

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><u>European Market Infrastructure Regulation (EMIR):</u></p> <ul style="list-style-type: none"> • Regulation on OTC derivative reporting, central clearing and risk mitigation • Corporates' hedging transactions exempted from clearing obligation but subject to reporting, portfolio reconciliation, portfolio compression and dispute resolution obligations 	<ul style="list-style-type: none"> • EACT has published its joint position paper with other corporate end-user associations on EMIR REFIT
<p><u>CRD / Basel:</u></p> <ul style="list-style-type: none"> • International and EU-level rules on capital, liquidity and leverage requirements for banks 	
<p><u>Money Market Funds (MMF) Regulation:</u></p> <ul style="list-style-type: none"> • 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. 	<ul style="list-style-type: none"> • ESMA is developing draft technical standards for the Regulation
<p><u>Financial Transaction Tax (FTT):</u></p> <ul style="list-style-type: none"> • A proposal to tax a large variety of equity and bond transactions in 11 EU Member States under the 'enhanced cooperation' approach • The proposal has been subject to widespread criticism (including its legality) and it is expected that should an FTT be implemented at any stage, it would be much more restricted in scope than originally proposed • EACT strongly opposed as FTT amounts to a tax on the real economy 	



Financial Benchmarks:

- EU Regulation on financial benchmarks regulates administrators, contributors and users of benchmarks. Corporate treasurers are not directly impacted but might be indirectly impacted due to the changes, for instance with regard to the availability of non-EU benchmarks
- Major benchmarks such as LIBOR and EURIBOR are also being reformed, for instance with regard to the methodology with which they are calculated. However the future continuation of the 'IBORs' is uncertain.

- **The UK FCA has announced that it will not force contributions to LIBOR after 2021**
- **A risk-free reference rate for euro is also being developed**

List of ongoing consultations:

Title	Website	Deadline
European Commission consultation on transparency and fees in cross-border transactions in the EU	Consultation page	30 October 2017
IOSCO consultation on Regulatory Reporting and Public Transparency in the Secondary Corporate Bond Markets	Consultation page	16 October 2017
Bank of International Settlements consultation on FinTech	Consultation page	31 October 2017

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



OTC Derivatives - European Market Infrastructure Regulation (EMIR)		
Content and legislative status	Latest developments	Issues from treasury perspective / EACT position
<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><u>EMIR REFIT review:</u> 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:</p> <ul style="list-style-type: none"> • For NFC-s (those that are under the clearing thresholds), the financial counterparty would be responsible for reporting transactions to the Trade Repository • For all NFCs, the obligation to report intragroup transactions would be removed • 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 	



OTC Derivatives - European Market Infrastructure Regulation (EMIR)

- counterparties
- 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](#).

EMIR – CCP location proposal:

- 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 important CCPs will continue to be able to operate under



OTC Derivatives - European Market Infrastructure Regulation (EMIR)

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.

ESMA:

- **ESMA published an [updated EMIR Q&A document](#)**

Key documents:

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

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>	<p>The Commission conducted the mid-term review of the CMU Action Plan</p>	
<p>Key documents:</p> <ul style="list-style-type: none"> • Commission CMU website (all relevant documents are available here) 		



Bank prudential requirements (Basel III / CRD IV/V)		
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"> • 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 • The Commission adopted 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) • The European Parliament adopted 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 	
Key documents: <ul style="list-style-type: none"> • Commission CRD IV website 		



Money Market Funds (MMFs) Regulation		
Content and legislative status	Latest developments	Issues from treasury perspective / EACT position
<p>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.</p> <p>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:</p> <ul style="list-style-type: none"> - there is no ban on external credit ratings for MMFs and funds will continue to be able to solicit external ratings - there will be no capital buffers required for funds, which would have undermined the continued availability of certain types of funds used by corporates <p>Other changes relevant to corporate treasurers include:</p> <ul style="list-style-type: none"> - 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 - Both Public Debt CNAV funds and LVNAV funds can under certain conditions impose 	<p>The Regulation text was published in the Official Journal. This means that most provisions will start applying as of mid-2018.</p>	



Money Market Funds (MMFs) Regulation

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:

- [Text of Regulation](#)



Financial Transaction Tax (FTT)		
Content and legislative status	Latest developments	Issues from treasury perspective / EACT position
<p>Council agreed to the “enhanced cooperation” procedure between 10 Member States (Belgium, Germany, Greece, Spain, France, Italy, Austria, Portugal, Slovenia and Slovakia) at the end of January.</p> <p>The Commission issued a proposal for a Directive on 14 February 2013 (see also the press release and the Questions & Answers).</p> <p>The new proposal is based on the previous text presented in 2011 with some amendments and to have the following main aspects:</p> <ul style="list-style-type: none"> • The scope of instruments covered is very broad including shares and bonds at 0.1% and derivatives at 0.01%. CFDs, equity derivatives, depository receipts, money market instruments, structured products are also covered. The applicable rates are minimum harmonized rate levels paving the way for individual countries to possibly adopt higher levels. 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 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 	<p>No progress has been made in the discussions.</p>	



Financial Transaction Tax (FTT)		
Content and legislative status	Latest developments	Issues from treasury perspective / EACT position
<p>issued.</p> <ul style="list-style-type: none"> • The proposal also provides for implementing acts regarding uniform collection methods of the FTT and the participating countries would have to adopt appropriate measures to prevent tax evasion, avoidance and abuse. • There will be an exemption for 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 FTT zone entity.</p>		
<p>Key documents:</p> <ul style="list-style-type: none"> • Commission proposal • Commission Impact Assessment; Summary of Impact Assessment • EACT position paper 		



<u>Financial benchmarks</u>		
Content and legislative status	Latest developments	Issues from treasury perspective / EACT position
<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 benchmarks, more information on the EMMI website (euribor) and ICE website (libor)</p>	<p>ESMA, FSMA, ECB and the European Commission announced the creation of a new working group to develop a risk-free reference rate for the euro area.</p> <p>At the end of July, the UK Financial Conduct Authority (FCA) announced that it will no longer force banks to contribute to LIBOR as of 2021. The FCA considers that there is not sufficiently active underlying markets to support LIBOR and that alternative benchmarks need to be developed.</p> <p>In April, the Risk Free Rate Working Group selected reformed SONIA as its proposed alternative benchmark to sterling LIBOR.</p> <p>The EU Benchmark Regulation was published in the Official Journal. The Regulation will apply as of January 2018.</p>	



<u>Financial benchmarks</u>		
Content and legislative status	Latest developments	Issues from treasury perspective / EACT position
Key documents: Benchmark Regulation		



Markets in Financial Instruments (MiFID / MiFIR 2)		
Content and legislative status	Latest developments	Issues from treasury perspective / EACT position
MiFID and MiFIR are a comprehensive set of rules governing the provision of investment services and activities in the EU	ESMA has published an opinion aimed at helping market participants to evaluate whether their activities in commodities can be qualified as ancillary to their main business activities within MiFID2.	
Key documents: <ul style="list-style-type: none">• Commission MiFID/MiFIR page		



Payments and SEPA		
Content and legislative status	Latest developments	Issues from treasury perspective / EACT position
<p>Revision of the Payment Services Directive (PSD): The main changes introduced by PSD2 are the following:</p> <ul style="list-style-type: none"> • Banning of surcharging on payment cards covered by the MIF Regulation • Inclusion of third-party payment service providers in the scope • Extension of the scope of the PSD e.g. where at least the payer's PSP is acting from within the EEA / extension to all currencies <p>Regulation on card interchange fees: 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>Key documents: Payment Services Directive 2 Regulation on interchange fees for card-based payment transactions SEPA Regulation</p>		



FinTech		
Content and legislative status	Latest developments	Issues from treasury perspective / EACT position
<p>The European Commission is developing its policy approach to technological innovation in financial services. To this end, it held a public consultation to seek input from stakeholder on future policies in this area. The EACT's contribution to the consultation can be found here.</p>	<p>The Commission published a summary of contributions received to the public consultation</p>	



Sustainable Finance		
Content and legislative status	Latest developments	Issues from treasury perspective / EACT position
<p>The European Commission High-Level Expert Group on Sustainable Finance published its interim report. It is expected that the final report will be delivered at the end of this year, which will be followed by a Commission comprehensive Action Plan on sustainable finance early next year. The report examines ways to mobilise capital for a sustainable economy as well as changes needed in the processes, incentives and culture of the financial system and of all the actors involved. The report suggests to take a broad view of sustainability that includes environmental, social and governance (ESG) factors, and aims to integrate these factors into the EU's regulatory and financial policy framework.</p> <p>The recommendations of the interim report are as follows:</p> <ul style="list-style-type: none"> • Develop a classification system for sustainable assets Establishing a European standard and label for green bonds and other sustainable assets 		



<ul style="list-style-type: none">• Clarify that fiduciary duty encompasses sustainability• Strengthen ESG reporting requirements• Introduce a 'sustainability test' for EU financial legislation• Create 'Sustainable Infrastructure Europe' to channel finance into sustainable projects• Enhance the role of the ESAs in assessing ESG-related risks• Unlock investments in energy efficiency through relevant accounting rules <p>The report also discusses other areas such as integrating sustainability considerations in ratings, the frequency of financial reporting, adapting regulatory prudential rules to include sustainability considerations, and adapting accounting rules.</p>		
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Review of the European supervisory Authorities (ESAs)		
Content and legislative status	Latest developments	Issues from treasury perspective / EACT position
<p>The European Commission adopted a legislative proposal to strengthen the European Supervisory Authorities (ESAs) – that include the European Banking Authority (EBA), the European Securities and Markets Authority (ESMA) and the European Insurance and Occupational Pensions Authority (EIOPA).</p> <p>The proposal includes the following:</p> <ul style="list-style-type: none"> • ESAs’ powers to ensure supervisory convergence will be increased • ESMA to receive transaction data directly from market participant • ESAs’ procedures to issue guidelines and recommendations will be enhanced. The ESAs will be required to conduct cost-benefit analysis and the relevant stakeholder groups will have the right to seek action by the Commission if they consider that the instruments exceed the ESAs’ competencies. • Direct supervision by ESMA to will be extended to certain capital market sectors • Sustainable finance considerations 	<p>The Commission published a summary of contributions received to the public consultation</p>	



will be integrated into supervision by requiring the ESAs to take into account environmental, social and governance factors arising within the framework of their mandate

The ESAs' funding mechanism will be changed so that financial institutions indirectly supervised by the ESAs would have to contribute to the ESAs' budget, alongside with contributions from the EU budget and the national supervisors

Key documents:

[Legislative proposal](#)



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

Content and legislative status	Latest developments	Issues from treasury perspective / EACT position
<p>The Commission has adopted a proposal for Regulation, which contains the following main aspects:</p> <ul style="list-style-type: none"> • Banning of proprietary trading • Potential separation of certain trading activities (market making, OTC derivatives trading, complex securitized products etc.) The banking supervisor would monitor banks' activities and could require a separation of these activities into a separate entity. <p>The Regulation would apply only to the biggest banks, i.e. those deemed to be 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"> • Impact on market-making • Impact on the availability of OTC derivatives as core (retail) institutions would not be able to offer OTC derivatives to their non-financial customers • Impact on pricing



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 RTSs 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>Key documents:</p> <ul style="list-style-type: none">• Text of the Regulation in the Official Journal		



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">• ESMA technical advice on competition, choice and conflicts of interest in the CRA industry• ESMA technical advice on reducing sole and mechanistic reliance on credit ratings• Commission CRA page		



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>In July the Parliament voted on its report on the Commission proposal. Compared to the Commission’s proposal, the Parliament introduces the possibility to exclude commercially sensitive information from the public disclosure requirements (through possible waivers granted by Member States, to be renewed annually). The Parliament would also require that all the information would be provided on a disaggregated basis globally (versus the Commission proposal that required country-by-country data for EU countries and aggregated data for other jurisdictions).</p> <p>The Council has not yet agreed on a General Approach.</p>	
<p>Key documents:</p> <ul style="list-style-type: none"> • Text of the proposal • Parliament report; Parliament press release 		



Common consolidated corporate tax base		
Content and legislative status	Latest developments	Issues from treasury perspective / EACT position
<p>The European Commission has adopted a proposal 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"> • Text of the proposal 		