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.

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Regulatory initiative	Content	Status	Issues from treasury perspective / EACT position
European Market Infrastructure Regulation (EMIR)	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. **Next deadlines of obligations:** • **Start date for reporting for interest rate and credit derivatives has been postponed to November 2013 as according to ESMA, the registration of the first Trade Repositories is not likely to take place before August 2013** • 1 January 2014 : Reporting to trade repositories for other asset classes starts	• The EU Official Journal published on 23 February the six Regulatory Technical Standards (RTS) arising from EMIR. • **ESMA is in the process of reviewing applications of Trade Repositories and national authorities are reviewing CCPs** • **ESMA is expected to issue the RTSs on clearing obligation by year-end; this will be preceded by a public consultation** • **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** • **Concerning EMIR's cross-border application, ESMA is currently preparing analysis on third-country legal regimes; if**	

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	• 15 September 2013 : Portfolio reconciliation, Portfolio compression and dispute resolution • Q4 2013: First CCPs authorised: Clearing member obligations, frontloading periods start • Summer 2014: First clearing obligations start (3 year phase-in for non-financial counterparties exceeding a clearing threshold)	**they are considered to be sufficiently aligned with EMIR, the Commission will declare them equivalent via an Implementing Act** • **ESMA published updated [Q&A on EMIR implementation]**	
Shadow banking / Money Market Funds (MMFs)	A leaked draft of the forthcoming Regulation on indicates that the text will impose e.g.: • 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	**The Commission was expected to publish a communication on shadow banking on 8 May, but this has been postponed.** 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. **The SEC proposal will now be subject to a 90-day public consultation.**	• Primary concerns are over the impact of regulatory moves on the competitiveness and availability of (CNAV) MMFs • Need also to monitor US initiatives and liaise with counterparts

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	on short selling The officials have stated (to EACT / Avisa) 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. **In the US the Securities and Exchange Commission (SEC) approved on 5 June a proposal on MMFs with two alternatives:** **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. Any fund that would not buy primarily government debt would have to charge redemption fees or pose**		

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	limitations to redemptions in times of extreme withdrawals. **The SEC, after a comment period, could also adopt a combination of the two.**		
Financial Transaction Tax (FTT)	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	**The negotiations are ongoing. 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.**	See position paper

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	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 nett ing 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		

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	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.		

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Capital Requirements Directive (CRD) IV – Capital Requirements Regulation (CRR)	On 16 April the European Parliament adopted the CRD IV package. The texts (dated 26 March 2013) of the CRD IV Directive and Capital Requirements Regulation were published together with a CRD IV/CRR - Frequently Asked Questions.	The adoption of the package will now be followed by a legal/linguist expert review, prior to final adoption by the EcoFIN Council and then publication in the Official Journal. The text must be published in the Official Journal before the end of June for the new regime to go live on 1 January 2014 (otherwise, the start date will be 1 July 2014). The European Banking Authority (EBA) is continuing the drafting of the regulatory technical standards (RTS) underpinning CRD IV.	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-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

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			non-financial counterparties established outside the Union in a third country from the own funds requirement for CVA risk.
Credit Rating Agencies (CRA) Regulation	Main provisions concerning the rating of sovereign debt: • 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 Rotation requirements (Article 6b): • 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-	**CRA III was published in the Official Journal on 31 May 2013**	

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	securitisations with underlying assets from the same originator for a period equal to the duration of the expired contract though not exceeding four years. • 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		
Markets in Financial Instruments Directive (MiFID II) and Regulation (MiFIR);	Commission proposed a review of MiFID / MiFIR on 20 October 2011 European Parliament ECON Committee has adopted their report in October 2012 (see report here). The Council is still working on their negotiation position. **The latest Presidency compromise proposal on the main issues is as follows:** **<u>Clearing Access (MiFIR Articles 28-29 and 45):</u>**	**At the last Council Attachés meeting on MiFID II-MiFIR held on 6 June, Member States were not able to agree on a Council General Approach. Despite the latter, the Irish Presidency considers that its compromise solution, together with the recent modifications made, is the only viable option to address the divergent concerns of delegations. Therefore, the compromise texts will go to COREPER (EU Ambassadors) on Wednesday 12 June. If there is no qualified**	No common EACT position

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	The topic of clearing access has been a very polarised issue and all delegations have had to make concessions. The current compromise proposal includes sufficient safeguards in order to address the concerns of delegations regarding any risks involved, while still providing for non-discriminatory access to trading venues and CCPs for all financial instruments. In addition, the text provides for a report following a risk assessment on any need to temporarily exclude exchange traded derivatives (for a maximum period of three years) to protect the stability and orderly functioning of financial markets. <u>Transparency (in particular MiFIR Articles 4-4a):</u> The proposed double volume cap limiting the use of waivers sends a clear message that EU is leading the way in severely limiting dark pool trading. An overall EU cap and a cap per trading venue should lead to	majority, the file will go to ECOFIN for further discussion at their meeting on 21 June. The subsequent ECOFIN meeting will take place on 9 July. After the General Approach is reached trilogue negotiations can start for an additional period of 6 months approx. The earliest MiFID II-MiFIR would be adopted and published in the OJ is in Q1 2014 and thus, their entering into force is not expected until at least early 2016.	

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	enhanced transparency and should ensure that dark trading does not become excessive which could result in damaging the price formation process. This proposal has struck a balance between the diverging views of delegations as it enables some continued, albeit very limited use, of the reference price and negotiated trade waivers. In this text the Presidency proposes a reduction of the overall EU cap to 8% and the cap per trading venue of 4% to further enhance transparency. These percentages will place significant limits on the use of the waivers. **<u>Market structure (MiFID Article 20):</u>** **The Presidency has extended the OTF (organised trading facility) category to include equities as it appeared that this was the view of the majority of delegations. In addition, there has been much debate on the use of proprietary capital and also matched principal trading in the OTF, but the**		

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	Presidency believes that the compromise text has reached a balance between the diverging views. However, in response to calls from Member States, the IE Presidency has amended the text to allow for the exceptional use of proprietary capital trading by the operator of an OTF for the facilitation of client orders in illiquid sovereign debt only.		

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Banking Union: • **Single Supervisory Mechanism (SSM)** • **Bank Recovery and Resolution** • **Deposit Guarantee Schemes (DGS)**	The so called 'Banking Union' includes: 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. 2) Bank Recovery & Resolution (BRR) Framework which contains a set of measures to deal with failing banks 3) Deposit Guarantee Scheme	1) SSM: the trilogue negotiations reached an agreement 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.** 2) BRR: **The EP ECON Committee voted on its position on the BRR Directive in May (report available here). The Council is working intensively to reach a General Approach so that trilogies can start as soon as possible.** **A Commission proposal on the creation of a common resolution fund is expected to be published in June/July 2013.**	**Concerning BRR, the ECON Committee report recommends making uncleared derivatives subordinate to cleared derivatives for bail-in unless they benefit from the EMIR clearing exemption / CRD IV CVA charge exemption. The issue of bail-in of derivatives needs to be monitored during trilogue.**

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		3) Deposit Guarantee Scheme (DGS) The debate on the deposit guarantee scheme is also controversial. The main outstanding issue is the harmonization of funding levels (and thus the size of the fund) currently varied across Member States.	
Interest rate benchmarks	**The Commission is expected to publish in July a proposal for regulating benchmark-setting, which would end self-regulation as all benchmarks would be subject to authorisation by the. 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 benchmark data as investors would be able to seek redress in case of abuse of a benchmark. Benchmarks would be**	**Legislative proposal due to be published by the Commission in July.**	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. **Contract continuity should be ensured in case of any future changes to benchmarks.**

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	based on transactional data where possible and estimations would be accepted only of such data is unavailable (for example on illiquid markets).		
Solvency II	A revision of Solvency II, the Solvency II/Omnibus II 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 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.	On 28 January 2013 EIOPA announced that the result of 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) to2016. In addition to the assessment of the long-term guarantee issue, EIOPA has been requested by the Commission to reconsider the treatment of long-term investment within the rules to implement Solvency II.In March 2013, EIOPA launched a public consultation on Guidelines related to the preparation for Solvency II (link to the consultation page, deadline: 19 June 2013) As requested by the Commission EIOPA also published on 8 April the discussion paper on treatment of long-term investment within the rules to implement Solvency II. The consultation of interested stakeholders is open until 28 May 2013.	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. However, the Green Paper on Long-Term Finance published on 25 March 2013 as well as EIOPA's study on long-term investment partially address this issue

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		Next steps: Second half of June 2013 - EIOPA will release the result of its studies on Long-Term Guarantee Assessment (LTGA)and on long-term investment.	
Long-term finance	Commission has published on 25 March a Green Paper consultation entitled "Long-term financing of the European economy"- please see the press release and the Green Paper. The Green Paper focuses on how to foster long-term financing and to improve and diversify the system of financial intermediation in Europe. The consultation has quite a large scope and the questions covered include amongst others: • the impact of the cumulative effects of ongoing financial reforms (especially prudential rules) on the financial sector's ability to finance the economy • the capacity of banks / institutional investors to		

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	channel financing to long-term investments • the question of whether current tax and accounting rules are appropriate in order to encourage long-term investment • the possible development of specific asset classes and markets such as covered bonds, securitization and a European project bond market • SMEs' access to bank and non-bank finance Deadline for responses is 25 June.		
Liikanen report	The Liikanen report issued in October 2012 proposes to: • 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	**The Commission has published a public consultation on the reform of the structure of the EU banking sector (see consultation document here). 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 deposit-taking entity.**	**From corporates' view the main issue is to ensure that there are strong and stable banks which provide liquidity to the market and can provide the range of services needed by corporates; a possible preference could be to favour to "build a wall" around the**

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	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 outdated • Strengthen the governance and	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. ECON is drafting an own initiative report on this subject.	**retail part of a bank. Furthermore, corporates should not be captured by the definition of a bank in any future legislation**

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	control of banks in order to rein in excessive risk-taking 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".		
Anti-Money Laundering Directive and Regulation on information accompanying transfer of funds	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: • 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	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.	

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	services for cash payment of €7,500 or more • 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). • 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.		
Payment Services Directive	Currently under review by the Commission. **The main changes in the PSD II are expected to be the following:** • **Inclusion of new market players in the scope (e.g. the so-called overlay payment service providers for internet**	**Commission is expected to issue in July a payment "package" comprised of the PSD II proposal, SEPA governance communication and a proposal for legislating card interchange fees.**	

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	payments) • **Inclusion of certain provisions regarding SEPA governance** • **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**		
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	**Commission is expected to issue in July a payment "package" comprised of the PSD II proposal, SEPA governance communication and a proposal for legislating card interchange fees.**	Ensure a balanced end-user participation