AMENDMENTS
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Draft opinion
Mislav Kolakušić
(PE693.586v01-00)


Proposal for a directive
Amendment 1
Daniel Buda

Proposal for a directive
Recital 1

\textit{Text proposed by the Commission}

(1) The Union needs to adequately and comprehensively address digital risks to all financial entities stemming from an increased use of information and communication technology (ICT) in the provision and consumption of financial services.

\textit{Amendment}

(1) The Union needs to adequately and comprehensively address digital risks to all financial entities stemming from an increased use of information and communication technology (ICT) in the provision and consumption of financial services, ensuring further support to the potential of digital finance in terms of innovation and competition.

Amendment 2
Daniel Buda

Proposal for a directive
Recital 3

\textit{Text proposed by the Commission}

(3) 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

\textit{Amendment}

(3) 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. The existing norms are not fully harmonised and it is necessary to ensure the avoidance of over-regulation and to guarantee the adequacy of the norms with regard to the reality in the field, which is constantly evolving. 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
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.

remedied by aligning Regulation (EU) xx/20xx of the European Parliament and of the Council\(^\text{26}\) [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.


22 Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms,


26 OJ L […], […], p. […].

Amendment 3
Daniel Buda

Proposal for a directive
Recital 6

Text proposed by the Commission

(6) Currently, the definition of ‘financial instrument’ in Directive 2014/65/EU does not explicitly include financial instruments issued using a class of technologies which support the distributed recording of encrypted data (distributed ledger technology, “DLT”). In order to ensure that such financial instruments can be traded on the market under the current legal framework, the definition in Directive 2014/65/EU should

Amendment

(6) Currently, the definition of ‘financial instrument’ in Directive 2014/65/EU does not explicitly include financial instruments issued using a class of technologies which support the distributed recording of encrypted data (distributed ledger technology, “DLT”), thus not reflecting the reality of the market. In order to ensure that such financial instruments can be traded on the market under the current legal framework,
be amended to include them. in order to avoid any potential risk due to non-regulation, the definition in Directive 2014/65/EU should be amended to include them.

Amendment 4
Daniel Buda

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 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

**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 and consumer 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 but should not set any limits on innovation. 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
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.

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 5
Daniel Buda

Proposal for a directive
Recital 13 a (new)

(13 a) The regulatory process must take into account the proper balance between, on the one hand, efficient management regarding risk limitation and, on the other hand, the insurance of fair competition in terms of encouraging the development of innovation in the market and protecting all actors involved.

Amendment 6
Marie Toussaint on behalf of the Greens/EFA Group
Manon Aubry

Proposal for a directive
Article 1 – paragraph 1 – introductory part

In Article 24a(1) of Directive 2006/43/EC, point (b) is replaced by the following:

In Article 24a(1) of Directive 2006/43/EC, point (b)(a) (new) is introduced with the following wording:
Amendment 7  
Axel Voss

Proposal for a directive  
Article 1 – paragraph 1  
Directive 2006/43/EC  
Article 24a – paragraph 1 – point b  

Text proposed by the Commission  

(b) a statutory auditor or an audit firm shall have sound administrative and accounting procedures, internal quality control mechanisms, effective procedures for risk assessment, and effective control and safeguard arrangements in order to manage its ICT systems and tools in accordance with Article 6 of Regulation (EU) 2021/xx [DORA] of the European Parliament and of the Council*.  

Or. en

Amendment 8  
Tiemo Wölken

Proposal for a directive  
Article 1 – paragraph 1  
Directive 2006/43/EC  
Article 24a – paragraph 1 – point b a (new)  

Text proposed by the Commission  

(b) a statutory auditor or an audit firm shall have sound administrative and accounting procedures, internal quality control mechanisms, effective procedures for risk assessment, and effective control and safeguard arrangements for information processing systems. Those internal quality control mechanisms shall be designed to ensure compliance with decisions and procedures at all levels of the audit firm or of the working structure of the statutory auditor. A statutory auditor or an audit firm, which is not a micro, small or medium-sized enterprise as defined in Article 2 of the Annex to Recommendation 2003/361, shall, in addition, manage its ICT systems and tools in accordance with Article 6 of Regulation (EU) 2021/xx [DORA] of the European Parliament and of the Council*.  

Or. en

(a) In Article 24a(1) of Directive
shall have sound administrative and accounting procedures, internal quality control mechanisms, effective procedures for risk assessment, and effective control and safeguard arrangements in order to manage its ICT systems and tools in accordance with Article 6 of Regulation (EU) 2021/xx [DORA] of the European Parliament and of the Council*.

2006/43/EC, point (b)(a) (new) is introduced with the following wording:

(b)(a) a statutory auditor or an audit firm that audits entities listed in Article 2 of Regulation (EU) 2021/xx [DORA] shall have sound administrative and accounting procedures, internal quality control mechanisms, effective procedures for risk assessment, and effective control and safeguard arrangements in order to manage its ICT systems and tools in accordance with Article 6 of Regulation (EU) 2021/xx [DORA] of the European Parliament and of the Council*.

Or. en

Justification

Only audit firms that audit entities within the scope of DORA (Article 2) should have to comply with the additional requirements.

Amendment 9
Marie Toussaint
on behalf of the Greens/EFA Group
Manon Aubry

Proposal for a directive
Article 1 – paragraph 1
Directive 2006/43/EC
Article 24a – paragraph 1 – point b a (new)

Text proposed by the Commission

Amendment

(b a) a statutory auditor or an audit firm shall set up and manage its network and information systems in accordance with the requirements of Regulation (EU) 2021/xx [DORA] of the European Parliament and of the Council*.
Amendment 10
Daniel Buda

Proposal for a directive
Article 2 – paragraph 1 – point 1
Directive 2009/65/EC
Article 12 – paragraph 1 – subparagraph 2 – point a

Text proposed by the Commission

(a) has sound administrative and accounting procedures and control and safeguard arrangements for electronic data processing, including information and communication technology systems that are set up and managed in accordance with Article 6 of Regulation (EU) 2021/xx of the European Parliament and of the Council* [DORA], as well as adequate internal control mechanisms including rules for personal transactions by its employees or for the holding and management of investments in financial instruments in order to invest on its own account and ensuring, at least, that each transaction involving the UCITS may be reconstructed according to its origin, the parties to it, its nature, and the time and place at which it was effected and that the assets of the UCITS managed by the management company are invested according to the fund rules or the instruments of incorporation and the legal provisions in force;

Amendment

(a) has sound administrative, operational and accounting procedures and control and safeguard arrangements for electronic data processing, including information and communication technology systems that are set up and managed in accordance with Article 6 of Regulation (EU) 2021/xx of the European Parliament and of the Council* [DORA], as well as adequate internal control mechanisms including rules for personal transactions by its employees or for the holding and management of investments in financial instruments in order to invest on its own account and ensuring, at least, that each transaction involving the UCITS may be reconstructed according to its origin, the parties to it, its nature, and the time and place at which it was effected and that the assets of the UCITS managed by the management company are invested according to the fund rules or the instruments of incorporation and the legal provisions in force;

(-)

Or. en

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Justification

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