



## EACT

### Quarterly Report on Regulatory Issues

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Hrvatska udruga  
korporativnih rizničara  
Croatian Association of  
Corporate Treasurers





This report has been designed for, and with the support of, the above National Treasury Associations. Its purpose is to provide information about European financial regulation impacting corporate treasurers.

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## Executive Summary

Topic and summary of content and EACT position	Latest developments
<p><b><u>European Market Infrastructure Regulation (EMIR):</u></b></p> <ul style="list-style-type: none"> <li>• Regulation to push derivatives trading on exchanges</li> <li>• Corporates' hedging transactions exempted from clearing obligation but subject to reporting, portfolio reconciliation, portfolio compression and dispute resolution obligations</li> </ul>	<ul style="list-style-type: none"> <li>• <b>The European Commission adopted an EMIR REFIT proposal, which included relief from reporting burdens for NFCs</b></li> <li>• <b>The European Commission also adopted a separate proposal for EMIR CCP supervisory oversight</b></li> </ul>
<p><b><u>CRD / Basel:</u></b></p> <ul style="list-style-type: none"> <li>• International and EU-level rules on capital, liquidity and leverage requirements for banks</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Agreement on Basel 4 has not yet been reached but could be possible in the near future</b></li> </ul>
<p><b><u>Money Market Funds (MMF) Regulation:</u></b></p> <ul style="list-style-type: none"> <li>• The MMFR establishes common rules for MMFs, in particular with regard to the composition of their portfolio, valuation and liquidity of their assets. The Regulation also prohibits any third-party sponsor support.</li> </ul>	
<p><b><u>Financial Transaction Tax (FTT):</u></b></p> <ul style="list-style-type: none"> <li>• A proposal to tax a large variety of equity and bond transactions in 11 EU Member States under the 'enhanced cooperation' approach</li> <li>• The proposal has been subject to widespread criticism (including its legality) and it is expected that should an FTT be implemented at any stage, it would be much more restricted in scope than originally proposed</li> <li>• EACT strongly opposed as FTT amounts to a tax on the real economy</li> </ul>	



**Financial Benchmark Regulation:**

- 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



**List of ongoing consultations:**

<b>Title</b>	<b>Website</b>	<b>Deadline</b>
ESMA consultation on trading obligation under MiFID 2	<a href="#">Consultation page</a>	31 July 2017
ESMA consultation on Money Market Fund Regulation	<a href="#">Consultation page</a>	7 August 2017

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



<b>OTC Derivatives - European Market Infrastructure Regulation (EMIR)</b>		
<b>Content and legislative status</b>	<b>Latest developments</b>	<b>Issues from treasury perspective / EACT position</b>
<p>EMIR was adopted on 4 July 2012 and entered into force on 16 August 2012. It requires the central clearing of all standardised OTC derivatives contracts, margins for non-centrally cleared contracts and the reporting of all derivatives contracts to trade repositories.</p> <p>EMIR contains different start dates for the various obligations and the obligations for NFC- (portfolio compression, trade reporting) are already in place. Central clearing should gradually start as of April 2016, with NFC+s having a three-year phase-in period.</p>	<p><b><u>EMIR review:</u></b>  <b>On 4 May the European Commission adopted an EMIR REFIT proposal. One key aspect of the proposal is to make the requirements on corporate end-users more proportionate, more efficient and less costly, without impacting financial stability. With regard to non-financial counterparties (NFCs) the Commission is proposing the following changes:</b></p> <ul style="list-style-type: none"> <li>• <b>For NFC-s (those that are under the clearing thresholds), the financial counterparty would be responsible for reporting transactions to the Trade Repository</b></li> <li>• <b>For all NFCs, the obligation to report intragroup transactions would be removed</b></li> <li>• <b>The obligation to report historic transactions ('backloading', i.e. transactions that were entered into after the date of application of EMIR but before the start date of the reporting, and which were still outstanding at the start of the reporting obligation) would be removed for all counterparties</b></li> </ul>	

### OTC Derivatives - European Market Infrastructure Regulation (EMIR)

- The obligation to centrally clear transactions would apply on an asset class by asset class basis; currently when the clearing threshold is exceeded in one asset class, transactions in all asset classes are subject to the central clearing obligation
- The hedging exemption is maintained

The proposal now goes to the European Parliament and the Member States in the Council for drafting their own positions on the text.

All the relevant documentation on the proposal can be found on the [Commission website on EMIR review](#).

ESMA/ EBA/ Commission:

- On 13 June the Commission [adopted](#) a separate EMIR review proposal, that concentrates on the topic of CCP oversight and location, and in particular on the issue of third country CCPs, considering the fact that post-Brexit the biggest CCPs will be outside the EU. The proposal introduces a new "two tier" system for classifying third-country CCPs. Non-systemically

### OTC Derivatives - European Market Infrastructure Regulation (EMIR)

important CCPs will continue to be able to operate under the existing EMIR equivalence framework, while systemically important CCPs will be subject to stricter requirements and will have to comply with EU requirements for CCPs and joint supervision by ESMA. However, if the third country CCP is deemed systemically very important, the Commission has the possibility of deciding that the CCP is only able to provide services in the Union if it establishes itself in the EU.

- The EBA has [stated](#) that it has stopped work in the planned guidelines on CVA. The EBA will however conduct a CVA monitoring exercise, in particular to monitor the impact of exempted transactions (of which transactions with NFC-s).

#### Key documents:

- [EMIR Regulation](#)
- All relevant texts (RTSs, ITSs etc.) are available on the Commission [EMIR website](#)



<b>Money Market Funds (MMFs) Regulation</b>		
<b>Content and legislative status</b>	<b>Latest developments</b>	<b>Issues from treasury perspective / EACT position</b>
<p><b>The MMFR establishes common rules for MMFs, in particular with regard to the composition of their portfolio, valuation and liquidity of their assets. The Regulation also prohibits any third-party sponsor support.</b></p> <p><b>MMFR will have implications for corporate end-users investing in MMFs, but many of the initial concerns voiced by the EACT and other MMF end-users have been taken into account in the final compromise as:</b></p> <ul style="list-style-type: none"> <li>- <b>there is no ban on external credit ratings for MMFs and funds will continue to be able to solicit external ratings</b></li> <li>- <b>there will be no capital buffers required for funds, which would have undermined the continued availability of certain types of funds used by corporates</b></li> </ul> <p><b>Other changes relevant to corporate treasurers include:</b></p> <ul style="list-style-type: none"> <li>- <b>the MMFR retains three types of funds: Variable Net Asset Value (VNAV) funds, Low Volatility Net Asset Value (LVNAV) funds and Public Debt Constant Net Asset Value (CNAV) funds</b></li> </ul>	<p>Following the <a href="#">agreement</a> reached between the EU institutions end of November, the Council and the Parliament ECON Committee have approved the agreement internally, and the final publication in the EU Official Journal is now expected in Q2 this year. This would mean that the provision of MMFR would apply to new MMFs as of Q2 2018 and to existing ones as of Q4 2018.</p>	

### Money Market Funds (MMFs) Regulation

- Both Public Debt CNAV funds and LVNAV funds can under certain conditions impose liquidity fees and redemption gates to their investors. Application of gates and fees becomes mandatory when weekly liquid assets fall below 10%, prior to that the fund has discretion
- LVNAV funds will have to convert into floating NAV when the mark-to-market value per unit deviates from the constant asset price by more than 20 basis points

The Public Debt CNAV funds will be allowed to hold non-EU public debt also, but in five years the Commission will review whether restrictions to non-EU public debt should be imposed

Key documents:

- [Compromise text](#)

<b>Financial Transaction Tax (FTT)</b>		
<b>Content and legislative status</b>	<b>Latest developments</b>	<b>Issues from treasury perspective / EACT position</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 effective rate higher as the transactions would be taxed separately from different market participants at different stages.</li> <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</li> </ul>		

<b>Financial Transaction Tax (FTT)</b>		
<b>Content and legislative status</b>	<b>Latest developments</b>	<b>Issues from treasury perspective / EACT position</b>
<p>combination of the residence principle and the location of the where the financial instrument is issued.</p> <ul style="list-style-type: none"> <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 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><b>Key documents:</b></p> <ul style="list-style-type: none"> <li>• <a href="#">Commission proposal</a></li> <li>• <a href="#">Commission Impact Assessment; Summary of Impact Assessment</a></li> <li>• <a href="#">EACT position paper</a></li> </ul>		

<b><u>Financial benchmarks</u></b>		
<b>Content and legislative status</b>	<b>Latest developments</b>	<b>Issues from treasury perspective / EACT position</b>
<p><u>Benchmark Regulation:</u></p> <p>The Benchmark Regulation aims to improve governance, transparency and calculation methodology for financial benchmarks. The Regulation requires benchmark administrators to obtain authorisation from their competent authority and adhere to different requirement, e.g. concerning internal governance and benchmark methodology. Benchmark contributors will have to make mandatory contributions in some cases (to critical benchmarks) and will have to respect a code of conduct. Users (such as corporates) will only be able to use EU authorized benchmarks. Concerning non-EU benchmarks, these may be used in the EU only if they are based in jurisdictions deemed equivalent by the EU, have been recognised by a Member State or have been endorsed by an EU administrator.</p> <p>The final compromise text of the Benchmark Regulation was adopted in December 2015 but still needs to be published in the Official Journal and will be of application 18 months thereafter.</p> <p><u>Review of LIBOR and EURIBOR:</u></p> <p>Libor and Euribor administrators are reforming the</p>	<p>The Benchmark Regulation was published in the <a href="#">Official Journal</a>. The Regulation will apply as of January 2018.</p>	



<b><u>Financial benchmarks</u></b>		
<b>Content and legislative status</b>	<b>Latest developments</b>	<b>Issues from treasury perspective / EACT position</b>
benchmarks, more information on the <a href="#">EMMI website</a> (euribor) and <a href="#">ICE website</a> (libor)		
<b>Key documents:</b> <a href="#">Benchmark Regulation</a>		

<b>Regulation on structural measures improving the resilience of EU credit institutions (structural separation of banks)</b>		
<b>Content and legislative status</b>	<b>Latest developments</b>	<b>Issues from treasury perspective / EACT position</b>
<p>The Commission has adopted a proposal for Regulation, which contains the following main aspects:</p> <ul style="list-style-type: none"> <li>• Banning of proprietary trading</li> <li>• 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.</li> </ul> <p>The Regulation would apply only to the biggest banks, i.e. those deemed to be of global systemic importance or those exceeding 30 billion euros in total assets and trading activities either exceeding 70 billion euros or 10% of the bank's total assets.</p> <p>The Commission adopted its proposal on 29 January which will be subject to the ordinary legislative procedure. According to the proposal the proprietary trading ban would apply as of 1 January 2017 and the separation of other trading activities as of 1 July 2018.</p>	<p>At this stage it looks unlikely that the Parliament will find a compromise, therefore the file is on hold.</p>	<ul style="list-style-type: none"> <li>• Impact on market-making</li> <li>• Impact on the availability of OTC derivatives as core (retail) institutions would not be able to offer OTC derivatives to their non-financial customers</li> <li>• Impact on pricing</li> </ul>



## Regulation on structural measures improving the resilience of EU credit institutions (structural separation of banks)

### Key documents:

- [Text of the proposal](#)
- Impact assessment:
  - [Executive Summary](#)
  - [Full text](#)



### Regulation on reporting and transparency of securities financing transactions

Content and legislative status	Latest developments	Issues from treasury perspective / EACT position
<p>SFTR aims to reduce risks and improve the transparency linked to securities financing transactions (includes repos, reverse repos and stock lending). All transactions should be reported to a central database (similarly to EMIR with the details to be defined by ESMA). This obligation applies to both financial and non-financial counterparties.</p> <p>The regulation also imposes increased transparency and conditions on rehypothecation (reuse of collateral by the collateral-taker for their own purposes)</p>	<p>ESMA has published the final draft <a href="#">RTSs</a> for SFTR implementation, including rules for reporting.</p> <p>The SFT Regulation was published in the Official Journal. The reporting regime will be put in place gradually, from May 2018 to February 2019.</p>	
<p><b>Key documents:</b></p> <ul style="list-style-type: none"> <li>• <a href="#">Text of the Regulation in the Official Journal</a></li> </ul>		



Capital Markets Union		
Content and legislative status	Latest developments	Issues from treasury perspective / EACT position
<p>The Capital Markets Union (CMU) is a plan of the European Commission that aims to create deeper and more integrated capital markets in the 28 Member States of the EU.</p> <p>With the CMU, the Commission will explore ways of reducing fragmentation in financial markets, diversifying financing sources, strengthening cross border capital flows and improving access to finance for businesses, particularly SMEs. The Commission adopted the CMU Action Plan on 30 September. The Action Plan contains some immediate actions, such as a legislative proposal on securitisations and amendments to Solvency II. Other areas of work include the review of the Prospectus Directive, review of the functioning of the EU corporate bond market, harmonisation of insolvency rules, and work to address the debt-equity bias.</p>	<ul style="list-style-type: none"> <li>• The Commission adopted a <a href="#">communication</a> on the CMU mid-term review</li> <li>• The Commission presented <a href="#">report</a> describing initiatives that have been taken at national and regional level to help SMEs identify a wider range of sources of finance, as well as to provide investors and lenders with reliable information about companies</li> <li>• An <a href="#">agreement</a> was found on the securitisation file</li> </ul>	
<p>Key documents:</p> <ul style="list-style-type: none"> <li>• <a href="#">Commission CMU website</a> (all relevant documents are available here)</li> </ul>		



Credit Rating Agencies		
Content and legislative status	Latest developments	Issues from treasury perspective / EACT position
CRA Regulation and Directive establish the regulatory and supervisory framework for CRAs in the EU		
Key documents: <ul style="list-style-type: none"> <li>• <a href="#">ESMA technical advice on competition, choice and conflicts of interest in the CRA industry</a></li> <li>• <a href="#">ESMA technical advice on reducing sole and mechanistic reliance on credit ratings</a></li> <li>• <a href="#">Commission CRA page</a></li> </ul>		

<u>Payments Package</u>		
Content and legislative status	Latest developments	Issues from treasury perspective / EACT position
<p><b>Revision of the Payment Services Directive (PSD):</b> The main changes introduced by PSD2 are the following:</p> <ul style="list-style-type: none"> <li>• Banning of surcharging on payment cards covered by the MIF Regulation</li> <li>• Inclusion of third-party payment service providers in the scope</li> <li>• 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> <p><b>Regulation on card interchange fees:</b> The Regulation will impose mandatory caps for card interchange fees: for debit card payments, the cap will be 0.2% for crossborder transactions and 0.2% of weighted average for national payments; for credit cards the cap will be 0.3% of the transaction value.</p>	<p>The European Commission notified the EBA of its intention to modify some aspects of the RTSs that EBA had drafted on strong customer authentication and common and secure communication. The Commission plans to amend some aspects of the draft RTSs, for instance grant an exemption for certain corporate payments. EBA has issued its <a href="#">opinion</a> on these suggested amendments, but ultimately it is up to the Commission and the co-legislators to decide on the final RTSs. PSD2 will be applicable from January 2018 and the RTSs should enter into force by October 2018.</p> <p>Strong customer authentication means:</p> <ul style="list-style-type: none"> <li>• authentication based on two or more elements categorized as knowledge, possession and inherence that results in the generation of an unique authentication code;</li> <li>• the authentication code will be accepted only once when the</li> </ul>	

<u>Payments Package</u>		
	<p>payer uses it to access a payment account online, to initiate an electronic payment transaction or to carry out any action through a remote channel which may imply a risk of payment fraud or other abuses.</p> <p>Some exemptions to the mandatory use of SCA are foreseen in the RTS but generally they apply to both customer and corporate payments</p>	
<p>Key documents:</p> <ul style="list-style-type: none"> <li>• <a href="#">Payment Services Directive 2</a></li> </ul> <p><a href="#">Regulation on interchange fees for card-based payment transactions</a></p>		



<b>SEPA</b>		
<b>Content and legislative status</b>	<b>Latest developments</b>	<b>Issues from treasury perspective / EACT position</b>
<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. Regarding SEPA governance, the ECB has established the <a href="#">European Retail Payments Board</a> (ERPB) which replaces the former SEPA Council.</p>	<p><b>The ECB has <a href="#">announced</a> that it will develop a service for the settlement of instant payments</b></p>	
<p><b>Key documents:</b></p> <ul style="list-style-type: none"> <li>• <a href="#">SEPA Regulation</a></li> <li>• <a href="#">Regulation 248/2014 amending the SEPA migration deadline</a></li> <li>• <a href="#">ECB website on national SEPA migration plans</a></li> </ul>		



<b><u>Markets in Financial Instruments (MiFID / MiFIR 2)</u></b>		
<b>Content and legislative status</b>	<b>Latest developments</b>	<b>Issues from treasury perspective / EACT position</b>
MiFID and MiFIR are a comprehensive set of rules governing the provision of investment services and activities in the EU		
Key documents: <ul style="list-style-type: none"> <li>• <a href="#">Commission MiFID/MiFIR page</a></li> </ul>		

Basel III / CRD IV		
Content and legislative status	Latest developments	Issues from treasury perspective / EACT position
Legislation on bank capital, liquidity and leverage	<ul style="list-style-type: none"> <li>• The finalisation of the so-called 'Basel 4' rules has again been delayed as the position of the new US administration is not yet defined</li> <li>• The Commission <a href="#">adopted</a> a proposal to review CRD IV / CRR in order to implement some of the remaining elements of the Basel III framework, such as the leverage ratio and the Net Stable Funding Ratio (NSFR)</li> <li>• The European Parliament <a href="#">adopted</a> a Resolution on Basel III, stating that the review of the use of internal models currently ongoing should not result in an overall increase of capital levels and should not penalize European banks</li> </ul>	
Key documents: <ul style="list-style-type: none"> <li>• <a href="#">Commission CRD IV website</a></li> </ul>		





Country-by-country reporting		
Content and legislative status	Latest developments	Issues from treasury perspective / EACT position
<p>Commission adopted a legislative proposal on corporate tax transparency for multinational companies. The proposal applies to both EU and non-EU multinationals operating in the EU with global revenues exceeding 750 million euros per year. The proposal would amend the current Accounting Directive and would oblige these companies to disclose publicly information on profits made and taxes paid on a country by country basis both for EU countries and for tax jurisdictions that do not abide by tax good governance standards (tax havens) and on an aggregated basis for other jurisdictions.</p>		
<p>Key documents:</p> <ul style="list-style-type: none"> <li>• <a href="#">Text of the proposal</a></li> </ul>		



Common consolidated corporate tax base		
Content and legislative status	Latest developments	Issues from treasury perspective / EACT position
<p>The European Commission has adopted a <a href="#">proposal</a> for common consolidated corporate tax base in the EU. The proposal consists of two parts, first one being the harmonisation of the definition and calculation of taxable profits within EU Member States, and the second (longer term objective) one being the setting up of a system to consolidate corporate tax revenue between Member States. The rules on common tax base would apply to companies with revenues of above 750 million euros per year. Corporate tax rates are not covered by the proposal, as they are a competence of the individual Member States. The proposal also aims to reduce the debt-equity bias.</p>	<p>The proposal will have to be adopted by unanimity of all the Member States, which means that its adoption could prove very difficult.</p>	
<p>Key documents:</p> <ul style="list-style-type: none"> <li>• <a href="#">Text of the proposal</a></li> </ul>		



## Legislative initiative

## Timeline of next steps and actions

	immediate	2016	2017	2018 and beyond
<b>EMIR</b>		Clearing obligation to gradually start mid 2016	Rules for margining non-centrally cleared OTC derivative transactions to be applied as of mid 2017	
<b>FTT</b>		Negotiations	Negotiations	Probable implementation (if any) likely not to take place before 2017/2018
<b>CRD IV</b>				
<b>MiFID / MiFIR</b>	Level 2 measures under development			Entry into force
<b>Benchmarks</b>	Level 2 measures under development			Entry into force
<b>Bank structural separation</b>		European Parliament to formulate its position - to be followed by trialogue negotiations	European Parliament to formulate its position - to be followed by trialogue negotiations	
<b>PSD II</b>			Entry into force two years after adoption	