AMENDMENTS
37 - 62

Draft report
Mikuláš Peksa
(PE689.790v01-00)


Proposal for a directive
At Union level, the requirements related to ICT risk for the financial sector are currently spread over Directives 2006/43/EC, 2009/66/EC, 2009/138/EC, 2011/61/EC, EU/2013/36, 2014/65/EU, (EU) 2015/2366, (EU) 2016/2341 of the European Parliament and of the Council and are diverse and occasionally incomplete. In some cases, ICT risk has only been implicitly addressed as part of the operational risk, whereas in others it has not been addressed at all. This should be remedied by aligning Regulation (EU) xx/20xx of the European Parliament and of the Council [DORA] and those acts. This Directive puts forward a set of amendments that appear necessary to bring legal clarity and consistency in relation to the application by financial entities that are authorised and supervised in accordance with those Directives of various digital operational resilience requirements that are necessary in the pursuit of their activities, thus guaranteeing the smooth functioning of the internal market.


19 Directive 2009/65/EC of the European


(4) In the area of banking services, Directive 2013/36/EU on access to the activity of credit institutions and the prudential regulation of credit institutions and investment firms currently sets out only general internal governance rules and operational risk provisions containing requirements for contingency and business continuity plans which implicitly serve as a basis for addressing ICT risk management. However, to ensure that ICT risk is explicitly addressed, the requirements for contingency and business continuity plans should be amended to include business continuity and disaster recovery plans also for ICT risk, in accordance with the requirements laid down in Regulation (EU) 2021/xx [DORA].

Amendment 39
Roberts Zīle
Proposal for a directive
Recital 5 a (new)

(5 a) In order to strengthen the digital resilience of financial entities even after the changes in the less safe digital
business and consumer environment caused by the COVID-19 pandemic, the DORA Regulation should also apply to the fight against money laundering and terrorist financing. In order to provide solutions for the application of the digital resilience dimension, Directive (EU) 2015/849 should be amended to include the DORA framework for that application, where appropriate.

Amendment 40
Mikuláš Peksa
on behalf of the Greens/EFA Group

Proposal for a directive
Recital 7

Text proposed by the Commission

Amendment

(7) In particular, in order to allow for the development of crypto-assets that would qualify as financial instruments and DLT, while preserving a high level of financial stability, market integrity, transparency and investor protection, it would be beneficial to create a temporary regime for DLT market infrastructures. This temporary legal framework should allow competent authorities to temporarily permit DLT market infrastructures to operate under an alternative set of requirements with regard to access to them compared to those otherwise applicable under the Union financial services legislation that could prevent them from developing solutions for the trading and settlement of transactions of crypto-assets that would qualify as financial instruments. This legal framework should be temporary in order to enable the European Supervisory Authorities (ESAs) and the national competent authorities to gain experience on the opportunities and specific risks created by crypto-assets traded on those
infrastructures. This Directive is consequently accompanying Regulation on a pilot regime for market infrastructures based on distributed ledger technology by supporting this new Union regulatory framework on DLT market infrastructures with a targeted exemption from specific provisions of Union financial services legislation applying to activities and services in relation to financial instruments as defined in point (15) of Article 4(1) of Directive 2014/65/EU that would otherwise not offer the full flexibility required when deploying solutions in the trading and post trading stages of transactions involving crypto-assets.

Or. en

Justification

Reflects the proposal to insert the provision relating to the temporary exemption from MiFID on direct access to retail investors in the text of the DLT pilot regime Regulation.

Amendment 41
Isabel Benjumea Benjumea, Frances Fitzgerald

Proposal for a directive
Recital 7

Text proposed by the Commission

(7) In particular, in order to allow for the development of crypto-assets that would qualify as financial instruments and DLT, while preserving a high level of financial stability, market integrity, transparency and investor protection, it would be beneficial to create a temporary regime for DLT market infrastructures. This temporary legal framework should allow competent authorities to temporarily permit DLT market infrastructures to operate under an alternative set of requirements with regard to access to them compared to those otherwise applicable under the Union financial services

Amendment

(7) In particular, in order to allow for the development of crypto-assets that would qualify as financial instruments and DLT, while preserving a high level of financial stability, market integrity, transparency and investor protection, it would be beneficial to create a temporary regime for DLT market infrastructures. This temporary legal framework should allow competent authorities to temporarily permit DLT market infrastructures to operate under an alternative set of requirements with regard to access to them compared to those otherwise applicable under the Union financial services
legislation that could prevent them from developing solutions for the trading and settlement of transactions of crypto-assets that would qualify as financial instruments. This legal framework should be temporary in order to enable the European Supervisory Authorities (ESAs) and the national competent authorities to gain experience on the opportunities and specific risks created by crypto-assets traded on those infrastructures. This Directive is consequently accompanying Regulation [on a pilot regime for market infrastructures based on distributed ledger technology] by supporting this new Union regulatory framework on DLT market infrastructures with a targeted exemption from specific provisions of Union financial services legislation applying to activities and services in relation to financial instruments as defined in point (15) of Article 4(1) of Directive 2014/65/EU that would otherwise not offer the full flexibility required when deploying solutions in the trading and post trading stages of transactions involving crypto-assets.

Amendment 42
Isabel Benjumea Benjumea, Frances Fitzgerald
Proposal for a directive
Recital 8

Text proposed by the Commission

(8) A DLT multilateral trading facility should be a multilateral system, operated

Amendment

(8) A DLT multilateral trading facility should be a multilateral system, operated
by an investment firm or a market operator authorised under Directive 2014/65/EU, that has received a specific permission under Regulation (EU) xx/20xx of the European Parliament and of the Council [Proposal for a regulation on a pilot regime on DLT market infrastructure]. DLT multilateral trading facilities should be subject to all the requirements applicable to a multilateral trading facility under that Directive, except if it were to be granted an exemption by its national competent authority in accordance with this Directive. One potential regulatory barrier to the development of a multilateral trading facility for transferable securities issued on a DLT could be the obligation of intermediation set out in Directive 2014/65/EU. A traditional multilateral trading facility can only admit as members and participants investment firms, credit institutions and other persons who have a sufficient level of trading ability and competence and who dispose of appropriate organisational arrangements and resources. A DLT multilateral trading facility should be allowed to request a derogation from such an obligation so that it can provide retail investors with easy access to the trading venue, provided that adequate safeguards are in place in terms of investor protection.

For the purpose of ensuring high levels of market integrity, investor protection and financial stability, the DLT transferable securities admitted to trading on a DLT multilateral trading facility should remain subject to the provisions prohibiting market abuse in Regulation (EU) No 596/2014 (the Market Abuse Regulation). A DLT multilateral trading facility should be allowed to request a derogation from such an obligation so that it can provide retail investors with easy access to the trading venue, provided that adequate safeguards are in place in terms of investor protection.

27 [full title] (OJ L [...], […], p. […]).

Amendment 43
Stéphanie Yon-Courtin, Gilles Boyer, Olivier Chastel, Billy Kelleher, Ondřej Kovařík
Proposal for a directive
Recital 8

Text proposed by the Commission

(8) A DLT multilateral trading facility should be a multilateral system, operated by an investment firm or a market operator authorised under Directive 2014/65/EU, that has received a specific permission under Regulation (EU) xx/20xx of the European Parliament and of the Council27 [Proposal for a regulation on a pilot regime on DLT market infrastructure]. DLT multilateral trading facilities should be subject to all the requirements applicable to a multilateral trading facility under that Directive, except if it were to be granted an exemption by its national competent authority in accordance with this Directive. One potential regulatory barrier to the development of a multilateral trading facility for transferable securities issued on a DLT could be the obligation of intermediation set out in Directive 2014/65/EU. A traditional multilateral trading facility can only admit as members and participants investment firms, credit institutions and other persons who have a sufficient level of trading ability and competence and who dispose of appropriate organisational arrangements and resources. A DLT multilateral trading facility should be allowed to request a derogation from such an obligation so that it can provide retail investors with easy access to the trading venue, provided that adequate safeguards are in place in terms of investor protection.

Amendment

(8) A DLT multilateral trading facility should be a multilateral system that has received a specific permission under Regulation (EU) xx/20xx of the European Parliament and of the Council27 [Proposal for a regulation on a pilot regime on DLT market infrastructure]. DLT multilateral trading facilities should be subject to all the requirements applicable to a multilateral trading facility under that Directive, except if it were to be granted an exemption by its national competent authority in accordance with this Directive. One potential regulatory barrier to the development of a multilateral trading facility for transferable securities issued on a DLT could be the obligation of intermediation set out in Directive 2014/65/EU. A traditional multilateral trading facility can only admit as members and participants investment firms, credit institutions and other persons who have a sufficient level of trading ability and competence and who dispose of appropriate organisational arrangements and resources. A DLT multilateral trading facility should be allowed to request a derogation from such an obligation so that it can provide retail investors with easy access to the trading venue, provided that adequate safeguards are in place in terms of investor protection.

Justification

Openness of the pilot regime to new entrants

27 [full title] (OJ L […], […], p. […]).

27 [full title] (OJ L […], […], p. […]).
Amendment 44
Isabel Benjumea Benjumea, Frances Fitzgerald

Proposal for a directive
Recital 9

Text proposed by the Commission
(9) Directive (EU) 2015/2366 on payment services sets out specific rules on ICT security controls and mitigation elements for the purposes of authorisation to perform payment services. Those authorisation rules should be amended in order to align them with to Regulation (EU) 2021/xx [DORA]. Furthermore, the incident notification rules in that Directive should not apply to ICT-related incident notifications that Regulation (EU) 2021/xx [DORA] fully harmonises.

Amendment
(9) Directive (EU) 2015/2366 on payment services sets out specific rules on ICT security controls and mitigation elements for the purposes of authorisation to perform payment services. Those authorisation rules should be amended in order to align them with to Regulation (EU) 2021/xx [DORA]. Furthermore, the incident notification rules in that Directive should not apply to credit institutions, payment institutions and e-money institutions which have to comply with fully harmonised reporting obligations under Chapter III of Regulation (EU) 2021/xx [DORA]. In order to reduce the administrative burden and avoid complexity and duplicative reporting requirements for payment service providers that fall within the scope of Regulation (EU) 2021/xx [DORA], the incident reporting requirements under Directive (EU) 2015/2366 should cease to apply, creating a single incident reporting mechanism for payment service providers for all operational or security payment-related and non-payment related incidents.

Or. en

Amendment 45
Stéphanie Yon-Courtin, Gilles Boyer, Olivier Chastel

Proposal for a directive
Recital 9

Text proposed by the Commission
Amendment
(9) Directive (EU) 2015/2366 on payment services sets out specific rules on ICT security controls and mitigation elements for the purposes of authorisation to perform payment services. Those authorisation rules should be amended in order to align them with to Regulation (EU) 2021/xx [DORA]. Furthermore, the incident notification rules in that Directive should not apply to ICT-related incident notifications that Regulation (EU) 2021/xx [DORA] fully harmonises.

Justification

Payment systems in scope of the DORA Regulation

Amendment 46
Roberts Zīle

Proposal for a directive
Recital 14 a (new)

Text proposed by the Commission

(14 a) There is a need for proportionality of the DORA framework, so that smaller financial institutions and smaller IT suppliers are not pushed out of the market by that Regulation.

Amendment

Or. en

Amendment 47
Isabel Benjumea Benjumea, Frances Fitzgerald

Proposal for a directive
Article 3 – paragraph 1 – point 1
Directive 2009/138/EC
Article 41 – paragraph 4

Text proposed by the Commission

4. Insurance and reinsurance undertakings shall take reasonable steps to ensure continuity and regularity in the performance of their activities, including the development of contingency plans. To that end, the undertaking shall employ appropriate and proportionate systems, resources and procedures and shall set up information communication technology systems and manage them in accordance with Article 6 of Regulation (EU) 2021/xx of the European Parliament and of the Council* [DORA].’;

Amendment

4. Insurance and reinsurance undertakings shall take reasonable steps to ensure continuity and regularity in the performance of their activities, including the development of contingency plans. To that end, the undertaking shall employ appropriate and proportionate systems, resources and procedures and shall employ appropriate and proportionate information and communication technology systems and manage them in accordance with Article 6 of Regulation (EU) 2021/xx of the European Parliament and of the Council* [DORA].’;

Or. en

Amendment 48
Isabel Benjumea Benjumea, Frances Fitzgerald

Proposal for a directive
Article 4 – paragraph -1 (new)
Directive 2011/61/EC
Article 6 – paragraph 4 – point b – subpoint iii a (new)

Text proposed by the Commission

-1 In Article 6(4) of Directive 2011/61/EU, the following point is added to point b:

'iii a) any other ancillary service where the ancillary service represents a continuation of the services already undertaken by the AIFM or a use of internal competences, and does not create conflicts of interest that could not be managed by additional rules.'

Amendment 49
Amendment 50
Isabel Benjumea Benjumea, Frances Fitzgerald

Proposal for a directive
Article 5 – paragraph -1 a (new)
Directive 2013/36/EU
Article 85 – paragraph 1

Present text

1. Competent authorities shall ensure that institutions implement policies and processes to **evaluate** and manage the exposures to operational risk, including model risk and risks resulting from outsourcing, and to cover low-frequency high-severity events. **Institutions shall articulate what constitutes operational risk for the purposes of those policies and**

Amendment

"1. Competent authorities shall ensure that institutions implement policies and processes to **monitor** and manage the exposures to operational risk, including model risk and risks resulting from outsourcing of **critical or important** functions and **ICT risk in accordance with Regulation (EU) 2021/xx of the European Parliament and of the Council**"
procedures. [DORA], and to cover low-frequency high-severity events."

Or. en

(02013L0036-20201229)

Amendment 51
Mikuláš Peksa
on behalf of the Greens/EFA Group

Proposal for a directive
Article 6 – paragraph 1 – point 4
Directive 2014/65/EU
Article 19 – paragraph 3

Text proposed by the Commission

Amendment

(4) in Article 19, the following paragraph is added:

‘3. However, where the investment firm or market operator operates a distributed ledger technology multilateral trading facility (“DLT multilateral trading facility”) as defined in Article 2(3) of Regulation xx/20xx [proposal for a regulation on a pilot regime for DLT market infrastructure], the competent authority may permit that, under its rules governing access as referred to in Article 18(3) and for a maximum of four years, the investment firm or market operator admits natural persons to the DLT multilateral trading facility as members or participants, provided that those persons fulfil the following requirements:

(a) they must be of sufficient good repute and fit and proper; and

(b) they must have sufficient level of trading ability, competence and experience, including knowledge of trading and the functioning of distributed ledger technology (“DLT”).

Where a competent authority grants the exemption referred to in the first subparagraph, it may impose additional

Where a competent authority grants the exemption referred to in the first subparagraph, it may impose additional
investor protection measures for the protection of natural persons admitted as members or participants to the DLT multilateral trading facility. Such measures shall be proportionate to the risk profile of the participants or members.’

Justification

Proposal to move the provision relating to the exemption from MiFID on direct access to retail investors in the text of the DLT pilot regime Regulation itself and discuss it in the context of the DLT pilot regime. This would be more in line with the temporary nature of the exemption and with the approach adopted in relation to the equivalent exemption on direct access to retail investors under the CSDR regulation, which is included in the text of the DLT pilot regime Regulation and not in the original Regulation.

Amendment 52
Stéphanie Yon-Courtin, Gilles Boyer, Olivier Chastel, Billy Kelleher, Ondřej Kovařík

Proposal for a directive
Article 6 – paragraph 1 – point 4
Directive 2014/65/EU
Article 19 – paragraph 3 – introductory part

Text proposed by the Commission

3. However, where the investment firm or market operator operates a distributed ledger technology multilateral trading facility (“DLT multilateral trading facility”) as defined in Article 2(3) of Regulation xx/20xx [proposal for a regulation on a pilot regime for DLT market infrastructure], the competent authority may permit that, under its rules governing access as referred to in Article 18(3) and for a maximum of four years, the investment firm or market operator admits natural persons to the DLT multilateral trading facility as members or participants, provided that those persons fulfil the following requirements:

Amendment

3. However, where an entity operates a distributed ledger technology multilateral trading facility (“DLT multilateral trading facility”) as defined in Article 2(3) of Regulation xx/20xx [proposal for a regulation on a pilot regime for DLT market infrastructure], the competent authority may permit that, under its rules governing access as referred to in Article 18(3) and for a maximum of four years, the entity operating a DLT multilateral trading facility admits natural persons to the DLT multilateral trading facility as members or participants, provided that those persons fulfil the following requirements:
Justification

Openness of the DLT pilot regime to new entrants

Amendment 53
Isabel Benjumea Benjumea, Frances Fitzgerald

Proposal for a directive
Article 6 – paragraph 1 – point 5 – point a
Directive 2014/65/EU
Article 47 – paragraph 1 – point (b)

Text proposed by the Commission
(b) to be adequately equipped to manage the risks to which it is exposed, including to manage risks to the ICT systems and tools in accordance with Article 6 of Regulation (EU) 2021/xx [DORA]*, to implement appropriate arrangements and systems for identifying all significant risks to its operation, and to put in place effective measures to mitigate those risks.;

Amendment
(b) to be adequately equipped to manage the risks to which it is exposed, including to manage risks to the ICT systems and tools in accordance with Article 6 of Regulation (EU) 2021/xx [DORA]*, to implement appropriate arrangements and systems for identifying significant risks to its operation, and to put in place effective measures to mitigate those risks.;

Or. en

Amendment 54
Isabel Benjumea Benjumea, Frances Fitzgerald

Proposal for a directive
Article 7 – paragraph 1 – point 1 a (new)
Directive (EU) 2015/2366
Article 20 – paragraph 1

Present text
1. Member States shall ensure that, where payment institutions rely on third parties for the performance of operational functions, those payment institutions take reasonable steps to ensure that the requirements of this Directive are complied with.

Amendment
(1 a) In Article 20, paragraph 1 is replaced by the following:
"1. Member States shall ensure that, where payment institutions rely on ICT third parties for the performance of critical or important functions or activities, those payment institutions take reasonable steps to ensure that the requirements of this Directive and of Chapter V of Regulation
Amendment 55
Stéphanie Yon-Courtin, Gilles Boyer, Olivier Chastel

Proposal for a directive
Article 7 – paragraph 1 – point 1 a (new)
Directive (EU) 2015/2366
Article 22 – paragraph 1 – subparagraph 1

Present text

1. Member States shall designate as the competent authorities responsible for the authorisation and prudential supervision of payment institutions which are to carry out the duties provided for under this Title either public authorities, or bodies recognised by national law or by public authorities expressly empowered for that purpose by national law, including national central banks.

Amendment

(1 a) Article 22(1) is amended as follows:

"1. Member States shall designate as the competent authorities responsible for the authorisation and prudential supervision of payment institutions which are to carry out the duties provided for under this Title and in accordance with Regulation (EU) 2021/xx of the European Parliament and of the Council [DORA] either public authorities, or bodies recognised by national law or by public authorities expressly empowered for that purpose by national law, including national central banks."

Justification

Designation of the competent authority following the inclusion of payment systems in the scope of the DORA Regulation

Amendment 56
Stéphanie Yon-Courtin, Gilles Boyer, Olivier Chastel, Billy Kelleher
Proposal for a directive
Article 7 – paragraph 1 – point 2 – point c
Directive (EU) 2015/2366
Article 95 – paragraph 5

Text proposed by the Commission

5. EBA shall promote cooperation, including the sharing of information, in the area of operational risks associated with payment services among the competent authorities, and between the competent authorities and the ECB.;

Amendment

5. EBA and its independent director in charge of digital operational resilience shall promote cooperation, including the sharing of information, in the area of operational risks associated with payment services among the competent authorities, and between the competent authorities and the ECB.;

Or. en

Justification

New function of independent director in charge of digital operational resilience as part of the Joint Oversight Executive Body created in the DORA Regulation

Amendment 57
Niels Fuglsang, Jonás Fernández, Alfred Sant

Proposal for a directive
Article 7 – paragraph 1 – point 2 – point c
Directive (E) 2015/2366
Article 95 – paragraph 5

Text proposed by the Commission

5. EBA shall promote cooperation, including the sharing of information, in the area of operational risks associated with payment services among the competent authorities, and between the competent authorities and the ECB.;

Amendment

5. EBA shall promote cooperation, including the sharing of information, in the area of operational risks associated with payment services among the competent authorities, and between the competent authorities, ENISA and the ECB.;

Or. en

Amendment 58
Isabel Benjumea Benjumea, Frances Fitzgerald

Proposal for a directive
Article 7 – paragraph 1 – point 2 – point c a (new)
Directive (EU) 2015/2366
Article 95 – paragraph 5a (new)

Text proposed by the Commission

(c a) the following paragraph is added:

'5a. Member States shall exempt payment service providers referred to in points (a), (b) and (d) of Article 1 (1) that are required to report operational or security payment-related and non-payment related incidents under Regulation (EU) 2021/xx [DORA], from the application of paragraphs 1 to 5 of this Article.'

Or. en

Amendment 59
Niels Fuglsang, Jonás Fernández, Alfred Sant

Proposal for a directive
Article 7 – paragraph 1 – point 3 – point b a (new)
Directive (EU) 2015/2366
Article 96 – paragraph 6 a (new)

Text proposed by the Commission

(b a) the following paragraph is added:

'6a. Payment service providers referred to in points (a), (b) and (d) of Article 1(1) who fall under the scope of Regulation (EU) 2021/xx of the European Parliament and of the Council* [DORA], and who manage, classify and report operational or security payment-related incidents and major operational or security payment-related incidents in accordance with Chapter III of Regulation (EU) 2021/xx of the European Parliament and of the Council* [DORA], shall be exempted from the application of paragraphs 1 to 5 of this Article.'

Or. en
Amendment 60
Roberts Zīle

Proposal for a directive
Article 7 a (new)
Directive (EU) 2015/849
Article 7 – paragraph 4 – point f (new)

Text proposed by the Commission

Amendment

Article 7 a

Amendment to Directive (EU) 2015/849 [AML]

In Article 7(4), the following point is added:
'(f) take appropriate steps to support procedures in accordance with Chapter II of Regulation (EU) 2021/xx [DORA] in relation to mitigating ICT-related risks, where applicable.'

Or. en

Amendment 61
Isabel Benjumea Benjumea, Frances Fitzgerald

Proposal for a directive
Article 8 – paragraph 1
Directive (EU) 2016/2341
Article 21– paragraph 5 – second sentence

Text proposed by the Commission

Amendment

To that end, IORPs shall employ appropriate and proportionate systems, resources and procedures and shall set up ICT systems and tools and manage them in accordance with Article 6 of Regulation (EU) 2021/xx of the European Parliament and the Council* [DORA].

To that end, IORPs shall employ appropriate and proportionate systems, resources and procedures and shall employ ICT systems and tools and manage them in accordance with Article 6 of Regulation (EU) 2021/xx of the European Parliament and the Council* [DORA].

Or. en

Amendment 62
Isabel Benjumea Benjumea, Frances Fitzgerald
### Proposal for a directive

**Article 9 – paragraph 1 – introductory part**

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Member States shall adopt and publish, by [one year after adoption] at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions.</td>
<td>1. Member States shall adopt and publish, by [24 months after adoption] at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions.</td>
</tr>
</tbody>
</table>

Or. en