

## EACT

### Quarterly Report on Regulatory Issues

*Date issued: 12 January 2018*



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 on OTC derivative reporting, central clearing and risk mitigation</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 Council has agreed on its position on EMIR REFIT</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>Basel Committee reached on agreement on the so-called Basel 4 measures</b></li> <li>• <b>European Parliament ECON Committee published its draft report on CDR V</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>Capital Markets Union:</u></b></p> <ul style="list-style-type: none"> <li>• 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.</li> </ul>	<ul style="list-style-type: none"> <li>• <b>The European Commission Expert Group on corporate bond markets has published its final report with several recommendation for the improvement of EU corporate bond markets</b></li> </ul>



**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.

**List of ongoing consultations:**

Title	Website	Deadline
<b>ESMA consultation on draft guidelines on anti-procyclicality measures for CCPs</b>	<a href="#">Consultation paper</a>	<b>28 February</b>
<b>ESMA consultation on draft RTSs under the new Prospectus Regulation</b>	<a href="#">Consultation paper</a>	<b>9 March</b>
<b>ESMA consultation on draft RTSs for Securitisation Regulation</b>	<a href="#">Consultation page</a>	<b>19 March</b>

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

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<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><b>EMIR REFIT review:</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:</p> <ul style="list-style-type: none"> <li>• For NFC-s (those that are under the clearing thresholds), the financial counterparty would be responsible for reporting transactions to the Trade Repository</li> <li>• For all NFCs, the obligation to report intragroup transactions would be removed</li> <li>• 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</li> <li>• The obligation to centrally clear transactions</li> </ul>	<p><b>EMIR REFIT</b> <b>EU Member States in the Council have agreed on their position on the Commission's proposal for EMIR REFIT review.</b></p> <p><b>The key points of the Council position relevant to corporate treasurers are:</b></p> <ul style="list-style-type: none"> <li>• <b>Extension of the proposed exemption for reporting intragroup transaction to include intragroup transactions with non-EU parts of the group; to be noted also that the exemption would apply only between two non-financial counterparties</b></li> <li>• <b>Clarification that financial counterparties are solely responsible and legally liable for the reporting done on behalf of non-financial counterparties</b></li> <li>• <b>An option for non-financial counterparties to continue reporting themselves</b></li> <li>• <b>Recognition that the obligation to post variation margin on physically-settled FX forwards should apply only to the most systemic counterparties</b></li> </ul>	



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

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

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 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

**The Parliament now has to debate the EMIR REFIT proposal and agree on its position, which they are expected to do in the first months of 2018. After that the negotiations between the Member States, the Parliament and the Commission can start in view of a final agreement on the proposal.**

#### **Margining obligation for physically-settled FX**

**The European Supervisory authorities (ESAs) have announced flexibility in application of variation margin for physically-settled FX forwards. The variation margin requirements have applied to financial counterparties and non-financial counterparties above the clearing threshold (NFC+s) since 1 March but for physically-settled FX forwards the obligation will only be applicable from 3 January 2018. The ESAs state that they expect national competent authorities to enforce the obligation proportionately, indicating forbearance on counterparties such as NFC+s. Subsequently, the ESAs published draft revised Regulatory Technical Standards (RTSs) that would exclude counterparties such as NFC+s from the margining requirements for physically-settled FX forward transactions. These revised RTSs will have to be approved by the European Commission, the European Parliament and the Council and will therefore not be applicable before the start-date of 3 January 2018.**



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

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 its first overview of EU OTC derivative market size**
- 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><b>The European Commission Expert Group on corporate bond markets has delivered its <a href="#">final report</a> and 22 recommendations to foster the development of corporate bond markets in the EU. The recommendations aim amongst others at making issuance easier for companies, increasing access and options for investors, ensuring the efficiency of intermediation and trading activities and fostering the development of new forms of trading. Importantly, the push for standardisation of issuance terms (such as maturities, coupons etc.), that the EACT has objected to, is not part of the recommendations made by the group. As the Expert Group is an independent group, the Commission is not bound by their recommendations and will conduct a further public consultation on the topic early next year, which is expected to lead to a Commission communication on corporate bond markets later in 2018.</b></p>	



**Capital Markets Union**

The Commission has published a [report](#)  
on the follow-up to the Call for Evidence

Key documents:

- [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"> <li>• <b>The Basel Committee has <u>reached an agreement</u> to finalise the Basel III reforms. The package includes revisions to both standardised and internal models for calculating credit risk, revisions to the credit valuation adjustment (CVA) framework and an aggregate output floor of 72.5% which means that a bank 's risk-weighted assets (RWA) calculated with an internal model cannot be lower than 72.5% of RWAs as calculated with the Basel standard model.</b></li> </ul> <p>The Basel standards are not legally binding and need to be implemented into national law by different jurisdictions. EU is likely to assess the impact of the Basel standards in the EU and potentially adjust accordingly.</p> <ul style="list-style-type: none"> <li>• <b>The European Parliament ECON Committee published its <u>draft report</u> on CRD V</b></li> </ul>	
Key documents: <ul style="list-style-type: none"> <li>• <a href="#">Commission CRD IV website</a></li> </ul>		



<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>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"> <li>- there is no ban on external credit ratings for MMFs and funds will continue to be able to solicit external ratings</li> <li>- there will be no capital buffers required for funds, which would have undermined the continued availability of certain types of funds used by corporates</li> </ul> <p>Other changes relevant to corporate treasurers include:</p> <ul style="list-style-type: none"> <li>- 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</li> <li>- Both Public Debt CNAV funds and LVNAV funds can under certain conditions impose</li> </ul>	<p>The Regulation text was published in the <a href="#">Official Journal</a>. 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](#)



<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 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 <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 combination of the residence principle and the location of the where the financial instrument is</li> </ul>	<p>No progress has been made in the discussions.</p>	



<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>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 benchmarks, more information on the <a href="#">EMMI website</a> (euribor) and <a href="#">ICE website</a> (libor)</p>	<p><b>LIBOR has been <a href="#">categorised</a> as a critical benchmark under the EU Benchmark Regulation. Benchmarks deemed critical in the EU Regulation have additional compliance requirements and obligations, including the possibility for national supervisors making mandatory the contribution to these benchmarks.</b></p> <p><b>The FCA has <u>confirmed</u> that the current 20 panel banks for LIBOR have agreed to stay as panel banks and support the benchmark at least until 2021. SONIA has previously been confirmed by the BoE as the preferred alternative to LIBOR. The BoE has <u>confirmed</u> that the SONIA reforms will take effect of as 23 April 2018; as from this date the BoE will become the administrator of the benchmark, taking care of its calculation and publication.</b></p>	





THE  
EUROPEAN  
ASSOCIATION  
OF  
CORPORATE  
TREASURERS

**Financial benchmarks**

**Content and legislative status**

**Latest developments**

**Issues from treasury perspective / EACT  
position**

**Key documents:**

[Benchmark Regulation](#)



<b>Markets in Financial Instruments (MiFID / MiFIR 2)</b>		
<b>Content and legislative status</b>	<b>Latest developments</b>	<b>Issues from treasury perspective / EACT position</b>
<p>MiFID and MiFIR are a comprehensive set of rules governing the provision of investment services and activities in the EU</p>	<p><b>ESMA has published several guidance papers / opinions on MiFID 2:</b></p> <ul style="list-style-type: none"> <li>• <a href="#">position management controls for commodity derivatives</a></li> <li>• <a href="#">ancillary activity – market size calculation</a></li> <li>• <a href="#">Q&amp;A updates on transparency and market structure</a></li> <li>• <a href="#">guidance on transactions on third country trading venues for post-trade transparency and position limits</a></li> <li>• <a href="#">public register</a> for the trading obligation for derivatives</li> </ul> <p>The European Commission published the <a href="#">list of derivatives subject to the trading obligation</a></p>	
<p>Key documents:</p> <ul style="list-style-type: none"> <li>• <a href="#">Commission MiFID/MiFIR page</a></li> </ul>		



<b>Payments and SEPA</b>		
<b>Content and legislative status</b>	<b>Latest developments</b>	<b>Issues from treasury perspective / EACT position</b>
<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 Commission has published a <a href="#">report</a> on the application of the SEPA Regulation, concluding that currently the Regulation is applied correctly and that there is no need to review the Regulation.</p>	
<p>Key documents:  <a href="#">Payment Services Directive 2</a>  <a href="#">Regulation on interchange fees for card-based payment transactions</a>  <a href="#">SEPA Regulation</a></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.</p> <p>The EACT's contribution to the consultation can be found <a href="#">here</a>.</p>	<p>The Commission published a <a href="#">summary</a> 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 <a href="#">interim report</a>. 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"> <li>• Develop a classification system for sustainable assets Establishing a European standard and label for green bonds and other sustainable assets</li> </ul>		



<ul style="list-style-type: none"><li>• Clarify that fiduciary duty encompasses sustainability</li><li>• Strengthen ESG reporting requirements</li><li>• Introduce a 'sustainability test' for EU financial legislation</li><li>• Create 'Sustainable Infrastructure Europe' to channel finance into sustainable projects</li><li>• Enhance the role of the ESAs in assessing ESG-related risks</li><li>• Unlock investments in energy efficiency through relevant accounting rules</li></ul> <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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<b><u>Review of the European supervisory Authorities (ESAs)</u></b>		
<b>Content and legislative status</b>	<b>Latest developments</b>	<b>Issues from treasury perspective / EACT position</b>
<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"> <li>• ESAs’ powers to ensure supervisory convergence will be increased</li> <li>• ESMA to receive transaction data directly from market participant</li> <li>• 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.</li> <li>• Direct supervision by ESMA to will be extended to certain capital market sectors</li> <li>• Sustainable finance considerations will be integrated into supervision by</li> </ul>		



<p>requiring the ESAs to take into account environmental, social and governance factors arising within the framework of their mandate</p> <p>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</p>		
<p>Key documents: <a href="#">Legislative proposal</a></p>		





**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"> <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>		



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	ESMA has <a href="#">published</a> its annual CRA market share calculation. The purpose of this document is to allow issuers to identify CRAs with less than 10% of total market share, as the CRA Regulation states that issuers have to consider appointing such a CRA whenever they are appointing a CRA to rate an issuance.	
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>		