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	<p>still unsettled issue. The EP has been pushing for some EU-level check to ensure consistent application of the rules while some Member States favored higher national discretion.</p> <p><u>Remuneration</u> remains a thorny point as well. Commission sources acknowledged that calibration is of utmost importance to ensure that legislation is not chasing business out of Europe.</p> <p>The CRD IV - CRR file is linked to the Single Supervisory Mechanism (SSM, one of the three key elements of the so-called <u>Banking Union</u>). Both CRD IV - CRR and the Banking Union have been listed as top priorities by the Irish Presidency. Some Member States - among which UK and Sweden- have tried to argue that CRD IV - CRR and SSM were two elements of a 'political package' while others previously declared that they would have to adopt CRD IV before moving on to SSM.</p> <p>In addition, the possible legislative proposal following up on the "Liikanen report" will potentially address some of the issues covered by CRD IV – CRR.</p>	<p>likely to protract for a while. Both EP and Irish Presidency sources have confirmed that no formal <u>implementation date</u> will be announced before trilogues are finalized. However, the earliest possible implementation date seems January 2014, after jurist-linguists have done their work (2-3 months) and the Commission and EBA developed level-2 texts (6 months).</p> <p><u>International aspects</u></p> <p>On November 2014 the US announced a delay in Basel III implementation declaring that none of the proposed rules on capital requirements would have become effective on 1 January 2013. Obviously, the</p>		

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		<p>US delay in implementing Basel III provides a strong argument to those who are against CRD IV - CRR implementation in Europe in both politics and financial institutions.</p>		
<p>Credit Rating Agencies (CRA) Regulation</p>	<p>Main provisions concerning the rating of sovereign debt:</p> <ul style="list-style-type: none"> ● CRAs will be required to set up a calendar (at the end of the previous year) for sovereign debt rating which will be limited to three ratings per year for unsolicited sovereign ratings. these ratings could be published only after markets in the EU have closed and at least one hour before they reopen. ● sovereign ratings would have to be reviewed at least every six months <p>Rotation requirements (Article 6b):</p> <ul style="list-style-type: none"> ● Rotation for CRAs is limited to new re-securitisations: if a CRA is issuing credit ratings on re-securitisations, it shall issue no credit ratings on new re-securitisations with underlying assets from the same originator 	<ul style="list-style-type: none"> ● Parliament approved the Regulation text on 16 January 2013 (remains to be published in the Official Journal; entry into force on the twentieth day following its publication except some provisions) ● ESMA consultation on guidelines and recommendations for the scope of the CRA Regulation ongoing (deadline 20 February) ● ESMA should establish a European Rating Platform where EU registered and authorised CRAs will have to communicate 		

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	<p>for a period equal to the duration of the expired contract though not exceeding four years.</p> <ul style="list-style-type: none"> • But mandatory rotation will not apply to small CRAs, or to issuers employing at least four CRAs each rating more than 10% of the total number of outstanding rated structured finance instruments 	<p>to ESMA all credit ratings they issue. ESMA will make them available to the public on a website.</p>		
<p>Markets in Financial Instruments Directive (MiFID II) and Regulation (MiFIR);</p>	<p>Key highlights of the latest Council MiFID II texts of 31 January 2013</p> <ul style="list-style-type: none"> • The entering into force of some provisions including Article 25 on the clearing obligation for derivatives traded on regulated markets and timing of acceptance for clearing has been increased to 2 years and 8 months. STP has been introduced in that Article at it seems that there is a wide agreement on this. We understand that amongst others Citadel is behind this who has been arguing that the EU should align with the US requirements on STP for exchange/SEF- traded 	<p><u>Next steps</u> Council working group meetings are scheduled on 5, 14 and 22 February. COREPER on 27-28 and possibly ECOFIN on 5 March. This is a very ambitious timeline and it is more likely that the General Approach on MiFID would be reached at the May ECOFIN meeting. After the Council's General Approach is adopted, trilogue negotiations with the Commission and European Parliament will start. The European Parliament has scheduled the plenary vote on MiFID II in October.</p>		

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	<p>derivatives. Some exchanges like ICE are not happy by this as they want to continue to use their own standards.</p> <ul style="list-style-type: none"> • The transposition period of MiFID in national legislative systems remains unchanged to 2 years. • On Article 26 on the trading obligation, ESMA/Commission would decide through Regulatory Technical Standards which of the class of derivatives that has been declared subject to the clearing obligation under EMIR would be subject to the trading obligation and the date from which the trading obligation will take effect. • Furthermore, ESMA through Regulatory Technical Standards would set out the conditions under which derivative transactions that are large in scale would be excluded from the trading obligation. 			

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	<ul style="list-style-type: none"> <li data-bbox="551 272 965 512">• A new definition of matched principal transaction has been inserted “to allow this form of trading on OTFS in order to facilitate trading in less liquid non-equity financial instruments” <li data-bbox="551 560 981 1198">• The provision of the single consolidated tape provider to be appointed by the Commission through a public procurement process has been moved from MiFID to the MiFIR text. The single CTP will apply 4 years and 4 months after the MiFIR Regulation enters into force. The information shall be made available free of charge 15 minutes after the CTP has published it. The single CTP would not prevent other entities from providing market data services and the Directive makes explicit that these will be supervised. <li data-bbox="551 1246 981 1342">• The Access provisions (Articles 28-30) have not been subject to any changes. 			

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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>The so called 'Banking Union' includes:</p> <ol style="list-style-type: none"> 1) Single Supervisory Mechanism; 2) Bank recovery Resolution regime; 3) Deposit Guarantee Scheme. <p>1) <u>Single Supervisory Mechanism</u></p> <p>On 12th September 2012 the Commission issued a proposal for a Single Supervisory Mechanism for credit institutions on which negotiations shall be finalized shortly.</p> <p>2&3) <u>Bank recovery Resolution regime & Deposit Guarantee Scheme</u></p> <p>Work on bank recovery and resolution and on deposit and guarantee scheme have already been undertaken prior to the proposal for a Single Supervisory Mechanism. In June-July 2012 the Commission issued two proposals concerning, respectively, bank recovery and resolution and deposit and guarantee schemes.</p> <p>The subsequent work on the 'Banking Union' package is building upon these previous developments with the aim of moving towards increasingly harmonized and centralized recovery and resolution tools and deposit and guarantee schemes.</p>	<p>1) <u>Single Supervisory Mechanism</u></p> <p>Irish Presidency sources confirmed to Avisa that the <i>trilogues</i> negotiations on the two proposed Regulations on the Single Supervisory Mechanism (SSM) are proceeding smoothly and that an agreement should be reached shortly.</p> <p>2&3) <u>Bank recovery Resolution & Deposit Guarantee Scheme</u></p> <p>Negotiations on both files are ongoing. Whilst being top priorities in the EU agenda, the two initiatives would only come after the Single Supervisory Mechanism is in place.</p>		<p>Avisa will ensure monitoring of 'Banking Union' developments.</p>

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LIBOR case and Market Abuse Directive and Regulation (MAD - MAR)	<ul style="list-style-type: none"> Following recent cases of benchmarks manipulation, the Commission proposed a revision of the Market Abuse legislation (MAD-MAR) in order to include benchmarks into the scope of MAD and MAR. The Council reached a General Approach on the topic in December 2012. ESMA (the European Security and Markets Authority) and EBA (the European Banking Authority) have recently published a public consultation on their principles for benchmark setting processes. Commissioner Barnier has stated that the Commission will propose further legislation on benchmarks in the second quarter of 2013 to further clarify the framework under which benchmarks should operate (expected to include the power to impose mandatory submissions for systemic benchmarks such as Euribor) 	<ul style="list-style-type: none"> ESMA-EBA public consultation opened on 11 January 2013 and will close on 15 February 2013. The trilogies on MAD-MAR have started at the end of January. Q2 2013: Commission legislative proposal on benchmarks 	<p>The main issue of concern to treasurers and corporates is the possible modification of LIBOR/EURIBOR setting process which might affect existing (often long-term) contracts negotiated under previous rules.</p>	<p>Avisa will monitor developments in benchmark setting process.</p>
Solvency II	<p>A revision of Solvency II, the Solvency II/Omnibus II package, has been</p>	<p>On 28 January 2013 EIOPA announced that the result of</p>	<p>Higher counter-cyclical capital buffers imposed by Solvency II-</p>	<p>Avisa will monitor developments in</p>

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	<p>proposed to update the legislation with legislative and institutional developments.</p> <p>Since April 2012 negotiation between the European Parliament (EP) and the Council are deadlocked over the issue of long-term insurance contracts.</p> <p>Life insurance contract do not rely on the prices of options or guarantees. Solvency II-Omnibus II proposes a change towards a market approach, which takes into account the prices of options and guarantees. A study by EIOPA (the European Insurance and Occupational Pensions Authority) has been commissioned in order to unlock the negotiations. The initial expected date for release of the results was March 2013.</p>	<p>the study will be released in the second half of June 2013. This seems push back the implementation date (officially set to 1 January 2014) to 2015 or 2016.</p> <p>Next steps:</p> <p>Second half of June 2013 - EIOPA will release the result of its study on Long-Term Guarantee Assessment (LTGA).</p>	<p>Omnibus II to insurers reduces funding available and undermines insurers' ability of investing long-term. This, in turn, makes it more difficult to finance long-term projects and exacerbate financing problems of business, still struggling with the aftermath of the financial crisis. There is a clear link between Solvency II and the upcoming Green Paper on Long-Term Finance.</p>	<p>Solvency II/Omnibus II negotiation and potential spill-over between the two files.</p>
Long-term finance	<p>The Commission is expected to release a Green Paper on Long Term Finance shortly. Following the publication of the Green Paper, interested stakeholders will be invited to take part in the debate.</p>	<p>Next steps:</p> <p>- First half of 2013: The European Commission is expected to issues a <i>Green Paper on Long Term Financing</i>.</p>	<p>Following the publication of the Green Paper, the EACT Group will be able to contribute to the debate by responding to the public consultation.</p>	<p>Avisa will be able to meet relevant Officials in DG Internal Market and Services (DG MARKT) as well as at Commissioner Barnier's Cabinet level to bring the EACT's message to regulators.</p>
Liikanen report	<p>The Liikanen report issued in October</p>	<p>A legislative proposal by the</p>		

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	<p>2012 proposes to:</p> <ul style="list-style-type: none"> • Ring-fence investment banking from retail banking into a separate entity if a banks' trading activities exceed a certain threshold (this entity would still be part of the same banking group but would have to hold its own capital) • Banks should maintain recovery and resolution plans; if authorities consider some of the a bank's trading activities too risky, the ring-fence could be widened • Use of designated bail-in instruments in order to ensure that a bank's private creditors share some of the losses in case of a bank's failure • European Commission to assess whether the proposed amendments to capital requirements would be sufficient to keep both investment and retail banks safe and sound; according to the report banks' techniques for assessing how much capital they needed to hold against their trading positions were 	<p>Commission planned in September 2013</p>		

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	<p>outdated</p> <ul style="list-style-type: none"> Strengthen the governance and control of banks in order to rein in excessive risk-taking <p>Both Germany and France – mirroring the Volcker rule in the US - have ongoing initiatives at national level to separate proprietary trading activities; trades executed on behalf of clients would remain within the retail bank “arm”.</p>			
<p>Anti-Money Laundering Directive and Regulation on information accompanying transfer of funds</p>	<p>Following the publication of the revised set of international standards by the Financial Action Task Force (FATF) – the international body setting recommendations for combating money laundering – in February 2012, the Commission has issued proposal to review these two pieces of legislations. Among the most important changes are:</p> <ul style="list-style-type: none"> The new Directive clarifies and reinforces the rules on customer due diligence and introduces new provisions to deal with politically exposed persons Inclusion within its scope of all persons dealing in goods or providing services for cash payment of €7,500 or more Designation of "Tax Crimes" as a new 	<p>The two review proposal were issued by the Commission on 5 February 2013 and they now need to be adopted by the Parliament and the Council through the ordinary legislative procedure. The Commission is planning to organize a public hearing on 15 March</p>	<p>To be analysed</p>	

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	<p>“predicate offence” (i.e. so that money laundering includes cases where the proceeds of tax evasion were involved).</p> <ul style="list-style-type: none"> • Introduction of a new requirement for all cross-border wire transfers to include beneficiary information and the expansion of the scope to certain e-money and mobile telephony payment products. • Clarification with respect to EU data protection rules, in particular regarding the ability to transfer information to different parts of an international group (including operating in third countries) for anti-money laundering purposes. 			
<p>Payment Services Directive</p>	<p>Currently under review by the Commission. Issues which are being looked at by the Commission include:</p> <ul style="list-style-type: none"> • Possible extension of the PSD to one-leg transactions (i.e. where at least the payer’s PSP is acting from within the EEA / extension to all currencies • Review of the exceptions (negative scope) • Possible merger of the categories of payment institutions and electronic money institutions • Review of the payment services covered by the Directive 	<p>Commission expected to issue a proposal in Q1 2013</p>	<p>To be analysed</p>	

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	<ul style="list-style-type: none"> • Transparency and information requirements • Surcharging • Refund right • Liability for unauthorized payment transactions • Liability for non-execution 			
SEPA Governance	EC and ECB to issue a proposal for the restructuring of SEPA governance: key questions evolve around the status of the SEPA Council and the organization of a multi-stakeholder structure	Awaiting for the EC/ECB to issue a proposal; next meeting of the SEPA Council scheduled for 13 March but could be postponed if the proposal is not published by that time	Ensure a balanced end-user participation	Follow-up on developments