

Swiss SPTC Meeting 41

Regulatory Developments

Matthias Heer, 18. December 2017

IMPACT ANALYSIS

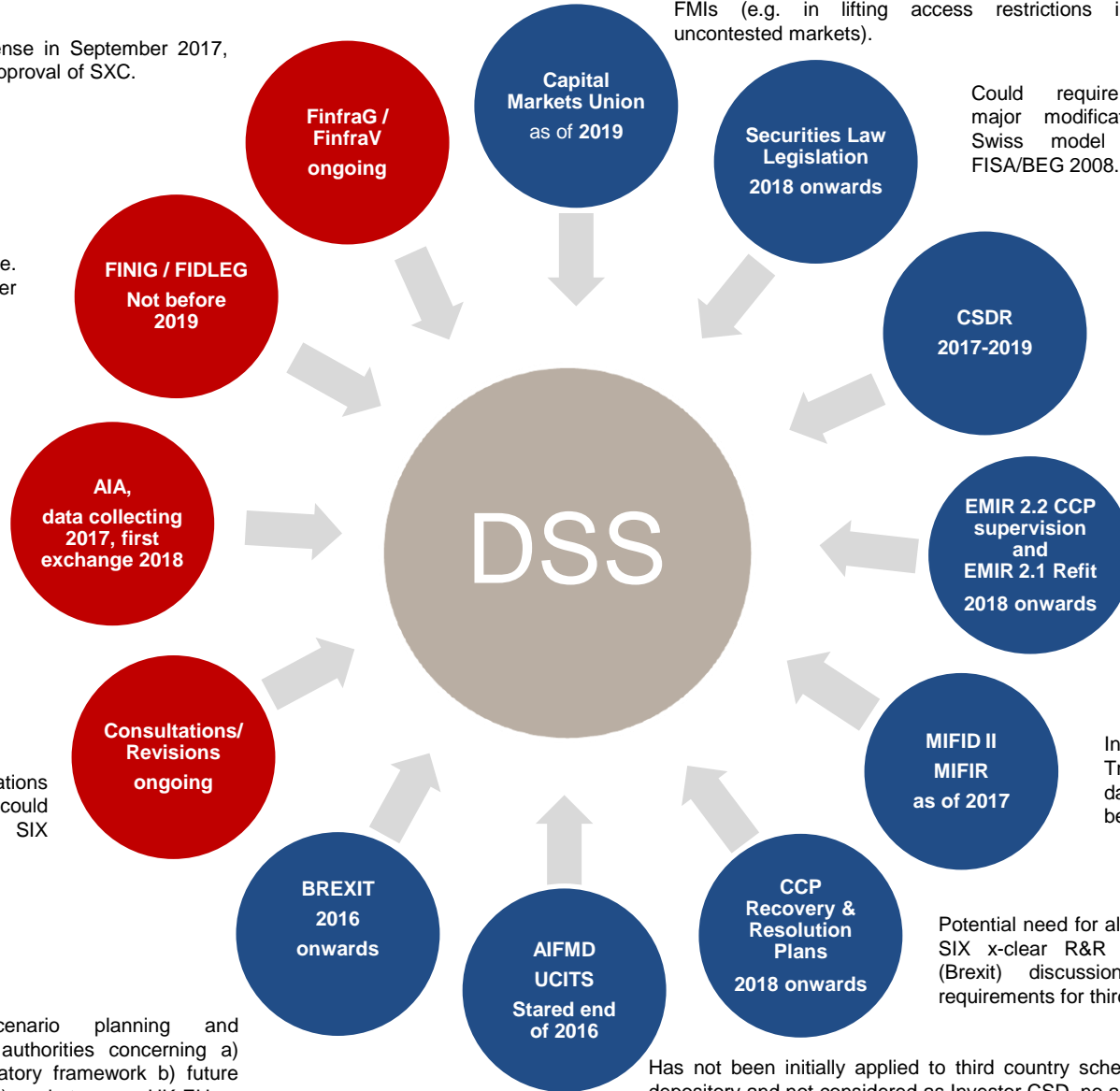
SIS received FMI License in September 2017, still waiting for formal approval of SXC.

The impact is on client side. DSS might be able to offer regulatory solutions.

AIA will be a global info sharing standard. Switzerland is fully committed to AIA, IT leverage effects possible, corresponding tax services to be offered.

Upcoming/pending consultations and revisions that possibly could affect DSS respectively SIX Group in the future.

Monitoring, scenario planning and exchange with authorities concerning a) future UK regulatory framework b) future relation CH-UK c) market access UK-EU



Potentially significant, particularly in advocating change in underpinning laws (SLL, company and investor protection), as well as on post-trading FMIs (e.g. in lifting access restrictions in uncontested markets).

Could require some major modifications to Swiss model law – FISA/BEG 2008.

Impact areas of governance, risk management, CoBM settlement and settlement discipline. SIX SIS equivalence procedure is under way.

Under discussion. Potential for equivalence review, additional requirements from EU authorities and supervisory fees. Technical adaptations due to planned simplifications.

Indirectly significant on Post-Trade. Technical changes in dataflow SIX SIS and SIX x-clear being implemented.

Potential need for alignment with ongoing SIX x-clear R&R planning. Politicized (Brexit) discussion about additional requirements for third countries CCP.

Has not been initially applied to third country schemes. As SIS is not a depository and not considered as Investor CSD, no application.

Topics

- EU CCP Regulation
 - EMIR 2.1 – REFIT
 - EMIR 2.2 – CCP Supervision
 - ECB Statutory Amendment
 - CCP Recovery and Resolution

- CSDR Equivalence Procedure SIX SIS

- BREXIT & Miscellaneous

EU CCP Supervision – Regulatory Streams

- **EMIR 2.1 – REFIT**

Focus; simplifications of EMIR specifications like

- non-financial counterparties – calibrating the clearing and bilateral margining requirements
- small financials – calibrating the clearing obligation
- simplifying the back loading reporting requirement

- **EMIR 2.2 – CCP Supervision**

Strengthen financial stability through CCP supervision, with focus on third country

CCPs Single CCP supervision for EU (ESMA or ECB, or both?)

- Supervisory fees
- Supervisory powers (access rights, recovery, resolution, suspension, audit, asset and data seizure)
- CCP criticality assessment and implications for supervision and domiciliation

- **EU CCP Recovery & resolution**

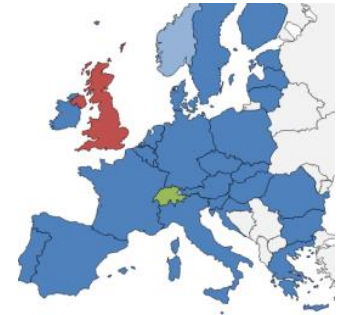
Provide a recovery & resolution system for CCPs.

- Skin-In-the-Game (25% of required capital or more)
- Equity exchange in connection with assessments
- Use of recovery tools, service-closure, etc.

- **ECB statutory amendment**

June 2017 ECB published a Recommendation for a Decision to amend Article 22 of the Statute, in order to allow the ECB to regulate “clearing systems for financial instruments” for monetary policy purposes.

- ECB to perform the responsibilities proposed to be granted to central banks of issue under the EMIR 2.2 proposal, for financial instruments denominated in euro.
- Has to be considered by COM and voted by Council and Parliament.



EMIR 2.1 – REFIT

- Discussion in EU Council just started
- Discussion in EU Parliament just started (MEP W. Langen)

- See discussion in the risk committee 24. May 2017
- Focus on simplifications of EMIR specifications like
 - *for small non-financial companies, they would no longer have to report a transaction to a trade repository if undertaken with a financial counter-party,*
 - The financial institution would be responsible, as well as legally liable, for the reporting.
 - Intra-group transactions for these smaller firms would also be exempt.
 - *clearing houses would be required to report exchange-traded derivatives on behalf of both counter-parties.*
 - Pension funds are also set to receive an additional three-year carve-out from the clearing obligation.
 - changing the way non-financial firms calculate a threshold which would subject them to the clearing obligation, basing it on a yearly calculation looking at aggregate month-end average position for March, April, and May.
 - removal of the so-called front-loading obligation, which requires firms to clear derivatives contracts entered into before the clearing obligation begins;
 - *the power for the Commission to suspend the clearing obligation in the case of financial stability concerns;*
 - a removal of the obligation to report derivatives trades not outstanding on February 12, 2014, a provision known as “back-loading.”
 - increasing the upper limit of fines that ESMA can impose on trade repositories to €200,000.

EMIR 2.2 – CCP Supervision

- New CCP Executive Session at ESMA
 - improved college of supervisors
 - ECB becomes member of the Executive Session
- Third country CCPs – 2 ½ tier system
 - 1. tier: non systemically CCPs
 - additional information
 - introduction of fees for third country CCPs
 - 2. tier: systemically important CCPs
 - compliance with CCP rules in EU and third country
 - compliance with additional requirements from central banks and ECB (availability and type of collateral, segregation, liquidity etc.)
 - compliance with additional requirements from ESMA (all relevant information, on-site inspections etc.)
 - safeguards confirming that such arrangements are valid in third country
 - comparable compliance with third countries regimes (reciprocity)
 - 2 ½ tier: substantially systemically important CCPs
Commission decides upon request from ESMA and ECB that CCP has to be established in EU

Discussion in EU Council
just started
Discussion in EU Parliament
just started (MEP D. Hübner)

EMIR 2.2 – CCP Supervision

Thousand dollar question: Systemically important or even substantially systemically important?

“ESMA will decide if a third-country CCP is systemically important by assessing a number of aspects of the third-country CCP's business (e.g. its size and how much that CCP clears of each Union currency), its links to the EU (e.g. how many clearing members are EU entities and the links between that CCP and EU market infrastructures), as well as its potential impact on financial markets, financial institutions or financial stability if such a CCP were to fail. The Commission, in cooperation with ESMA and the European System of Central Banks (ESCB), will specify the exact criteria for assessing whether a third-country CCP is systemically important in a Delegated Act which is planned to be adopted within six months of the entry into force of this regulation.”

CCP Recovery and Resolution

Discussion in EU Council ongoing
Discussion in EU parliament
ongoing – Report by MEP von
Weizsäcker and MEP Swinburne

- The Commission tabled its proposal for this new legislation on the 28th November 2016. The proposal follows to some extent the work of the FSB and CPMI-IOSCO
- New CCP Executive Session at ESMA
 - additional R&R college of supervisors
 - ECB becomes member of the college
- The main element of the proposal are
 - high flexibility for the national resolution authorities when considering the tools to be used and the timing
 - it rejects the idea of toolkit setting out the order in which the tools should be used as it would limit the authorities' flexibility
 - the main resolution tools in the proposal are: partial or full contracts tear-up, variation margin haircutting, cash calls, write-down and conversion of capital and debt instruments, sale of business, bridge CCP, finally public support as a last resort.
 - possibility for resolution authorities to “require the CCP to set up a parent financial holding company in a Member State or a Union parent financial holding company”. (Link to EMIR 2.2)

CCP Recovery and Resolution

Third Country Requirements, Articles 74 to 78

- **Art. 74 – Agreements with third countries**
the Commission may submit to the Council recommendations for the negotiation of agreements with third countries where a third country CCP provides services or has subsidiaries in one or more Member States.
- **Art. 75 – Recognition and enforcement of third-country resolution proceedings**
Relevant national authorities shall recognize third-country resolution proceedings relation to a third-country CCP but also shall at least have the resolution powers in relation to assets located in the Member States and rights or liabilities of TC CCP business booked in the MS.
- **Art 76 – Right to refuse recognition or enforcement of third-country resolution proceedings**
By adverse effects on financial stability, by unequal treatment as third-country creditors, by material fiscal implications, by contradictions to national laws.
- **Art. 77 – Cooperation with third countries authorities**
Competent authorities or resolution authorities, where appropriate, shall conclude cooperation arrangements with third country authorities. ESMA to issue guidelines on the types and content of the provisions of cooperation arrangements by 18 months after the entry into force of the Regulation.
- **Art. 78 – Exchange of confidential information**
Not via ESMA.

ECB Statutory amendment

- 23. June 2017 – ECB recommends amendment of art. 22 of the ECB Statutes.
 - 2. October 2017 – positive EU Commission opinion on amendment of art. 22
 - Has to be approved by EU Council and EU Parliament
- Goals concerning CCP
 - “a significantly enhanced role for central banks of issue in the supervisory system of central counterparties (CCPs), in particular with regard to the recognition and supervision of systemically important third-country CCPs clearing significant amounts of euro-denominated transactions.
 - Under the proposed amendments to the EMIR framework, the Eurosystem will be able to continue to fulfil its role as the central bank issuing the single currency. The amendments will allow the Eurosystem to monitor and address risks associated with central clearing activities that could affect the conduct of monetary policy, the operation of payment systems and the stability of the euro.”
- Questions remain:
 - ECB powers and governance structure?
 - Only Euro-Clearing? What about CCPs from non-Euro member states?
 - What about third country CCPs?
 - Future role of ESMA?
 - Analogue bank supervision, single resolution authority? Single Resolution funds?

Timeline for Finalisation of CSDR and SIX SIS Application

2017	
30. March	Entry into force of relevant RTS on CSD requirements, participant default rules and CSD capital requirements. Start of six month application period for CSDs.
26. September	SIX SIS received CH FinfraG FMI licence from FINMA.
29. September	SIX SIS sent in application for recognition as a third country CSD under CSDR to ESMA. Grandfathering in place.
2018	
End of March	Deadline for NCA to rule on CSDs' applications, 6 month after recognition of complete application.
Q2 – Q3	Requirement 1: adoption of CSDR into the EEA acquis (Liechtenstein acquis).
Q2 – Q3	Requirement 2: EU COM equivalence decision on Swiss regulatory and supervisory framework.
Q2 – Q3	Requirement 3: MoU between ESMA and FINMA.
Q4	ESMA decision on SIX SIS as a third country CSD under CSDR.
2019	
June	Entry into force of settlement discipline provision.

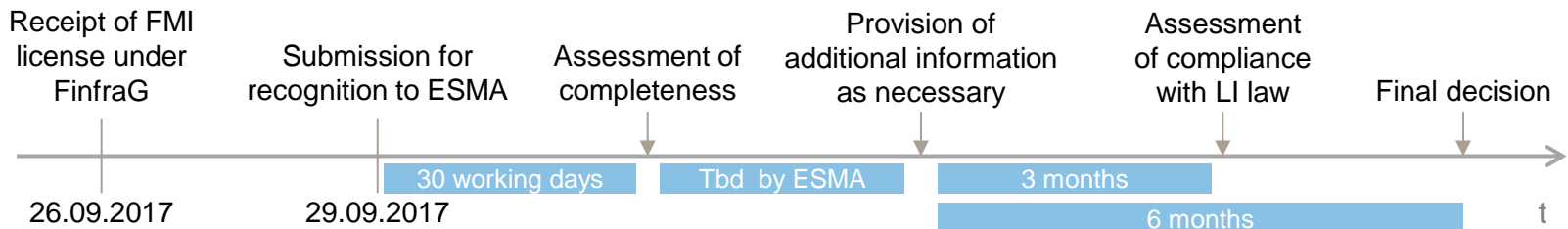
Project FinfraG/CSDR – Third Country Recognition

Requirements for recognition (Article 25(4) CSDR)

- Equivalence decision by the European Commission (Article 25(4)(a));
- With receipt of its FMI license under FinfraG, FINMA confirmed that SIX SIS is subject to effective supervision and is compliant with prudential requirements applicable in Switzerland (Article 25(4)(b));
- Cooperation arrangements between ESMA and FINMA (Article 25(4)(c));
- Confirmation by FMA that SIX SIS takes the necessary measures to allow its users to comply with the law of Liechtenstein (Article 25(4)(d)).

Timelines (Article 25(6) CSDR)

- Within 30 days from the receipt of the application, ESMA shall assess whether the application is complete;
- If application is not complete, ESMA shall set a time limit by which the applicant CSD has to provide additional information;
- The FMA shall assess the compliance of SIX SIS with the law of Liechtenstein and inform ESMA within 3 months of receipt of necessary information from ESMA.
- Within six months from the submission of the complete application, ESMA shall decide whether to grant or refuse the recognition.



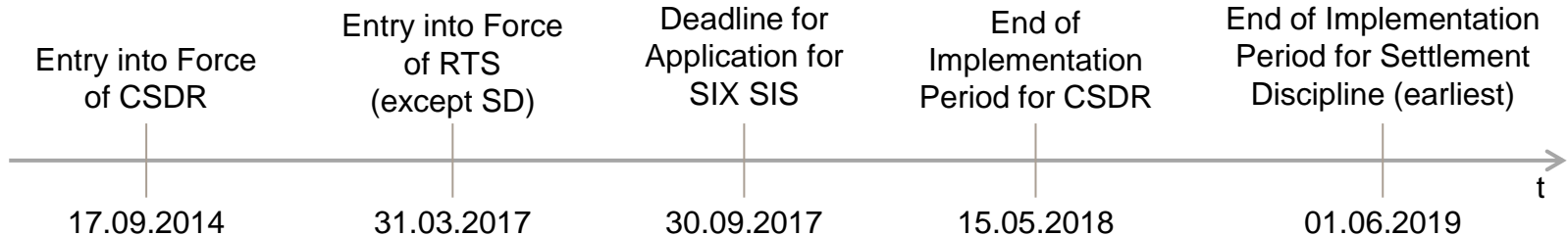
Project FinfraG/CSDR – Settlement Discipline



CSDR aims to harmonise the Settlement Discipline Regime across the EU.



- Settlement Discipline is regulated in Art. 5 to 8 CSDR and RTS on Settlement Discipline.
- Scope largely but not fully stable yet
- Timing of implementation unclear: It is expected that they will be put into force by the end of Q1 2018. Corresponding implementation will therefore be due in June 2019.



BREXIT

UK regulatory framework

- Licensing? (EMIR, ROCH)
- Regulatory Framework?
- Reporting?

Future relation UK-CH

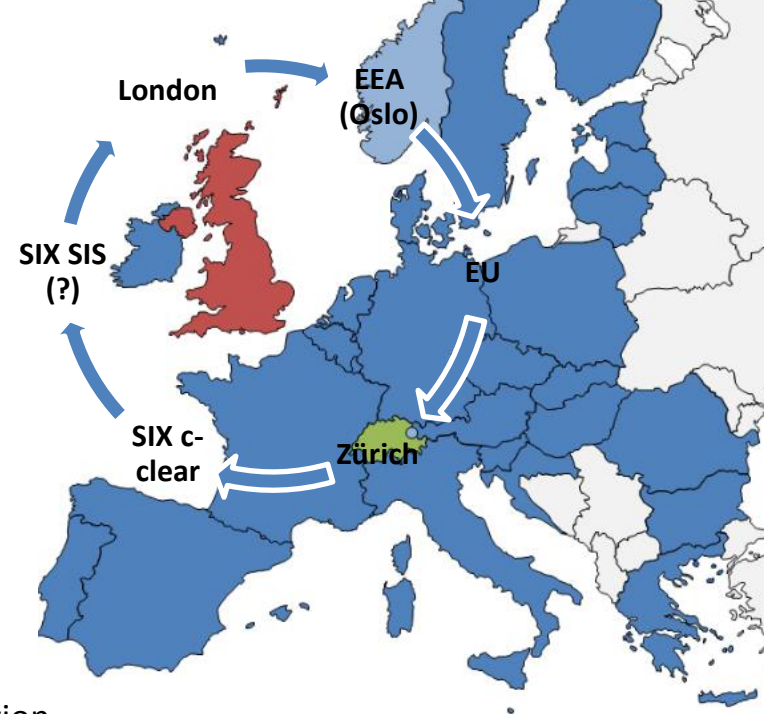
- Bilateral discussions UK-CH
- Bilateral agreement
- Supervisory cooperation

Future relation EU-UK

- Market Adjustments (ongoing)
- CCP Interoperability and recognition
- Settlement Finality
- Brexit agreement?
- Transition period?

Fallout EU-CH

- Financial Services Agreement?
- Simplified equivalence procedures?
- Deviation from global standards?



Miscellaneous

Next EU Presidencies

- 01/2018 **Bulgaria** – focus Financial Services
 - Banking (deposit insurance, risk reduction (BRRD), insurance)
 - EMIR-review
- 07/2018 **Austria** – focus Financial Services:
 - CCP Recovery & Resolution
 - CMU (EPTF)

Capital Markets Union (CMU)

- Mainly to do with revitalisation of company funding tools and instruments, but some post-trade aspects, covering:
 - Review of remaining Giovannini Barriers: EPTF (European Post Trade Forum) – report, EU COM consultation ended in Nov. 2018. Communication from COM expected end Q1 2018
 - Securities Law: high level working group, report in 2018. EU COM consultation just ended. Legislative and other recommendation expected for end 2018.

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