

Digital finance: Pilot regime on distributed ledger technology market infrastructures (DLT)

2020/0267(COD) - 24/09/2020 - Legislative proposal

PURPOSE: to establish a common EU pilot regime for market infrastructures based on distributed ledger technology (DLT).

PROPOSED ACT: Regulation of the European Parliament and of the Council.

ROLE OF THE EUROPEAN PARLIAMENT: the European Parliament decides in accordance with the ordinary legislative procedure and on an equal footing with the Council.

BACKGROUND: this proposal is part of the Digital Finance package, a package of measures to further enable and support the potential of digital finance in terms of innovation and competition while mitigating the risks. The digital finance package includes a new [Strategy on digital finance for the EU financial sector](#) with the aim to ensure that the Union's financial services legislation is fit for the digital age, and contributes to a future-ready economy that works for the people, including by enabling the use of innovative technologies. The Union has a stated and confirmed policy interest in developing and promoting the uptake of transformative technologies in the financial sector, including blockchain and distributed ledger technology (DLT).

This package also includes a proposal for a [proposal](#) on crypto-asset markets, a [proposal](#) for digital operational resilience, and a [proposal](#) to clarify or amend certain related EU financial services rules.

CONTENT: the Commission seeks to propose a pilot regime for market infrastructures that wish to try to trade and settle transactions in financial instruments in crypto-asset form. The regime follows the 'sandbox' approach which allows for temporary derogations from some specific requirements under the Union financial services legislation that could otherwise prevent them from developing solutions for the trading and settlement of transactions in crypto-assets that qualify as financial instruments.

This proposed Regulation on a pilot regime for market infrastructures based on distributed ledger technology seeks to provide legal certainty and flexibility for market participants who wish to operate a DLT market infrastructure by establishing uniform requirements for operating these.

Permissions granted under this Regulation shall allow market participants to operate a DLT market infrastructure and to provide their services across all Member States.

Scope

The proposal establishes operating conditions for DLT market infrastructures, permission to make use of them and the supervision and cooperation of competent authorities and ESMA. It shall apply to market participants (either investment firms, market operators or central securities depositories, CSDs).

Limitations on the transferable securities admitted to trading on or settled by a DLT market infrastructure

The proposal sets out the limitations in terms of DLT transferable securities that can be admitted to trading on, or recorded by, DLT market infrastructures. For shares, the market capitalisation or the tentative market capitalisation of the issuer of DLT transferable securities should be less than EUR 200

million; for public bonds other than sovereign bonds, covered bonds and corporate bonds the limit is EUR 500 million.

DLT market infrastructures shall not admit to trading or record sovereign bonds.

In addition, the total market value of DLT transferable securities recorded by a CSD operating a DLT securities settlement system, or by a DLT MTF where allowed to record such DLT transferable securities, shall not exceed EUR 2.5 billion.

Additional requirements on DLT market infrastructures

Additional requirements are laid down to address the novel forms of risks raised using DLT. DLT market infrastructures must provide all members, participants, clients and investors with clear and unambiguous information on how they carry out their functions, services and activities.

DLT market infrastructures must also ensure that overall IT and cyber arrangements related to the use of DLT are adequate. Where the business model of a DLT market infrastructure involves the safekeeping of clients' funds or DLT transferable securities, or the means to access these, they must have adequate arrangements to safeguard such assets.

Cooperation between operators of DLT market infrastructures, competent authorities and ESMA

It is proposed that DLT market infrastructures must inform competent authorities and ESMA of, for example: proposed material changes to their business plan including critical staff, evidence of hacking, fraud or other serious malpractice, material changes in the information contained in the initial application, technical or operational difficulties in delivering activities or services covered under the permission and any risks to investor protection, market integrity or financial stability that may have arisen and were not foreseen at the time the permission was given.

Where notified of such information, the competent authority may request the DLT market infrastructure to submit an application for another permission, exemption or take any corrective measure it deems appropriate.

In addition, the DLT market infrastructure shall produce and submit a report to the competent authority and ESMA detailing all of the information above including potential difficulties in applying EU financial services legislation.

Reporting

At the latest after a five-year period, ESMA shall produce a detailed report on the pilot regime to the Commission. On the basis of ESMA's assessment, the Commission will produce a report including a cost-benefit analysis on whether the pilot regime should be maintained as it is or amended, whether it should be extended to new categories of financial instruments, whether targeted amendments to EU legislation should be considered to enable a widespread use of DLT and whether the pilot regime should be terminated.

Budgetary implications

This proposal holds implications in terms of costs and administrative burden for national competent authorities and the European Securities and Markets Authority. The magnitude and distribution of these costs will depend on the precise requirements placed on DLT market infrastructures and the related

supervisory and monitoring tasks. The estimated supervisory costs for each Member State (including staff, training, IT infrastructure) can range from EUR 150 000 to EUR 250 000 per year per DLT market infrastructure.

For ESMA, the estimated cost in relation to review and coordination are estimated at EUR 150 000-EUR 300 000 in total. These costs shall be covered by ESMA's operating budget, which shall be increased.

In addition, ESMA is expected to maintain a register of DLT market infrastructures in operation, the costs related to this are considered to be covered by the costs relating to the maintenance of the register.