

It'll be up to the European Parliament to make the SIU work

Karel Lannoo

Seeing some SIU light at the end of the MISP tunnel is hard. The European Commission's legislative package to create an integrated capital market has demonstrated the dangers of the 'omnibus method', of bringing a wide variety of subjects into a single package. It's good to see the European Parliament (EP) asking for even more single market and interconnectedness, while the Council of the EU is working to preserve goldplating and the prerogatives of national authorities, as well as setting rules in an arbitrary way. ESMA will for sure have a long way to go to make it all work if it's to become Europe's market supervisor – the data integration and governance challenge alone is enormous.

The Market Integration and Supervision Package – MISP – is the centerpiece of the Commission's response to building a more unified capital market. It proposes more single market for trading venues and post-trading facilities, more integrated oversight for asset management (which thus far has remained very disintegrated), a new single depositary regime, and single supervision of large trading venues and post-trade facilities.

Scanning through the 2 252 amendments put forward by the EP's Economic and Monetary Affairs (ECON) Committee and the Council's common position shows that nothing has changed in the rulemaking process, notwithstanding the many reports and recommendations on simplification. Level one proposals contain a lot of detail, which should be left to implementing measures and guidelines, allowing for quick adaptation to market developments. Detailed definitions and criteria to determine whether a trading platform is pan-European or not should be left to Level 2, but of course this isn't what some parties want. Council amendments openly call for preserving national flexibility, hence goldplating (see i.e. recitals 29 or 34 of the Council amendments to the draft regulation).



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The European Capital Markets Institute (ECMI) is an independent, non-profit research institute that conducts in-depth research aimed at informing the public debate and policymaking process on a broad range of issues related to capital markets. ECMI's operations and staff are managed by the Centre for European Policy Studies (CEPS).

On the substance of the draft amendments, major points of contention are equity market structure and transparency, the supervision of commodity markets (with non-banks), the interoperability of post-trade, the review of asset management, the use of stablecoins, and the scope of ESMA supervision.

- On equity market structure, many EP amendments favour lit markets and act to constrain the use of systemic internalisers (SI). SIs, which will be directly supervised by ESMA, will be subject to more pre-trade and post-trade transparency, and will have to publish rulebooks;
- On commodity markets, the ancillary activity exemption has been re-opened, meaning that commodity traders working for non-banks will fall under the MiFID rules;
- Interoperable links are required across the board among infrastructures, from trading venues to CSDs and CCPs, and with T2S, and more transparency, in a single reporting regime and with fee disclosure, to make sure markets work;
- The annual review of asset management has led to divided views, as are the macro-prudential requirements and fee transparency. There's also no consensus on the depositary passport. The annual review conducted by ESMA would be replaced by a 'coordination college' under the Council, with ESMA acting merely as a secretariat without formal powers;
- The scope of ESMA supervision is expanded in the EP amendments, with more powers to act against goldplating and prerogatives for no-action letters. Support also exists for a competitiveness mandate for ESMA, and a larger role for supervising the DLT pilot regime. The question remains about the scope of supervising pan-European market operators (PEMOs), systemic CSDs and CCPs. The Council changed the group criteria for trading venues to market share and the degree of cross-border activity. The arbitrary nature of the criteria raises many questions about the exercise objectives and the level playing field, all impacting the overall attractiveness of the EU's capital markets. In short, carving out a large European exchange that wouldn't fall under ESMA's supervision makes no sense;
- ESMA's governance is also an issue, with the Council trying to strike a balance between the powers of the Executive Board and the Board of Supervisors. Related to this is ESMA's funding, but this is difficult to plan if the scope of its tasks and responsibilities remain unclear.

It's still early days to judge, but there's certainly a lot to come regarding ESMA and its new chair, to prepare for new tasks and an almost doubling of its workforce. Enforcement will, even more than before, be a key issue for making it all work.

But first the EP needs to make sure that MISP's scope is consistent and absolutely no arbitrary exceptions are made for PEMOs and large financial infrastructures.