

## EACT – Monthly Report on Regulatory Issues – February 2013

The main changes compared to the previous version of this report (January 2013) are:

- **EMIR** (pages 1-2) – the Regulatory Technical Standards (RTS) were published in the Official Journal and will enter into force on 15 March.
- **Shadow banking** (page 3) – EACT Chair and Avisa met with the Commission on 7 March to discuss the forthcoming legislation on Money Market Funds (see separate note on the meeting circulated with this report)
- **Financial Transaction Tax** (pages 3-5) – the Commission issued a revised proposal on 14 February. EACT / Avisa is drafting a position paper on the proposal. Further input from companies and EACT members on the feasibility of an ‘exemption’ is welcome. Intention is also to test the exemption idea with AFME experts.
- **CRD IV** (page 6) – the trilogue partners (the European Parliament, the Council and the Commission) reached an agreement on the text, which still needs to be formally approved by the Plenary of the Parliament. The CVA exemption for non-financial counterparties for non-centrally cleared derivatives was maintained in the text.
- **Long-term financing** (pages 11-12): Commission is expected to issue the Green Paper on 20 March.

For ease of reading, all new text compared to the previous report is in **bold** font.

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<p>European Market Infrastructure Regulation (EMIR) - Regulatory Technical Standards (RTS)</p>	<ul style="list-style-type: none"> <li>• The EU Official Journal published on 23 February <a href="#">the six Regulatory Technical Standards (RTS)</a> arising from EMIR. As previously reported, the final publication was made possible after the European Commission agreed to phase in some of the rules for non-financial companies. According to the phase-in rules, non-financials will get three years to move their trades into CCPs if they go above the threshold.</li> <li>• On February 27, <a href="#">the European Commission extended for four months the deadline for ESMA advise</a> on the equivalence between non-EU legal and supervisory frameworks and EMIR. According to the letter from the Commission, ESMA shall now deliver its advice on Japan and the USA by 15 June 2013 and, for the remaining countries specified in the request by 15 July 2013. The original deadline was 15 March 2013.</li> </ul>	<p>The RTSs will enter into force 20 days after their publication in the Official Journal, i.e. on 15 March 2013.</p> <p>The standards on trade confirmations, mark-to-market requirements and NFC/threshold breach notifications will become law on this date.</p>		<ul style="list-style-type: none"> <li>• Letter addressed to Commissioner Barnier – awaiting for feedback from Barnier cabinet</li> <li>• Contribute to BIS-IOSCO consultation</li> </ul>

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	<ul style="list-style-type: none"> <li>• BIS-IOSCO consultation on margin requirements for non-centrally cleared derivatives is ongoing and comments are due by 15 March. EACT will contribute via a joint response with Chatham Financial (US Coalition for Derivatives End-Users)</li> </ul>			
<b>Shadow banking / Money Market Funds (MMFs)</b>	<p>On 19<sup>th</sup> March 2012 the European Commission issued a <a href="#">Green Paper on shadow banking</a> which gives an overview of the policy options on the table. A public consultation took place in March-June 2012.</p> <p><b>Concerning the legislation on MMFs, the officials have stated (to EACT / Avisa) that they view CNAV MMFs as posing unacceptable systemic risk; they consider labeling [all] MMFs as VNAV MMFs is ultimately necessary and therefore the legislation would probably aim at directing the market towards the use of VNAV MMFs (possibly in a long term).</b></p>	<p><b>It is expected that there will be a communication from the Commission at the end of April – beginning of May on shadow banking, including a roadmap in different topics and one legislative proposal, which would most probably be on Money Market Funds. 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.</b></p>	<ul style="list-style-type: none"> <li>• Primary concerns are over the impact of regulatory moves on the competitiveness and availability of (CNAV) MMFs</li> <li>• Need also to monitor US initiatives and liaise with counterparts</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Confirm EACT position and lobby accordingly after publication of the proposal</b></li> </ul>
<b>Financial Transaction Tax (FTT)</b>	<p>Council agreed to the “enhanced cooperation” procedure between 11 Member States (Belgium, Germany,</p>	<p>The whole procedure for adoption of the FTT, which would only require a</p>	<ul style="list-style-type: none"> <li>• The Impact of the tax on the overall economy</li> <li>• Hidden cost increases for</li> </ul>	<p><b>Define EACT position and schedule meetings</b></p>

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	<p>Estonia, Greece, Spain, France, Italy, Austria, Portugal, Slovenia and Slovakia) at the end of January.</p> <p><b>The Commission issued a <a href="#">proposal for a Directive on 14 February 2013</a> (see also the <a href="#">press release</a> and the <a href="#">Questions &amp; Answers</a>).</b></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</li> </ul>	<p>unanimity vote by the 11 participating countries, should take a few months. The Irish Presidency has already allocated a slot in their ECOFIN agenda meeting of 14 May (fastest scenario). <b>The first Council technical working party took place on 21 February. The next working party meeting is scheduled for 16 April.</b></p> <p>The proposal states that the Directive would enter into force on 1 January 2014 and that the participating countries would have to adopt their national laws transposing and complying with the FTT Directive by 30 September 2013 at the latest.</p>	<p>end-users</p> <ul style="list-style-type: none"> <li>• Drop in trading activity in the FTT zone (ISDA, for example, expects derivatives activities to drop by between 60-90 percent in countries where the tax is introduced)</li> <li>• <b>EACT lobbying strategy is being drafted. This will possibly include lobbying for an exemption for intragroup and hedging transactions and corporate pension funds</b></li> <li>• <b>The theoretical feasibility of such an exemption needs to be tested quickly as there must be real doubts over it. An approach will be made to the head of tax at AFME to open up a discussion.</b></li> </ul>	<p><b>with Semeta cabinet and the permanent representatives of the participating Member States.</b></p>

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	<p>financial instrument before netting and settlement and it would be applied on the basis of a combination of the residence principle and the location of the where the financial instrument is issued.</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 entity established in the FTT Zone.</p>			

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<b>Capital Requirements Directive (CRD) IV – Capital Requirements Regulation (CRR)</b>	<p>An agreement on the text on renewed bank capital requirements was reached between the trilogue partners end of February. The CVA exemption for non-financial counterparties is maintained in the compromise text.</p> <p>The text includes the following (controversial) points:</p> <ul style="list-style-type: none"> <li>• Cap on bankers' bonuses</li> <li>• National governments' additional flexibility to lift the minimum capital requirements for banks in their countries based on economic conditions or rising risk</li> <li>• Obligation for EU banks to report to the European Commission (EC) their paid taxes and profits gain country by country (both inside and outside the EU).</li> </ul>	<p>If the text is published by mid-2013 (after some final drafting, legal checks and translations), the provisions could enter into force as of 1 January 2014.</p> <p>EBA is developing level-2 texts.</p>	<p>CVA exemption proposal</p>	
<b>Credit Rating Agencies (CRA) Regulation</b>	<p>Main provisions concerning the rating of sovereign debt:</p> <ul style="list-style-type: none"> <li>• CRAs will be required to set up a calendar (at the end of the previous year) for sovereign debt rating which will be limited to three ratings per year for unsolicited sovereign ratings. these ratings could be</li> </ul>	<ul style="list-style-type: none"> <li>• Parliament approved the Regulation text on 16 January 2013 (remains to be published in the Official Journal; entry into force on the twentieth day following its</li> </ul>		

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	<p>published only after markets in the EU have closed and at least one hour before they reopen.</p> <ul style="list-style-type: none"> <li>sovereign ratings would have to be reviewed at least every six months</li> </ul> <p>Rotation requirements (Article 6b):</p> <ul style="list-style-type: none"> <li>Rotation for CRAs is limited to new re-securitisations: if a CRA is issuing credit ratings on re-securitisations, it shall issue no credit ratings on new re-securitisations with underlying assets from the same originator for a period equal to the duration of the expired contract though not exceeding four years.</li> <li>But mandatory rotation will not apply to small CRAs, or to issuers employing at least four CRAs each rating more than 10% of the total number of outstanding rated structured finance instruments</li> </ul>	<p>publication except some provisions)</p> <ul style="list-style-type: none"> <li>ESMA consultation on guidelines and recommendations for the scope of the CRA Regulation ongoing (deadline 20 February)</li> <li>ESMA should establish a European Rating Platform where EU registered and authorised CRAs will have to communicate to ESMA all credit ratings they issue. ESMA will make them available to the public on a website.</li> </ul>		
<p><b>Markets in Financial Instruments Directive (MiFID II) and Regulation (MiFIR);</b></p>	<p><b>The next meeting of the Council working group will discuss the following points:</b></p> <ul style="list-style-type: none"> <li><b>Market Structure and Organised Trading Facilities</b></li> </ul>	<p><b>In terms of next steps the Presidency announced that the next working group meeting will be held on 26 March.</b></p>	<p><b>No common EACT position</b></p>	

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	<ul style="list-style-type: none"> <li>• Transparency (Trading obligation on investment firms)</li> <li>• Pre- and post trade transparency</li> <li>• Portfolio Compression</li> </ul>	<p>Given the slow advancement of the discussion, it is not sure that the Council will be able to agree on a General Approach for the ECOFIN meeting of 14 May. In April, the ECOFIN is informal and cannot take any formal decisions. Trilogue negotiations will follow the Council General Approach. EP Plenary vote is provisionally scheduled for October 2013.</p>		

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<p><b>Banking Union:</b></p> <ul style="list-style-type: none"> <li>• <b>Single Supervisory Mechanism (SSM)</b></li> <li>• <b>Bank Recovery and Resolution</b></li> <li>• <b>Deposit Guarantee Schemes (DGS)</b></li> </ul>	<p>The so called 'Banking Union' includes:</p> <p>1) Single Supervisory Mechanism; 2) Bank recovery Resolution regime; 3) Deposit Guarantee Scheme.</p> <p>1) <u>Single Supervisory Mechanism</u></p> <p>On 12<sup>th</sup> September 2012 the Commission issued a proposal for a Single Supervisory Mechanism for credit institutions on which negotiations shall be finalized shortly.</p> <p>2&amp;3) <u>Bank recovery Resolution regime &amp; Deposit Guarantee Scheme</u></p> <p>Work on bank recovery and resolution and on deposit and guarantee scheme have already been undertaken prior to the proposal for a Single Supervisory Mechanism. In June-July 2012 the Commission issued two proposals concerning, respectively, bank recovery and resolution and deposit and guarantee schemes.</p> <p>The subsequent work on the 'Banking Union' package is building upon these previous developments with the aim of moving towards increasingly harmonized and centralized recovery and resolution tools and deposit and guarantee schemes.</p>	<p>1) <u>Single Supervisory Mechanism</u></p> <p>Irish Presidency sources confirmed to Avisa that the <i>trilogues</i> negotiations on the <a href="#">two proposed Regulations</a> on the Single Supervisory Mechanism (SSM) are proceeding smoothly and that an agreement should be reached shortly.</p> <p>2&amp;3) <u>Bank recovery Resolution &amp; Deposit Guarantee Scheme</u></p> <p><b>Both files are under negotiation. On the former, discussion in the European Parliament (EP) considers easing conditions under which small banks should participate in the recovery plan and resolution fund. The European Banking Authority (EBA) could also get the power to set common rules for calculation of bail-in debt.</b></p>		<p>Monitor</p>

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<b>LIBOR case and Market Abuse Directive and Regulation (MAD - MAR)</b>	<ul style="list-style-type: none"> <li>Following recent cases of benchmarks manipulation, the Commission proposed a revision of the Market Abuse legislation (MAD-MAR) in order to include benchmarks into the scope of MAD and MAR. The Council reached a General Approach on the topic in December 2012.</li> <li>ESMA (the European Security and Markets Authority) and EBA (the European Banking Authority) have recently published a public consultation on their <a href="#">principles</a> for benchmark setting processes.</li> <li>Commissioner Barnier has stated that the Commission will propose further legislation on benchmarks in the second quarter of 2013 to further clarify the framework under which benchmarks should operate (expected to include the power to impose mandatory submissions for systemic benchmarks such as Euribor)</li> </ul>	<p><b>20 February 2013: published responses to ESMA-EBA public <a href="#">consultation</a> on principles for benchmarks-setting processes in the EU (<a href="#">link to responses</a>).</b></p> <p><b>As far as negotiation on the proposed revision is concerned, it appears that the Irish Presidency is willing to prioritize other banking measures before dealing with benchmarks.</b></p> <p><b>Concerning further legislative action, Commissioner Barnier declared that the Commission will propose further legislation on benchmarks in Q2 2013 (<a href="#">link to statement</a>). The legislation could entail mandatory banks participation in rate-indexes.</b></p>	<p>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.</p>	<p><b>Monitor and respond to any legislative proposals</b></p>
<b>Solvency II</b>	<p>A revision of <a href="#">Solvency II</a>, the Solvency II/<a href="#">Omnibus II</a> package, has been</p>	<p>On 28 January 2013 EIOPA announced that the result of</p>	<p>Higher counter-cyclical capital buffers imposed by Solvency II-</p>	<p>Monitor developments in</p>

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	<p>proposed to update the legislation with legislative and institutional developments.</p> <p>Since April 2012 negotiation between the European Parliament (EP) and the Council are deadlocked over the issue of long-term insurance contracts.</p> <p>Life insurance contract do not rely on the prices of options or guarantees.</p> <p>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.</p>	<p>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) to 2015 or 2016.</p> <p><b>Next steps:</b></p> <p>Second half of June 2013 - EIOPA will release the result of its study on Long-Term Guarantee Assessment (LTGA).</p>	<p>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 aftermath of the financial crisis. There is a clear link between Solvency II and the upcoming Green Paper on Long-Term Finance.</p>	<p>Solvency II/Omnibus II negotiation and potential spill-over between the two files.</p>
<p><b>Long-term finance</b></p>	<p><b>The Commission is expected to release a Green Paper on Long Term Finance in a few weeks.</b> Following the publication of the Green Paper, interested stakeholders will be invited to take part in the debate.</p> <p><b>The Green Paper is expected to have a very large scope, topics varying from prudential rules, role of financial markets, taxation, corporate governance, accounting and reporting rules, benchmarks and ratings, public</b></p>	<p><b>Commissioner Barnier delivered a speech announcing the publication of a Green Paper on long-term financing in the coming weeks (see speech - in French). The Green Paper is expected to be published on 20 March 2013.</b></p>	<p>Contribute to the public consultation following publication of the Green Paper.</p>	<p><b>Respond to Green Paper consultation upon publication</b></p>

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	<p><b>policy environment (state aids, public procurement), long-term saving and investment products to SMEs etc.</b></p>			
<p><b>Liikanen report</b></p>	<p>The Liikanen report issued in October 2012 proposes to:</p> <ul style="list-style-type: none"> <li>• Ring-fence investment banking from retail banking into a separate entity if a banks' trading activities exceed a certain threshold (this entity would still be part of the same banking group but would have to hold its own capital)</li> <li>• Banks should maintain recovery and resolution plans; if authorities consider some of the a bank's trading activities too risky, the ring-fence could be widened</li> <li>• Use of designated bail-in instruments in order to ensure that a bank's private creditors share some of the losses in case of a bank's failure</li> <li>• European Commission to assess whether the proposed amendments to capital requirements would be sufficient to keep both investment and retail banks safe and sound; according to</li> </ul>	<p><b>A regulatory text will probably be presented in September this year on which there will be a consultation. However the text would most probably not be adopted during this legislature.</b></p>		

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	<p>the report banks' techniques for assessing how much capital they needed to hold against their trading positions were outdated</p> <ul style="list-style-type: none"> <li>• Strengthen the governance and control of banks in order to rein in excessive risk-taking</li> </ul> <p>Both Germany and France – mirroring the Volcker rule in the US - have ongoing initiatives at national level to separate proprietary trading activities; trades executed on behalf of clients would remain within the retail bank “arm”.</p>			
<p><b>Anti-Money Laundering Directive and Regulation on information accompanying transfer of funds</b></p>	<p>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:</p> <ul style="list-style-type: none"> <li>• The new Directive clarifies and reinforces the rules on customer due diligence and introduces new provisions to deal with politically exposed persons</li> <li>• Inclusion within its scope of all</li> </ul>	<p>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. The Commission is planning to organize a public hearing on 15 March</p>	<p>To be analysed</p>	

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	<p>persons dealing in goods or providing services for cash payment of €7,500 or more</p> <ul style="list-style-type: none"> <li>• Designation of "Tax Crimes" as a new "predicate offence" (i.e. so that money laundering includes cases where the proceeds of tax evasion were involved).</li> <li>• Introduction of a new requirement for all cross-border wire transfers to include beneficiary information and the expansion of the scope to certain e-money and mobile telephony payment products.</li> <li>• Clarification with respect to EU data protection rules, in particular regarding the ability to transfer information to different parts of an international group (including operating in third countries) for anti-money laundering purposes.</li> </ul>			
<b>Payment Services Directive</b>	<p>Currently under review by the Commission. Issues which are being looked at by the Commission include:</p> <ul style="list-style-type: none"> <li>• Possible extension of the PSD to one-leg transactions (i.e. where at least the payer's PSP is acting from within the EEA / extension to all currencies</li> <li>• Review of the exceptions (negative scope)</li> <li>• Possible merger of the categories of payment</li> </ul>	Commission expected to issue a proposal in Q1 2013	To be analysed	

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	institutions and electronic money institutions <ul style="list-style-type: none"> <li>• Review of the payment services covered by the Directive</li> <li>• Transparency and information requirements</li> <li>• Surcharging</li> <li>• Refund right</li> <li>• Liability for unauthorized payment transactions</li> <li>• Liability for non-execution</li> </ul>			
<b>SEPA Governance</b>	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	Awaiting for the EC/ECB to issue a proposal; next meeting of the SEPA Council scheduled for 13 March but could be postponed if the proposal is not published by that time	Ensure a balanced end-user participation	Follow-up on developments