



## EACT

### Monthly Report on Regulatory Issues

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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.

Despite all efforts, some information mentioned in this report could contain errors or be subject to interpretation. The EACT or National Treasury Associations should not be held liable.

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



Regulatory initiative	Content	Status	Issues from treasury perspective / EACT position
<b>European Market Infrastructure Regulation (EMIR)</b>	<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>Next deadlines of obligations:</p> <ul style="list-style-type: none"> <li>• <b>Start date for reporting for interest rate and credit derivatives has been postponed to January 2014 as according to ESMA, the registration of the first Trade Repositories is not likely to take place before end of September</b></li> <li>• 1 January 2014 : Reporting to trade repositories for other asset classes starts</li> <li>• 15 September 2013 : Portfolio reconciliation, Portfolio compression and dispute</li> </ul>	<ul style="list-style-type: none"> <li>• <b>ESMA is currently <a href="#">consulting</a> on the clearing obligation with a deadline of 12 September</b></li> <li>• <b>An agreement on the cross-border application of EMIR – Dodd Frank has been reached between the EU and US officials. This agreement would mean that both sides would consider each other’s rules as essentially identical and which would basically allow groups falling under both rules to decide whether to apply EMIR or Dodd Frank rules (see <a href="#">EU press release</a> and the <a href="#">CFTC press release</a>).</b></li> <li>• ESMA published updated <a href="#">Q&amp;A on EMIR implementation</a></li> <li>• ESMA is in the process of reviewing applications of Trade Repositories and national authorities are reviewing CCPs</li> <li>• ESMA is expected to issue the RTSs on clearing obligation by year-end; this will be preceded by a public consultation</li> </ul>	

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	<p>resolution</p> <ul style="list-style-type: none"> <li>• Q4 2013: First CCPs authorised: Clearing member obligations, frontloading periods start</li> <li>• Summer 2014: First clearing obligations start (3 year phase-in for non-financial counterparties exceeding a clearing threshold)</li> </ul>	<ul style="list-style-type: none"> <li>• The RTSs for margin requirements for non-cleared derivatives are still missing – they were due in September 2012 but it was decided to postpone their drafting due to the work which is being carried out by IOSCO. EBA will draft the RTS based on IOSCO's work which is meant to be concluded by September, therefore EBA's work on the RTSs will take at least until the end of the year</li> <li>• The EU Official Journal published on 23 February <a href="#">the six Regulatory Technical Standards (RTS)</a> arising from EMIR.</li> </ul>	
<p><b>Shadow banking / Money Market Funds (MMFs)</b></p>	<p>A leaked draft of the forthcoming Regulation on indicates that the text will impose e.g.:</p> <ul style="list-style-type: none"> <li>• A requirement on CNAV MMFs to have a cash "buffer" equivalent to 3 percent of their assets</li> <li>• binding rules on the types of assets MMFs can invest in</li> <li>• limits on how much business MMFs can do with a single counterparty, and</li> </ul>	<p><b>The proposal for MMF Regulation is expected to be adopted on 24 July.</b></p> <p>There would be no further consultation on this legislative proposal (as the Green Paper is considered sufficient); the text is now in the last phase of the impact assessment and the EC's internal procedure before adoption by the College of Commissioners.</p>	<ul style="list-style-type: none"> <li>• <b>Question of future availability of CNAV funds; also uncertainty on whether VNAV funds can be accounted for as cash or cash equivalent</b></li> </ul>

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	<p>restrictions on short selling</p> <p>The officials have stated (to EACT / Avisia) that they view CNAV MMFs as posing unacceptable systemic risk therefore the legislation would aim at directing the market towards the use of VNAV MMFs.</p> <p>In the US the Securities and Exchange Commission (SEC) approved on 5 June a proposal on MMFs with two alternatives:</p> <ol style="list-style-type: none"> <li>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.</li> <li>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.</li> </ol> <p>The SEC, after a comment period, could also</p>	<p>The SEC proposal will now be subject to a 90-day public consultation.</p>	<ul style="list-style-type: none"> <li>• Primary concerns are over the impact of regulatory moves on the competitiveness and availability of (CNAV) MMFs</li> <li>• Need also to monitor US initiatives and liaise with counterparts</li> </ul>

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	adopt a combination of the two.		
<b>Financial Transaction Tax (FTT)</b>	<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 <a href="#">proposal for a Directive</a> on 14 February 2013 (see also the <a href="#">press release</a> and the <a href="#">Questions &amp; Answers</a>).</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"> <li>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</li> </ul>	<p><b>The negotiations within the Council are ongoing. A meeting between the 11 participating Member States took place on 24 June and between all the 28 Member States on 2 July. Currently the participating MSs are still going through the text of the Commission proposal article by article. Once this reading is finished the Presidency will hold talks individually with MSs and will then propose a compromise text. Next meeting is tentatively scheduled for 26 September but remains to be confirmed. Currently there is no time pressure to achieve an outcome of the discussions.</b></p> <p>At this stage it seems likely that MSs will move away from the Commission proposal to a watered-down FTT. Furthermore, the political attention is moving away from FTT to other fiscal topics.</p> <p><b>The European Parliament (which only has a consultative role in this process and not a co-</b></p>	See position paper

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	<p>effective rate higher as the transactions would be taxed separately from different market participants at different stages.</p> <ul style="list-style-type: none"> <li>• 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.</li> <li>• 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.</li> <li>• There will be an exemption for primary market transactions (i.e. subscription/issuance).</li> </ul> <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</p>	<p><b>legislator role) adopted its report on the proposed Directive on 3 July. The report proposes several amendments to the Commission proposal, for example:</b></p> <ul style="list-style-type: none"> <li>• <b>the inclusion of spot currency transactions and speculative forwards transactions</b></li> <li>• <b>the higher taxation of OTC transactions (but not including OTC derivative transactions used by corporates to hedge risk)</b></li> <li>• <b>exclusion of non-financial institutions from the scope when they hedge risks</b></li> <li>• <b>the inclusion of a transfer of legal title principle whereby the ownership of an instrument would not be legally enforceable if the FTT has not been paid on a transaction</b></li> <li>• <b>(Partial) exclusion of market makers, intragroup transactions</b></li> <li>• <b>Lower initial rates for repos and pension funds</b></li> </ul>	



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	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.		



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<p><b>Capital Requirements Directive (CRD) IV – Capital Requirements Regulation (CRR)</b></p>	<p>Implementation of Basel III requirements in European legislation (see Commission's <a href="#">CRD IV/CRR - Frequently Asked Questions</a>).</p>	<p><b>On 27 June both texts were published in the Official Journal (see <a href="#">CRR</a> and <a href="#">CRD IV</a>)</b></p> <p>The European Banking Authority (EBA) is continuing the drafting of the regulatory technical standards (RTS) underpinning CRD IV.</p>	<p>CVA exemption: Article 372(3a) excludes transactions with non-financial counterparties as defined in EMIR or with non-financial counterparties established in a third country, where those transactions do not exceed the clearing threshold specified in EMIR. The Article further says that EBA shall conduct a review by 1 January 2015 and every two years thereafter, in the light of international regulatory developments and including on potential methodologies on the calibration and thresholds for application of CVA charges to third country non financial counterparties. EBA in co-</p>

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			operation with ESMA shall, within 6 months of the date of the review, develop draft regulatory technical standards to specify the procedures for excluding transactions with non-financial counterparties established outside the Union in a third country from the own funds requirement for CVA risk.
<b>Credit Rating Agencies (CRA) Regulation</b>	<p>Main provisions concerning the rating of sovereign debt:</p> <ul style="list-style-type: none"> <li>● 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.</li> <li>● sovereign ratings would have to be reviewed at least every six months</li> </ul>	CRA III was published in the <a href="#">Official Journal</a> on 31 May 2013	

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	<p>Rotation requirements (Article 6b):</p> <ul style="list-style-type: none"> <li>• 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 for a period equal to the duration of the expired contract though not exceeding four years.</li> <li>• 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</li> </ul>		
<p><b>Markets in Financial Instruments Directive (MiFID II) and Regulation (MiFIR);</b></p>	<p>Commission proposed a review of MiFID / MiFIR on 20 October 2011 European Parliament ECON Committee has adopted their report in October 2012 (see report <a href="#">here</a>).</p>	<p><b>The Council General Approach on MiFID II was adopted on Friday 21 June. The trilogue negotiations between the Commission, the Council and the Parliament have therefore started.</b></p>	

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<p><b>Banking Union:</b></p> <ul style="list-style-type: none"> <li>• <b>Single Supervisory Mechanism (SSM)</b></li> <li>• <b>Bank Recovery and Resolution</b></li> <li>• <b>Deposit Guarantee Schemes (DGS)</b></li> </ul>	<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 a unified oversight of 100-200 biggest euro zone banks. National supervisors will be in charge of the rest but under ECB's oversight.</p> <p>2) Bank Recovery &amp; Resolution (BRR) Framework which contains a set of measures to deal with failing banks</p> <p>3) Deposit Guarantee Scheme</p>	<p>1) SSM: the trilogue negotiations reached an <a href="#">agreement</a> was reached on 19 March. The finalisation of the legislative procedure is expected in the course of the autumn with the view that the ECB will start its supervisory function mid-2014.</p> <p>2) BRR: The EP ECON Committee voted on its position on the BRR Directive in May (report available <a href="#">here</a>). <b>The Council agreed on a <a href="#">General Approach</a> on 27 June, which will allow for the trilogue negotiations to begin. The parties aim to reach an agreement by the year-end. On 10 July the Commission adopted a proposal for a Single Resolution Mechanism to centralise the management of a failing bank and to set up a</b></p>	

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		<p><b>Single Resolution Fund (funded by banks and replacing national funds) in order to deal with failing banks. Germany is opposing to this proposal as according to the German officials giving such powers to the Commission would require a change of the EU Treaties.</b></p> <p>3) Deposit Guarantee Scheme (DGS)</p> <p><b>The Parliament has adopted its negotiating position but the file is stuck at the Council's side.</b></p>	
<p><b>Interest rate benchmarks</b></p>	<p>The Commission is expected to publish in July a proposal for regulating benchmark-setting, which would end self-regulation as benchmark administrators would be subject to authorisation. According to the draft proposal the supervision of “critical Union benchmarks”, such as Libor and Euribor, would be handed over to ESMA. The proposal would also make it possible for authorities to oblige parties to contribute data for important benchmarks. Furthermore, the proposal includes wide liability for contributors and administrators of</p>	<p><b>Legislative proposal due to be published by the Commission in July.</b></p>	<p><b>Main issues for corporates are:</b></p> <ul style="list-style-type: none"> <li>• <b>Implications of liability burden on contributors in terms of its impact on viability of overall benchmarks</b></li> <li>• <b>Ensuring contract continuity</b></li> </ul>

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	<p>benchmark data as investors would be able to seek redress in case of abuse of a benchmark. Benchmarks would be based on transactional data where possible and estimations would be accepted only if such data is unavailable (for example on illiquid markets).</p>		<ul style="list-style-type: none"> <li>• <b>Volatility and possible drying up of the unsecured interbank market</b></li> </ul>
<b>Solvency II</b>	<p>A revision of <a href="#">Solvency II</a>, the Solvency II/<a href="#">Omnibus II</a> package, has been proposed to update the legislation with legislative and institutional developments. Since April 2012 negotiation between the European Parliament (EP) and the Council are deadlocked over the issue of long-term insurance contracts. Life insurance contracts 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) was commissioned in order to unlock the negotiations.</p>	<p><b>On 14 June EIOPA released the <a href="#">result</a> of its study on Long-Term Guarantee Assessment (LTGA) and the trilogue discussions have resumed. Implementation of Solvency II will be at the earliest in 2016.</b></p>	<p>Higher counter-cyclical capital buffers imposed by Solvency II-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 financial crisis.</p>
<b>Long-term financing</b>	<p>Commission has published on 25 March a Green Paper consultation entitled "Long-term financing of the European economy"- please</p>		

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	<p>see the <a href="#">press release</a> and the <a href="#">Green Paper</a>. The Green Paper focuses on how to foster long-term financing and to improve and diversify the system of financial intermediation in Europe.</p> <p><b>The Commission is expected to come up with (a) legislative proposal(s) following up the consultation in the autumn.</b></p> <p><b>The Commission has already adopted a proposal for Regulation on European Long Term Investment Funds (ELTIFs) – see <a href="#">text of the proposal</a> and the <a href="#">FAQs</a>. This framework builds on the model of UCITS but deals with funds which would invest in unlisted securities with long-term views. One of the investors targeted are corporate pension funds.</b></p>		
<p><b>Liikanen report</b></p>	<p>The Liikanen report issued in October 2012 proposes to:</p> <ul style="list-style-type: none"> <li>• 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)</li> </ul>	<p><b>The Commission published a public consultation on the reform of the structure of the EU banking sector (see <a href="#">consultation document here</a>). The Commission is considering different types of possibilities, which vary from separating only proprietary trading to separating all investment and wholesale banking activities from the</b></p>	

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	<ul style="list-style-type: none"> <li>• 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</li> <li>• 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</li> <li>• 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 outdated</li> <li>• Strengthen the governance and control of banks in order to rein in excessive risk-taking</li> </ul> <p>Both Germany and France – mirroring the Volcker rule in the US - have ongoing initiatives</p>	<p><b>deposit-taking entity.</b></p> <p>This consultation should be followed by a legislative proposal at the end of summer (most likely in September) As at least 6 months are needed to complete the legislative procedure and the last EP's plenary of this legislature will be in April 2014, all legislative acts started after October 2013 will not be concluded.</p> <p><b>The European Parliament has adopted its <a href="#">report</a> on this topic.</b></p>	



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	at national level to separate proprietary trading activities; trades executed on behalf of clients would remain within the retail bank “arm”.		
<b>Revised Accounting and Transparency Directives</b>	<p>The Commission, the Council and the Parliament have agreed on a compromise for a revised text of the Transparency and Accounting Directives. The main changes are:</p> <ul style="list-style-type: none"> <li>• The requirement to publish quarterly financial reports in abolished</li> <li>• holdings of certain types of financial instruments that can be used to acquire economic interests in listed companies without acquiring shares are brought in scope of the transparency requirements</li> <li>• disclosure requirement of payments to governments on a country and project basis by listed and large non-listed companies with activities in the extractive industry (oil, gas and mining) and loggers of primary forests</li> </ul>	<p><a href="#">The Accounting Directive</a> enters into force on 20 July 2013. EU Member States have to incorporate the rules of the Directive into their national law by 20 July 2015.</p> <p><a href="#">The Transparency Directive</a> has been adopted by the EP but not yet published in the Official Journal. Member States have two years from the entry into force to transpose the Directive into their national legislation.</p>	
<b>Anti-Money Laundering Directive and Regulation on</b>	Following the publication of the revised set of international standards by the Financial Action Task Force (FATF) – the international body	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	

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<b>information accompanying transfer of funds</b>	<p>setting recommendations for combating money laundering – in February 2012, the Commission has issued proposal to review these two pieces of legislations.</p> <p>Among the most important changes are:</p> <ul style="list-style-type: none"> <li>• The new Directive clarifies and reinforces the rules on customer due diligence and introduces new provisions to deal with politically exposed persons</li> <li>• Inclusion within its scope of all persons dealing in goods or providing services for cash payment of €7,500 or more</li> <li>• Designation of "Tax Crimes" as a new "predicate offence" (i.e. so that money laundering includes cases where the proceeds of tax evasion were involved).</li> <li>• 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.</li> <li>• 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</li> </ul>	<p>Council through the ordinary legislative procedure.</p>	

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	third countries) for anti-money laundering purposes.		
<b>Payment Services Directive</b>	<p>Currently under review by the Commission. The main changes in the PSD II will be the following:</p> <ul style="list-style-type: none"> <li>• Inclusion of new market players in the scope (e.g. the so-called overlay payment service providers for internet payments)</li> <li>• Inclusion of certain provisions regarding SEPA governance</li> <li>• Possible 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</li> </ul>	<b>Proposal to be adopted by the Commission on 17 or 24 July.</b>	<p><b>Certain corporates might be impacted by the following:</b></p> <ul style="list-style-type: none"> <li>• <b>Surcharging for payment cards will be prohibited</b></li> <li>• <b>The rules for refund right for direct debits will be adapted</b></li> </ul>
<b>Regulation on card interchange fees</b>	<b>The Commission will issue 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</b>	<b>Proposal to be adopted by the Commission on 17 or 24 July.</b>	<b>Positive development is that this should (at least in theory) reduce the costs passed on by payment service providers to merchants</b>



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SEPA Governance	<p>The Commission will publish a review of the SEPA governance structure in July (by adding provisions to the PSD and by publishing a separate communication on the governance review).</p> <p>The proposal foresees the establishment of the European Retail Payments Board (abolishing the SEPA Council) which would include all relevant stakeholders and the public authorities. However, the ERPB would be consensus-based and would not have any formal powers to impose decisions. The ERPB could establish multi-stakeholder groups for more technical work.</p>	Proposal to be adopted by the Commission on 17 or 24 July.	Ensure EACT's representation in the new body.



**Legislative initiative**

**Timeline of next steps and actions**



	immediate	2013	2014	2015 and beyond
<b>EMIR</b>	Consultation on clearing obligation	Level 2	Reporting and clearing obligations to start	
<b>MMF</b>	Commission to publish a proposal for Regulation on 24 July	European Parliament and Council to formulate their positions	European Parliament and Council to formulate their positions - to be followed by trilogue negotiations	
<b>FTT</b>		Negotiations	Negotiations	Probable implementation (if any) likely not to take place before 2016
<b>CRD IV</b>	Level 2	Level 2	Implementation starts	
<b>MiFID / MiFIR</b>		Trilogues	Trilogues – earliest possible adoption Q1 2014 Entry into force mid-2014	Entry into force not probable before 2016
<b>Banking Union – Single Supervisory Mechanism</b>				
<b>Banking Union – Bank Recovery and Resolution Benchmarks</b>		Trilogues	Trilogues	Earliest possible entry into force January 2015
<b>Solvency II</b>		Commission proposal to be published in autumn Trilogues	Trilogues	Entry into force at the earliest in 2016



**Legislative initiative**

**Timeline of next steps and actions**



	immediate	2013	2014	2015 and beyond
<b>Liikanen</b>	Commission public consultation closed on 11 July	Legislative proposal expected in autumn	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
<b>Anti Money Laundering Directive</b>		Trilogues	Trilogues	Entry into force two year after adoption
<b>PSD II / SEPA</b>	Commission proposal to be adopted by 24 July	Trilogues	Trilogues	Entry into force two year after adoption
<b>Card interchange fee Regulation</b>	Commission proposal to be adopted by 24 July	Trilogues	Trilogues	Entry into force not known