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

2020/0267(COD) - 24/03/2022 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 527 votes to 28, with 31 abstentions, a legislative resolution on the proposal for a regulation of the European Parliament and of the Council on a pilot regime for market infrastructures based on distributed ledger technology.

The proposal for a regulation on a pilot scheme for market infrastructures based on distributed ledger technology (DLT) aims to provide legal certainty and flexibility for market participants wishing to operate a DLT market infrastructure by establishing uniform requirements for the operation of DLTs.

The European Parliament's position adopted at first reading under the ordinary legislative procedure amends the Commission's proposal as follows:

Subject matter and scope

The pilot regime lays down the conditions for acquiring permission to operate a DLT market infrastructure, defines which DLT financial instruments can be traded and details the cooperation between the operators of DLT market infrastructures, national competent authorities and ESMA.

The DLT pilot regime aims to test the development of the European infrastructure for trading, clearing and settlement of DLT-based financial instruments. Crypto-assets are one of the main DLT applications for finance. Distributed ledger, broadly defined, is a consensually shared database through which a transaction is validated.

The concept of DLT market infrastructure comprises DLT multilateral trading facilities (DLT MTF), DLT settlement systems (DLT SS) and DLT trading and settlement systems (DLT TSS).

Limitations on the financial instruments admitted to trading or recorded on DLT market infrastructure

DLT financial instruments should only be admitted to trading on a DLT market infrastructure, or be recorded on a DLT market infrastructure, if, at the moment of admission to trading or the moment of recording on a distributed ledger, the DLT financial instruments are:

- shares, the issuer of which has a **market capitalisation, or a tentative market capitalisation, of less than EUR 500 million**;

- bonds, other forms of securitised debt, including depositary receipts in respect of such securities, or money market instruments, with an issue size of **less than EUR 1 billion**, excluding those that embed a derivative or incorporate a structure which makes it difficult for the client to understand the risk involved; or

- units in collective investment undertakings covered by Directive 2014/65/EU, the market value of the assets under management of which is less than EUR 500 million.

The aggregate market value of all the DLT financial instruments that are admitted to trading on a DLT market infrastructure or that are recorded on a DLT market infrastructure shall not exceed **EUR 6 billion** at the moment of admission to trading, or initial recording, of a new DLT financial instrument.

Additional requirements for DLT market infrastructures

Operators of a DLT market infrastructure should:

- establish clear and **detailed business plans** in which they describe how they intend to provide their services and conduct their business, including a description of personnel in critical staff, technical aspects and the use of distributed ledger technology;

- make available to the public **up-to-date, clear and detailed written documentation** setting out the rules for the operation of DLT market infrastructures and their operators;

- set the **rules** for the operation of the distributed ledger technology they use, in order to ensure investor protection, market integrity and financial stability;

- provide their members, participants, issuers and customers with **clear and unambiguous information** on their websites about the way in which operators perform their functions, services and activities;

- ensure that all IT and **cybersecurity arrangements** related to the use of their distributed ledger technology are proportionate to the nature, scale and complexity of their business;

- put in place specific **operational risk management procedures** for the risks associated with the use of distributed ledger technology and crypto-assets and for how to address these risks if they materalise.

Consumer protection

In the event of a loss of funds, a loss of collateral or a loss of a DLT financial instrument, the operator of a DLT market infrastructure that lost the funds, collateral or DLT financial instrument should be **liable for the loss**, up to the market value of the asset lost, unless it proves that the loss arose as a result of an external event beyond its reasonable control.

Operators of DLT market infrastructure should establish **transparent and adequate arrangements** to ensure investor protection and should establish mechanisms for handling client complaints and procedures for compensation or redress in cases of investor loss as a result of any of the unavoidable circumstances.

Supervision

National competent authorities will remain in charge for the authorisation while the **ESMA can issue an opinion** on the application for authorisation to operate an DLT MTFs and DLT SSs. The opinion would be non-public and non-binding but an explanation would be needed in case the national competent authorities decide to significantly deviate from it.

This pilot scheme will be in place for **three years**, after which the Commission, based on ESMA's advice, should report to the Council and Parliament on the costs and benefits of extending, amending or abolishing it.