



Union of Listed Companies

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Summary of points

1. Over-regulation – (relaxation for SMEs)

ENEISSET (ULC – Union of Listed Companies) fully supports the EU Commission’s initiative on a “EU Listing Act”. The initiative has the potential to improve the financing and regulatory environment for European listed companies. Nevertheless, the regulatory framework for listed companies needs to be rebalanced to better reflect the companies’ perspective and needs. Indeed, listed companies all over Europe share a similar experience: The intensity of regulation has steadily increased in the last 20 years. This has created unnecessary bureaucratic burden as well as compliance and legal risks associated. For example:

- Prospectus regime should deliver less bureaucracy in the process of an initial public or initial bond offering as well as for secondary offerings of already listed companies and overall the EU should make it easier for small and medium sized companies (among them start-ups) to use capital markets
- MAR (bureaucratic burden caused by insider lists and notification of managers’ transactions),
- Less on going and organizational requirements for SMEs
- Level playing field with more robust definitions of fundamental terms is required: transferable securities, marketing of UCITS and AIFs, inside information, or market abuse by omission.

2. The consolidation effect of financial markets regulation and regional markets

Once clearing and ownership obstacles are addressed securities can be traded interchangeably among various execution venues at minimal cost. This makes regional investment firms redundant and regional exchanges more or less vulnerable to cream skimming of order flow from new execution venues. This could eventually mean that big market players with access to more centralized infrastructures could “cherry pick” liquid securities traded in regional stock exchanges for which there is certain interest by their clients leading to a ‘centralization’ of main trading interest, leaving regional exchanges with illiquid second class securities and trapped local investment firms and local investors. Assuming the positive role of stock exchanges to local national economies, such as business innovation and growth and that new listings are attracted by liquid markets where more investors and intermediaries operate, such centralization effect could eventually result in the decline of regional national markets. However, there is a huge difference between EU and US. EU is not a federal state like US and hence distinct national economic interests, in the absence of a full economic integration continue to exist.

Another form of consolidation that could arise out of the excessive competition among market venues and market fragmentation is through aggregating fragmented access to various market venues. Discovering the best possible price through a big number of execution venues could be extremely costly or even almost impossible. Executing



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an order, choosing among available venues and securing best execution is not anymore a complex manual process but an automated one. In that respect the operation of such smart order routing systems (SORs) introduce a new form of consolidation.

EU financial market in the post MiFID II era could be seen as a virtual market with multiple entry points. Along the same line smart order routers can be seen as meta-exchanges playing the function that search engines play in the world wide web. However, even such a market model could lead to forms of monopolies or oligopolies other than the natural monopoly of traditional stock exchanges. SORs are not explicitly regulated under MiFID II

Also the above trading environment as already indicated above, is expected to affect investment firms and more specifically to have a disproportionately negative impact on small firms as opposed to large ones. Off course bigger investment firm could offer better prices to customers. Nonetheless, consolidation of investments firms will decrease competition on the relevant market. This will ultimately lead to higher prices because as a matter of principle, better prices can be achieved through free and undistorted competition. Financial rules that directly or indirectly tend to create oligopolies restrict competition and serve customers poorly.

Attention should be given to regional markets:

- Introduction of a special committee for regional markets and the side effects that market integration causes to firms and exchanges.
- Relaxation of rules for small investment firms
- An open discussion on policies for the role of regional stock exchanges.

3. CSRD

Good intention with too much ambition becomes unrealistic for EU companies and misaligned at international level. First it is very important to align with ISSB on disclosure baseline for the sake of reporting of EU business. Second CSRD and ESRS are ambitious in terms of the amount of info and new data to be reported (reporting requirements must be feasible) . Third expertise is not there yet.

4. Corporate sustainability Due Diligence Directive (CS3D)

ULC believes that European Commission goes too far and becomes unrealistic on scope of the value chain and level playing field with third country companies and the rules need a better calibration (we submitted our views through European Issuers in the public consultation). Moreover, there is a strong need to clarify definitions. We underline the need to have a well-balanced supervisory system including non-judicial remediation mechanisms and that the role of the supervisory authorities should be revised. From a practical point of view, it is difficult to see how a national authority, even the most staffed one, may supervise, in an effective way, all companies subject to the due diligence requirements, request information and carry out investigations. If the investigative and



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sanctioning powers of the supervisory authorities were to be maintained, companies should not be exposed at the same time to investigations with potentially administrative sanctions and judicial proceedings on the same grounds. In the case of a group of companies, where the resources are shared within the group, there should be one single authority to avoid multiple supervisions.

5. Sanctions

A more consolidated approach needs to be followed with respect to sanctions, at guideline levels. Principles are there (a good example is crowdfunding regulation), but there is no harmonization at regulatory practices of the competent authorities level. More guidelines are needed on the categorization of the severity of breaches, the calculation of penalties, the introduction of principles such as intention and negligence and the departure from objective rules etc...

6. Civil liability

The introduction of administrative rules and organization measures comes with a negative externality: How breaches of such rules lead to civil liability. Certain member states have stricter principles for such liability to occur and others have an almost automatic rule for civil liability in case of breaches of any form of rule. This ends up to a non harmonized environment for the provision of services and operation of markets and causes substantial market distortion and barriers to entry as well as forum seeking. The impact of excess liability may be huge in certain circumstances. The above are need to be mapped and examined. We urge ESMA and European Commission to introduce a study in this area.

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