

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 • The European Commission has adopted a review proposal (EMIR Refit) in order to revise certain aspects of EMIR, for instance some relief on NFC reporting obligations 	<ul style="list-style-type: none"> • The European Parliament ECON Committee has published its proposed amendments to the EMIR Refit proposal, and is currently working on a compromise text
<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 	<ul style="list-style-type: none"> • European Parliament ECON Committee is working a compromise text on CRD V based on the amendments proposed by the Committee members; the Council is also finalising its position
<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. 	<ul style="list-style-type: none"> • The European Commission has confirmed to ESMA that it considers that the so-called Reverse Distribution Mechanism (also called share cancellation) is not allowed under the MMF Regulation. This could pose problems to CNAV and LVNAV funds that currently use the mechanism to deal with negative yield.
<p><u>Capital Markets Union:</u></p> <ul style="list-style-type: none"> • 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. 	<ul style="list-style-type: none"> • The European Commission published its Action Plan on sustainable finance



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
- Alternatives to 'IBORs' are being developed and the transition to risk-free rates is being prepared

- **The ECB has nominated the members of the euro risk free rate working group**

List of ongoing consultations:



Title	Website	Deadline
EMMI consultation on hybrid methodology for the calculation of euribor	Consultation page	15 May
European Payment Council's consultation on the evolution of SEPA payment schemes	Consultation page	10 June

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><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 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 	<p><u>EMIR REFIT</u></p> <p><u>The European Parliament ECON Committee published its draft report and amendments tabled to the EMIR Refit proposal. The Committee is currently discussing the amendments with a view of reaching a compromise position.</u></p> <p>EU Member States in the Council have agreed on their <u>position</u> on the Commission's proposal for EMIR REFIT review.</p> <p>The key points of the Council position relevant to corporate treasurers are:</p> <ul style="list-style-type: none"> • 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 • Clarification that financial counterparties are solely responsible and legally liable for the reporting done on behalf of non-financial counterparties 	



OTC Derivatives - European Market Infrastructure Regulation (EMIR)

<p>all asset classes are subject to the central clearing obligation</p> <ul style="list-style-type: none"> The hedging exemption is maintained <p>All the relevant documentation on the proposal can be found on the Commission website on EMIR review.</p> <p><u>EMIR – CCP location proposal:</u></p> <ul style="list-style-type: none"> 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 country CCP is deemed systemically very important, the Commission has the 	<ul style="list-style-type: none"> An option for non-financial counterparties to continue reporting themselves Recognition that the obligation to post variation margin on physically-settled FX forwards should apply only to the most systemic counterparties <p>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.</p> <p><u>Margining obligation for physically-settled FX</u></p> <p>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</p>	
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OTC Derivatives - European Market Infrastructure Regulation (EMIR)

possibility of deciding that the CCP is only able to provide services in the Union if it establishes itself in the EU.

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.

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>	<ul style="list-style-type: none"> • The European Commission published a communication on completing the CMU by 2019. New measures were announced on crowdfund platforms, covered bonds and on cross-border distribution of investment funds. • ESMA has published the draft technical advice on the Prospectus regime, which specifies e.g. the format and the content of prospectuses. 	
<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 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. <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"> The European Parliament ECON Committee published its <u>draft report</u> on CRD V and tabled amendments (amd 180-414, 415-685, 686-935, 936-1100) 	
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 European Commission has sent a letter to ESMA stating that it considers that reverse distribution mechanism (RDM) is not compatible with the MMF Regulation. RDM is a practice used by stable-priced funds to deal with negative yield, where units of shares are cancelled. The Commission is requesting ESMA to develop guidance on the issue in order to ensure supervisory convergence.</p>	<p>Prohibiting the practice of RDM is very likely to have consequences on the availability of CNAV and future LVNAV funds denominated in euro (and in other negative-yielding currencies) as it will be difficult for them to deal with negative yields in other way than by RDM.</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 	<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>location of the where the financial instrument is 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 		

Financial benchmarks		
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>	<ul style="list-style-type: none"> • The ECB has appointed the working group on euro risk free rate • EMMI, the administrator of EURIBOR, has started a public consultation on a hybrid methodology for the calculation of the benchmark. The deadline for responses is 15 May. • EMMI has also concluded that it will not continue efforts to review EONIA's calculation methodology. EMMI also states that the daily publication of the rate will continue as is until end 2019 but beyond that the benchmark's existence cannot be warranted. 	



<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	<p>ESMA has published several guidance papers / opinions on MiFID 2:</p> <ul style="list-style-type: none"> • position management controls for commodity derivatives • ancillary activity – market size calculation • Q&A updates on transparency and market structure • guidance on transactions on third country trading venues for post-trade transparency and position limits • public register for the trading obligation for derivatives <p>The European Commission published the list of derivatives subject to the trading obligation</p>	
<p>Key documents:</p> <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
	<ul style="list-style-type: none">• The European Commission has published a legislative proposal on fees on cross-border payments denominated in euro. The legislation in force foresees that fees for cross-border payments in euro in Eurozone countries should be the same of the fees for domestic payments denominated in euro. The aim of the proposal is to enlarge this scope also to EU member states that are not in the Eurozone, where the fees will have to be the same for cross-border euro payment and a domestic payment of the same value in local currency. The proposal does not cover other (EU) currencies than the euro however.• The European Payments Council has launched a public consultation on the changes to be made to the SEPA credit transfer	



Payments and SEPA

- and SEPA direct debit payment schemes
- The [final Regulatory Technical Standards](#) on strong customer authentication and secure communication supplementing PSD2 were published. The RTSs will be applicable as of September 2019.

Key documents:

[Payment Services Directive 2](#)

[Regulation on interchange fees for card-based payment transactions](#)

[SEPA Regulation](#)

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 here.</p>	<ul style="list-style-type: none"> • The European Commission published its Fintech Action Plan • The European Commission launched a Blockchain Observatory and Forum • The EBA has published its FinTech Roadmap 	

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 	<p>The European Commission published its Action Plan on sustainable finance that is based on the final report of the High Level Expert Group on sustainable finance. The recommendations of the Action Plan include:</p> <ul style="list-style-type: none"> • Establishing an EU classification system on what is sustainable • Developing EU labels for green financial products, such as green bonds • Ensuring that asset managers and institutional investors take sustainability into account in their investment processes • Enhancing transparency in corporate reporting 	



<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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<u>Review of the European supervisory Authorities (ESAs)</u>		
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 will be integrated into supervision by 		



<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: Legislative proposal</p>		



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>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><u>Key documents:</u></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		