

Swiss SPTC Meeting 39

Regulatory Developments

Matthias Heer, 27. June 2017

IMPACT ANALYSIS

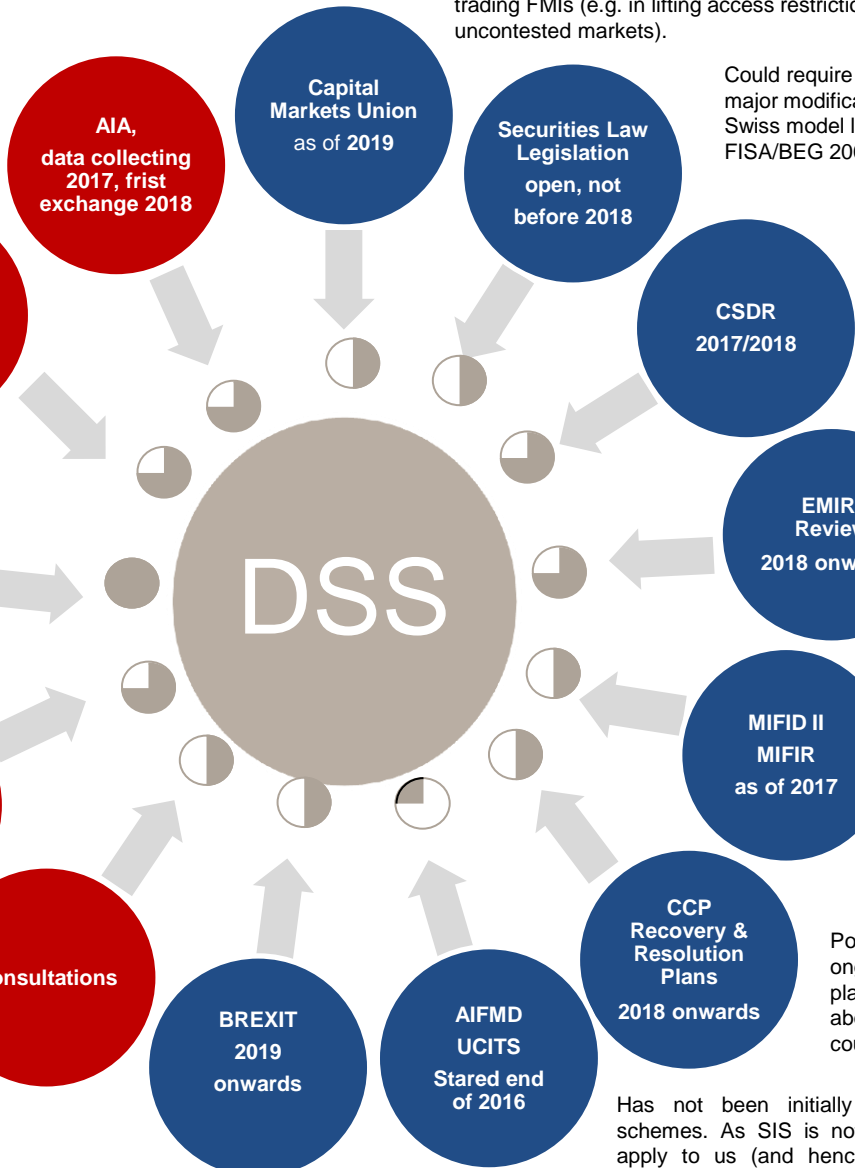
AIA will be a global info sharing standard; Switzerland is fully committed to AIA, SIS as potential data provider for the ETSV, IT leverage effect with FATCA is likely.

The impact is on client side. DSS might be able to offer new services.

Partially new and additional reportings with a higher degree of information (risk management as well as an extended description of our processes).
Resolution & Recovery planning

SXC and SIS requested for FMI License, still running as a Bank till formal approval. Uncertainties concerning modalities of recovery planning 2017 and applicability of FINMA circulars.

Upcoming/pending consultations that possibly will affect DSS respectively SIX Group in the future.



Still in early stages. 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 FMI (e.g. in lifting access restrictions in uncontested markets).

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

As with EMIR, potentially far-reaching in areas of governance, risk management, CoBM settlement and settlement discipline. Need for SIX SIS equivalence.

High potential for x-clear equivalence review, additional requirements from EU authorities and supervisory fees. Technical adaptations due to planned simplifications.

DSX equivalence needs to be achieved. Technical changes in dataflow SIX SIS and SIX x-clear being analysed and implemented.

Potential need for alignment with ongoing SIX SIS and 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, it does not apply to us (and hence does not trigger liability provision).

EU Post Trading Agenda

Segment of the Value Chain	Measure	Proposed (Published)	Adopted (Finalised)	Entry into Force (after Technical Standards)
Trading	MiFID II/MiFIR (MiFID I)	July 2011	13 May 2014	1 January 2018
Clearing	EMIR	September 2010	4 July 2012	15 March 2013 21 June 2016 (Clearing)
	CCP Resolution & Recovery	November 2016	<i>End 2017?</i>	<i>Mid 2018?</i>
	EMIR-Review / EMIR CCP authorisation	May 2017 June 2017	<i>Mid 2018?</i>	<i>2019?</i>
Settlement	Central Securities Depositories Regulation (CSDR)	March 2012	28 August 2014	Q1 2017, Except Settlement Discipline (Q1 2019)
Underpinning Law	Securities Law Legislation (SLL)	Recommendation by end-2018 (part CMU)	<i>Not Clear</i>	<i>Not Clear</i>

CCP Resolution and Recovery 1

- 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-IO스코
- 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”.
- **Discussion in EU Council started**
- **Discussion in the EU Parliament started only recently**
- ... no CSDR R&R under this COM-legislation (2014-2019)**

CCP Recovery and Resolution 2

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.

CCP Recovery and Resolution 3

Third Country Requirements, Articles 74 to 78

- **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.

EMIR Review 1– Simplification

- A market consultation on the – largely CCP requirements aspects of EMIR – was concluded in 2015 . *“Commission recognised that EMIR (and the CRR) were the main pieces of legislation causing market participants difficulty in respect of complexity, duplication and overlap.”*
- Commission came forward with its recommendations on the 23. November 2016.
- After postponement, the commission presented its legal proposal
 - 1. part: EMIR review, 4. May 2017
 - 2. part: EMIR CCP supervision & stability, 13. June 2017
- Focus of 1. part are simplifications of EMIR specifications like
 - non-financial counterparties – calibrating the clearing and bilateral margining requirements
 - small financials – calibrating the clearing obligation
 - simplifying the backloading reporting requirement
 - intragroup transactions – simplifying reporting requirements
 - simplifying double-sided reporting
- **Discussion in EU Council not started yet**
- **Discussion in the EU Parliament not started yet**

EMIR Review 2 – CCP Authorisation and 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

 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.)
 - introduction of fees for third country CCPs
 - comparable compliance with third countries regimes (reciprocity)
 - safeguards confirming that such arrangements are valid in third country

 - 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 and EU Parliament not started yet**

Timeline for Finalisation of CSDR and Application

2017	
10. March	Publication of CSDR RTS on CSD requirements, participant default rules and CSD capital requirements.
30. March	Entry into force of relevant RTS, 20 days after publication in the OJ (except Settlement Discipline) triggers application deadlines for MS CSDs and TC CSDs
30. September	Application Deadline for TC CSDs to ESMA and EU CSDs to National Competent Authorities (“NCAs”) for recognition under the CSDR
late 2017	Expected incorporation of CSDR into the EEA Agreement, triggering the change in legal personality of LIE securities into “EU” securities
ongoing work	additional requirements <ul style="list-style-type: none"> - COM equivalence decision on Swiss regulatory and supervisory framework - MoU between ESMA and FINMA - assent of LI authorities
2018	
beginning with March	Deadline for NCA/ESMA to rule on CSDs’ applications, 6 month after recognition of completed application
2019	
March	Entry into force of settlement discipline provisions

Other EU Issues on Our Radar 1

Next EU Presidencies

- 07/2017 **Estonia** – focus Financial Services:
 - Banking (deposit insurance, risk reduction (BRRD), insurance, Basel 3.5-4...)
 - CCP Recovery & Resolution
 - start EMIR-review
- 01/2018 **Bulgaria** – focus Financial Services
 - EMIR-review
 - 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: Commission EPTF (European Post Trade Forum) has just completed its reports for the Commission. Follow-up are expected to be announced end of Q2.
 - Securities Law: high level working group, report in 2018. Ongoing Com-consultation (Q2 2017). Legislative and other recommendation expected for end 2018.

Other EU Issues on Our Radar 2

Financial Transaction Tax (FTT) – the unsuccessful story goes on

- 10. October 2016: agreement between the 10 finance ministers of the FTT-member states in the margin of the Eurogroup-meeting on main pillars. Goal was a common proposal for the end of 2016.
- 6. December 2016: discussion of the ministers postponed to January 2017
- 22. January 2017: minister discussion without further insights
- 21. February 2017: minister discuss exceptions for pension funds
- 17. March 2017: OECD assignments for an FTT interim report (fall 2017)
- 23. June 2017: interim report under the Maltese presidency

Participating member states still arguing about scope and basis of taxation. As well as economic outcome and compensation payments.

BREXIT – Post Trade Perspective

SIX

- Swiss Exchange – Recognition Overseas Investment Exchange
- SIX x-clear – Recognition based on EMIR
- SIX Financial Information
- SIX Payment Services

CH – UK market access

- Licenses
- Renewal / replacement of EU regulation
- Legal certainty

UK – EU market access

- Losing market access / passport
- Market disruptions
- Hub London

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