



2020/0267(COD)

9.3.2021

*****I**

DRAFT REPORT

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
(COM(2020)0594 – C9-0305/2020 – 2020/0267(COD))

Committee on Economic and Monetary Affairs

Rapporteur: Johan Van Overtveldt

Symbols for procedures

- * Consultation procedure
- *** Consent procedure
- ***I Ordinary legislative procedure (first reading)
- ***II Ordinary legislative procedure (second reading)
- ***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

Amendments by Parliament set out in two columns

Deletions are indicated in ***bold italics*** in the left-hand column. Replacements are indicated in ***bold italics*** in both columns. New text is indicated in ***bold italics*** in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

Amendments by Parliament in the form of a consolidated text

New text is highlighted in ***bold italics***. Deletions are indicated using either the ▯ symbol or ~~strikeout~~. Replacements are indicated by highlighting the new text in ***bold italics*** and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.

CONTENTS

	Page
DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION	5
EXPLANATORY STATEMENT.....	91

DRAFT EUROPEAN PARLIAMENT 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 (COM(2020)0594 – C9-0305/2020 – 2020/0267(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2020)0594),
 - having regard to Article 294(2) and Article 114 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C9-0305/2020),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to the opinion of the European Economic and Social Committee of 2 March 2021¹,
 - having regard to the opinion of the European Central Bank²,
 - having regard to Rule 59 of its Rules of Procedure,
 - having regard to the report of the Committee on Economic and Monetary Affairs (A9-0000/2021),
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Amendment 1

Proposal for a regulation Recital 1

Text proposed by the Commission

(1) The European Commission's communication on a Digital Finance

Amendment

(1) The European Commission's communication on a Digital Finance

¹ OJ C xxx, xx.x.2021, p. xx.

² OJ C xxx, xx.x.2021, p. xx.

Strategy³² aims to ensure that the Union 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 policy interest in developing and promoting the uptake of transformative technologies in the financial sector, such as blockchain and distributed ledger technology ('DLT'). Crypto-assets are one of the main DLT applications for finance.

³² Communication from the Commission to the European Parliament, the Council, the European Central Bank, the European Economic and Social Committee and the committee of the Regions on a Digital Finance Strategy for EU COM(2020)591

Strategy³² aims to ensure that the Union 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 policy interest in **exploring**, developing and promoting the uptake of transformative technologies in the financial sector, such as blockchain and distributed ledger technology ('DLT'). Crypto-assets are one of the main DLT applications for finance.

³² Communication from the Commission to the European Parliament, the Council, the European Central Bank, the European Economic and Social Committee and the committee of the Regions on a Digital Finance Strategy for EU COM(2020)591

Or. en

Justification

It is appropriate to mention that the pilot regime is also intended to explore the uptake of innovative technologies, with a view to testing new business models and thus informing future legislative developments.

Amendment 2

Proposal for a regulation Recital 1 a (new)

Text proposed by the Commission

Amendment

(1a) Principles of technology neutrality, proportionality, a level playing field, and “same activity, same risks, same rules” should apply to ensure that market participants have the regulatory space to innovate and to uphold the values of transparency, fairness, stability, consumer and investor protection, accountability, market integrity, and the protection of privacy and personal data, as guaranteed by Articles 7 and 8 of the Charter of Fundamental Rights of the European

Union.

Or. en

Justification

It is appropriate to highlight fundamental principles of the CMU agenda that should be complied with by this Regulation.

Amendment 3

Proposal for a regulation

Recital 1 b (new)

Text proposed by the Commission

Amendment

(1b) Digital finance should be considered to be an essential and effective tool for Union small and medium-sized enterprises (SMEs), with the ability to provide rapid effective solutions adapted to their financing needs. Moreover, digital finance has the potential to help close the SME financing gap.

Or. en

Justification

It is appropriate to introduce a recital in the Regulation to highlight that the DLT Pilot Regime could contribute to closing the SME financing gap.

Amendment 4

Proposal for a regulation

Recital 2

Text proposed by the Commission

Amendment

(2) The majority of crypto-assets fall outside of the scope of **EU** legislation and raise, among others, challenges in terms of investor protection, market integrity and financial stability. They therefore require a dedicated regime at Union level. By contrast, other crypto-assets qualify as financial instruments within the meaning of

(2) The majority of crypto-assets fall outside of the scope of **Union** legislation and raise, among others, challenges in terms of investor protection, market integrity and financial stability. They therefore require a dedicated regime at Union level. By contrast, other crypto-assets qualify as financial instruments

Directive 2014/65/EU of the European Parliament and of the Council (Markets in Financial Instruments Directive, MiFID II)³³. In so far as a crypto-asset qualifies as a financial instrument under that Directive, a full set of Union financial rules, including Regulation (EU) 2017/1129 of the European Parliament and of the Council (the Prospectus Regulation)³⁴, Directive 2013/50/EU of the European Parliament and of the Council (the Transparency Directive)³⁵, Regulation (EU) No 596/2014 of the European Parliament and of the Council (the Market Abuse Regulation)³⁶, Regulation (EU) No 236/2012 of the European Parliament and of the Council (the Short Selling Regulation)³⁷, Regulation (EU) No 909/2014 of the European Parliament and of the Council (the Central Securities Depositories Regulation)³⁸ and Directive 98/26/EC of the European Parliament and of the Council (the Settlement Finality Directive)³⁹ may apply to its issuer and firms conducting activities related to it. The so-called tokenisation of financial instruments, that is to say their transformation into crypto-assets to enable them to be issued, stored and transferred on a distributed ledger, is expected to open up opportunities for efficiency improvements in the *entire* trading and post-trading area.

³³ Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).

³⁴ Regulation (EU) 2017/1129 of the

within the meaning of Directive 2014/65/EU of the European Parliament and of the Council (Markets in Financial Instruments Directive, MiFID II)³³. In so far as a crypto-asset qualifies as a financial instrument under that Directive, a full set of Union financial rules, including Regulation (EU) 2017/1129 of the European Parliament and of the Council (the Prospectus Regulation)³⁴, Directive 2013/50/EU of the European Parliament and of the Council (the Transparency Directive)³⁵, Regulation (EU) No 596/2014 of the European Parliament and of the Council (the Market Abuse Regulation)³⁶, Regulation (EU) No 236/2012 of the European Parliament and of the Council (the Short Selling Regulation)³⁷, Regulation (EU) No 909/2014 of the European Parliament and of the Council (the Central Securities Depositories Regulation)³⁸ and Directive 98/26/EC of the European Parliament and of the Council (the Settlement Finality Directive)³⁹ may apply to its issuer and firms conducting activities related to it. The so-called tokenisation of financial instruments, that is to say their transformation into crypto-assets to enable them to be issued, stored and transferred on a distributed ledger, is expected to open up opportunities for efficiency improvements in *some dimensions of* the trading and post-trading area. ***However, as the fundamental trade-offs involving credit risk and liquidity remain in a tokenised world, the success of token-based systems will depend on how well they interact with traditional account-based systems, at least in the interim.***

³³ Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).

³⁴ Regulation (EU) 2017/1129 of the

European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC (OJ L 168, 30.6.2017, p. 12)

³⁵ Directive 2013/50/EU of the European Parliament and of the Council of 22 October 2013 amending Directive 2004/109/EC of the European Parliament and of the Council on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market, Directive 2003/71/EC of the European Parliament and of the Council on the prospectus to be published when securities are offered to the public or admitted to trading and Commission Directive 2007/14/EC laying down detailed rules for the implementation of certain provisions of Directive 2004/109/EC (OJ L 294, 6.11.2013, p. 13)

³⁶ Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC (OJ L 173, 12.6.2014, p. 1)

³⁷ Regulation (EU) No 236/2012 of the European Parliament and of the Council of 14 March 2012 on short selling and certain aspects of credit default swaps (OJ L 86, 24.3.2012, p. 1).

³⁸ Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012 (OJ L 257, 28.8.2014, p. 1)

³⁹ Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems (OJ L 166,

European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC (OJ L 168, 30.6.2017, p. 12)

³⁵ Directive 2013/50/EU of the European Parliament and of the Council of 22 October 2013 amending Directive 2004/109/EC of the European Parliament and of the Council on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market, Directive 2003/71/EC of the European Parliament and of the Council on the prospectus to be published when securities are offered to the public or admitted to trading and Commission Directive 2007/14/EC laying down detailed rules for the implementation of certain provisions of Directive 2004/109/EC (OJ L 294, 6.11.2013, p. 13)

³⁶ Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC (OJ L 173, 12.6.2014, p. 1)

³⁷ Regulation (EU) No 236/2012 of the European Parliament and of the Council of 14 March 2012 on short selling and certain aspects of credit default swaps (OJ L 86, 24.3.2012, p. 1).

³⁸ Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012 (OJ L 257, 28.8.2014, p. 1)

³⁹ Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems (OJ L 166,

Justification

Editorial comment, and reminder taken from BIS Quarterly review March 2020, “On the future of securities settlement”.

Amendment 5**Proposal for a regulation****Recital 3***Text proposed by the Commission*

(3) The Union financial services legislation was not designed with DLT and crypto-assets in mind⁴⁰, and there are provisions in existing *EU* financial services legislation that may preclude or limit the use of DLT in the issuance, trading and settlement of crypto-assets which qualify as financial instruments. There is also **currently** a lack of market infrastructures using DLT **and providing** trading **and** settlement services for crypto-assets that qualify as financial instruments. Without a secondary market able to provide liquidity and to enable investors to buy and sell such assets, the primary market for crypto-assets that qualify as financial instruments will never expand in a sustainable way.

⁴⁰ European Securities and Markets Authority’s, Report with advice on Initial Coin Offerings and Crypto-Assets (ESMA50-157-1391)

Amendment

(3) The Union financial services legislation was not designed with DLT and crypto-assets in mind⁴⁰, and there are provisions in existing **Union** financial services legislation that may preclude or limit the use of DLT in the issuance, trading and settlement of crypto-assets which qualify as financial instruments. **Currently**, there is also a lack of market infrastructures using DLT **to provide either** trading **or** settlement services for crypto-assets that qualify as financial instruments. Without a secondary market able to provide liquidity and to enable investors to buy and sell such assets, the primary market for crypto-assets that qualify as financial instruments will never expand in a sustainable way.

⁴⁰ European Securities and Markets Authority’s, Report with advice on Initial Coin Offerings and Crypto-Assets (ESMA50-157-1391)

Justification

Editorial comments.

Amendment 6

Proposal for a regulation

Recital 4

Text proposed by the Commission

(4) At the same time, regulatory gaps exist due to legal, technological and operational specificities related to the use of DLT and crypto-assets that qualify as financial instruments. For instance, there are no transparency, reliability and safety requirements imposed on the protocols and smart contracts underpinning crypto-assets that qualify as financial instruments. The underlying technology could also pose some novel forms of cyber risks that are not appropriately addressed by existing rules. Several projects for the trading and post-trading of crypto-assets qualifying as financial instruments have been developed in the Union, but few are already in operation or they have limited scale. Given this limited experience as regards the trading and post-trading of transactions in crypto-assets that qualify as financial instruments, it would currently be premature to bring significant modifications to the Union financial services legislation to enable the full deployment of such crypto-assets and their underlying technology. At the same time, the creation of financial market infrastructures for crypto-assets that qualify as financial instruments is currently constrained by some requirements embedded in the Union's financial services legislation that **would not be** fully adapted to crypto-assets qualifying as financial instruments and to the use of DLT. For instance, trading platforms for crypto-assets usually give direct access to retail investors, while traditional trading venues usually give access through financial intermediaries.

Amendment

(4) At the same time, regulatory gaps exist due to legal, technological and operational specificities related to the use of DLT and crypto-assets that qualify as financial instruments. For instance, there are no transparency, reliability and safety requirements imposed on the protocols and smart contracts underpinning crypto-assets that qualify as financial instruments. The underlying technology could also pose some novel forms of cyber risks that are not appropriately addressed by existing rules. Several projects for the trading and post-trading of crypto-assets qualifying as financial instruments have been developed in the Union, but few are already in operation or they have limited scale. Given this limited experience as regards the trading and post-trading of transactions in crypto-assets that qualify as financial instruments, it would currently be premature to bring significant modifications to the Union financial services legislation to enable the full deployment of such crypto-assets and their underlying technology. At the same time, the creation of financial market infrastructures for crypto-assets that qualify as financial instruments is currently constrained by some requirements embedded in the Union's financial services legislation that **are not** fully adapted to crypto-assets qualifying as financial instruments and to the use of DLT. For instance, trading platforms for crypto-assets usually give direct access to retail investors, while traditional trading venues usually give access through financial intermediaries.

Or. en

Editorial comment.

Amendment 7

Proposal for a regulation

Recital 5

Text proposed by the Commission

(5) In order to allow for the development of crypto-assets that qualify as financial instruments **and** DLT, while preserving a high level of financial stability, market integrity, transparency and investor protection, it would be useful to create a pilot regime for DLT market infrastructures. A pilot regime for DLT market infrastructures should allow such DLT market infrastructures to be temporarily exempted 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. The pilot regime should also enable the European Securities and Markets Authorities (ESMA) and competent authorities to gain experience on the opportunities and specific risks created by crypto-assets that qualify as financial instruments, and by their underlying technology.

Amendment

(5) In order to allow for the development of crypto-assets that qualify as financial instruments **based on** DLT, while preserving a high level of financial stability, market integrity, transparency and investor protection, it would be useful to create a pilot regime for DLT market infrastructures. A pilot regime for DLT market infrastructures should allow such DLT market infrastructures to be temporarily exempted 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. The pilot regime should also enable the European Securities and Markets Authorities (ESMA) and competent authorities to gain experience on the opportunities and specific risks created by crypto-assets that qualify as financial instruments, and by their underlying technology. ***The experience gained with the pilot regime should therefore help to identify possible practical proposals for a suitable regulatory framework in order to make targeted adjustments to existing Union law involving the issuance, safekeeping and asset servicing, trading and settlement of financial instruments based on DLT.***

Or. en

Justification

Editorial comment. Furthermore, it is appropriate to explicitly mention that the experience gained with the DLT pilot regime should inform future legislative developments.

Amendment 8

Proposal for a regulation

Recital 7

Text proposed by the Commission

(7) A DLT market infrastructure should be defined ***either*** as a DLT multilateral trading facility (DLT MTF) ***or*** a DLT securities settlement system.

Amendment

(7) A DLT market infrastructure should be defined as a DLT multilateral trading facility (DLT MTF), a DLT securities settlement system (***DLT SSS***), ***or a DLT trade and settlement system (DLT TSS)***.

Or. en

Justification

Alignment to ensure a common logic behind the requirements for DLT market infrastructures. Your Rapporteur proposes that a DLT market infrastructure allowed to perform both trading and post-trading services should be considered as a third type of DLT market infrastructure under this Regulation: a DLT Trading and Settlement System (TSS). Such entity would be a complete novel type of market infrastructure and it should not be commingled with either a DLT MTF or a DLT SSS.

Amendment 9

Proposal for a regulation

Recital 8

Text proposed by the Commission

(8) A DLT MTF should be a multilateral trading facility that is operated by an investment firm or a market operator that ***operate*** the business ***or*** a regulated market and maybe the regulated market itself, authorised under Directive 2014/65/EU (Markets in Financial Instruments Directive, MiFID II), and that has received a specific permission under this Regulation. ***Such*** a DLT MTF should

Amendment

(8) A DLT MTF should be a multilateral trading facility that is operated by an investment firm or a market operator that ***operates*** the business ***of*** a regulated market and maybe the regulated market itself, authorised under Directive 2014/65/EU (Markets in Financial Instruments Directive, MiFID II), and that has received a specific permission under this Regulation. A DLT MTF ***and its***

be subject to all the requirements applicable to a multilateral trading facility under the framework of Directive 2014/65/EU (Markets in Financial Instruments Directive, MiFID II), Regulation EU No 600/2014 of the European Parliament and of the Council (the Markets in Financial Instruments Regulation, MiFIR)⁴¹, or any other **EU** financial services legislation, except if **it** has been granted one or several exemptions by its national competent authority, in accordance with this Regulation and Directive (EU) .../... of the European Parliament and of the Council⁴².

operator should be subject to all the requirements applicable to a multilateral trading facility **and its operator** under the framework of Directive 2014/65/EU (Markets in Financial Instruments Directive, MiFID II), Regulation EU No 600/2014 of the European Parliament and of the Council (the Markets in Financial Instruments Regulation, MiFIR)⁴¹, or any other **applicable Union** financial services legislation, except if **the DLT MTF operator** has been granted one or several exemptions by its national competent authority, in accordance with this Regulation and Directive (EU) .../... of the European Parliament and of the Council⁴².

⁴¹ Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 (OJ L 173, 12.6.2014, p. 84)

⁴¹ Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 (OJ L 173, 12.6.2014, p. 84)

⁴² Proposal for a Directive of the European Parliament and of the Council amending Directives 2006/43/EC, 2009/65/EC, 2009/138/EU, 2011/61/EU, EU/2013/36, 2014/65/EU, (EU) 2015/2366 and EU/2016/2341 - COM(2020)596

⁴² Proposal for a Directive of the European Parliament and of the Council amending Directives 2006/43/EC, 2009/65/EC, 2009/138/EU, 2011/61/EU, EU/2013/36, 2014/65/EU, (EU) 2015/2366 and EU/2016/2341 - COM(2020)596

Or. en

Justification

Some requirements are applicable to the operator of the market infrastructure.

Amendment 10

Proposal for a regulation

Recital 9

Text proposed by the Commission

(9) The use of distributed ledger technology, with all transactions recorded in a **decentralised** ledger, can expedite and condense trading and settlement to nearly real-time and could enable the merger of

Amendment

(9) The use of distributed ledger technology, with all transactions recorded in a **distributed** ledger, can expedite and condense trading and settlement to nearly real-time and could enable the merger of

trading and post-trading activities. **However**, the current rules envisage the performance of trading and settlement activities by separate market infrastructures. Regulation (EU) No 909/2014 of the European Parliament and of the Council (the Central Securities Depositories Regulation) requires that financial instruments admitted to trading on a trading venue within the meaning of Directive 2014/65/EU (Market in Financial Instruments Directive, MiFID II) be recorded with a central securities **depository ('CSD'), while a distributed ledger could be potentially used as a decentralised version of such a depository**. Therefore, it would be justified to allow a DLT **MTF to perform some** activities normally performed by **a CSD**. Therefore, when granted the relevant **exemption(s)**, a DLT **MTF** should be allowed to ensure the initial recording of DLT transferable securities, the settlement of transactions in DLT transferable securities and the safekeeping of DLT transferable securities.

trading and post-trading activities. **The combination of trading and post-trading activities within one single legal entity is currently not permitted, irrespective of the technology, as a result of policy choices related to risk specialisation and the promotion of unbundling in order to encourage competition**. The current rules envisage the performance of trading and settlement activities by separate market infrastructures. Regulation (EU) No 909/2014 of the European Parliament and of the Council (the Central Securities Depositories Regulation, **CSDR**) requires that financial instruments admitted to trading on a trading venue within the meaning of Directive 2014/65/EU (Market in Financial Instruments Directive, MiFID II) be recorded with a central securities depository (**CSD**). Therefore, it would be justified to allow a DLT **market infrastructure to combine the** activities normally performed by **both MTFs and SSSs**. Therefore, when granted the relevant **permission(s)**, a DLT **market infrastructure** should be allowed to ensure, **inter alia, the trading of DLT transferable securities**, the initial recording of DLT transferable securities, the settlement of transactions in DLT transferable securities and the safekeeping of DLT transferable securities.

Or. en

Justification

This recital is linked to the definition of DLT (AM 46). Your rapporteur believes that further work on this definition is needed. Further, the draft Regulation sometimes appears to mix the notions of 'permission' and 'exemption'. In the opinion of your Rapporteur, allowing a DLT MTF to engage in securities settlement activities amounts to a permission; once this permission is granted, the necessary exemptions (from CSDR) must be granted for the DLT environment to reach its full potential.

Amendment 11

Proposal for a regulation

Recital 10

Text proposed by the Commission

(10) A DLT **securities settlement system** should be a securities settlement system operated by a CSD authorised under Regulation (EU) No 909/2014 (the Central Securities Depositories Regulation) that has received a specific permission under this Regulation. A DLT securities settlement system, and the CSD operating it, should be subject to the **relevant** requirements of Regulation (EU) No 909/2014 (the Central Securities Depository Regulation), except where the national competent authority has granted the CSD operating the DLT securities settlement system with one or several exemptions, in accordance with this Regulation.

Amendment

(10) A DLT **SSS** should be a securities settlement system operated by a CSD authorised under Regulation (EU) No 909/2014 (the Central Securities Depositories Regulation) that has received a specific permission under this Regulation. A DLT securities settlement system, and the CSD operating it, should be subject to **all** the requirements **applicable to a securities settlement system and its operating CSD under the framework** of Regulation (EU) No 909/2014 (the Central Securities Depository Regulation, **CSDR**), **Directive 98/26/EC (the Settlement Finality Directive)**, or **any other applicable Union financial services legislation**, except where the national competent authority has granted the CSD operating the DLT securities settlement system with one or several exemptions, in accordance with this Regulation.

Or. en

Justification

It is appropriate to highlight that “any other applicable EU financial services legislation” besides CSDR and the Settlement Financial Directive also applies. Furthermore, some requirements are applicable to the operator of the market infrastructure.

Amendment 12

Proposal for a regulation
Recital 10 a (new)

Text proposed by the Commission

Amendment

(10a) A DLT TSS should be a DLT market infrastructure operated by an investment firm, a market operator, or a central securities depository, that receives a specific permission under this Regulation to combine the activities of both a DLT MTF and a DLT SSS. The

DLT TSS and its operator should be authorised under Directive 2014/65/EU (Markets in Financial Instruments Directive, MiFID II) and Regulation (EU) No 909/2014 (the Central Securities Depositories Regulation, CSDR). A DLT TSS and its operator should be subject to the requirements applicable to both a DLT MTF and a DLT SSS, as well as their operators, under this Regulation, and should, where relevant, have the possibility of being granted the same exemptions foreseen under this Regulation.

Or. en

Justification

Alignment to ensure a common logic behind the requirements for DLT market infrastructures. Your Rapporteur proposes that a DLT market infrastructure allowed to perform both trading and post-trading services should be considered as a third type of DLT market infrastructure under this Regulation: a DLT Trading and Settlement System (TSS). Such entity would be a complete novel type of market infrastructure and it should not be commingled with either a DLT MTF or a DLT SSS.

Amendment 13

Proposal for a regulation Recital 11

Text proposed by the Commission

(11) ***A DLT MTF or a CSD operating a DLT securities settlement system*** should only admit to trading or record DLT transferable securities on ***their*** distributed ledger. DLT transferable securities should be crypto-assets that qualify as ‘transferable securities’ within the meaning of Directive 2014/65/EU (the Market in Financial Instruments Directive, MiFID II) and that are issued, transferred and stored on a distributed ledger.

Amendment

(11) ***DLT market infrastructures*** should only admit to trading or record DLT transferable securities on ***a*** distributed ledger. DLT transferable securities should be crypto-assets that qualify as ‘transferable securities’ within the meaning of Directive 2014/65/EU (the Market in Financial Instruments Directive, MiFID II) ***with the exception of depositary receipts,*** and that are issued, transferred and stored on a distributed ledger. ***DLT market infrastructures should bear the liability for risks related to the functioning of the DLT they operate, notably ledger transparency risks, cyber risks and***

Justification

Alignment to ensure a common logic behind the requirements for DLT market infrastructures. It is more appropriate here to use the generic term of DLT market infrastructures (which also include the DLT TSS). Furthermore, the definition of “DLT transferable securities” refers to Article 4 (1) (44) (a) and (b) of MiFID II, which not only includes shares and bonds, but also depository receipts in respect of shares or bonds. In a DLT environment, shares and bonds could be considered as “native” security tokens while depository receipts can be considered as “asset-backed” security tokens representing ownership rights of an underlying traditional share or bond. It needs to be clarified that the Regulation only applies to so-called “native” security tokens (i.e. shares and bonds that are created/issued on DLT and have no existence outside the DLT ledger). The understanding of your Rapporteur that this Regulation only applies to “native” security tokens is based on the limitations in Article 3 that only apply to shares and bonds (and not depository receipts). Finally, it is suggested to make it fully clear that the liability for the functioning of the particular DLT used should remain with the DLT market infrastructures.

Amendment 14

Proposal for a regulation

Recital 12

Text proposed by the Commission

(12) In order to allow innovation and experimentation in a sound regulatory environment while preserving financial stability, the type of transferable securities **admitted to trading on a DLT MTF or recorded in a CSD operating a DLT securities settlement system** should be limited to securities, such as shares and bonds **that are not liquid. In order to determine whether a share or bond is liquid or not, this Regulation should set** some value thresholds. To avoid the creation of any risk to financial stability, the total market value of DLT transferable securities recorded by a **CSD operating a DLT securities settlement system, or admitted to trading** by a DLT MTF, should also be limited. **DLT market infrastructures should also be prevented from admitting to trading or recording on**

Amendment

(12) In order to allow innovation and experimentation in a sound regulatory environment while preserving financial stability, the type of transferable securities **serviced by a DLT market infrastructure** should be limited to securities, such as shares and bonds, **below the value thresholds set out in this Regulation.** To avoid the creation of any risk to financial stability, the total market value of DLT transferable securities recorded by a **DLT SSS or** by a DLT **TSS** should also be limited. To verify that the DLT transferable securities traded on or recorded by a DLT market infrastructure **meet** the conditions imposed under this Regulation, national competent authorities should require such DLT market infrastructures to submit reports.

the distributed ledger sovereign bonds. To verify that the DLT transferable securities traded on or recorded by a DLT market infrastructure ***meets*** the conditions imposed under this Regulation, national competent authorities should ***be allowed to*** require such DLT market infrastructures to submit reports.

Or. en

Justification

Alignment to ensure a common logic behind the requirements for DLT market infrastructures. It is more appropriate here to use the generic term of DLT market infrastructures (which also include the DLT TSS). Moreover, the thresholds defined in the Regulation are not a measure of liquidity as only related to the issuance/market cap size (without taking into account the number of transactions performed). Considering the shares and bonds as 'not liquid' is therefore misleading. Furthermore, for consistency reasons, the Regulation should either refer to the operators of the DLT market infrastructures or to the market infrastructure itself, for both the DLT MTF and the DLT SSS. In addition, the total market value of DLT transferable securities admitted to trading by a DLT MTF is not limited under Article 3.3. of this regulation. Finally, it is suggested to delete the exclusion of sovereign bonds.

Amendment 15

Proposal for a regulation

Recital 13

Text proposed by the Commission

(13) In order to ***ensure a*** level playing field with transferable securities admitted to trading on a traditional trading venue within the meaning of Directive 2014/65/EU (the Market in Financial Instruments Directive, MiFID II) and ***a high level*** of market integrity, the DLT transferable securities admitted to trading on a DLT MTF should always be subject to the provisions prohibiting market abuse in Regulation (EU) No 596/2014 (the Market Abuse Regulation).

Amendment

(13) In order to ***minimise distortions of the*** level playing field with transferable securities admitted to trading on a traditional trading venue within the meaning of Directive 2014/65/EU (the Market in Financial Instruments Directive, MiFID II) and ***to ensure high levels*** of market integrity, ***investor protection and financial stability***, the DLT transferable securities admitted to trading on a DLT MTF ***or on a DLT SSS*** should always be subject to the provisions prohibiting market abuse in Regulation (EU) No 596/2014 (the Market Abuse Regulation).

Or. en

Justification

Alignment to ensure a common logic behind the requirements for DLT market infrastructures. Furthermore, there will always remain level playing field issues between entities active within the DLT pilot regime and entities outside of the DLT pilot regime.

Amendment 16

Proposal for a regulation

Recital 14

Text proposed by the Commission

(14) A DLT MTF should be able to request one or several exemptions on a temporary basis, as listed under this Regulation, to be granted by the competent authority, if it complies with the conditions attached to such exemptions as well as additional requirements set under this Regulation to address novel forms of risks raised by the use of DLT. **The** DLT MTF should also comply with any compensatory measure imposed by the competent authority in order to meet the objectives pursued by the provision for which an exemption has been requested.

Amendment

(14) A DLT MTF should be able to request one or several exemptions on a temporary basis, as listed under this Regulation, to be granted by the competent authority **after ESMA has issued its recommendation**, if it complies with the conditions attached to such exemptions as well as additional requirements set under this Regulation to address novel forms of risks raised by the use of DLT. **A** DLT MTF should also comply with any compensatory **or corrective** measure imposed by the competent authority in order to meet the objectives pursued by the provision for which an exemption has been requested.

Or. en

Justification

With a view to ensuring the consistency and proportionality of the exemptions granted by different competent authorities across the Union and thus fostering the level playing field, your Rapporteur suggests that the ESMA issue a recommendation instead of a non-binding opinion. In contrast to an ESMA opinion, an ESMA recommendation is based on a comply-or-explain approach, in accordance with Article 16 of Regulation (EU) No 1095/2010 (ESMA Regulation).

Amendment 17

Proposal for a regulation

Recital 15

(15) ***Where a financial instrument is admitted to trading on an MTF, it is to be recorded with an authorised Central Securities Depository in accordance with Regulation (EU) No 909/2014 (the Central Securities Depository Regulation). While the recording of a transferable security and the settlement of related transactions could potentially take place on a distributed ledger, Regulation (EU) No 909/2014 imposes an intermediation by a CSD and would oblige to replicate the recording on the distributed ledger at the CSD level, potentially imposing a functionally redundant overlay to the trade lifecycle of a financial instrument handled by DLT market infrastructures subject to this Regulation. Therefore, a DLT MTF should be able to request an exemption of the book-entry requirement and the recording with a CSD set by Regulation (EU) No 909/2014, where the DLT MTF complies with equivalent requirements to those applying to a CSD. The DLT MTF should record the transferable securities on its distributed ledger, ensure the integrity of the issues on the distributed ledger, establish and maintain procedures to ensure the safekeeping of the DLT transferable securities, complete the settlement of transactions, and prevent settlement fails.***

(15) ***An investment firm or a market operator operating a DLT MTF should be able to be permitted to record and settle DLT transferable securities on a distributed ledger. In such a case, the DLT MTF should be considered to be a DLT TSS and should, in addition to the requirements applicable to a DLT MTF, comply with the same requirements as those applying to a DLT SSS and should, among other requirements set out under Regulation (EU) No 909/2014, record the transferable securities on a distributed ledger, ensure the integrity of the issues on the distributed ledger, establish and maintain procedures to ensure the safekeeping of the DLT transferable securities, complete the settlement of transactions, and prevent settlement fails. The exemptions from those requirements provided for in this Regulation in respect of DLT MTFs and DLT SSSs should also be available to DLT TSSs.***

Or. en

Justification

Most of the original recital is not required anymore as it was justifying the exemption from CSDR Article 3(2) (recording securities in book-entry form in a CSD). Your Rapporteur thus suggests to redraft the recital and mention that the DLT MTF can be permitted to record and settle DLT transferable securities. It would then be a DLT TSS, be obliged to apply the same requirements as a DLT SSS, and have the possibility to request the same exemptions as a DLT TSS. To be noted, in case the “book-entry form” is not compatible with the DLT used, it is foreseen that the DLT SSS/DLT TSS is able to request an exemption from this requirement under the Article 5 of this Regulation.

Amendment 18

Proposal for a regulation Recital 16

Text proposed by the Commission

(16) **Where performing the settlement of transactions in DLT transferable securities, the DLT MTF** should ensure that the payment for DLT transferable securities from the buyer occurs at the same time as DLT transferable securities are delivered from the seller (delivery versus payment). Where practicable and available, the **cash payments** should be settled through central bank money **and**, where not practicable or available, through commercial bank money. In order to test innovative solutions and to allow for the **cash payments** to occur on a distributed ledger, **the DLT MTFs** should also be allowed to use so-called settlement coins, that is to say commercial bank money in a tokenised form, or e-money tokens as defined in the Regulation No 2021/XX on Markets in Crypto-Assets⁴³. Where using commercial bank money for **cash payments**, the DLT MTF should limit counterparty risk by establishing and monitoring adherence by the credit institutions used for the settlement of **cash payments** to strict criteria, such as their regulation and supervision, creditworthiness, capitalisation, access to liquidity and operational reliability.

⁴³ Proposal for a Regulation of the European Parliament and of the Council on Markets in Crypto-assets, and amending Directive (EU) 2019/1937–COM(2020)593

Amendment

(16) **A DLT TSS** should ensure that the payment for DLT transferable securities from the buyer occurs at the same time as DLT transferable securities are delivered from the seller (delivery versus payment). Where practicable and available, the **payment leg** should be settled through central bank money **or**, where not practicable or available, through commercial bank money. In order to test innovative solutions and to allow for the **payment leg** to occur on a distributed ledger, **a DLT TSS** should also be allowed to use so-called settlement coins, that is to say commercial bank money in a tokenised form, or e-money tokens as defined in the Regulation No 2021/XX on Markets in Crypto-Assets⁴³. Where using commercial bank money for **the payment leg**, the DLT TSS should limit counterparty risk by establishing and monitoring adherence by the credit institutions used for the settlement of **the payment leg** to strict criteria, such as their regulation and supervision, creditworthiness, capitalisation, access to liquidity and operational reliability.

⁴³ Proposal for a Regulation of the European Parliament and of the Council on Markets in Crypto-assets, and amending Directive (EU) 2019/1937–COM(2020)593

Or. en

Justification

Editorial comments, and alignment to ensure a common logic behind the requirements for DLT market infrastructures.

Amendment 19

Proposal for a regulation

Recital 18

Text proposed by the Commission

(18) To be granted an exemption under this Regulation, the DLT MTF should demonstrate that the exemption is proportionate and limited to the use of DLT as described in its business plan and that the **exemption** requested is limited to the DLT MTF and not extended to any other MTF operated by the same investment firm or market operator.

Amendment

(18) To be granted an exemption under this Regulation, the DLT MTF should demonstrate that the **requested** exemption is proportionate and limited to the use of DLT as described in its business plan and that the requested **exemption** is limited to the DLT MTF and not extended to any other MTF operated by the same investment firm or market operator.

Or. en

Justification

Editorial comments.

Amendment 20

Proposal for a regulation

Recital 19

Text proposed by the Commission

(19) **A CSD operating a DLT securities settlement system** should be able to request one or several exemptions on a temporary basis, as listed under this Regulation, to be granted by the relevant competent authority, if it **complied** with the conditions to such exemptions as well as additional requirements to address novel forms of risks raised by the use of DLT. The **CSD operating the DLT securities settlement system** should comply with any compensatory measure imposed by the competent authority in order to meet the objectives pursued by the provision for which an exemption has been requested.

Amendment

(19) A DLT **SSS** should be able to request one or several exemptions on a temporary basis, as listed under this Regulation, to be granted by the relevant competent authority **after it has consulted with ESMA**, if it **complies** with the conditions **attached** to such exemptions as well as additional requirements **set out in this Regulation** to address novel forms of risks raised by the use of DLT. The **DLT SSS** should **also** comply with any compensatory **or corrective** measure imposed by the competent authority in order to meet the objectives pursued by the provision for which an exemption has been requested.

Justification

Editorial comments and alignment to ensure a common logic behind the requirements for DLT market infrastructures. This modification aims at mirroring recital (14) applicable to DLT MTF. For consistency reasons, the Regulation should either refer to the operators of the DLT market infrastructures or to the market infrastructure itself, for both the DLT MTF and the DLT SSS. Further streamlining across the Regulation might be needed in this respect.

Amendment 21

Proposal for a regulation

Recital 20

Text proposed by the Commission

(20) A CSD operating a securities settlement system should be allowed to request exemptions from different provisions that are likely to create regulatory obstacles for the development of settlement securities systems for transferable securities. For instance, a CSD should be able to request ***an exemption from*** some definitions of Regulation (EU) 909/2014 (the Central Securities Depositories Regulation), such as the notion of ‘dematerialised form’, ‘security account’, ‘transfer orders’ as well as exemptions from provisions which refers to the notion of ‘security account’, such as the rules on the recording of securities, integrity of issue or segregation of accounts. CSDs operate securities settlement system by crediting and debiting the securities accounts of its participants. However, double-entry (or multiple-entry) book keepings securities accounts may not always exist in a DLT system. Therefore, a CSD operating a DLT ***securities settlements system*** should be able to request an exemption from the rules referring to the notion of ‘securities account’ or ‘book-entry form’ should it be necessary to allow the recording of DLT transferable securities on a distributed ledger, to ensure the integrity of the DLT

Amendment

(20) A CSD operating a securities settlement system should be allowed to request exemptions from different provisions that are likely to create regulatory obstacles for the development of settlement securities systems for transferable securities. For instance, a CSD should be able to request ***that*** some definitions of Regulation (EU) 909/2014 (the Central Securities Depositories Regulation) ***do not apply***, such as the notion of ‘dematerialised form’, ‘security account’, ‘transfer orders’ as well as exemptions from provisions which refers to the notion of ‘security account’, such as the rules on the recording of securities, integrity of issue or segregation of accounts. CSDs operate securities settlement system by crediting and debiting the securities accounts of its participants. However, double-entry (or multiple-entry) book keepings securities accounts may not always exist in a DLT system. Therefore, a CSD operating a DLT ***SSS*** should be able to request an exemption from the rules referring to the notion of ‘securities account’ or ‘book-entry form’ should it be necessary to allow the recording of DLT transferable securities on a distributed ledger. ***However, any CSD operating a DLT SSS would still need*** to ensure the

transferable security issue on the distributed ledger and the segregation of the DLT transferable securities belonging to various participants.

integrity of the DLT transferable security issue on the distributed ledger and the segregation of the DLT transferable securities belonging to various participants.

Or. en

Justification

Editorial comments and alignment to ensure a common logic behind the requirements for DLT market infrastructures. Furthermore, your Rapporteur suggests making it fully clear that CSDs are mandated to ensure the integrity of the DLT transferable security issue by any other means if they do not use security accounts (the corresponding wording for the similar requirement for MTFs is already sufficiently clear in the EC proposal).

Amendment 22

Proposal for a regulation Recital 20 a (new)

Text proposed by the Commission

Amendment

(20a) A DLT SSS should be able to be permitted, at its request, to admit to trading DLT transferable securities and perform similar roles as the ones performed by a DLT MTF. In such a case, a DLT SSS should be considered to be a DLT TSS and should, in addition to the requirements applicable to a DLT SSS, comply with the same requirements as those applying to a DLT MTF. The exemptions from those requirements provided for in this Regulation in respect of DLT MTFs and DLT SSSs should also be available to DLT TSSs.

Or. en

Justification

Alignment to ensure a common logic behind the requirements for DLT market infrastructures. To ensure a level playing field, a DLT SSS should be allowed to perform the roles of as a DLT MTF, in the same way as it is permitted for a DLT MTF to perform the roles of a DLT SSS.

Amendment 23

Proposal for a regulation

Recital 21

Text proposed by the Commission

(21) Under Regulation (EU) No 909/2014 (the Central Securities Depositories Regulation), a CSD can only outsource one of its core activities, after receiving an authorisation from the competent authority. The CSD is also required to respect several conditions, so that the outsourcing does not result in a delegation of its responsibility or in a modification of the obligations of the CSD towards its participants or issuers. Depending on its business plan, a CSD operating a DLT securities settlement system could be willing to share the responsibility of *running its* distributed ledger on which the transferable securities are recorded with other entities, including with its participants. The DLT securities settlement system should be able to request an exemption from the outsourcing requirements to develop such innovative business models. In such a case, they should demonstrate that the provisions on outsourcing are incompatible with the use of DLT as envisaged in their business plan and they should also demonstrate that some minimum requirements on outsourcing are met.

Amendment

(21) Under Regulation (EU) No 909/2014 (the Central Securities Depositories Regulation), a CSD can only outsource one of its core activities, after receiving an authorisation from the competent authority. The CSD is also required to respect several conditions, so that the outsourcing does not result in a delegation of its responsibility or in a modification of the obligations of the CSD towards its participants or issuers. Depending on its business plan, a CSD operating a DLT securities settlement system could be willing to share the responsibility of *operating the* distributed ledger on which the transferable securities are recorded with other entities, including with its participants. The DLT securities settlement system should be able to request an exemption from the outsourcing requirements to develop such innovative business models. In such a case, they should demonstrate that the provisions on outsourcing are incompatible with the use of DLT as envisaged in their business plan and they should also demonstrate that some minimum requirements on outsourcing are met.

Or. en

Justification

Editorial comment.

Amendment 24

Proposal for a regulation

Recital 23

Text proposed by the Commission

(23) The entities that are eligible to participate in a CSD covered by Regulation (EU) No 909/2014 (the Central Securities Depositories Regulation) are based on the entities that are eligible to participate in a securities settlement system that is designated and notified in accordance with Directive 98/26/EC (the Settlement Finality Directive) because Regulation (EU) No 909/2014 (the Central Securities Depositories Regulation) requires securities settlement systems operated by CSDs to be designated and notified under Directive 98/26/EC. A DLT **securities settlement system** that applies to be exempted from the participation requirements of Regulation (EU) No 909/2014 (the Central Securities Depositories Regulation) would not be compliant with the participation requirements of Directive 98/26/EC. Consequently, such a DLT **securities settlement system** could not be designated and notified under that Directive. However, this would not preclude a DLT **securities settlement system** that complies with all of the requirements of Directive 98/26/EC from being so designated and notified.

Amendment

(23) The entities that are eligible to participate in a CSD covered by Regulation (EU) No 909/2014 (the Central Securities Depositories Regulation) are based on the entities that are eligible to participate in a securities settlement system that is designated and notified in accordance with Directive 98/26/EC (the Settlement Finality Directive) because Regulation (EU) No 909/2014 (the Central Securities Depositories Regulation) requires securities settlement systems operated by CSDs to be designated and notified under Directive 98/26/EC. A DLT **SSS or a DLT TSS** that applies to be exempted from the participation requirements of Regulation (EU) No 909/2014 (the Central Securities Depositories Regulation) would not be compliant with the participation requirements of Directive 98/26/EC. Consequently, such a DLT **SSS or DLT TSS** could not be designated and notified under that Directive. However, this would not preclude a DLT **SSS or a DLT TSS** that complies with all of the requirements of Directive 98/26/EC from being so designated and notified.

Or. en

Justification

Alignment to ensure a common logic behind the requirements for DLT market infrastructures.

Amendment 25

Proposal for a regulation

Recital 24

Text proposed by the Commission

(24) Regulation (EU) No 909/2014 (the Central Securities Depositories Regulation) encourages the settlement of transactions in

Amendment

(24) Regulation (EU) No 909/2014 (the Central Securities Depositories Regulation) encourages the settlement of transactions in

central bank money. Where the settlement of *cash payments* in central bank money is not available and practicable, this settlement can take place in commercial bank money. That provision can be difficult to apply for a CSD operating a DLT securities settlement system, as such a CSD would have to effect movements in cash accounts at the same time as the delivery of securities on the *DLT*. A CSD operating a DLT securities settlement system should be allowed to request an exemption from the rules of Regulation (EU) No 909/2014 (the Central Securities Depositories Regulation) on cash settlement in order to develop innovative solutions, such as the use of settlement coins or ‘e-money tokens’ as defined in the Regulation No 2021/XX on Markets in Crypto-Assets⁴⁵.

⁴⁵ Proposal for a Regulation of the European Parliament and of the Council on markets in crypto-assets, and amending Directive (EU) 2019/1937 – COM(2020)593

central bank money. Where the settlement of *the payment leg* in central bank money is not available and practicable, this settlement can take place in commercial bank money. That provision can be difficult to apply for a CSD operating a DLT securities settlement system, as such a CSD would have to effect movements in cash accounts at the same time as the delivery of securities on the *distributed ledger*. A CSD operating a DLT securities settlement system should be allowed to request an exemption from the rules of Regulation (EU) No 909/2014 (the Central Securities Depositories Regulation) on cash settlement in order to develop innovative solutions, such as the use of settlement coins or ‘e-money tokens’ as defined in the Regulation No 2021/XX on Markets in Crypto-Assets⁴⁵.

⁴⁵ Proposal for a Regulation of the European Parliament and of the Council on markets in crypto-assets, and amending Directive (EU) 2019/1937 – COM(2020)593

Or. en

Justification

Editorial comments.

Amendment 26

Proposal for a regulation Recital 25

Text proposed by the Commission

(25) Regulation (EU) No 909/2014 (the Central Securities Depositories Regulation) requires that a CSD gives access to another CSD or to other market infrastructures. The access to a *CSD operating a DLT securities settlement system* can be burdensome or difficult to achieve, as the

Amendment

(25) Regulation (EU) No 909/2014 (the Central Securities Depositories Regulation) requires that a CSD gives access to another CSD or to other market infrastructures *on a non-discriminatory and transparent basis*. The access to a *DLT SSS or DLT TSS* can be *technically more challenging*,

interoperability of legacy systems with DLT has not been tested yet. A DLT **securities settlement system** should also be able to request an exemption from such rules, if it can demonstrate that the application of such rules are disproportionate to the size of the DLT **securities settlement system**.

burdensome or difficult to achieve, as the interoperability of legacy systems with DLT has not been tested yet. A DLT **SSS or DLT TSS** should also be able to request an exemption from such rules, if it can demonstrate that the application of such rules are disproportionate to the size of the DLT **SSS or DLT TSS**.

Or. en

Justification

Editorial comments and alignment to ensure a common logic behind the requirements for DLT market infrastructures.

Amendment 27

Proposal for a regulation

Recital 26

Text proposed by the Commission

(26) Irrespective of the rule for which an exemption is requested, a CSD operating a DLT **securities settlement system** should demonstrate that the exemption requested is proportionate and justified by the use of DLT. The exemption should also be limited to the DLT **securities settlement system** and not cover other securities settlement systems operated by the same CSD.

Amendment

(26) Irrespective of the rule for which an exemption is requested, a CSD operating a DLT **SSS** should demonstrate that the exemption requested is proportionate and justified by the use of DLT. The exemption should also be limited to the DLT **SSS** and not cover other securities settlement systems operated by the same CSD.

Or. en

Justification

Editorial comments.

Amendment 28

Proposal for a regulation

Recital 27

Text proposed by the Commission

Amendment

(27) DLT market infrastructures should also be subject to additional requirements, compared to traditional market infrastructures. These requirements are necessary to avoid risks raised by the use of DLT or by the new way the DLT market infrastructure would carry out its activities. Therefore, DLT market infrastructure should establish a clear business plan that details how the DLT would be used and the legal arrangements put in place.

(27) DLT market infrastructures **and their operators** should also be subject to additional requirements, compared to traditional market infrastructures. These requirements are necessary to avoid risks raised by the use of DLT or by the new way the DLT market infrastructure would carry out its activities. Therefore, **a** DLT market infrastructure **and its operator** should establish a clear business plan that details how the DLT would be used and the legal arrangements put in place.

Or. en

Justification

Some requirements are applicable to the operator of the DLT market infrastructure.

Amendment 29

Proposal for a regulation

Recital 28

Text proposed by the Commission

Amendment

(28) ***A CSD operating a DLT securities settlement system, or DLT MTF where they are permitted to settle the transactions in DLT transferable securities themselves,*** should establish the rules on the functioning of the ***proprietary DLT*** they operate, including the rules to access and admission on the ***DLT***, the rules for the participating nodes and the rules to address potential conflicts of interest, as well as risk management measures.

(28) ***DLT SSS and DLT TSS operators*** should establish ***or document, as appropriate,*** the rules on the functioning of the ***distributed ledger*** they operate, including the rules to access and admission on the ***distributed ledger***, the rules for the participating nodes and the rules to address potential conflicts of interest, as well as risk management measures.

Or. en

Justification

Alignment to ensure a common logic behind the requirements for (operators of) DLT market infrastructures. Furthermore, the wording in the EC proposal might seem to impose the use of specified DLTs, i.e. proprietary DLTs (in contrast to public or consortia DLTs), to market

infrastructures. This amendment aims at a more technology-neutral wording. At the same time, liability for the functioning of the particular DLT used should remain with the DLT market infrastructure, regardless whether the security token project is a proprietary or another type of DLT. Finally, editorial comment.

Amendment 30

Proposal for a regulation

Recital 29

Text proposed by the Commission

(29) A DLT market infrastructure should be required to inform members, participants, issuers and clients on how **they intend** to perform **their** activities and how the use of DLT will create deviations compared to the way the service is normally provided by a traditional MTF or a CSD operating a securities settlement system.

Amendment

(29) A DLT market infrastructure should be required to inform members, participants, issuers and clients on how **it intends** to perform **its** activities and how the use of DLT will create deviations compared to the way the service is normally provided by a traditional MTF or a CSD operating a securities settlement system.

Or. en

Justification

Editorial comment.

Amendment 31

Proposal for a regulation

Recital 32

Text proposed by the Commission

(32) At the time where **the** specific permission is granted, DLT market infrastructures should also have a credible exit strategy in place in case the regime on DLT market infrastructures should be discontinued or the specific permission or some of the exemptions granted should be withdrawn.

Amendment

(32) At the time where **a** specific permission is granted, DLT market infrastructures should also have a credible exit strategy in place in case the regime on DLT market infrastructures should be discontinued or the specific permission or some of the exemptions granted should be withdrawn.

Or. en

Justification

More than one permission may be required in the case of a DLT TSS.

Amendment 32

Proposal for a regulation

Recital 33

Text proposed by the Commission

(33) The specific permission granted to a DLT market infrastructure should follow the **same** procedures **as** the authorisation of a traditional MTF, or a CSD **where such a CSD is seeking to operate a new** securities settlement **system**. However, when applying for a permission, the applicant DLT infrastructure should indicate the exemptions it would be seeking. Before granting a permission to a DLT market infrastructure, the competent authority should consult ESMA. ESMA should issue a **non-binding opinion and make any recommendations** on the application or the exemptions requested. ESMA should also consult the competent authorities of the other Member States. Where issuing its **non-binding opinion**, ESMA should aim at ensuring financial stability, market integrity and investor protection. In order to ensure the level-playing field and fair competition across the single market, ESMA's **non-binding opinion** should also aim at ensuring the consistency and proportionality of the exemptions granted by different competent authorities across the Union.

Amendment

(33) The specific permission(s) granted to a DLT market infrastructure should follow the **respective** procedures **for** the authorisation of a traditional MTF **with respect to securities trading**, or a CSD **with respect to** securities settlement. However, when applying for a permission, the applicant DLT **market** infrastructure should indicate the exemptions it would be seeking. Before granting a permission to a DLT market infrastructure, the competent authority should consult ESMA. ESMA should issue a **recommendation** on the application or the exemptions requested. ESMA should also consult the competent authorities of the other Member States. Where issuing its **recommendation**, ESMA should aim at ensuring financial stability, market integrity and investor protection. In order to ensure the level-playing field and fair competition across the single market, ESMA's **recommendation** should also aim at ensuring the consistency and proportionality of the exemptions granted by different competent authorities across the Union.

Or. en

Justification

Where the operator of a MTF/SSS seeks permission to operate a DLT MTF/DLT SSS that engages in trading/settlement services, the permission covering the securities settlement aspect should be granted by the competent authority under CSDR while the permission covering the trading aspect should be granted by the competent authority under MiFID. Furthermore, it is suggested that ESMA should issue a recommendation instead of a non-

binding opinion.

Amendment 33

Proposal for a regulation

Recital 34

Text proposed by the Commission

(34) The competent authority **which would examine** the application submitted by a prospective DLT market infrastructure should have the possibility to refuse a permission if there **were** reasons to believe that the DLT market infrastructure would pose a threat to financial stability, investor protection or market integrity or if the application were an attempt to circumvent existing requirements.

Amendment

(34) The competent authority **that examines** the application submitted by a prospective DLT market infrastructure should have the possibility to refuse a permission if there **are** reasons to believe that the DLT market infrastructure would pose a threat to financial stability, investor protection or market integrity or if the application were **merely** an attempt to circumvent existing requirements.

Or. en

Justification

Editorial comments.

Amendment 34

Proposal for a regulation

Recital 35

Text proposed by the Commission

(35) The specific permission given by a competent authority to a given DLT market infrastructure should indicate the exemptions granted to that DLT market infrastructure. Such **a** permission should be valid for the Union. ESMA should publish on its website the list of DLT market infrastructures and the list of exemptions granted to each of them.

Amendment

(35) The specific permission(**s**) given by a competent authority to a given DLT market infrastructure should indicate the exemptions granted to that DLT market infrastructure. Such permission(**s**) should be valid for the Union. ESMA should publish on its website the list of DLT market infrastructures and the list of exemptions granted to each of them.

Or. en

Justification

More than one permission may be required in the case of a DLT TSS.

Amendment 35

Proposal for a regulation

Recital 36

Text proposed by the Commission

(36) The specific permission and the exemptions granted by national competent authorities should be granted on a temporary basis, for a period of up to six years from the date of the specific permission. After a five-year period from the entry into application of the Regulation, ESMA and the Commission would be required to ***make an*** assessment of ***this*** pilot regime ***for market infrastructures based on digital ledger technology***. The aforementioned six-year period provides DLT market infrastructures sufficient time to adapt their business models to any modifications of this regime and operate under the pilot in a commercially viable manner. It would allow ESMA and the Commission to gather a useful data set ***encompassing around three calendar years of*** the operation of the pilot regime following the grant of a critical mass of specific permissions and related exemptions and to report thereon. It would also allow time for DLT market infrastructures to take the necessary steps either to wind down their operations or to transition to a new regulatory framework following ESMA's and the Commission's reports.

Amendment

(36) The specific permission(s) and the exemptions granted by national competent authorities should be granted on a temporary basis, for a period of up to six years from the date of the specific permission. After a ***three-year period and a*** five-year period from the entry into application of the Regulation, ESMA and the Commission would be required to ***conduct, respectively, an early-exit assessment and a final*** assessment of ***the DLT*** pilot regime. The aforementioned six-year period provides DLT market infrastructures sufficient time to adapt their business models to any modifications of this regime and operate under the pilot in a commercially viable manner. It would allow ESMA and the Commission to gather a useful data set ***on*** the operation of the pilot regime following the grant of a critical mass of specific permissions and related exemptions and to report thereon. It would also allow time for DLT market infrastructures to take the necessary steps either to wind down their operations or to transition to a new regulatory framework following ESMA's and the Commission's reports.

Or. en

Justification

The draft Regulation requires the ESMA to submit a detailed report on the pilot regime to the Commission only after a period of five years, at the latest. Your Rapporteur considers the five-year period too long given the rapid evolution of technology and financial innovation. He

suggests that the Commission, based on advice from the ESMA, should already submit an assessment on a potential adjustment or discontinuation to the European Parliament and the Council after three years. If the regime is not terminated, then the second and final assessment should be submitted after five years.

Amendment 36

Proposal for a regulation

Recital 36 a (new)

Text proposed by the Commission

Amendment

(36a) During the lifecycle of the transitional regime, it is important that it be subject to early and frequent review and evaluation, in order to maximise information for operators of DLT market infrastructures about the future rules under the permanent regime. In that respect, it is essential that the review process be as transparent and participatory as possible, in order to allow for a proper assessment of investment by market operators. Annual interim reports by ESMA should also take into consideration the existence of established market practices that present specific features relevant for the future Union framework for markets in crypto-assets.

Or. en

Justification

The draft Regulation requires the ESMA to submit a detailed report on the pilot regime to the Commission only after a period of five years, at the latest. Your Rapporteur considers the five-year period too long given the rapid evolution of technology and financial innovation. He suggests to have more frequent information on the evolution of the pilot regime, thus allowing operators to understand whether they need to review their activities. Annual interim reports seem appropriate to help understand possible adjustments to the pilot regime based on the evolution of technology and first experiences.

Amendment 37

Proposal for a regulation

Recital 37

Text proposed by the Commission

(37) Without prejudice to the relevant provisions of Directive 2014/65/EU (Markets in Financial Instruments Directive, MiFID II) or Regulation (EU) No 909/2014 (the Central Securities Depositories Regulation), the competent authorities should have the power to withdraw the specific permission or any exemptions granted to the DLT market infrastructure, where a flaw has been discovered in the underlying technology or the services or activities provided by the DLT market infrastructure, and provided that this flaw outweighs the benefits provided by the service at stake, or where the DLT market infrastructure has breached any conditions attached to the exemptions imposed by the competent authority at the time of the granting of the specific permission, or where the DLT market infrastructure has recorded financial instruments that do not meet the conditions of DLT transferrable securities under this Regulation. In the course of its activity, a DLT market infrastructure should have the possibility to ask for additional exemptions to those requested at the time of the permission. In such a case, these additional exemptions requested **by the DLT market infrastructures should be subject to a specific permission** by the competent authorities, in the same way as those requested at the time of the initial permission of the DLT market infrastructure.

Amendment

(37) Without prejudice to the relevant provisions of Directive 2014/65/EU (Markets in Financial Instruments Directive, MiFID II) or Regulation (EU) No 909/2014 (the Central Securities Depositories Regulation), the competent authorities should have the power to withdraw the specific permission or any exemptions granted to the DLT market infrastructure, where a flaw has been discovered in the underlying technology or the services or activities provided by the DLT market infrastructure, and provided that this flaw outweighs the benefits provided by the service at stake, or where the DLT market infrastructure has breached any conditions attached to the **permissions or** exemptions imposed by the competent authority at the time of the granting of the specific permission, or where the DLT market infrastructure has recorded financial instruments that do not meet the conditions of DLT transferrable securities under this Regulation. In the course of its activity, a DLT market infrastructure should have the possibility to ask for additional exemptions to those requested at the time of the permission. In such a case, these additional exemptions **should be** requested **from** the competent authorities, in the same way as those requested at the time of the initial permission of the DLT market infrastructure.

Or. en

Justification

Editorial comments. It is confusing to state here that ‘an exemption is subject to a permission’. By way of a general remark, your Rapporteur considers that the entire Regulation should be carefully scrutinised on the consistent use of the terms ‘exemption’ and ‘permission’.

Amendment 38

Proposal for a regulation Recital 38

Text proposed by the Commission

(38) Since DLT market infrastructures could receive temporary exemptions from existing Union legislation, they should closely cooperate with competent authorities and the European Securities and Markets Authority (ESMA) during the time **of** their specific **permission**. DLT market infrastructures should inform the competent authorities and ESMA about any material change to **its** business plan and **its** critical staff, any evidence of cyber threats or attacks, fraud or serious malpractice, of any change in the information provided at the time of the initial application for permission, of any technical difficulties, and in particular those linked to the use of DLT, and of any new risks to investor protection, market integrity and financial stability that **was** not envisaged at the time **where** the specific **permission was** granted. Where notified of such a material change, the competent authority should request the DLT market infrastructure to apply for a new permission or exemption or **it should** take any corrective measures **it** deems appropriate. DLT market infrastructures should also provide any relevant data to competent authorities and ESMA, whenever such data is requested. **To ensure investor protection, market integrity and financial stability**, the competent authority which granted the specific permission to the DLT market infrastructure should be able to recommend any corrective measures, after **consultation with** ESMA.

Amendment

(38) Since DLT market infrastructures could receive temporary exemptions from existing Union legislation, they should closely cooperate with competent authorities and the European Securities and Markets Authority (ESMA) during the time their specific **permissions are valid**. DLT market infrastructures should inform the competent authorities and ESMA about any material change to **their** business plan and **their** critical staff, any evidence of cyber threats or attacks, fraud or serious malpractice, of any change in the information provided at the time of the initial application for permission, of any technical difficulties, and in particular those linked to the use of DLT, and of any new risks to investor protection, market integrity and financial stability that **were** not envisaged at the time **when** the specific **permissions were** granted. **To ensure investor protection, market integrity and financial stability**, where notified of such a material change, the competent authority should **consult ESMA for a recommendation, and on that basis** request the DLT market infrastructure to apply for a new permission or exemption or **to** take any corrective measures **as ESMA** deems appropriate. DLT market infrastructures should also provide any relevant data to competent authorities and ESMA, whenever such data is requested. The competent authority which granted the specific permission to the DLT market infrastructure should be able to recommend any corrective measures, after **a recommendation has been issued by** ESMA.

Or. en

Justification

Editorial comments. Furthermore, with a view to ensuring the consistency and proportionality of the exemptions granted by different competent authorities across the Union and thus fostering the level playing field, your Rapporteur suggests that the ESMA issue a recommendation instead of a non-binding opinion. In contrast to an ESMA opinion, an ESMA recommendation is based on a comply-or-explain approach, in accordance with Article 16 of Regulation (EU) No 1095/2010 (ESMA Regulation).

Amendment 39

Proposal for a regulation

Recital 39

Text proposed by the Commission

(39) DLT market infrastructures should also make regular reports to their competent authorities and ESMA. ESMA should organise discussions on these reports to enable all competent authorities across the Union to gain experience on the impact of the use of DLT and on any adaptations to the Union financial services legislation that could be necessary to allow for the use of DLT on a greater scale.

Amendment

(39) DLT market infrastructures should also make regular reports to their competent authorities and ESMA. ESMA should organise discussions on these reports to enable all competent authorities across the Union to gain experience on the impact of the use of DLT and on any **possible future** adaptations to the **applicable** Union financial services legislation that could be necessary to allow for the use of DLT on a greater scale.

Or. en

Justification

Editorial comments.

Amendment 40

Proposal for a regulation

Recital 40

Text proposed by the Commission

(40) **Five years** after the **entry into** application of this Regulation, ESMA should report to the Commission **on this** pilot regime for DLT market infrastructures, **including on the** potential benefits linked to the use of DLT, the risks

Amendment

(40) **By ... [36 months** after the **date of** application of this Regulation], ESMA should **present an early-exit assessment** report to the Commission **to enable the latter to decide whether to extend the** pilot regime for DLT market infrastructures **to ...**

raised and *the* technical difficulties. **Based on ESMA's** report, the Commission should report to the **Council and** European Parliament. **This** report should assess the costs and benefits of extending *this* regime on DLT market infrastructures for *another* period of time, extending *this* regime to new *type* of financial instruments, making *this* regime permanent with or without modifications, bringing modifications to *the* Union financial services legislation or terminating *this* regime.

[five years after the date of application of this Regulation]. The early-exit assessment report should include potential benefits linked to the use of DLT, the risks raised and *any* technical difficulties ***encountered. The early-exit assessment report should be produced on the basis of annual interim reports to collect information on, among others, market size, lessons learned, and the evolution of DLT technology. In the event that the pilot regime is extended by the Commission, ESMA should provide the Commission with its final report on the DLT pilot regime by ... [five years after the date of application of this Regulation]. The final report should be prepared along the same lines as the early-exit assessment report.*** The Commission should ***present a*** report to the European Parliament ***and the Council based on ESMA's early-exit assessment report and subsequently, where applicable, a report based on ESMA's final report. The Commission's*** report should ***in each case*** assess the costs and benefits of extending *the pilot* regime on DLT market infrastructures for *a further* period of time, extending *the* regime to new *types* of financial instruments, making *the* regime permanent with or without modifications, bringing modifications to Union financial services legislation, or terminating *the* regime.

Or. en

Justification

The draft Regulation requires the ESMA to submit a detailed report on the pilot regime to the Commission only after a period of five years, at the latest. Your Rapporteur considers the five-year period too long given the rapid evolution of technology and financial innovation. He suggests that the Commission, based on advice from the ESMA, should already submit an assessment on a potential adjustment or discontinuation to the European Parliament and the Council after three years. If the regime is not terminated, then the second assessment should be submitted after five years.

Amendment 41

Proposal for a regulation

Recital 41

Text proposed by the Commission

(41) Some potential gaps have been identified in the existing **EU** financial services rules as regards their application to crypto-assets that qualify as financial instruments⁴⁶. In particular, some regulatory technical standards under the Regulation **EU** No 600/2014 (the Markets in financial instruments Regulative) relative to certain data reporting requirements and pre- and post-trade transparency requirements are not well adapted to financial instruments issued on a distributed ledger technology. Secondary markets in financial instruments issued on distributed ledger technology or similar technology are still nascent and therefore their features may differ from markets in financial instruments using traditional technology. The rules set out in these regulatory technical standards should be capable of being effectively applied to all financial instruments, regardless of the technology used. Therefore, ESMA should be mandated to carry out a comprehensive assessment of these regulatory technical standards adopted in application of Regulation **EU** No 600/2014 and propose any needed amendments aimed at ensuring that the rules set out therein can be effectively applied to financial instruments issued on distributed ledger technology. In carrying out this assessment, ESMA should take into account the specificities of those financial instruments issued on a distributed ledger technology and whether they require adapted standards which would allow for their development without undermining the objectives of the rules laid down in the regulatory technical standards adopted in application of Regulation **EU** No 600/2014.

Amendment

(41) Some potential gaps have been identified in the existing **Union** financial services rules as regards their application to crypto-assets that qualify as financial instruments⁴⁶. In particular, some regulatory technical standards under the Regulation (**EU**) No 600/2014 (the Markets in financial instruments Regulative) relative to certain data reporting requirements and pre- and post-trade transparency requirements are not well adapted to financial instruments issued on a distributed ledger technology. Secondary markets in financial instruments issued on distributed ledger technology or similar technology are still nascent and therefore their features may differ from markets in financial instruments using traditional technology. The rules set out in these regulatory technical standards should be capable of being effectively applied to all financial instruments, regardless of the technology used. Therefore, ESMA should be mandated to carry out a comprehensive assessment of these regulatory technical standards adopted in application of Regulation (**EU**) No 600/2014 and propose any needed amendments aimed at ensuring that the rules set out therein can be effectively applied to financial instruments issued on distributed ledger technology. In carrying out this assessment, ESMA should take into account the specificities of those financial instruments issued on a distributed ledger technology and whether they require adapted standards which would allow for their development without undermining the objectives of the rules laid down in the regulatory technical standards adopted in application of Regulation (**EU**) No 600/2014.

⁴⁶ European Securities and Markets Authority's, Report with advice on Initial Coin Offerings and Crypto-Assets (ESMA50-157-1391)

⁴⁶ European Securities and Markets Authority's, Report with advice on Initial Coin Offerings and Crypto-Assets (ESMA50-157-1391)

Or. en

Justification

Editorial comments.

Amendment 42

**Proposal for a regulation
Article 1 – paragraph 1**

Text proposed by the Commission

(1) This Regulation lays down requirements *on multilateral trading facilities and securities settlement systems using distributed ledger technology* 'DLT market infrastructures', which are granted with *a* specific permissions to operate in accordance with Article 7 and Article 8.

Amendment

(1) This Regulation lays down requirements *for* DLT market infrastructures *and their operators*, which are granted with specific permissions to operate in accordance with Article 7, *Article 8* and Article *8a*.

Or. en

Justification

Editorial comments. The term 'DLT market infrastructures' is defined in Article 2. Furthermore, some requirements are applicable to the operator of the market infrastructure.

Amendment 43

**Proposal for a regulation
Article 1 – paragraph 2 – point d**

Text proposed by the Commission

(d) operating *such* DLT market infrastructures;

Amendment

(d) operating DLT market infrastructures;

Or. en

Justification

Editorial comment. The term 'DLT market infrastructures' is defined in Article 2.

Amendment 44

Proposal for a regulation

Article 1 – paragraph 2 – point e

Text proposed by the Commission

(e) supervising *such* DLT market infrastructures; and

Amendment

(e) supervising DLT market infrastructures; and

Or. en

Justification

Editorial comment. The term 'DLT market infrastructures' is defined in Article 2.

Amendment 45

Proposal for a regulation

Article 1 – paragraph 2 – point f

Text proposed by the Commission

(f) cooperation between operators of DLT market infrastructures, competent authorities and ESMA.

Amendment

(f) cooperation between operators of DLT market infrastructures, *national* competent authorities and ESMA.

Or. en

Justification

Editorial comments.

Amendment 46

Proposal for a regulation

Article 2 – paragraph 1 – point 1

Text proposed by the Commission

(1) 'distributed ledger technology' or

Amendment

(1) 'distributed ledger technology' or

‘DLT’ means a class of technologies which **support** the distributed recording of **encrypted** data;

‘DLT’ means a class of technologies which **enable** the distributed recording of data **through secure mechanisms such as cryptography**;

Or. en

Justification

Firstly, your Rapporteur proposes to indicate that the class of DLT technologies not merely supports but actually enables the distributed recording of data. It is thus clarified that the technological infrastructure is essential to the function of the distributed ledger. Secondly, he refers to the Commission’s intention to draft legislation that is technologically neutral. At present, DLT does indeed operate on the basis of encryption but it is not to be excluded that in the future other mechanisms than encryption will see the light to ensure the safe and secure recording of data in a distributed environment. In that sense, cryptography is already covered by the words “class of technologies”. Your Rapporteur nonetheless thinks that it is appropriate, for greater clarity, to include an explicit reference to cryptography but merely by way of example. Another such technology often used in DLT relates to the consensus mechanism (proof of work, proof of stake, etc.). Further elaboration on this definition is needed, as well as alignment with the proposed Regulation on a European framework for markets in crypto-assets (MiCA), as the definition is indeed fundamental to both files.

Amendment 47

Proposal for a regulation

Article 2 – paragraph 1 – point 2

Text proposed by the Commission

(2) ‘DLT market infrastructure’ means **either** a ‘DLT multilateral trading facility’ **or** a ‘DLT securities settlement system’;

Amendment

(2) ‘DLT market infrastructure’ means a ‘DLT multilateral trading facility’, a ‘DLT securities settlement system’, **or a ‘DLT trading and settlement system’**;

Or. en

Justification

Alignment to ensure a common logic behind the requirements for DLT market infrastructures. Your Rapporteur proposes that a DLT market infrastructure allowed to perform both trading and post-trading services should be considered as a third type of DLT market infrastructure under this Regulation: a DLT Trading and Settlement System (TSS). Such entity would be a complete novel type of market infrastructure and it should not be commingled with either a DLT MTF or a DLT SSS.

Amendment 48

Proposal for a regulation

Article 2 – paragraph 1 – point 3 – introductory part

Text proposed by the Commission

(3) ‘DLT multilateral trading facility’ or ‘DLT MTF’ means a ‘multilateral trading facility’, operated by an investment firm or a market operator, ***that only admits to trading DLT transferable securities and that may be permitted, on the basis of transparent, non-discretionary, uniform rules and procedures, to:***

Amendment

(3) ‘DLT multilateral trading facility’ or ‘DLT MTF’ means a ‘multilateral trading facility’ ***authorised under this Regulation***, operated by an investment firm or a market operator;

Or. en

Justification

There is a need to differentiate a DLT MTF (that is authorized under the pilot regime) from a MTF authorized under MiFID II (that may trade DLT transferable securities as well under the existing regulatory framework). Furthermore, the requirement that only DLT transferable securities are admitted to trading stems from Article 3 and need not to be repeated here. Finally, the reference to ‘transparent, non-discretionary, uniform rules and procedures’ appears to be superfluous in this definition.

Amendment 49

Proposal for a regulation

Article 2 – paragraph 1 – point 3 – point a

Text proposed by the Commission

(a) ***ensure the initial recording of DLT transferable securities;***

Amendment

deleted

Or. en

Justification

Alignment to ensure a common logic behind the requirements for DLT market infrastructures. This role would be performed by DLT TSSs.

Amendment 50

Proposal for a regulation

Article 2 – paragraph 1 – point 3 – point b

Text proposed by the Commission

Amendment

(b) settle transactions in DLT transferable securities against payment; and **deleted**

Or. en

Justification

Alignment to ensure a common logic behind the requirements for DLT market infrastructures. This role would be performed by DLT TSSs.

Amendment 51

Proposal for a regulation

Article 2 – paragraph 1 – point 3 – point c

Text proposed by the Commission

Amendment

(c) provide safekeeping services in relation to DLT transferable securities, or where applicable, to related payments and collateral, provided using the DLT MTF; **deleted**

Or. en

Justification

Alignment to ensure a common logic behind the requirements for DLT market infrastructures. This role would be performed by DLT TSSs.

Amendment 52

Proposal for a regulation

Article 2 – paragraph 1 – point 4

Text proposed by the Commission

Amendment

(4) ‘DLT securities settlement system’ means a securities settlement system, operated by a ‘central securities

(4) ‘DLT securities settlement system’ or ‘DLT SSS’ means a securities settlement system *authorised under this Regulation,*

depository’, **that settles transactions in DLT transferable securities against payment;**

operated by a ‘central securities depository’;

Or. en

Justification

There is a need to differentiate a DLT SSS (that is authorized under the pilot regime) from a securities settlement system authorized under CSDR (that may settle DLT transferable securities as well under the existing regulatory framework). Furthermore, there is no need to clarify its roles (which is otherwise not limited to transaction settlement).

Amendment 53

Proposal for a regulation

Article 2 – paragraph 1 – point 4 a (new)

Text proposed by the Commission

Amendment

(4a) ‘DLT trading and settlement system’ or ‘DLT TSS’ means a DLT market infrastructure that combines the services performed by both a DLT MTF and a DLT SSS, operated by a single legal entity authorised under this Regulation;

Or. en

Justification

Alignment to ensure a common logic behind the requirements for DLT market infrastructures. Your Rapporteur proposes that a DLT market infrastructure allowed to perform both trading and post-trading services should be considered as a third type of DLT market infrastructure under this Regulation: a DLT Trading and Settlement System (TSS). Such entity would be a complete novel type of market infrastructure and it should not be commingled with either a DLT MTF or a DLT SSS.

Amendment 54

Proposal for a regulation

Article 2 – paragraph 1 – point 5

Text proposed by the Commission

Amendment

(5) ‘DLT transferable securities’ means ‘transferable securities’ within the meaning

(5) ‘DLT transferable securities’ means ‘transferable securities’ within the meaning

of Article 4(1)(44) (a) and (b) of Directive 2014/65/EU that are issued, recorded, transferred and stored using **a** DLT;

of Article 4(1)(44) (a) and (b) of Directive 2014/65/EU , **with the exception of depositary receipts**, that are issued, recorded, transferred and stored using DLT;

Or. en

Justification

The definition of “DLT transferable securities” refers to Article 4 (1) (44) (a) and (b) of MiFID II, which not only includes shares and bonds, but also depositary receipts in respect of shares or bonds. In a DLT environment, shares and bonds could be considered as “native” security tokens while depositary receipts can be considered as “asset-backed” security tokens representing ownership rights of an underlying traditional share or bond. It needs to be clarified that the Regulation only applies to so-called “native” security tokens (i.e. shares and bonds that are created/issued on DLT and have no existence outside the DLT ledger). The understanding of your Rapporteur that this Regulation only applies to “native” security tokens is based on the limitations in article 3 that only apply to shares and bonds (and not depositary receipts).

Amendment 55

Proposal for a regulation

Article 2 – paragraph 1 – point 6 a (new)

Text proposed by the Commission

Amendment

(6a) ‘DLT exchange-traded fund units’ or ‘DLT ETF units’ means units or shares of an exchange-traded fund within the meaning of Article 4(1)(46) of Directive 2014/65/EU that are issued, recorded, transferred and stored using DLT;

Or. en

Justification

With a view to allowing more market participants to gain experience with DLT market infrastructures, your rapporteur suggests extending the scope of the DLT pilot regime through the inclusion of ETF units in the list of instruments admitted to trading on or settled by a DLT market infrastructure, while limiting the investments of DLT-ETF to DLT-transferable securities to ensure indirect application of the proposed market caps.

Amendment 56

Proposal for a regulation

Article 2 – paragraph 1 – point 12 a (new)

Text proposed by the Commission

Amendment

(12a) 'settlement coin' means commercial bank money in a tokenised form;

Or. en

Justification

It is appropriate to introduce a definition of "settlement coin". This definition needs further elaboration.

Amendment 57

Proposal for a regulation

Article 2 – paragraph 1 – point 22 – point a

Text proposed by the Commission

Amendment

(a) an investment firm operating a DLT MTF, the Member State determined in accordance with Article 4(55)(a) (ii) and (iii) of Directive 2014/65/EU;

(a) an investment firm operating a DLT MTF **or a DLT TSS**, the Member State determined in accordance with Article 4(55)(a) (ii) and (iii) of Directive 2014/65/EU;

Or. en

Justification

Alignment to ensure a common logic behind the requirements for DLT market infrastructures.

Amendment 58

Proposal for a regulation

Article 2 – paragraph 1 – point 22 – point b

Text proposed by the Commission

Amendment

(b) a market operator operating a DLT MTF, the Member State in which the market operator of the DLT MTF is

(b) a market operator operating a DLT MTF **or a DLT TSS**, the Member State in which the market operator of the DLT

registered or, if under the law of that Member State it has no registered office, the Member State in which the head office of the marker operator of the DLT MTF is situated;

MTF *or the DLT TSS* is registered or, if under the law of that Member State it has no registered office, the Member State in which the head office of the marker operator of the DLT MTF *or of the DLT TSS* is situated;

Or. en

Justification

Alignment to ensure a common logic behind the requirements for DLT market infrastructures.

Amendment 59

Proposal for a regulation

Article 2 – paragraph 1 – point 22 – point c

Text proposed by the Commission

(c) a CSD operating a DLT **securities settlement system**, the Member State determined in accordance with Article 2(23) of Regulation (EU) No 909/2014/EU.

Amendment

(c) a CSD operating a DLT **SSS or a DLT TSS**, the Member State determined in accordance with Article 2(23) of Regulation (EU) No 909/2014/EU.

Or. en

Justification

Alignment to ensure a common logic behind the requirements for DLT market infrastructures.

Amendment 60

Proposal for a regulation

Article 3 – paragraph 1 – introductory part

Text proposed by the Commission

1. Only DLT transferable securities that meet the following conditions may be admitted to trading **on a DLT MTF and recorded on a distributed ledger by a CSD operating a DLT securities settlement system**

Amendment

1. Only DLT transferable securities that meet the following conditions may be admitted to trading **or recorded, or both, on a DLT market infrastructure:**

Justification

Alignment to ensure a common logic behind the requirements for DLT market infrastructures. It is more appropriate here to use the generic term of DLT market infrastructures (which also include the DLT TSS).

Amendment 61**Proposal for a regulation****Article 3 – paragraph 1 – point a***Text proposed by the Commission*

(a) shares, the issuer of which has a market capitalisation or a tentative market capitalisation of less than EUR **200** million; or

Amendment

(a) shares, the issuer of which has a market capitalisation or a tentative market capitalisation of less than EUR **50** million; or

Or. en

Justification

While your Rapporteur considers that the aggregate threshold for the total market value of DLT transferable securities proposed by the Commission seems to strike an appropriate balance between innovation friendliness and protecting against risks that could endanger financial stability, investor protection, and market integrity, he takes note that the individual financial thresholds proposed by the Commission would encompass the majority of shares and bonds currently available on the securities market. Your Rapporteur considers that a more prudent approach is required for the accomplishment of the abovementioned objective, and prefers significantly lower individual thresholds.

Amendment 62**Proposal for a regulation****Article 3 – paragraph 1 – point b***Text proposed by the Commission*

(b) convertible bonds, covered bonds, corporate bonds, other public bonds and other bonds, with an issuance size of less than EUR **500** million.

Amendment

(b) convertible bonds, covered bonds, corporate **bonds, sovereign** bonds, other public bonds and other bonds, with an issuance size of less than EUR **50** million.

Or. en

Justification

While your Rapporteur considers that the aggregate threshold for the total market value of DLT transferable securities proposed by the Commission seems to strike an appropriate balance between innovation friendliness and protecting against risks that could endanger financial stability, investor protection, and market integrity, he takes note that the individual financial thresholds proposed by the Commission would encompass the majority of shares and bonds currently available on the securities market. Your Rapporteur considers that a more prudent approach is required for the accomplishment of the abovementioned objective, and prefers significantly lower individual thresholds. Furthermore, he sees no fundamental reason to exclude sovereign bonds from the scope of the DLT pilot regime. The inclusion of sovereign bonds as eligible instrument could in particular be helpful for smaller Member States with less developed capital markets, to enable them to also gain experience with DLT market infrastructures.

Amendment 63

Proposal for a regulation

Article 3 – paragraph 1 – point b a (new)

Text proposed by the Commission

Amendment

(ba) DLT ETF units, investing in the types of instruments referred to in points (a) and (b).

Or. en

Justification

With a view to allowing more market participants to gain experience with DLT market infrastructures, your rapporteur suggests extending the scope through the inclusion of ETF units in the list of instruments admitted to trading on or settled by a DLT market infrastructure, while limiting the investments of DLT-ETF to DLT-transferable securities to ensure indirect application of the proposed market caps.

Amendment 64

Proposal for a regulation

Article 3 – paragraph 2

Text proposed by the Commission

Amendment

2. An investment firm or market operator operating a DLT MTF shall not admit to trading sovereign bonds under this Regulation. A CSD operating a DLT

deleted

securities settlement system, or an investment firm or market operator that is permitted to record DLT transferable securities on a DLT MTF, in accordance with paragraphs 2 and 3 of Article 4, shall not record sovereign bonds under this Regulation.

Or. en

Justification

Your Rapporteur sees no fundamental reason to exclude sovereign bonds from the scope of the DLT pilot regime. The inclusion of sovereign bonds as eligible instrument could in particular be helpful for smaller Member States with less developed capital markets, to enable them to also gain experience with DLT market infrastructures.

Amendment 65

**Proposal for a regulation
Article 3 – paragraph 3**

Text proposed by the Commission

3. The total market value of DLT transferable securities recorded in a **CSD operating** a DLT **securities settlement system** shall not exceed EUR 2.5 billion. **Where a DLT MTF records the DLT transferable securities instead of a CSD, in accordance with paragraphs 2 and 3 of Article 4, the total market value of the DLT transferable securities recorded by the investment firm or market operator operating the DLT MTF shall not exceed EUR 2.5 billion.**

Amendment

3. The total market value of DLT transferable securities recorded in a **DLT SSS or** a DLT **TSS** shall not exceed EUR 2.5 billion.

Or. en

Justification

Alignment to ensure a common logic behind the requirements for DLT market infrastructures.

Amendment 66

**Proposal for a regulation
Article 3 – paragraph 4 – point b**

Text proposed by the Commission

Amendment

(b) equal to the sum of: the daily closing price of each DLT transferable security admitted for trading on a DLT MTF, multiplied by the number of DLT transferable securities with the same ISIN that are settled on the DLT **securities settlement system** or DLT **MTF concerned** on that day, whether in full or in part.

(b) equal to the sum of: the daily closing price of each DLT transferable security admitted for trading on a DLT MTF, multiplied by the number of DLT transferable securities with the same ISIN that are settled on the DLT **SSS** or DLT **TSS** on that day, whether in full or in part.

Or. en

Justification

Alignment to ensure a common logic behind the requirements for DLT market infrastructures.

Amendment 67

Proposal for a regulation

Article 3 – paragraph 5 – subparagraph 1

Text proposed by the Commission

Amendment

The operator of a DLT market infrastructure shall submit to the competent authority that granted the specific permission, in accordance with Article 7 or Article 8, monthly reports, demonstrating that all the DLT transferable securities that are recorded and settled on a DLT **MTF permitted to do so, in accordance with paragraphs 2 and 3 of Article 4, or by a CSD on a DLT securities settlement system**, fulfil the conditions under paragraphs 1 to 3.

The operator of a DLT market infrastructure shall submit to the competent authority that granted the specific permission, in accordance with Article 7 or Article 8, monthly reports, demonstrating that all the DLT transferable securities that are recorded and settled on a DLT **SSS or on a DLT TSS** fulfil the conditions under paragraphs 1 to 3.

Or. en

Justification

Alignment to ensure a common logic behind the requirements for DLT market infrastructures.

Amendment 68

Proposal for a regulation

Article 3 – paragraph 5 – subparagraph 2

Text proposed by the Commission

Where the total market value of the DLT transferable securities reported under paragraph 1, has reached EUR 2.25 billion, the investment firm or market operator operating the DLT ***MTF concerned, or the CSD operating the DLT securities settlement system concerned*** shall activate the transition strategy, referred to in Article 6(6). They shall notify the competent authority of the activation of their transition strategy, in their monthly report and of the time-horizon for such transition.

Amendment

Where the total market value of the DLT transferable securities reported under paragraph 1, has reached EUR 2.25 billion, the investment firm or market operator operating the DLT ***SSS or the DLT TSS*** shall activate the transition strategy, referred to in Article 6(6). They shall notify the competent authority of the activation of their transition strategy, in their monthly report and of the time-horizon for such transition.

Or. en

Justification

Alignment to ensure a common logic behind the requirements for DLT market infrastructures.

Amendment 69

Proposal for a regulation

Article 3 – paragraph 5 a (new)

Text proposed by the Commission

Amendment

5a. ESMA may develop draft regulatory technical standards to amend the ceilings specified in points (a) and (b) of paragraph 1 and in the second and third subparagraphs of paragraph 5, up to a maximum of double the value of the ceilings having regard to the ceiling values specified in this Regulation on ... [date of entry into application of this Regulation], based on a consultation and an impact assessment evidencing the positive impact of such amendments. ESMA shall submit those draft regulatory technical standards to the Commission by [36 months after the date of entry into

application of this Regulation], and again [60 months after the date of entry into application of this Regulation].

Power is delegated to the Commission to supplement this Regulation by adopting, in combination with a report as specified in Article 10(2), the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

Or. en

Justification

Empowerment for the ESMA to amend the ceilings (with a view to at a maximum doubling them) in relation to the early-exit assessment report.

Amendment 70

Proposal for a regulation Article 3 – paragraph 6

Text proposed by the Commission

6. Regulation (EU) No 596/2014 shall apply to DLT transferable securities admitted to trading on a DLT MTF.

Amendment

6. Regulation (EU) No 596/2014 shall apply to DLT transferable securities admitted to trading on a DLT MTF **or on a DLT TSS**.

Or. en

Justification

Alignment to ensure a common logic behind the requirements for DLT market infrastructures.

Amendment 71

Proposal for a regulation Article 4 – paragraph 1 – introductory part

Text proposed by the Commission

1. A DLT MTF shall be subject to all the requirements applicable to **an** MTF

Amendment

1. A DLT MTF **and its operator** shall be subject to all the requirements

under Directive 2014/65/EU and Regulation (EU) No 2014/600, except if the investment firm or the market operator operating the DLT MTF:

applicable to **a** MTF under Directive 2014/65/EU and Regulation (EU) No 600/2014 **or any other applicable Union financial services legislation**, except if the investment firm or the market operator operating the DLT MTF:

Or. en

Justification

Some requirements are applicable to the operator of the market infrastructure. Furthermore it is appropriate to highlight that “any other applicable EU financial services legislation” besides MiFID II/MiFIR also applies.

Amendment 72

Proposal for a regulation

Article 4 – paragraph 1 – point a

Text proposed by the Commission

(a) has requested an exemption as specified **in paragraph 2 or** under Directive (EU) .../...⁵³ and has been granted such an exemption by the competent authority that granted the specific permission in accordance with Article 7; and

⁵³ Proposal for a Directive of the European Parliament and of the Council amending Directives 2006/43/EC, 2009/65/EC, 2009/138/EU, 2011/61/EU, EU/2013/36, 2014/65/EU, (EU) 2015/2366 and EU/2016/2341 - COM(2020)596 - - COM(2020)596

Amendment

(a) has requested an exemption as specified under Directive (EU) .../...⁵³ and has been granted such an exemption by the competent authority that granted the specific permission in accordance with Article 7; and

⁵³ Proposal for a Directive of the European Parliament and of the Council amending Directives 2006/43/EC, 2009/65/EC, 2009/138/EU, 2011/61/EU, EU/2013/36, 2014/65/EU, (EU) 2015/2366 and EU/2016/2341 - COM(2020)596 - - COM(2020)596

Or. en

Justification

Alignment to ensure a common logic behind the requirements for DLT market infrastructures. Because the investment firm or market operator would need to be licenced under CSDR (and would therefore become a CSD), the exemption foreseen in paragraph 2 is not relevant anymore.

Amendment 73

Proposal for a regulation

Article 4 – paragraph 1 – point c

Text proposed by the Commission

(c) complies with the conditions set out in **paragraphs 2 to 4** and with any additional compensatory measures that the competent authority which granted the specific permission may deem appropriate in order to meet the objectives pursued by the provisions from which an exemption is requested or to ensure investor protection, market integrity and/or financial stability.

Amendment

(c) complies with the conditions set out in **paragraph 4** and with any additional compensatory **or corrective** measures that the competent authority which granted the specific permission may deem appropriate in order to meet the objectives pursued by the provisions from which an exemption is requested or to ensure investor protection, market integrity and/or financial stability.

Or. en

Justification

Alignment to ensure a common logic behind the requirements for DLT market infrastructures. Because the investment firm or market operator would need to be licenced under CSDR (and would therefore become a CSD), the exemption foreseen in paragraph 2 is not relevant anymore.

Amendment 74

Proposal for a regulation

Article 4 – paragraph 2 – subparagraph 1

Text proposed by the Commission

At its request, an investment firm or a market operator operating a DLT MTF may be permitted to **admit to trading** DLT transferable securities **that are not recorded in a CSD in accordance with Article 3(2) of Regulation (EU) 909/2014 but instead recorded** on the DLT MTF's distributed ledger.

Amendment

At its request, an investment firm or a market operator operating a DLT MTF may be permitted to **record and settle** DLT transferable securities on the DLT MTF's distributed ledger. **In such a case, the DLT MTF shall be considered to be a DLT TSS.**

Or. en

Justification

Alignment to ensure a common logic behind the requirements for DLT market infrastructures.

Because the investment firm or market operator would need to be licenced under CSDR (and would therefore become a CSD), the exemption foreseen in paragraph 2 is not relevant anymore. Furthermore, this amendment aims at avoiding having an unlevel playing field for the DLT MTF compared to the DLT SSS (the latter being subject to a permission rather than an exemption).

Amendment 75

Proposal for a regulation

Article 4 – paragraph 2 – subparagraph 2

Text proposed by the Commission

Amendment

An investment firm or market operator requesting an exemption pursuant to paragraph 1 shall propose compensatory measures to meet the objectives pursued by the provisions from which an exemption is requested, and ensure at a minimum: ***deleted***

(a) the recording of the DLT transferable securities on the digital ledger technology;

(b) that the number of DLT transferable securities recorded on the DLT MTF equals the total number of such DLT transferable securities in circulation on the digital ledger technology at any given time;

(c) that the DLT MTF keeps records which enable the investment firm or market operator operating the DLT MTF, without delay at any given time, to segregate the DLT transferable securities of a member, participant, issuer or client from those of any other member, participant, issuer or client.

Or. en

Justification

Alignment to ensure a common logic behind the requirements for DLT market infrastructures. Because the investment firm or market operator would need to be licenced under CSDR (and would therefore become a CSD), the exemption foreseen in paragraph 2 is not relevant anymore. Furthermore, this amendment aims at avoiding having an unlevel playing field for the DLT MTF compared to the DLT SSS (the latter being subject to a permission rather than

a exemption).

Amendment 76

Proposal for a regulation

Article 4 – paragraph 2 – subparagraph 3

Text proposed by the Commission

Where no request for ***an exemption*** has been made by the DLT MTF in accordance with the first subparagraph, the DLT transferable securities shall either be recorded in ***book-entry form in a CSD or on the distributed ledger technology of a CSD operating a DLT securities settlement system.***

Amendment

Where no request for ***a permission*** has been made by the DLT MTF ***operator*** in accordance with the first subparagraph, the DLT transferable securities shall either be recorded in a CSD operating a securities settlement system ***or in a CSD operating a DLT SSS or a DLT TSS.***

Or. en

Justification

The draft Regulation sometimes appears to mix up the notions of ‘permission’ and ‘exemption’. In the opinion of your Rapporteur, allowing a DLT MTF to engage in securities settlement activities amounts to a permission; once this permission is granted, the necessary exemptions (from CSDR) must be granted for the DLT environment to reach its full potential. Furthermore, the request for a permission is made by the operator of the DLT MTF in the first subparagraph (and not the DLT MTF). In addition, the last sentence is rephrased to make it more comprehensible, without changing its meaning. Finally, alignment to ensure a common logic behind the requirements for DLT market infrastructures.

Amendment 77

Proposal for a regulation

Article 4 – paragraph 3 – introductory part

Text proposed by the Commission

3. Where an investment firm or a market operator operating a DLT MTF has requested ***an exemption*** under paragraph 2, it shall ensure, by means of robust procedures and arrangements that, the DLT ***MTF***:

Amendment

3. Where an investment firm or a market operator operating a DLT MTF has requested ***a permission*** under paragraph 2, it shall ensure, by means of robust procedures and arrangements that ***it complies with the same requirements and exemptions applicable to a DLT SSS and its operating CSD, and therefore that*** the

Justification

Paragraph 2 entails a permission rather than an exemption. Furthermore, alignment to ensure a common logic behind the requirements for DLT market infrastructures.

Amendment 78

Proposal for a regulation

Article 4 – paragraph 3 – point a

Text proposed by the Commission

(a) guarantees that the number of DLT transferable securities in an issue or in part of an issue admitted by the investment firm or market operator operating the DLT *MTF*, is equal to the sum of DLT transferable securities making up such an issue or part of an issue, recorded on the DLT, at any given time;

Amendment

(a) guarantees that the number of DLT transferable securities in an issue or in part of an issue admitted by the investment firm or market operator operating the DLT *TSS*, is equal to the sum of DLT transferable securities making up such an issue or part of an issue, recorded on the DLT, at any given time;

Justification

Alignment to ensure a common logic behind the requirements for DLT market infrastructures.

Amendment 79

Proposal for a regulation

Article 4 – paragraph 3 – point b

Text proposed by the Commission

(b) guarantees the safekeeping of any DLT transferable securities, as well as any funds to effect payments for such securities or any collateral provided in respect of such transactions using the DLT *MTF*;

Amendment

(b) guarantees the safekeeping of any DLT transferable securities, as well as any funds to effect payments for such securities or any collateral provided in respect of such transactions using the DLT *TSS*;

Justification

Alignment to ensure a common logic behind the requirements for DLT market infrastructures.

Amendment 80

Proposal for a regulation

Article 4 – paragraph 3 – point f – subparagraph 2

Text proposed by the Commission

The settlement of *payments* may be carried out through central bank money where practicable and available, or where not practicable and available, through commercial bank money, including commercial bank money in a token-based form, or in e-money tokens.

Amendment

The settlement of *the payment leg* may be carried out through central bank money where practicable and available, or where not practicable and available, through commercial bank money, including commercial bank money in a token-based form, or in e-money tokens.

Or. en

Justification

Editorial comment.

Amendment 81

Proposal for a regulation

Article 4 – paragraph 3 – point f – subparagraph 3

Text proposed by the Commission

Where settlement occurs through commercial bank money or e-money tokens, the investment firm or market operator operating the DLT *MTF* shall identify, measure, monitor, manage, and minimise any counterparty risk arising from the use of such money; and

Amendment

Where settlement occurs through commercial bank money or e-money tokens, the investment firm or market operator operating the DLT *TSS* shall identify, measure, monitor, manage, and minimise any counterparty risk arising from the use of such money; and

Or. en

Justification

Alignment to ensure a common logic behind the requirements for DLT market infrastructures.

Amendment 82

Proposal for a regulation

Article 4 – paragraph 3 – point g a (new)

Text proposed by the Commission

Amendment

(ga) keeps records which enable the investment firm or market operator operating the DLT TSS, without delay at any given time, to disaggregate the DLT transferable securities of a member, participant, issuer or client from those of any other member, participant, issuer or client.

Or. en

Justification

Point moved here from Article 4.2(c).

Amendment 83

Proposal for a regulation

Article 4 – paragraph 4 – introductory part

Text proposed by the Commission

Amendment

4. Where an investment firm or a market operator operating a DLT MTF requests an exemption in accordance with **paragraph 2 or with** Directive (EU) .../...⁵⁴, it shall in any case demonstrate that the exemption requested is:

4. Where an investment firm or a market operator operating a DLT MTF requests **a permission in accordance with paragraph 2 or** an exemption in accordance with Directive (EU) .../...⁵⁴, it shall in any case demonstrate that the **permission or** exemption requested is:

⁵⁴ Proposal for a Directive of the European Parliament and of the Council amending Directives 2006/43/EC, 2009/65/EC, 2009/138/EU, 2011/61/EU, EU/2013/36, 2014/65/EU, (EU) 2015/2366 and EU/2016/2341 - - COM(2020)596

⁵⁴ Proposal for a Directive of the European Parliament and of the Council amending Directives 2006/43/EC, 2009/65/EC, 2009/138/EU, 2011/61/EU, EU/2013/36, 2014/65/EU, (EU) 2015/2366 and EU/2016/2341 - - COM(2020)596

Or. en

Justification

Paragraph 2 entails a permission rather than an exemption.

Amendment 84

Proposal for a regulation

Article 4 – paragraph 4 – point b

Text proposed by the Commission

(b) limited to the DLT MTF and does not ***extended*** to any other MTF operated by the said investment firm or market operator.

Amendment

(b) limited to the DLT MTF and does not ***extend*** to any other MTF operated by the said investment firm or market operator.

Or. en

Justification

Editorial comment.

Amendment 85

Proposal for a regulation

Article 5 – title

Text proposed by the Commission

Requirements and exemptions regarding DLT securities settlement ***system***

Amendment

Requirements and exemptions regarding DLT securities settlement ***systems***

Or. en

Justification

Editorial comment.

Amendment 86

Proposal for a regulation

Article 5 – paragraph 1 – introductory part

Text proposed by the Commission

Amendment

1. A **CSD** operating **a DLT securities settlement system** shall be subject to the requirements applicable to a CSD under Regulation (EU) No 909/2014, except if **such a CSD**:

1. A **DLT SSS and its** operating **CSD** shall be subject to the requirements applicable to a **securities settlement system and its operating** CSD under Regulation (EU) No 909/2014, **or any other applicable Union financial services legislation**, except if **it**:

Or. en

Justification

Some requirements are applicable to the operator of the market infrastructure. Furthermore it is appropriate to highlight that “any other applicable EU financial services legislation” besides CSDR also applies.

Amendment 87

Proposal for a regulation

Article 5 – paragraph 1 – point c

Text proposed by the Commission

Amendment

(c) complies with the conditions set out in paragraphs 2 to 7 and with any additional compensatory measures that the competent authority which granted the specific permission may deem appropriate in order to meet the objectives pursued by the provisions from which an exemption is requested or to ensure investor protection, market integrity and/or financial stability.

(c) complies with the conditions set out in paragraphs 2 to 7 and with any additional compensatory **or corrective** measures that **ESMA or** the competent authority which granted the specific permission may deem appropriate in order to meet the objectives pursued by the provisions from which an exemption is requested or to ensure investor protection, market integrity and/or financial stability.

Or. en

Justification

It is appropriate to also mention the ESMA here.

Amendment 88

Proposal for a regulation

Article 5 – paragraph 2 – point a

Text proposed by the Commission

Amendment

(a) demonstrates that the use of a ‘securities account’ as defined under Article 2(28) of Regulation (EU) No 909/2014 or the use of book-entry form are incompatible with the use of *its* particular DLT;

(a) demonstrates that the use of a ‘securities account’ as defined under Article 2(28) of Regulation (EU) No 909/2014 or the use of book-entry form are incompatible with the use of *a* particular DLT ***operated by the CSD concerned***;

Or. en

Justification

This amendment aims at a more technology-neutral wording on the use of DLTs.

Amendment 89

Proposal for a regulation

Article 5 – paragraph 2 – point b

Text proposed by the Commission

Amendment

(b) proposes compensatory measures to meet the objectives pursued by the provisions from which an exemption is requested, and ensures at minimum that:

(b) proposes compensatory ***or corrective*** measures to meet the objectives pursued by the provisions from which an exemption is requested, and ensures at minimum that:

Or. en

Justification

Editorial comment.

Amendment 90

Proposal for a regulation

Article 5 – paragraph 4 – point b

Text proposed by the Commission

Amendment

(b) have sufficient level of ability, competence, experience and knowledge of the post-trading and the functioning of DLT.

(b) have sufficient level of ability, competence, experience and knowledge of the post-trading and the functioning of DLT, ***and of the assessment of risks***.

Justification

It is appropriate to also require that participants have an appropriate understanding of the potentially high-level risks involved.

Amendment 91

Proposal for a regulation
Article 5 – paragraph 5 – subparagraph 1

Text proposed by the Commission

At its request, a CSD operating a DLT **securities settlement system** may be exempted by the competent authority from the application of Article 40 of Regulation (EU) No 909/2014 on cash settlement, provided that the CSD ensures delivery versus payment.

Amendment

At its request, a CSD operating a DLT **SSS** may be exempted by the competent authority from the application of Article 40 of Regulation (EU) No 909/2014 on cash settlement, provided that the CSD ensures delivery versus payment.

Justification

Editorial comment.

Amendment 92

Proposal for a regulation
Article 5 – paragraph 5 – subparagraph 2

Text proposed by the Commission

The settlement of **payments** may be carried out through central bank money, where practicable and available, or where not practicable and available, through commercial bank money, including commercial bank money in a token-based form, or in e-money tokens.

Amendment

The settlement of **the payment leg** may be carried out through central bank money, where practicable and available, or where not practicable and available, through commercial bank money, including commercial bank money in a token-based form, or in e-money tokens.

Justification

Editorial comment.

Amendment 93

Proposal for a regulation

Article 5 – paragraph 5 – subparagraph 3

Text proposed by the Commission

Where settlement occurs through commercial bank money or e-money tokens, the *investment firm or market operator* operating *the DLT MTF* shall identify, measure, monitor, manage, and minimise any counterparty risk arising from the use of such money.

Amendment

Where settlement occurs through commercial bank money or e-money tokens, the **CSD** operating **a DLT SSS** shall identify, measure, monitor, manage, and minimise any counterparty risk arising from the use of such money.

Or. en

Justification

Correction (Article 5 relates to DLT SSSs and not DLT MTFs).

Amendment 94

Proposal for a regulation

Article 5 – paragraph 6

Text proposed by the Commission

6. At its request, a CSD operating a DLT **securities settlement system** may be exempted by the competent authority from the application of Articles 50 and/or Article 53 on standard link access and access between a CSD and another market infrastructure of Regulation (EU) No 909/2014, provided that it demonstrates that the use of a DLT is incompatible with legacy systems of other CSDs or other market infrastructures or that granting such access to another CSD or another market infrastructure using legacy systems would trigger disproportionate costs, given the size of the DLT securities settlement

Amendment

6. At its request, a CSD operating a DLT **SSS** may be exempted by the competent authority from the application of Articles 50 and/or Article 53 on standard link access and access between a CSD and another market infrastructure of Regulation (EU) No 909/2014, provided that it demonstrates that the use of a DLT is incompatible with legacy systems of other CSDs or other market infrastructures or that granting such access to another CSD or another market infrastructure using legacy systems would trigger disproportionate costs, given the size of the

system.

DLT securities settlement system.

Or. en

Justification

Editorial comment.

Amendment 95

Proposal for a regulation

Article 5 – paragraph 6 a (new)

Text proposed by the Commission

Amendment

6a. At its request, a CSD operating a DLT SSS may be permitted to admit to trading DLT transferable securities. In such a case, it shall be considered to operate a TSS. Where a CSD operating a DLT SSS has requested such permission, it shall ensure, by means of robust procedures and arrangements, that it complies with the same requirements and exemptions applicable to a DLT MTF and its operating investment firm or market operator under this Regulation. In such a case, the DLT SSS shall be considered to be a DLT TSS.

Or. en

Justification

Alignment to ensure a common logic behind the requirements for DLT market infrastructures. To ensure a level playing field, a DLT SSS should be allowed to perform the roles of a DLT MTF, in the same way as it is permitted for a DLT MTF to perform the roles of a DLT SSS.

Amendment 96

Proposal for a regulation

Article 5 – paragraph 7 – subparagraph 1

Text proposed by the Commission

Amendment

Where a CSD operating a DLT **securities settlement system** has requested an

Where a CSD operating a DLT **SSS** has requested an exemption in accordance with

exemption in accordance with the first sub-paragraph, it shall give access to other CSDs operating a DLT securities settlement system or to DLT MTFs.

the first sub-paragraph, it shall give access to other CSDs operating a DLT securities settlement system or to DLT MTFs. ***The CSD operating a DLT SSS shall inform the competent authority of its intention to establish any such access. Upon mandatory consultation with ESMA, the competent authority may prohibit such access insofar as it would be detrimental to the stability of the Union financial system.***

Or. en

Justification

This amendment aims at creating awareness that the open access requirement for CSDs operating a DLT SSS to give access to other CSDs operating a DLT SSS or to DLT MTFs may generate financial stability risks. It is suggested that access may be prohibited in case such risks would be detrimental for the stability of the financial system.

Amendment 97

Proposal for a regulation

Article 5 – paragraph 7 – subparagraph 2 – introductory part

Text proposed by the Commission

Where a CSD operating a DLT securities settlement system requests an exemption in accordance with paragraphs 2 to 6, it shall in any case demonstrate that:

Amendment

Where a CSD operating a DLT securities settlement system requests an exemption in accordance with paragraphs 2 to 6 ***or a permission in accordance with paragraph 6a***, it shall in any case demonstrate that:

Or. en

Justification

Alignment to ensure a common logic behind the requirements for DLT market infrastructures.

Amendment 98

Proposal for a regulation

Article 5 – paragraph 7 – subparagraph 2 – point a

Text proposed by the Commission

Amendment

(a) the exemption requested is proportionate to and justified by the use of *its DLT, and;*

(a) the exemption *or permission* requested is proportionate to and justified by the use of *the DLT operated by that CSD; and*

Or. en

Justification

Alignment to ensure a common logic behind the requirements for DLT market infrastructures. Furthermore, this amendment aims at a more technology-neutral wording on the use of DLTs.

Amendment 99

Proposal for a regulation

Article 5 – paragraph 7 – subparagraph 2 – point b

Text proposed by the Commission

Amendment

(b) the exemption requested is limited to the DLT securities settlement system and does not extend to any other securities settlement system as defined in Article 2(10) of Regulation (EU) No 909/2014 operated by the same CSD.

(b) the exemption *or permission* requested is limited to the DLT securities settlement system and does not extend to any other securities settlement system as defined in Article 2(10) of Regulation (EU) No 909/2014 operated by the same CSD.

Or. en

Justification

Alignment to ensure a common logic behind the requirements for DLT market infrastructures. By way of a general remark, your Rapporteur considers that the entire Regulation should be carefully scrutinised on the consistent use of the terms ‘exemption’ and ‘permission’.

Amendment 100

Proposal for a regulation

Article 5 – paragraph 8

Text proposed by the Commission

Amendment

8. Where a CSD has requested and been granted an exemption under paragraph 3, the requirement in Article

8. Where a CSD has requested and been granted an exemption under paragraph 3, the requirement in Article

39(1) of Regulation (EU) No 909/2014/EU for Member States to designate and notify the securities settlement system operated by the CSD in accordance with Directive 98/26/EC shall not apply to the DLT **securities settlement system**. The foregoing shall not preclude Member States from designating and notifying a DLT **securities settlement system** in accordance with Directive 98/26/EC where the DLT **securities settlement system** fulfils all of the requirements of that Directive.

39(1) of Regulation (EU) No 909/2014/EU for Member States to designate and notify the securities settlement system operated by the CSD in accordance with Directive 98/26/EC shall not apply to the DLT **SSS or the DLT TSS**. The foregoing shall not preclude Member States from designating and notifying a DLT **SSS or a DLT TSS** in accordance with Directive 98/26/EC where the DLT **SSS or the DLT TSS** fulfils all of the requirements of that Directive.

Or. en

Justification

Alignment to ensure a common logic behind the requirements for DLT market infrastructures.

Amendment 101

Proposal for a regulation

Article 6 – title

Text proposed by the Commission

Additional requirements **on** DLT market infrastructures

Amendment

Additional requirements **for** DLT market infrastructures

Or. en

Justification

Editorial comment.

Amendment 102

Proposal for a regulation

Article 6 – paragraph 1 – subparagraph 2

Text proposed by the Commission

They shall also have up-to-date, clear and detailed **publically** available written documentation, which may be made available by electronic means, defining the rules under which the DLT market

Amendment

They shall also have up-to-date, clear and detailed **publicly** available written documentation, which may be made available by electronic means, defining the rules under which the DLT market

infrastructure shall operate, including the agreed upon associated legal terms defining the rights, obligations, responsibilities and liabilities of the operator of the DLT market infrastructure, as well as that of the members, participants, issuers and/or clients using the DLT market infrastructure concerned. Such legal arrangements shall specify the governing law, the pre-litigation dispute settlement mechanism and the jurisdiction for bringing legal action.

infrastructures and their operators shall operate, including the agreed upon associated legal terms defining the rights, obligations, responsibilities and liabilities of the operator of the DLT market infrastructure, as well as that of the members, participants, issuers and/or clients using the DLT market infrastructure concerned. Such legal arrangements shall specify the governing law, the pre-litigation dispute settlement mechanism and the jurisdiction for bringing legal action.

Or. en

Justification

Editorial comment. Furthermore, some requirements are applicable to the operator of the market infrastructure.

Amendment 103

Proposal for a regulation Article 6 – paragraph 2

Text proposed by the Commission

2. A CSD operating a DLT **securities settlement system**, and an investment firm or a market operator operating a DLT **MTF** requesting an exemption from Article 3(2) of Regulation (EU) No 909/2014, shall establish rules on the functioning of the **DLT** they operate, including the rules for accessing the distributed ledger **technology**, the participation of the validating nodes, addressing potential conflicts of interest, and risk management including any mitigation measures.

Amendment

2. A CSD operating a DLT **SSS**, and an investment firm or a market operator operating a DLT **TSS** requesting an exemption from Article 3(2) of Regulation (EU) No 909/2014, shall establish **or document, as appropriate**, rules on the functioning of the **distributed ledger** they operate, including the rules for accessing the distributed ledger, the participation of the validating nodes, addressing potential conflicts of interest, and risk management including any mitigation measures.

Or. en

Justification

Alignment to ensure a common logic behind the requirements for DLT market infrastructures. Furthermore, this amendment aims at a more technology-neutral wording on the use of DLTs. Finally, editorial comment.

Amendment 104

Proposal for a regulation

Article 6 – paragraph 4 – subparagraph 2

Text proposed by the Commission

The operators of DLT market infrastructures shall have a specific operational risk procedure for the risks posed by the use of a DLT and crypto-assets and on how these risks would be addressed if they materialised.

Amendment

The operators of DLT market infrastructures shall have a specific operational risk **management** procedure for the risks posed by the use of a DLT and crypto-assets and on how these risks would be addressed if they materialised.

Or. en

Justification

Editorial comment.

Amendment 105

Proposal for a regulation

Article 6 – paragraph 6

Text proposed by the Commission

6. The operator of a DLT market infrastructure shall establish a clear, detailed and **publically** available strategy for transitioning out of or winding down a particular DLT market infrastructure (referred to herein as the ‘transition strategy’), ready to be deployed in a timely manner, in the event that the permission or some of the exemptions granted in accordance with Article 4 or Article 5 have to be withdrawn or otherwise discontinued, or in the event of any voluntary or involuntary cessation of the business of the **DLT MTF or DLT securities settlement system**. The transition strategy shall set out how members, participants, issuers and clients shall be treated, in the event of such withdrawal, discontinuation or cessation. The transition strategy shall be updated on an ongoing basis subject to the prior

Amendment

6. The operator of a DLT market infrastructure shall establish a clear, detailed and **publicly** available strategy for transitioning out of or winding down a particular DLT market infrastructure (referred to herein as the ‘transition strategy’), ready to be deployed in a timely manner, in the event that the permission or some of the exemptions granted in accordance with Article 4 or Article 5 have to be withdrawn or otherwise discontinued, or in the event of any voluntary or involuntary cessation of the business of the **DLT market infrastructure**. The transition strategy shall set out how members, participants, issuers and clients shall be treated, in the event of such withdrawal, discontinuation or cessation. The transition strategy shall be updated on an ongoing basis subject to the prior consent of the

consent of the competent authority which granted the permission to operate and related exemptions under Article 4 and Article 5.

competent authority which granted the permission to operate and related exemptions under Article 4 and Article 5.

Or. en

Justification

Editorial comment and alignment to ensure a common logic behind the requirements for DLT market infrastructures. It is more appropriate here to use the generic term of DLT market infrastructures (which also include the DLT TSS).

Amendment 106

Proposal for a regulation Article 7 – paragraph 2 – point c

Text proposed by the Commission

(c) ***where applicable***, the functioning of ***its proprietary DLT*** as referred to in Article 6(2);

Amendment

(c) the functioning of ***the distributed ledger*** as referred to in Article 6(2);

Or. en

Justification

The wording in the EC proposal might seem to impose the use of specified DLTs, i.e. proprietary DLTs (in contrast to public or consortia DLTs), to market infrastructures. This amendment aims at a more technology-neutral wording. At the same time, liability for the functioning of the particular DLT used should remain with the DLT market infrastructure, regardless whether the security token project is a proprietary or another type of DLT. Finally, editorial comment.

Amendment 107

Proposal for a regulation Article 7 – paragraph 2 – point g

Text proposed by the Commission

(g) the exemptions it is requesting in accordance with Article 4, the justification for each exemption sought, any compensatory measures proposed as well as the means envisaged to comply with the

Amendment

(g) the exemptions it is requesting in accordance with Article 4, the justification for each exemption sought, any compensatory ***or corrective*** measures proposed as well as the means envisaged to

conditions attached to such exemptions under Article 4.

comply with the conditions attached to such exemptions under Article 4.

Or. en

Justification

Editorial comment.

Amendment 108

Proposal for a regulation

Article 7 – paragraph 3 – subparagraph 1

Text proposed by the Commission

3. Before deciding on an application for a specific permission to operate a DLT MTF under this Regulation, the competent authority of the home Member State shall notify and provide all relevant information on the DLT MTF to ESMA, an explanation of the exemptions requested, their justifications and any compensatory measures proposed by the applicant or required by the competent authority.

Amendment

3. Before deciding on an application for a specific permission to operate a DLT MTF under this Regulation, the competent authority of the home Member State shall notify and provide all relevant information on the DLT MTF to ESMA, an explanation of the exemptions requested, their justifications and any compensatory *or corrective* measures proposed by the applicant or required by the competent authority.

Or. en

Justification

Editorial comment.

Amendment 109

Proposal for a regulation

Article 7 – paragraph 3 – subparagraph 2

Text proposed by the Commission

Within three months of receipt of the notification, ESMA shall provide the competent authority with a *non-binding opinion* on the application and shall make any recommendations on the exemptions requested by the applicant, that are

Amendment

Within three months of receipt of the notification, ESMA shall provide the competent authority with a *recommendation issued in accordance with Article 16 of Regulation (EU) No 1095/2010* on the application and shall

necessary to ensure investor protection, market integrity and financial stability. ESMA shall also promote the consistency and proportionality of exemptions granted by competent authorities to investment firms or market operators operating DLT MTFs across the Union. In order to do so, ESMA, shall consult the competent authorities of the other Member States in a timely manner and take the utmost account of their views in its *opinion*.

make any recommendations on the exemptions requested by the applicant, that are necessary to ensure investor protection, market integrity and financial stability. ESMA shall also promote the consistency and proportionality of exemptions granted by competent authorities to investment firms or market operators operating DLT MTFs across the Union. In order to do so, ESMA shall consult the competent authorities of the other Member States in a timely manner and take the utmost account of their views in its *recommendation*.

Or. en

Justification

With a view to ensuring the consistency and proportionality of the exemptions granted by different competent authorities across the Union and thus fostering the level playing field, your Rapporteur suggests that the ESMA issue a recommendation instead of a non-binding opinion. In contrast to an ESMA opinion, an ESMA recommendation is based on a comply-or-explain approach, in accordance with Article 16 of Regulation (EU) No 1095/2010 (ESMA Regulation).

Amendment 110

Proposal for a regulation

Article 7 – paragraph 5 – subparagraph 2

Text proposed by the Commission

ESMA shall publish on its website the list of DLT MTFs, the start and end dates of their specific permissions and the list of exemptions granted to each of them.

Amendment

ESMA shall publish on its website the list of DLT MTFs, the start and end dates of their specific permissions and the list of exemptions granted to each of them.

Furthermore, ESMA shall publish on its website all requests for exemptions that have been made under this Regulation, indicating in each case whether ESMA recommended that the exemption be accepted or refused.

Or. en

Justification

The requests for permissions and exemptions as well as the ultimate decisions should be made

public. In order to provide complete transparency on the exemption process, requests that were accepted as well as those that were refused should be published, after the removal of sensitive business information. The relevant recommendations, after the removal of sensitive business information, should also be published.

Amendment 111

Proposal for a regulation

Article 7 – paragraph 6 – point d

Text proposed by the Commission

(d) the investment firm or market operator, operating a DLT MTF, that has requested ***an exemption from Article 3(2) of Regulation (EU) No 909/2014***, has recorded DLT transferable securities that do not fulfil the conditions laid down in Article 3(1) and 3(2);

Amendment

(d) the investment firm or market operator, operating a DLT MTF, that has requested ***a permission to record and settle DLT transferable securities under Article 4(2)***, has recorded DLT transferable securities that do not fulfil the conditions laid down in Article 3(1) and 3(2);

Or. en

Justification

Alignment to amendment to Article 4(2): the exemption from CSDR article 3(2) is changed to a permission to record and settle DLT transferable securities.

Amendment 112

Proposal for a regulation

Article 7 – paragraph 6 – point e

Text proposed by the Commission

(e) the investment firm or market operator, operating a DLT MTF, that has requested ***specific permission to be exempted from Article 3(2) of Regulation (EU) No 909/2014***, has exceeded the thresholds referred to in Article 3(3) or (5), third subparagraph; or

Amendment

(e) the investment firm or market operator, operating a DLT MTF, that has requested ***a permission to record and settle DLT transferable securities under Article 4(2)***, has exceeded the thresholds referred to in Article 3(3) or (5), third subparagraph; or

Or. en

Justification

Alignment to amendment to Article 4(2): the exemption from CSDR article 3(2) is changed to

a permission to record and settle DLT transferable securities.

Amendment 113

Proposal for a regulation

Article 7 – paragraph 7 – subparagraph 1

Text proposed by the Commission

7. Where in the course of its activity, an investment firm or a market operator operating a DLT MTF proposes to **introduces** a material change to the functioning of the DLT, or to its services or activities, which requires a new permission, a new exemption, or the modification of one or more of its existing exemptions or of any conditions attached to it, it shall request such permission, exemption or modification in accordance with Article 4. Such permission, exemption or modification shall be processed by the competent authority, in accordance with paragraphs 2 to 5.

Amendment

7. Where in the course of its activity, an investment firm or a market operator operating a DLT MTF proposes to **introduce** a material change to the functioning of the DLT, or to its services or activities, which requires a new permission, a new exemption, or the modification of one or more of its existing exemptions or of any conditions attached to it, it shall request such permission, exemption or modification in accordance with Article 4. Such permission, exemption or modification shall be processed by the competent authority, in accordance with paragraphs 2 to 5.

Or. en

Justification

Editorial comment.

Amendment 114

Proposal for a regulation

Article 8 – paragraph 2 – point c

Text proposed by the Commission

(c) the functioning of **its proprietary DLT** as referred to in Article 6(2);

Amendment

(c) the functioning of **the distributed ledger** as referred to in Article 6(2);

Or. en

Justification

The wording in the EC proposal might seem to impose the use of specified DLTs, i.e. proprietary DLTs (in contrast to public or consortia DLTs), to market infrastructures. This

amendment aims at a more technology-neutral wording. At the same time, liability for the functioning of the particular DLT used should remain with the DLT market infrastructure, regardless whether the security token project is a proprietary or another type of DLT. Finally, editorial comment.

Amendment 115

Proposal for a regulation Article 8 – paragraph 2 – point g

Text proposed by the Commission

(g) the exemptions it is requesting, in accordance with Article 5, the justifications for each exemption sought, any compensatory measures proposed as well as the measures envisaged to comply with the conditions attached to such exemptions under Article 5.

Amendment

(g) the exemptions it is requesting, in accordance with Article 5, the justifications for each exemption sought, any compensatory **or corrective** measures proposed as well as the measures envisaged to comply with the conditions attached to such exemptions under Article 5.

Or. en

Justification

Editorial comment.

Amendment 116

Proposal for a regulation Article 8 – paragraph 3 – subparagraph 1

Text proposed by the Commission

Before deciding on an application for a specific permission to operate a DLT **MTF** under this Regulation, the competent authority shall notify and provide all relevant information on the DLT **securities settlement system to** ESMA and an explanation of the exemptions requested, their justification and any compensatory measures proposed by the applicant or required by the competent authority.

Amendment

Before deciding on an application for a specific permission to operate a DLT **SSS** under this Regulation, the competent authority shall notify and provide all relevant information on the DLT **SSS to** ESMA and an explanation of the exemptions requested, their justification and any compensatory **or corrective** measures proposed by the applicant or required by the competent authority.

Or. en

Justification

Correction (Article 8 relates to DLT SSSs and not DLT MTFs). Furthermore, editorial comment.

Amendment 117

**Proposal for a regulation
Article 8 – paragraph 5 – subparagraph 2**

Text proposed by the Commission

ESMA shall publish on its website the list of DLT securities settlement systems, the start and end dates of their specific permissions and the list of exemptions granted to each of them.

Amendment

ESMA shall publish on its website the list of DLT securities settlement systems, the start and end dates of their specific permissions and the list of exemptions granted to each of them. ***Furthermore, ESMA shall publish on its website those requests for exemptions that have been made under this Regulation, indicating in each case whether ESMA recommended that the exemption be accepted or refused.***

Or. en

Justification

The requests for permissions and exemptions as well as the ultimate decisions should be made public. In order to provide complete transparency on the exemption process, requests that were accepted as well as those that were refused should be published, after the removal of sensitive business information. The relevant recommendations, after the removal of sensitive business information, should also be published.

Amendment 118

**Proposal for a regulation
Article 8 a (new)**

Text proposed by the Commission

Amendment

Article 8a

Specific permission to operate a DLT trading and settlement system

1. A legal person authorised as a CSD under Regulation (EU) No 909/2014 and as an investment firm or as a market

operator under Directive 2014/65/EU may apply for the specific permission to operate a DLT TSS under this Regulation by requesting the specific permissions set out in Articles 7 and 8.

Or. en

Justification

Alignment to ensure a common logic behind the requirements for DLT market infrastructures. Your Rapporteur proposes that a DLT market infrastructure allowed to perform both trading and post-trading services should be considered as a third type of DLT market infrastructure under this Regulation: a DLT Trading and Settlement System (TSS). Such entity would be a complete novel type of market infrastructure and it should not be commingled with either a DLT MTF or a DLT SSS.

Amendment 119

Proposal for a regulation

Article 9 – paragraph 4 – point b

Text proposed by the Commission

(b) the number and value of DLT transferable securities admitted to trading on the DLT MTF, the number and value of DLT transferable securities recorded **by a CSD operating DLT securities settlement systems, and where applicable, the number and value of transferable securities recorded by an investment firm or market operator operating** on a DLT MTF;

Amendment

(b) the number and value of DLT transferable securities admitted to trading on the DLT MTF, the number and value of DLT transferable securities recorded on a **DLT SSS or a DLT TSS**;

Or. en

Justification

Alignment to ensure a common logic behind the requirements for DLT market infrastructures.

Amendment 120

Proposal for a regulation

Article 9 – paragraph 4 – point c

Text proposed by the Commission

Amendment

(c) the number and value of transactions traded on a DLT MTF and settled either by a CSD operating a DLT **securities settlement system, or where applicable**, by an **investment firm or market** operator operating a DLT **MTF**;

(c) the number and value of transactions traded on a DLT MTF and settled either by a CSD operating a DLT **SSS** or by an operator operating a DLT **TSS**;

Or. en

Justification

Alignment to ensure a common logic behind the requirements for DLT market infrastructures.

Amendment 121

Proposal for a regulation

Article 10 – paragraph 1 – introductory part

Text proposed by the Commission

Amendment

1. Five years from the entry into application of this Regulation, **at the latest**, ESMA shall present **a** report to the Commission on:

1. ESMA shall present to the Commission **an early-exit assessment report by ... [three years from the entry into application of this Regulation] and, if the regime prescribed in this Regulation is not terminated by then, a final** report by [five years from the entry into application of this Regulation] on:

Or. en

Justification

The draft Regulation requires the ESMA to submit a detailed report on the pilot regime to the Commission only after a period of five years, at the latest. Your Rapporteur considers the five-year period too long given the rapid evolution of technology and financial innovation. He suggests that the Commission, based on advice from the ESMA, should already submit an assessment on a potential adjustment or discontinuation to the European Parliament and the Council after three years. If the regime is not terminated, then the second assessment should be submitted after five years.

Amendment 122

Proposal for a regulation

Article 10 – paragraph 1 – point b

Text proposed by the Commission

(b) the number of DLT MTFs and **CSDs operating a DLT securities settlement system** which have been granted a specific permission under this Regulation;

Amendment

(b) the number of DLT MTFs, **DLT SSSs** and **DLT TSSs** which have been granted a specific permission under this Regulation;

Or. en

Justification

Alignment to ensure a common logic behind the requirements for DLT market infrastructures.

Amendment 123

Proposal for a regulation

Article 10 – paragraph 1 – point d

Text proposed by the Commission

(d) the number and value of DLT transferable securities admitted to trading on DLT MTFs, the number and value of DLT transferable securities recorded by CSDs operating DLT **securities settlement systems, and where applicable**, the number and value of transferable securities recorded by DLT **MTFs**;

Amendment

(d) the number and value of DLT transferable securities admitted to trading on DLT MTFs, the number and value of DLT transferable securities recorded by CSDs operating DLT **SSSs, and** the number and value of transferable securities **traded and** recorded by DLT **TSSs**;

Or. en

Justification

Alignment to ensure a common logic behind the requirements for DLT market infrastructures.

Amendment 124

Proposal for a regulation

Article 10 – paragraph 1 – point e

Text proposed by the Commission

Amendment

(e) the number and value of transactions traded on DLT MTFs and settled by ***CSDs operating DLT securities settlement system, and where applicable, by DLT MTFs***;

(e) the number and value of transactions traded on DLT MTFs, ***settled by DLT SSSs and traded on*** and settled by ***DLT TSSs***;

Or. en

Justification

Alignment to ensure a common logic behind the requirements for DLT market infrastructures.

Amendment 125

Proposal for a regulation

Article 10 – paragraph 1 – point g

Text proposed by the Commission

Amendment

(g) the procedures put in place by DLT MTFs in accordance with Article 4(3)(g);

(g) the procedures put in place by DLT MTFs ***or DLT TSSs*** in accordance with Article 4(3)(g);

Or. en

Justification

Alignment to ensure a common logic behind the requirements for DLT market infrastructures.

Amendment 126

Proposal for a regulation

Article 10 – paragraph 1 – point h a (new)

Text proposed by the Commission

Amendment

(ha) any level playing field issues between, on the one hand, DLT market infrastructures within the DLT pilot regime and, on the other hand, DLT market infrastructures and other market infrastructures using legacy systems;

Justification

Particularly the open-access and interoperability requirements between (DLT) market infrastructures need to be further analysed. The current provisions foreseen in the Regulation may indeed create risks in terms of distortion of competition dynamics, market fragmentation and unlevel playing field between DLT market infrastructures within the DLT pilot regime and between DLT market infrastructures and other market infrastructures using legacy systems. Based on the analysis, further adjustments and/or new provisions may need to be made.

Amendment 127

Proposal for a regulation

Article 10 – paragraph 1 – point j

Text proposed by the Commission

(j) the benefits resulting from the use of a DLT, in terms of *any* efficiency improvements and *risk reductions* across the entire trading and post-trading chain, including without limitation, with regard to the recording and safekeeping of DLT transferable securities, the traceability of transactions, corporate actions, reporting and supervision functions at the level of the DLT market infrastructure;

Amendment

(j) the benefits *and costs* resulting from the use of a DLT, in terms of *both* efficiency improvements and *possible risks for market integrity, investor protection and financial stability* across the entire trading and post-trading chain, including without limitation, with regard to the recording and safekeeping of DLT transferable securities, the traceability of transactions, corporate actions, reporting and supervision functions at the level of the DLT market infrastructure;

Or. en

Justification

Besides benefits also costs arising from the use of a DLT should be assessed.

Amendment 128

Proposal for a regulation

Article 10 – paragraph 2 – introductory part

Text proposed by the Commission

2. Based on the *report* referred to in paragraph 1, the Commission shall present

Amendment

2. Based on the *reports* referred to in paragraph 1, the Commission shall, *within*

a report to the European Parliament and Council including a cost-benefit analysis on whether the regime for DLT market infrastructures under this Regulation should be:

three months of receipt of each report, present a report to the European Parliament and Council including a cost-benefit analysis on whether the regime for DLT market infrastructures under this Regulation should be:

Or. en

Justification

This amendment aims at setting a deadline for the Commission to present its report to the European Parliament and the Council.

Amendment 129

Proposal for a regulation

Article 10 – paragraph 2 – point a

Text proposed by the Commission

(a) extended for another period;

Amendment

(a) ***in the event that the report is received after ... [three years from entry into application of this Regulation],*** extended for another period ***of two years;***

Or. en

Justification

The draft Regulation requires the ESMA to submit a detailed report on the pilot regime to the Commission only after a period of five years, at the latest. Your Rapporteur considers the five-year period too long given the rapid evolution of technology and financial innovation. He suggests that the Commission, based on advice from the ESMA, should already submit an assessment on a potential adjustment or discontinuation to the European Parliament and the Council after three years. If the regime is not terminated, then the second assessment should be submitted after five years.

Amendment 130

Proposal for a regulation

Article 10 – paragraph 2 – point e

Text proposed by the Commission

(e) terminated.

Amendment

(e) terminated, ***and all permissions that have been granted in accordance***

*with Articles 3, 4, 5, 7, 8, 8a, and 9
withdrawn.*

Or. en

Justification

You Rapporteur suggests a "hard cut", with permissions expiring automatically once the pilot regime is terminated.

Amendment 131

Proposal for a regulation

Article 10 – paragraph 2 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

In its report based on the ESMA report received by ... [five years from the entry into application of this Regulation] in accordance with paragraph 1, the Commission shall make a recommendation to either make the regime for DLT market infrastructures permanent with or without amendments in accordance with point (d) or terminate it in accordance with point (e).

Or. en

Justification

If the pilot regime is not terminated after three years, the Commission shall after five years either make it permanent with or without amendments, or terminate it.

Amendment 132

Proposal for a regulation

Article 10 – paragraph 2 – subparagraph 1 b (new)

Text proposed by the Commission

Amendment

Where the Commission decides in favour of an extension pursuant to point (a), it shall ask ESMA to submit, no later than three months before the end of the extension period laid down in point (a), a

report pursuant to paragraph 1. Upon reception of that report from ESMA, the Commission shall submit to the European Parliament and the Council a report in accordance with this paragraph.

Or. en

Justification

If the pilot regime is not terminated after three years, the Commission shall after five years either make it permanent with or without amendments, or terminate it.

Amendment 133

Proposal for a regulation

Article 10 – paragraph 2 – subparagraph 1 c (new)

Text proposed by the Commission

Amendment

ESMA shall provide interim reports with a view to provide market participants with information on the functioning of the markets, to address incorrect behaviour of operators, to provide clarifications on the application of this Regulation and its implementing acts and to update previous indications based on the evolution of DLT. Those reports shall be published annually. The first report shall be published [12 months after the date of entry into application of this Regulation].

Or. en

Justification

The draft Regulation requires ESMA to submit a detailed report on the DLT pilot regime to the Commission only after a period of five years, at the latest. Your Rapporteur considers the five-year period too long given the rapid evolution of technology and financial innovation. He suggests to have more frequent information on the evolution of the DLT pilot regime, thus allowing operators of DLT market infrastructures to understand whether they need to review their activities. Annual interim reports seem appropriate to help understand possible adjustments to the pilot regime based on the evolution of technology and first experiences.

Amendment 134

Proposal for a regulation Article 10 a (new)

Text proposed by the Commission

Amendment

Article 10a

Exercise of the delegation

- 1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.***
- 2. The power to adopt delegated acts referred to in Article 3(5a) shall be conferred on the Commission for a period of six years from [date of entry into force of this Regulation].***
- 3. The delegation of power referred to in Article 3(5a) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.***
- 4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.***
- 5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.***
- 6. A delegated act adopted pursuant to Article 3(5a) shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of three months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European***

Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by three months at the initiative of the European Parliament or of the Council.

Or. en

Justification

For the delegated act added to Article 3(5a) it is necessary to include an Article on the exercise of the delegation.

EXPLANATORY STATEMENT

1. Background

As part of its Digital Finance package, the European Commission published a draft Regulation regarding a pilot regime for market structures based on distributed ledger technology (the “DLT Pilot Regime”).

The proposed Regulation aims at providing a mechanism for allowing market infrastructures to experiment with certain restricted use of DLT. More specifically, firms already authorised to operate specific market infrastructures would be allowed to apply for specific temporary exemptions from certain restrictions and requirements in financial services legislation, and thus be permitted to restructure their activities making use of DLT.

The experience and understanding gained by supervisory authorities regarding the application of current EU financial services legislation to DLT-based market infrastructures is expected to inform future legislative developments.

2. Procedure in the European Parliament

The Committee on Economic and Monetary Affairs (ECON) was appointed as the lead Committee to deal with the proposal.

3. Draft Report

Your Rapporteur is of the opinion that DLT can bring a number of potential benefits in the provision of financial services, including reduced complexity, improved end-to-end processing speed, increased transparency and immutability in transaction recordkeeping, strengthened network resiliency through distributed data management, and reduced operational and financial risks. In order to foster the development of successful DLT projects at European level, he considers it key for the EU to adopt an ambitious approach in this regard.

Your Rapporteur therefore supports the overall objectives of the proposed Regulation, namely:

- (i) to provide legal certainty by establishing uniform requirements for operating DLT market infrastructures;
- (ii) to support innovation by removing obstacles to the application of DLT in the financial sector, thus allowing market infrastructures and regulators to gain experience in this regard;
- (iii) to instil consumer and investor protection and market integrity by providing for appropriate supervision and cooperation of the ESMA and national competent authorities; and
- (iv) to ensure financial stability by putting in place appropriate safeguards, including by limiting the size of the Pilot Regime and the types of financial instruments that can be traded or recorded.

At the same time, however, your Rapporteur is of the opinion that, in order to reach the

abovementioned objectives, the Commission proposal can be positively amended, whereby special attention has to be drawn to:

- (i) the scope of the proposed Regulation, in terms of the requirements for entities allowed to participate in the regime, the limitations on DLT transferable securities that can be admitted to trading on or recorded by DLT market infrastructures, and the (tentative) market capitalisation of issuers of DLT transferable securities;
- (ii) the need to ensure a level playing field, both between entities allowed to participate in the DLT Pilot Regime and regarding regulatory supervision across Member States;
- (iii) the need to ensure proportionality by allowing adequate flexibility to supervisors, and by providing for appropriate provisions regarding transitioning out of or winding down DLT market infrastructures.

You Rapporteur emphasises that this draft report constitutes only a starting point for ECON's work on the DLT Pilot Regime Regulation. He looks forward to the contributions of the shadow rapporteurs and further points out that, while at the date of submitting this draft report the opinion of the European Central Bank (ECB) on the draft Regulation is still forthcoming, he intends to take the ECB's recommendations into consideration when elaborating compromises both within ECON and during the trilogue negotiations with the Council.

In view of these considerations, your Rapporteur welcomes the draft Regulation and suggests strengthening some elements of the Commission's proposal with the following main modifications.

3.1. Scope

The draft Regulation foresees limits in terms of both financial thresholds and instruments that can be accepted under the DLT Pilot Regime. Your rapporteur indeed acknowledges the appropriateness, importance, and necessity of limits, particularly with a view to preserving financial stability, consumer and investor protection, and market integrity. Keeping these objectives in mind, he suggests adjusting both the instruments and the individual thresholds, while maintaining the aggregate threshold proposed by the Commission.

With regard to the entities allowed to operate within the DLT Pilot Regime, your Rapporteur considers that, while the regime should indeed be restricted to market infrastructures, i.e. multilateral trading facilities (MTFs) and Securities Settlement Services (SSSs), it is appropriate to impose more stringent requirements on DLT market infrastructures that want to combine both trading and post-trading roles. Furthermore, he suggests technological-neutral wording regarding the types of DLTs that can be used by market infrastructures.

Financial thresholds

While the aggregate threshold for the total market value of DLT transferable securities proposed by the Commission seems to strike an appropriate balance between innovation friendliness and protecting against risks that could endanger financial stability, investor protection, and market integrity, the proposed individual financial thresholds would encompass the majority of shares and bonds currently available on the securities market. Your

Rapporteur considers that a more prudent approach is required for the accomplishment of the abovementioned objective, and prefers significantly lower individual thresholds. More specifically, he suggests that the (tentative) market capitalisation of the issuer of DLT transferable securities should be less than EURO 50 million for both shares and bonds. The DLT Pilot Regime could thus be regarded as a useful instrument aimed at helping to close the SME financing gap.

Admissible securities

Your Rapporteur acknowledges the need for restrictions on the types of securities that should be admitted within the DLT Pilot Regime. However, he does not see a fundamental reason for prohibiting market infrastructures to admit sovereign bonds to trading or record them on a distributed ledger. Ministries of Finance should be able to decide their preferred issuance mechanism, and the proposed Regime should not result in investments moving from sovereign bond markets to corporate bond markets, as this may create disadvantageous conditions for sovereign bond issuers. Furthermore, to ensure that products are sufficiently attractive, including for institutional investors, your Rapporteur suggests extending the scope of the DLT Pilot Regime by including DLT exchange-traded fund (ETF) units.

Technology-neutral wording on the use of DLTs

The wording in the Commission proposal might seem to impose the use of specified DLTs uniquely used by specific market infrastructures operating within the Pilot Regime, i.e. proprietary DLT. Your Rapporteur suggests a more neutral approach, while making it clear that liability for the functioning of any particular DLT should always remain with the DLT market infrastructure, regardless of the type of DLT it operates. More generally, your Rapporteur agrees with the Commission that admission to participate in the Pilot Regime should be restricted to market infrastructures. At the same time, he suggests creating a novel type of market infrastructure for operators wanting to combine both trading and post-trading roles (see under 3.2. below).

3.2. Level playing field

Your Rapporteur underscores that the DLT Pilot Regime focuses exclusively on market infrastructures. While the competitive environments between entities active inside and outside the Pilot Regime will unavoidably be different, there is room for improvement of some provisions in the Commission's proposal so as to ensure a genuine level playing field between DLT market infrastructures competing inside the Pilot Regime, keeping in mind the fundamental principle of "same activity, same risks, same rules".

Your rapporteur found inspiration in this regard in the European Parliament's own-initiative report on "Digital Finance: emerging risks in crypto-assets - regulatory and supervisory challenges in the area of financial services, institutions and markets" 2020/2034(INL). This report indeed stresses that the abovementioned fundamental principle should be reflected in any Digital Finance measure taken at Union level.

Level playing field between DLT MTFs and DLT SSSs

The Commission proposal foresees the possibility for DLT MTFs to perform CSD activities under the Pilot Regime, but does not give DLT SSSs an equal opportunity to perform MTF

activities. Furthermore, it is currently foreseen that DLT market infrastructures follow different rules while performing the same activity. To avoid an unlevel playing field between these two types of DLT market infrastructures, your Rapporteur suggests a symmetric approach, which requires three critical changes:

- (i) a DLT MTF doing settlement services must follow the same requirements as a DLT SSS;
- (ii) a DLT SSS must be allowed to perform the roles of a DLT MTF;
and
- (iii) a novel type of DLT market infrastructure for performing both trading and post-trading roles, named “DLT Trading and Settlement System” (“DLT TSS”), must be licensed under both MiFID II (for its trading services) and CSDR (for its settlement/notary/custody services). By amending the Commission’s proposal accordingly, the pilot regime arrangements for DLT MTFs and DLT SSSs combining trading and settlement services would exactly mirror each other. A further advantage of this approach is that it fits important EU priorities of better regulation and simplification.

Cooperation and supervision of national competent authorities and the ESMA

In the Commission proposal, the ESMA is required to issue a non-binding opinion before a national competent authority can grant a permission to a prospective DLT market infrastructure. To ensure the consistency and proportionality of the exemptions granted by different competent authorities across the Union and thus foster the level playing field, your Rapporteur instead suggests that the ESMA issue a recommendation. In contrast to an ESMA opinion, an ESMA recommendation is based on a comply-or-explain approach, in accordance with Article 16 of Regulation (EU) No 1095/2010 (ESMA Regulation).

3.3. Early-exit assessment

The Commission proposal foresees a duration of the Pilot Regime of five years, after which the Commission, based on advice from the ESMA, would be required to make an assessment of the costs and benefits of extending the regime on DLT market infrastructures for another period of time, extending it to new types of financial instruments, making it permanent with or without modifications, or terminating it. In view of the high pace of technological innovations in certain types of activities, your Rapporteur is of the opinion that the five-year period is too long and risks leaving market participants with insufficient regulatory certainty over an extended period of time. He further doubts that it will take five years for the market participants to discover what kind of legislative changes would be desirable to truly encourage the development of DLT market infrastructures. Therefore, your Rapporteur proposes that the Commission, based on advice from the ESMA, should already submit an early-exit assessment report on a potential adjustment or discontinuation to the European Parliament and the Council after three years. If the regime is not terminated by then, a final report should be submitted after five years, as currently foreseen in the proposal.

Moreover it is to be expected that, the longer the pilot regime continues, the more likely financial thresholds will be exceeded, and the bigger any potential transition efforts to a more permanent regime will be. In view of these considerations, your rapporteur proposes giving the Commission, based on advice from the ESMA, the discretion to adjust certain thresholds via a delegated act. Any such decision should be based on previous periodic reviews.

