



Plenary sitting

A9-0000/2021

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*****I**

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.

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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 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

AMENDMENTS BY THE EUROPEAN PARLIAMENT*

to the Commission proposal

2020/0267 (COD)

Proposal for a

* Amendments: new or amended text is highlighted in bold italics; deletions are indicated by the symbol **||**.

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on a pilot regime for market infrastructures based on distributed ledger technology

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee¹,

Having regard to the opinion of the European Central Bank *of 28 April 2021*²

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) The European Commission's communication on a Digital Finance Strategy³ 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'). *DLT comprises a diverse set of solutions that combine database technology and cryptography in order to tackle malicious behaviour and address the risk that different users rely on inconsistent versions of the data due to network latency or the validation of conflicting forks, by allowing ultimate cryptographic auditing of users' activity and by providing mechanisms, both traditional and new, to achieve consensus among users on the status of the database over time.* Crypto-assets are one of the main DLT applications for finance.
 - (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.*
- (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, *energy consumption* 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

¹ OJ C , , p. .

² OJ C [...], [...], p. [...].

³ 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

Directive 2014/65/EU of the European Parliament and of the Council (Markets in Financial Instruments Directive, MiFID II)⁴. 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)⁵, Directive 2013/50/EU of the European Parliament and of the Council (the Transparency Directive)⁶, Regulation (EU) No 596/2014 of the European Parliament and of the Council (the Market Abuse Regulation)⁷, Regulation (EU) No 236/2012 of the European Parliament and of the Council (the Short Selling Regulation)⁸, Regulation (EU) No 909/2014 of the European Parliament and of the Council (the Central Securities Depositories Regulation)⁹ and Directive 98/26/EC of the European Parliament and of the Council (the Settlement Finality Directive)¹⁰ may apply to its issuer and firms conducting activities related to it. The so-called tokenisation of financial instruments, that is to say their **digital representation on distributed ledgers or the issuance of traditional asset classes in tokenised form** to enable them to be issued, stored and transferred on a distributed ledger, is expected to open up opportunities for efficiency improvements in 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.**

- (3) The Union financial services legislation was not designed with DLT and crypto-assets in mind¹¹, 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 **authorised financial** market infrastructures using DLT **to provide** trading **or** settlement services, **or a combination thereof**, for crypto-assets that qualify as financial instruments. **The development of a secondary market and of tokenised securities**

⁴ 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).

⁵ 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)

⁶ 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)

⁷ 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)

⁸ 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).

⁹ 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)

¹⁰ 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, 11.6.1998, p. 45)

¹¹ European Securities and Markets Authority's, Report with advice on Initial Coin Offerings and Crypto-Assets (ESMA50-157-1391)

could bring multiple benefits in terms of enhanced efficiency, transparency and competition in relation to trading and settlement activities .

- (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 *and practices*. 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 have limited scale. *Furthermore, as highlighted by ECB Advisory Groups on Market Infrastructures for Securities and Collateral and for Payments, the use of DLT would entail similar challenges to those faced by solutions relying on conventional technology (such as fragmentation and interoperability issues) and would potentially create new ones (for instance relating to the legal validity of tokens)*. Given this limited experience as regards the trading and post-trading of transactions in crypto-assets that qualify as financial instruments *as well as the risks highlighted by the ECB, a cautious approach is needed and* it would 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 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.
- (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 *and avoiding regulatory arbitrage and loopholes*, it would be useful to create a pilot regime *to test* 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, *without weakening any existing requirements and safeguards applied to traditional market infrastructures. In addition, DLT market infrastructures and their operators should have in place adequate safeguards to ensure effective protection of investors related to the use of DLT, including clearly defined lines of liability to clients for any losses due to operational failures. The creation of the pilot regime should be without prejudice to the tasks and responsibilities of the European Central Bank (ECB) and the national central banks in the European System of Central Banks (ESCB), set out in the Treaty on the Functioning of the European Union and in the statutes of the ESCB and of the ECB, to promote the smooth operation of payment systems and to ensure efficient and sound clearing and payment systems within the Union and with third countries*. The pilot regime should also enable the European Securities and Markets Authorities (ESMA) and *national* competent authorities to *draw lessons from the regime and* gain experience on the opportunities and specific risks *related to* crypto-assets that qualify as financial instruments, and *to*

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.*

- (6) To meet this objective, a new Union status of DLT market infrastructures should be created *in order to ensure that the Union is able to play a leading role regarding tokenized financial instruments and to contribute to the development of a secondary market for those assets.* This status of DLT market infrastructure should be optional and should not prevent financial market infrastructures, such as trading venues, central securities depositories and central counterparties, from developing trading and post-trading services and activities for crypto-assets which qualify as financial instruments or are based on DLT, under the existing Union financial services legislation.
- (7) A DLT market infrastructure should be defined **■** as a DLT multilateral trading facility (DLT MTF) **■**, a DLT SSS, *or a DLT trade and settlement system (DLT TSS).* *Those DLT market infrastructures should be able to cooperate with other market participants in order to test innovative solutions based on DLT, on each segment of the value chain of the financial services.*
- (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 *of* a regulated market and maybe the regulated market itself, authorised under Directive 2014/65/EU (Markets in Financial Instruments Directive, MiFID II), that has received a specific permission under this Regulation. A DLT MTF *and its 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)¹², or any other *applicable Union* financial services legislation, except **■** *for requirements in respect of which an exemption* has been granted by ESMA **■**, in accordance with this Regulation **■**. *In order to allow for competition, while at the same time preserving a level playing field and high standards in terms of investor protection, market integrity and financial stability, new entrants should also be able to access the pilot regime, provided that they ensure compliance with the same requirements as those applicable to authorised investment firms or market operators under Directive 2014/65/EU (MiFID), in a manner proportionate to the nature, scale and risks of their business, and with any other applicable Union financial services legislation, except for requirements in respect of which exemptions are granted in accordance with this Regulation.*
- (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. *The combination of trading and post-trading within one single legal entity is currently not permitted, irrespective of the technology used due to policy choices related to risk specialisation and unbundling for the purposes of encouraging competition. The pilot regime should not be a precedent for a fundamental overhaul of the separation of trading and post-*

¹² 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)

trading functions nor of the landscape of financial market infrastructures. 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, *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 multilateral trading facilities (MTFs) and securities settlement systems. Therefore, when granted the relevant permission(s), a DLT market infrastructure should be allowed to ensure, *inter alia*, the trading of DLT financial instruments, the initial recording of DLT financial instruments, the settlement of transactions in DLT financial instruments and the safekeeping of DLT financial instruments.

- (9a) *Where CSDs operated by members of the ESCB, or by other Member States' national bodies performing similar functions, or by other public bodies charged with or intervening in the management of public debt in the Union, operate a DLT securities settlement system (DLT SSS), they should not be required to seek specific exemptions or permissions from a competent authority, since such CSDs are not required to report to competent authorities nor to comply with their orders, and are subject to a limited set of requirements under Regulation (EU) No 909/2014, in accordance with Article 1(4) thereof.*
- (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 SSS, and the CSD operating it, should be subject to all the requirements of Regulation (EU) No 909/2014 (the Central Securities Depository Regulation, *CSDR*), Directive 98/26/EC (the Settlement Finality Directive, *SFD*), and any other applicable Union financial services legislation, except for requirements in respect of which an exemption has been granted by ESMA to the CSD operating the DLT SSS, in accordance with this Regulation. In order to allow for competition, while at the same time preserving a level playing field and high standards in terms of investor protection, market integrity and financial stability, new entrants should also be able to access the pilot regime, provided that they ensure compliance with the same requirements as those applicable to an authorised CSD under Regulation (EU) No 909/2014, in a manner proportionate to the nature, scale and risks of their business, and with any other applicable Union financial services legislation, except for requirements in respect of which exemptions are granted in accordance with this Regulation. In order to ensure business continuity, while also ensuring fair competition, new entrants should include specific arrangements with authorised CSDs as part of their transition strategy, and those CSDs should offer to conclude such arrangements in a non-discriminatory manner against a reasonable commercial fee based on actual costs.*
- (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. A DLT TSS and its operator should be subject to the same requirements as those applicable to both a DLT MTF and a DLT SSS, as well as to their operators, under*

this Regulation, and should where relevant also have the possibility of being granted the same exemptions foreseen under this Regulation.

- (11) **DLT market infrastructures** should only admit to trading or record DLT **financial instruments** on a distributed ledger. DLT **financial instruments** should be crypto-assets that qualify as **financial instruments** within the meaning of Directive 2014/65/EU (the Market in Financial Instruments Directive, MiFID II) *with the exception of depository 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 operational risks.*
- (12) In order to allow innovation and experimentation in a sound regulatory environment while preserving financial stability, the type of **financial instruments** **serviced by** a DLT **market infrastructure** should be limited to securities, such as shares, bonds, *including sovereign bonds, exchange-traded funds (ETFs), and units of collective investment undertakings (UCITS) subject to* value thresholds *set out in this Regulation*. To avoid the creation of any risk to financial stability, the total market value of DLT **financial instruments** recorded by a **DLT SSS** or **by** a DLT **TSS**, should also be limited. **To** verify that the DLT **financial instruments** traded on or recorded by a DLT market infrastructure meet the conditions imposed under this Regulation, **ESMA** should **require** such DLT market infrastructures to submit reports.
- (13) In order to **minimise distortions of the** level playing field with **financial instruments** 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 **financial instruments** admitted to trading on a DLT MTF *or on a DLT TSS* should always be subject to the provisions prohibiting market abuse in Regulation (EU) No 596/2014 (the Market Abuse Regulation).
- (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 **ESMA**, 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 *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. *ESMA should grant exemptions and require compensatory or corrective measures in a way that ensures the uniform application of this Regulation across the Union, notably with respect to investor protection, market integrity, financial stability and the non-intermediated access of retail investors to DLT MTFs.*
- (15) **An investment firm or a market operator operating a DLT MTF should be able to be permitted to record and settle DLT financial instruments** on a distributed ledger. *In such a case, the DLT MTF should be considered to be a DLT TSS and should 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** **financial instruments** 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 **financial instruments**, complete the settlement of transactions, and prevent settlement

fails. *The exemptions from those requirements allowed in this Regulation for DLT MTFs and DLT SSSs should also be available to DLT TSSs.*

- (16) A DLT TSS should ensure that the payment for DLT **financial instruments** from the buyer occurs at the same time as DLT **financial instruments** delivered from the seller (*delivery versus payment, DvP*). 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 (*EMTs*) as defined in Regulation No 2021/XX on Markets in Crypto-Assets¹³. Where using commercial bank money for **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.
- (17) Under Directive (EU) .../...¹⁴, which amends Directive 2014/65/EU (Markets in Financial Instruments Directive, MiFID II), a DLT MTF is able to request an exemption from the obligation of intermediation. Traditional MTFs may admit as members or participants only investment firms, credit institutions and other persons who have sufficient level of trading ability, competence and with adequate organisational arrangements and resources. By contrast, many trading platforms for crypto-assets offer a disintermediated access and provide direct access to retail clients. One potential regulatory hurdle to the development of MTFs for DLT **financial instruments** could be the obligation of intermediation embedded in Directive 2014/65/EU (Markets in Financial Instruments Directive, MiFID II). A DLT MTF is allowed to request a temporary derogation to such an obligation of intermediation and to provide access to retail investors, provided that adequate safeguards in terms of investor protection would be in place and that such retail investors are fit and proper for anti-money laundering and combatting the financing of terrorism purpose.
- (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.
- (19) A CSD operating 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 **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 **SSS** should comply with any compensatory *or corrective* measure imposed by **ESMA after consulting the national competent authority**, in order to meet the objectives pursued by the provision for which an exemption has been

¹³ 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

¹⁴ Proposal for a Directive of the European Parliament and of the Council amending Directive EU/2013/36, Directive 2014/65/EU, Directive (EU) 2015/2366, Directive 2009/138/EC, Directive EU/2016/2341, Directive 2009/65/EC, Directive 2011/61/EC and Directive 2006/43/EC, - COM(2020)596

requested. *ESMA should grant exemptions and require compensatory or corrective measures in a way that ensures the uniform application of this Regulation across the Union, notably with respect to investor protection, market integrity, financial stability and the non-intermediated access of retail investors to DLT SSSs.*

- (20) A CSD operating a securities settlement system should be allowed to request exemptions from **■ certain** provisions that are likely to create regulatory obstacles for the development of **■ DLT SSSs**. For instance, a CSD should be able to request **■ that** some definitions of Regulation (EU) 909/2014 (the Central Securities Depositories Regulation, *CSDR*) **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 **■ financial instruments** on a distributed ledger. *However, any CSD operating a DLT SSS would still need to ensure the integrity of the DLT **■ financial instruments** issue on the distributed ledger and the segregation of the DLT **■ financial instruments** belonging to various participants.*
- (20a) *A DLT SSS should be able to be permitted, at its request, to admit to trading DLT financial instruments 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.*
- (21) **■ A CSD operating a DLT SSS should remain subject to Regulation (EU) No 909/2014 (the Central Securities Depositories Regulation, CSDR), pursuant to which a CSD that outsources services or activities to a third party remains fully responsible for discharging all of its obligations under that Regulation and is required to ensure that any outsourcing does not result in the delegation of the CSD's responsibility. Pursuant to the CSDR, a CSD operating a DLT SSS is only permitted to outsource a core service or activity after receiving an authorisation from the competent authority. The CSD operating a DLT SSS should be able to request an exemption from that authorisation requirement [in cases where it is able to demonstrate that the requirement is incompatible with the use of DLT as envisaged in its business plan].**
- (22) The obligation of intermediation through a credit institution or an investment firm so that retail investors are not able to obtain direct access to the settlement and delivery systems operated by a CSD could potentially create a regulatory obstacle to the development of alternative models of settlement based on a DLT that allow direct access by retail clients. Therefore, the CSD operating a DLT **■ SSS** should be allowed to request an exemption from the notion of participant, as set out by Regulation (EU) No 909/2014 (the Central Securities Depositories Regulation, *CSDR*). Where seeking an exemption from the obligation of intermediation under Regulation (EU) No 909/2014 (the Central Securities Depositories Regulation, *CSDR*), the CSD operating a securities

settlement system should ensure that these persons are of sufficient good repute and fit and proper for the purpose of anti-money laundering and combatting the financing of terrorism. The CSD operating the securities settlement system should also ensure that these participants have sufficient level of ability, competence, experience and knowledge of post-trading and the functioning of DLTs.

- (23) The entities that are eligible to participate in a CSD covered by Regulation (EU) No 909/2014 (the Central Securities Depositories Regulation, *CSDR*) 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, *SFD*) because Regulation (EU) No 909/2014 (the Central Securities Depositories Regulation, *CSDR*) 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, *CSDR*) would not be compliant with the participation requirements of Directive 98/26/EC. Consequently, such a DLT **SSS or TSS** could not be designated and notified under that Directive. However, this would not preclude a DLT **SSS** that complies with all of the requirements of Directive 98/26/EC from being so designated and notified.
- (24) Regulation (EU) No 909/2014 (the Central Securities Depositories Regulation, *CSDR*) encourages the settlement of transactions in 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 **SSS**, 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 **SSS** should be allowed to request an exemption from the rules of Regulation (EU) No 909/2014 (the Central Securities Depositories Regulation, *CSDR*) on cash settlement in order to develop innovative solutions, such as the use of settlement coins or ‘e-money tokens’ (*EMTs*) as defined in the Regulation No 2021/XX on Markets in Crypto-Assets¹⁵.
- (25) Regulation (EU) No 909/2014 (the Central Securities Depositories Regulation, *CSDR*) 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 CSD operating a DLT **SSS** can be **technically more challenging**, burdensome or difficult to achieve, as the interoperability of legacy systems with DLT has not been tested yet. A DLT **SSS** 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**.
- (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.
- (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 **related to** the use of DLT or by the new way the DLT market

¹⁵ 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

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.

- (28) **DLT SSS and DLT TSS operators** should establish *or document, as appropriate*, the rules on the functioning of the **distributed ledger** they **use**, 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.
- (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.
- (30) A DLT market infrastructure should have specific and robust IT and cyber arrangements related to the use of DLT. These arrangements should be proportionate to the nature, scale and complexity of the DLT market infrastructure's business plan. These arrangements should also ensure the continued reliability, continuity and security of the services provided, including the reliability of smart contracts that are potentially used, *either created by the DLT market infrastructure itself or by a third party following contractual outsourcing procedures*. DLT market infrastructures should also ensure the integrity, security, confidentiality, availability and accessibility of data stored on the DLT. The competent authority of a DLT market infrastructure should be allowed to request an audit to ensure that the overall IT and cyber arrangements are fit for purpose. The costs of such an audit should be borne by the DLT market infrastructure.
- (31) Where the business plan of a DLT market infrastructure would involve the safekeeping of clients' funds, such as cash or cash equivalent, or DLT **financial instruments**, or the means of access to such DLT **financial instruments**, including in the form of cryptographic keys, the DLT market infrastructure should have adequate arrangements in place to safeguard their clients' assets **DLT market infrastructures** should not use clients' assets on own account, except with prior express consent from their clients. The DLT market infrastructure should segregate clients' funds or DLT **financial instruments**, or the means of access to such assets, from its own assets or other clients' assets. The overall IT and cyber arrangements of DLT market infrastructures should ensure that clients' assets are protected against fraud, cyber threats or other malfunctions.
- (32) At the time where *a* specific permission is granted, DLT market infrastructures should also have *in place* a credible exit strategy, *including the transition or reversion of their DLT operations to traditional infrastructures* 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 the thresholds envisaged in this Regulation have been reached*.
- (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. **In line with the Union objective to progress towards a true Capital Markets Union and in order to ensure a consistent and uniform**

application of the pilot regime, while preventing supervisory fragmentation, ESMA should have a direct supervisory mandate for granting a permission to a DLT market infrastructure and any exemptions across the Union, under this Regulation. In order to ensure effective cooperation and exchange of relevant information, ESMA should consult the national competent authorities and other relevant authorities, where appropriate, on the operators of DLT market infrastructures authorised in their Member States. Where assessing the application and the exemptions requested, ESMA should aim at ensuring financial stability, market integrity, investor protection, the level-playing field, and fair competition across the single market.

- (34) The competent authority *that examines* the application submitted by a prospective DLT market infrastructure should 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 *is merely* an attempt to circumvent existing requirements.
- (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 a permission should be valid for the Union *and only for the duration of the operation of the DLT pilot regime*. ESMA should publish on its website the list of DLT market infrastructures and the list of exemptions granted to each of them.
- (36) The specific permission and exemptions should be granted on a temporary basis, for a period of up to six years from the date of the specific permission *and should be valid only for the duration of the operation of the DLT pilot regime*. 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 *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.
- (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, *CSDR*), 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 *ESMA* at the time of the granting of the specific permission, or where the DLT market infrastructure has recorded financial instruments that *exceed the thresholds or* do not meet *other* conditions of DLT *financial instruments* 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 ESMA**, in the same way as those requested at the time of the initial permission of the DLT market infrastructure.

- (38) Since DLT market infrastructures could receive temporary exemptions from existing Union legislation, they should closely cooperate with **the European Securities and Markets Authority (ESMA) and their national competent authorities** during the time their specific permissions *are valid*. DLT market infrastructures should inform **ESMA and their national competent authorities** 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, **ESMA** 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 **ESMA and their national competent authorities**, whenever such data is requested. To ensure investor protection, market integrity and financial stability, **ESMA** should be able to **require** any corrective measures **.**
- (39) DLT market infrastructures should also make regular reports to **ESMA and their national competent authorities**. 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 *in financial markets* 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.
- (39a) *During the lifecycle of the DLT pilot regime, it is important that it be subject to frequent monitoring and evaluation, in order to maximise information for operators of DLT market infrastructures. ESMA should publish annual interim reports in order to provide market participants with a better understanding of the functioning and development of the markets and to provide clarification on the application of the pilot regime. The interim reports should include an update on the progress of the pilot regime regarding the most important trends, risks, and vulnerabilities. The interim reports should be submitted to the European Parliament, the Council, the Commission, and the national competent authorities.*
- (40) Five years after the entry into application of this Regulation, ESMA, *after consulting the national competent authorities*, should *submit its final* report to the Commission on *the* pilot regime for DLT market infrastructures, including on the potential benefits linked to the use of DLT, the risks raised and the technical difficulties. Based on ESMA's report, the Commission should *present a* report to the Council and European Parliament *based on ESMA's final report. The Commission's* report should 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 **by** modifications to the Union financial services legislation or terminating *the* regime.
- (40a) *It would be undesirable to have two parallel regimes for DLT-based and non-DLT-based market infrastructures. If the pilot regime provided for in this Regulation is*

successful, it could be made permanent by amending the relevant Union financial services legislation in such a way that establishes a single, coherent framework.

- (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 instruments¹⁶. In particular, some regulatory technical standards under the Regulation (EU) No 600/2014 (the Markets in financial instruments **Regulation, MiFIR**) 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. ■
- (42) Where the objectives of this Regulation cannot be sufficiently achieved by the Member States, because any regulatory obstacles to the development of DLT market infrastructures for crypto-assets that qualify as financial instruments under Directive 2014/65/EU (Markets in Financial Instruments Directive, MiFID II) are embedded in Union financial services legislation such objectives can rather be better achieved at Union level. Therefore, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.
- (43) In order for the Union to keep pace with innovation, it is important that the regime of DLT market infrastructures enters into application, as soon as possible, after the transposition by Member States of the Directive (EU) .../... of the European Parliament and of the Council¹⁷.
- (44) The European Data Protection Supervisor ■ *was* consulted in accordance with Article 42(1) of Regulation (EU) 2018/1725(CE) of the European Parliament and of the Council¹⁸, and delivered *its* opinion on **23 April 2021**.
- (44a) *The operation of DLT market infrastructures could involve the processing of personal data. Where it is necessary for the purposes of this Regulation to process personal data, that processing should be carried out in accordance with applicable Union law***

¹⁶ European Securities and Markets Authority's, Report with advice on Initial Coin Offerings and Crypto-Assets (ESMA50-157-1391)

¹⁷ 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

¹⁸ Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

on the protection of personal data. This Regulation is without prejudice to the rights and obligations under Regulations (EU) 2016/679¹⁹ and (EU) 2018/1725²⁰.

HAVE ADOPTED THIS REGULATION:

Article 1

Subject matter and scope

- (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 and Article 8.
- (2) This Regulation establishes the requirements for:
 - (a) granting and withdrawing such specific permissions;
 - (b) granting, modifying and withdrawing related exemptions;
 - (c) mandating, modifying and withdrawing attached conditions, compensatory or corrective measures;
 - (d) operating DLT market infrastructures;
 - (e) supervising DLT market infrastructures; and
 - (f) cooperation between operators of DLT market infrastructures, **national** competent authorities and ESMA.

Article 2

Definitions

For the purposes of this Regulation, the following definitions apply:

- (1) ‘distributed ledger technology’ or ‘DLT’ means **DLT as defined in Article 3(1)(1) of Regulation [MiCA]**;
- (2) ‘DLT market infrastructure’ means **a ‘DLT multilateral trading facility’, a ‘DLT securities settlement system’ or a ‘DLT trading and settlement system’**;
- (3) ‘DLT multilateral trading facility’ or ‘DLT MTF’ means a ‘multilateral trading facility’ **authorised under this Regulation**;

█

¹⁹ *Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).*

²⁰ *Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).*

- (4) ‘DLT securities settlement system’ or ‘**DLT SSS**’ means a securities settlement system **authorised under this Regulation** ;
- (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**;
- (5) ‘DLT **financial instruments**’ means ‘**financial instruments**’ within the meaning of Article 4(1)(15) of Directive 2014/65/EU, **with the exception of depositary receipts**, that are issued, recorded, transferred and stored using a DLT;
- (6) ‘multilateral trading facility’ means a ‘multilateral trading facility’ as defined in Article 4(1)(22) of Directive 2014/65/EU;
- (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**;
- (6b) ‘**DLT units of collective investment undertakings**’ means **units of collective investment undertakings mentioned in Annex I, section C, item 3 of Directive 2014/65/EU that are issued, recorded, transferred and stored using DLT**;
- (7) ‘central securities depository’ or ‘CSD’ means a ‘central securities depository’ as defined in Article 2(1) of Regulation (EU) No 909/2014;
- (8) ‘financial instrument’ means a ‘financial instrument’ as defined in Article 4(1)(15) of Directive 2014/65/EU;
- (9) ‘settlement’ means ‘settlement’ as defined in Article 2(7) of Regulation (EU) No 909/2014;
- (10) ‘business day’ means ‘business day’ as defined in Article 2(14) of Regulation (EU) No 909/2014;
- (11) ‘delivery versus payment mean’ or ‘DVP’ means ‘delivery versus payment’ as defined in Article 2(27) of Regulation (EU) No 909/2014;
- (12) ‘settlement fail’ means a ‘settlement fail’ as defined in Article 2(1)(15) of Regulation (EU) No 909/2014;
- (12a) ‘**settlement coin**’ means **commercial bank money in a tokenised form**;
- (13) ‘sovereign bond’ means a bond issued by a sovereign issuer **as defined in Article 4(1)(60) of Directive 2014/65/EU** ;
- (14) ;
- (15) ‘convertible bond’ means an instrument consisting of a bond or a securitised debt instrument with an embedded derivative, such as an option to buy the underlying equity;
- (16) ‘covered bond’ means bonds as referred to in Article 52(4) of Directive 2009/65/EC of the European Parliament and of the Council²¹;

²¹ Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (OJ L 302 17.11.2009, p. 32).

- (17) ‘corporate bond’ means a bond that is issued by a *Societas Europaea* established in accordance with Council Regulation (EC) No 2157/2001²² or a type of company listed in Annex I of Directive 2017/1132/EC²³ of the European Parliament and of the Council or equivalent in third countries;
- (18) ‘other bond’ means a bond that does not belong to any of the types of bonds specified in points (13) to (17);
- (19) ‘investment firm’ means an ‘investment firm’ as defined in Article 4(1)(1) of Directive 2014/65/EU;
- (20) ‘market operator’ means a ‘market operator’ as defined in Article 4(1)(18) of Directive 2014/65/EU;
- (21) ‘competent authority’ means one or more competent authorities designated either in accordance with:
- (a) Article 67 of Directive 2014/65/EU for investment firms and market operators operating a DLT MTF;
 - (b) Article 11 of Regulation (EU) No 909/2014 for a CSD operating a DLT SSS; or
 - (c) ESMA for the purposes of overseeing the application of this Regulation.
- (22) ‘home Member State’ means in the case of:
- (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;
 - (b) a market operator operating a DLT MTF *or a DLT TSS*, the Member State in which the market operator of the DLT 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 market operator of the DLT MTF *or of the DLT TSS* is situated;
 - (ba) *an entity operating a DLT MTF or a DLT TSS that is neither an investment firm nor a market operator, the Member State in which the entity 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 operator is situated;*
 - (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;
 - (ca) *an entity operating a DLT SSS or a DLT TSS that is not a CSD, the Member State in which the operator 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 operator is situated.*

²² Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European company (SE) OJ L 294, 10.11.2001, p. 1–21

²³ Directive (EU) 2017/1132 of the European Parliament and of the Council of 14 June 2017 relating to certain aspects of company law (OJ L 169, 30.6.2017, p. 46)

- (23) ‘e-money tokens’ means ‘e-money tokens’ as defined in Article XX of Regulation No 2021/XX on Markets in Crypto-Assets²⁴.

Article 3

Limitations on the financial instruments admitted to trading on or settled by a DLT market infrastructure

1. Only DLT financial instruments that meet the following conditions may be admitted to trading or recorded, or both on a DLT market infrastructure:
 - (a) shares, the issuer of which has a market capitalisation or a tentative market capitalisation of less than EUR 200 million; or
 - (b) convertible bonds, covered bonds, corporate bonds, sovereign bonds and other bonds, with an issuance size of less than EUR 500 million;
 - (ba) *DLT ETF units, investing in instruments under points (a) and (b), with an issuance size of less than EUR 500 million;*
 - (bb) *DLT units of collective investment undertakings (UCITS), investing in instruments under points (a) and (b), with an issuance size of less than EUR 500 million. Corporate bonds issued by issuers whose market capitalisation did not exceed EUR 200 million at the time of their issuance shall be excluded from the calculation of the threshold set out in paragraph (1)(b).*
2.
3. *Operators of a DLT SSS or of a DLT TSS may admit new financial instruments until the total market value of DLT financial instruments recorded in a DLT SSS or in a DLT TSS reaches EUR 5 billion .*
4. For the purposes of determining and monitoring the total market value of DLT financial instruments under paragraph 1, the total market value of the DLT financial instruments shall be:
 - (a) determined daily, either by the CSD or the investment firm or market operator concerned; and
 - (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 financial instruments with the same ISIN that are settled on the DLT SSS or DLT TSS on that day, whether in full or in part.
5. 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 financial instruments that are recorded and settled on a DLT SSS or on a DLT TSS fulfil the conditions under paragraphs 1 to 3.

Where the total market value of the DLT financial instruments reported under paragraph 1, has reached EUR 7 billion, the operator of the DLT SSS or the

²⁴ 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

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.

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

Article 4

Requirements and exemptions regarding DLT multilateral trading facilities

1. A DLT MTF *and its operator* shall be subject to all the requirements applicable to a MTF under Directive 2014/65/EU, *except in relation to an exemption granted in accordance with paragraph 1a (new)*, Regulation (EU) No 2014/600 **■** *and any other applicable financial services legislation*, **■** *and in addition* the investment firm or the market operator operating the DLT MTF:

- (a) **■**
- (b) complies with the obligations set out in Article 6; and
- (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.

- 1a. At its request, an investment firm or market operator operating a DLT MTF may be exempted by ESMA from the application of Article 19 of Directive 2014/65/EU (MiFID) and may be permitted, under the rules governing access referred to in Article 18(3) of Directive 2014/65/EU (MiFID) and for a maximum period of four years, to admit natural persons to the DLT MTF as members or participants, provided that those persons fulfil the following requirements:*

- (a) they are of sufficiently good repute and are fit and proper;*
- (b) they have sufficient level of trading ability, competence and experience, including knowledge of the trading and the functioning of DLT; and*
- (c) they have given informed consent to be included in the pilot regime and are adequately informed of its experimental nature and the potential risks associated with it.*

At its request, an investment firm or market operator operating a DLT MTFs and its members or participants may be exempted by ESMA from the application of Article 26 of Regulation (EU) No 600/2014 (MiFIR).

Where ESMA grants the exemption referred to in the first subparagraph, it may impose additional investor protection measures for the protection of natural persons admitted as members of, or participants in, the DLT MTF. Such measures shall be proportionate to the risk profile of the participants or members.

Where ESMA grants the exemption referred to in the second subparagraph, the DLT MTF shall keep at the disposal of ESMA the relevant details of all transactions executed through its systems. The records shall contain all the details specified in paragraph 3 of Article 26 of Regulation (EU) No 600/2014 that are relevant having regard to the system used by the DLT MTF and the member or participant executing the transaction. The DLT MTF shall also ensure that ESMA have direct and immediate access to these details. In order to access the records ESMA shall be admitted to the DLT MTF as regulatory observer participant.

ESMA shall ensure that all competent authorities referred to in Article 4(1)(26) of Directive 2014/65/EU have access to all of the details of transactions they need to fulfil their respective responsibilities and mandates.

2. At its request, an investment firm or a market operator operating a DLT MTF may be permitted to **record and settle** DLT **financial instruments** on the distributed ledger *used by the DLT MTF*. *In such a case, the DLT MTF shall be considered to be a DLT TSS.*

■

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

3. Where an investment firm or a market operator operating a DLT MTF has requested **a permission** under paragraph 2, it *shall ensure compliance with all the requirements applicable to a CSD operating a securities settlement system under Regulation (EU) No 909/214 in a manner proportionate to the nature, scale and risks of its business and* 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 DLT TSS, inter alia:**
 - (a) guarantees that the number of DLT **financial instruments** 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 **financial instruments** making up such an issue or part of an issue, recorded on the DLT, at any given time;
 - (b) guarantees the safekeeping of any DLT **financial instruments**, as well as any funds to effect payments for such securities or any collateral provided in respect of such transactions using the DLT TSS;
 - (c) enables clear, accurate and timely confirmation of the details of transactions in DLT **financial instruments** including any payments made in respect thereof as well as the discharge of or calling for any collateral in respect of the same;
 - (d) provides, *in accordance with Article 39(5) of Regulation (EU) No 909/2014*, clear, accurate and timely information in relation to the settlement of transactions, including settlement finality, by defining the moment from which transfer orders or other pre-identified instructions may not be revoked by a member, participant, issuer or client;

- (e) settles transactions in DLT **financial instruments** close to real time or intraday, and in any case, no later than on the second business day after the conclusion of the trade;
- (f) ensures delivery versus payment.

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.

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

- (g) either prevents or, if not possible, addresses settlement fails, *in accordance with Article 6 and Article 7 of Regulation (EU) No 909/2014 and Commission Delegated Regulation (EU) 2018/1229²⁵, as applicable.*
- (ga) *keeps records which enable the investment firm or market operator operating the DLT TSS, without delay at any given time, to segregate the DLT financial instruments of a member, participant, issuer or client from those of any other member, participant, issuer or client.*

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) .../...²⁶, it shall in any case demonstrate that the exemption requested is:

- (a) proportionate to and justified by the use of a DLT; and
- (b) limited to the DLT MTF and does not *extend* to any other MTF operated by the said investment firm or market operator.

4a. *An entity that is not subject to all the requirements applicable to an MTF under Directive 2014/65/EU and Regulation (EU) No 2014/600 shall benefit only from exemptions from Directive 2014/65/EU and Regulation (EU) No 909/2014 granted in accordance with this Regulation and shall be allowed to request exemptions and permissions in accordance with paragraphs 1 to 4 of this Article.*

Competent authorities shall put in place specific procedures for the entities referred to in the first subparagraph.

²⁵ *Commission Delegated Regulation (EU) 2018/1229 of 25 May 2018 supplementing Regulation (EU) No 909/2014 of the European Parliament and of the Council with regard to regulatory technical standards on settlement discipline (OJL 230, 13.9.2018, p.1)*

²⁶ 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

Article 5

Requirements and exemptions regarding DLT securities settlement systems

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, and any other applicable Union financial services legislation** except if **it**:
 - (a) has requested exemptions as specified in paragraphs 2 to 6 and has been granted such exemptions by the competent authority that granted the specific permission in accordance with Article 8;
 - (b) complies with the obligations set out in Article 6; and
 - (c) complies with the conditions set out in paragraphs 2 to 7 and with any additional compensatory **or corrective** measures that the competent authority **or ESMA after consulting the national 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.
2. At its request, a CSD operating a **DLT SSS** may be exempted by the competent authority from the application of Article 2(4) on dematerialised form, Article 2(9) on transfer of orders, Article 2(28) on securities accounts, Article 3 on the recording of securities, Article 37 on the integrity of issue, Article 38 on the segregation of assets of Regulation (EU) No 909/2014, provided that the CSD operating the **DLT SSS**:
 - (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 **the** particular **DLT deployed**;
 - (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:
 - (c) the recording of the **DLT financial instruments** on the distributed ledger;
 - (d) the number of **DLT financial instruments** in an issue or in part of an issue admitted by the CSD operating the DLT settlement securities system, is equal to the sum of **DLT financial instruments** making up such issue or part of an issue, recorded on the distributed ledger at any given time; and
 - (e) it keeps records which enable the CSD, without delay at any given time, to segregate the **DLT financial instruments** of a member, participant, issuer or client from those of any other member, participant, issuer or client.
3. At its request, a CSD operating a **DLT SSS** may be exempted by the competent authority from the application of Article 19 **of** Regulation (EU) No 909/2014, **in relation only to the outsourcing of a core service to a third party**, provided that:
 - (a) **the application of that Article is** incompatible with the use of a DLT as envisaged by the particular DLT operated by the CSD concerned.

4. At its request, a CSD operating a DLT **SSS** may be exempted by the competent authority from the application of Article 2(19) of Regulation (EU) No 909/2014 on participants and may be permitted to admit as participants natural and legal persons other than those referred to in Article 2(19), provided that such persons:
- (a) are of sufficient good repute and are fit and proper; and
 - (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;*
 - (ba) have given informed consent to be included in the pilot regime and are adequately informed of its experimental nature and potential risks associated with it.**
5. 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.
- The settlement of *the payment leg shall* 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.
- Where settlement occurs through commercial bank money or e-money tokens, the **CSD** operating **a DLT TSS** shall identify, measure, monitor, manage, and minimise any counterparty risk arising from the use of such money, *also taking into account any risk arising from the designation or non-designation of the DLT SSS as a system for the purposes of Directive 98/26/EC and paragraph 8 of this Article.*
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 DLT **SSS**.
- 6a. At its request, a CSD operating a DLT SSS may be permitted to admit to trading DLT financial instruments, in which 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 as those applicable to a DLT MTF and its operating investment firm or market operator under this Regulation in a manner proportionate to the nature, scale and risks of its business. The DLT SSS shall in such a case be considered to be a DLT TSS.**
7. Where a CSD operating a DLT **SSS** has requested an exemption in accordance with the first sub-paragraph, it shall give access to other CSDs operating a DLT **SSS** or to DLT MTFs. *The CSD operating a DLT SSS shall inform the competent authority of its intention to establish any such access. After consulting ESMA, the competent authority may prohibit such access insofar as it would be detrimental to the stability of the Union financial system.*

Where a CSD operating a DLT **SSS** 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:

- (a) the exemption *or permission* requested is proportionate to and justified by the use of *the particular* DLT, and;
- (b) the exemption *or permission* requested is limited to the DLT **SSS** 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.

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 **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 TSS** fulfils all of the requirements of that Directive.

8a. An entity that is not subject to the requirements applicable to a CSD under Regulation (EU) No 909/2014, shall benefit only from exemptions from Directive 2014/65/EU and Regulation (EU) No 909/2014 and shall be allowed to request exemptions and permissions in accordance with paragraphs 1 to 8 of this Article.

Competent authorities shall put in place specific procedures for the entities referred to in the first subparagraph.

Article 6

Additional requirements for DLT market infrastructures

1. The operators of DLT market infrastructures shall establish a clear and detailed business plan describing how they intend to carry out their services and activities, including a description of critical staff, technical aspects, the use of the DLT and the information required in paragraph 3.

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 **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, **any insolvency protection measures under Directive 98/26/EC** and the jurisdiction for bringing legal action.

1a. The operators of DLT market infrastructures shall at all times remain fully responsible for the services and activities they carry out under this Regulation, including the operation of the distributed ledger deployed. Where the operators of DLT market infrastructures outsource part of their services and activities they shall

ensure that the conditions laid down in Article 30 of Regulation (EU) No 909/2014 are complied with in full, as applicable.

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*:
 - (a) rules on the functioning of the **distributed ledger** they operate, including the rules for accessing the distributed ledger **DLT**, the participation of the validating nodes, addressing potential conflicts of interest, and risk management including any mitigation measures *to ensure investor protection and financial stability; and*
 - (b) *measures to mitigate the risks arising from insolvency, where insolvency protection measures under Directive 98/26/EC do not apply.*
3. The operators of DLT market infrastructures shall provide their members, participants, issuers and clients with clear and unambiguous information on their website on how they carry out their functions, services and activities and how this performance of functions, services and activities deviates from an MTF or a securities settlement system. This information shall include the type of DLT used.
4. The operators of DLT market infrastructures shall ensure that the overall IT and cyber arrangements related to the use of their DLT are proportionate to the nature, scale and complexity of their business. These arrangements shall ensure the continued transparency, availability, reliability and security of their services and activities, including the reliability of smart contracts used on the DLT. These arrangements shall also ensure the integrity, security and confidentiality of any data stored, and the availability and accessibility of such data.

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.

To assess the reliability of the overall IT and cyber arrangements of a DLT market infrastructure, the competent authority may require an audit. The competent authority shall appoint an independent auditor to carry out the audit. The DLT market infrastructure shall bear the costs of such an audit.
5. Where the operator of a DLT market infrastructure ensures the safekeeping of participants', members', participants', issuers' or clients' funds, collateral and DLT **financial instruments**, as well as the means of access to such DLT **financial instruments**, including in the form of cryptographic keys, the operators of such DLT market infrastructures shall have adequate arrangements in place to prevent the use of the said funds, collateral or DLT **financial instruments** on their own account other than with the express consent, evidenced in writing, which may be made through electronic means, of the participant, member, issuer, or client concerned.

The operator of a DLT market infrastructure shall maintain safe, accurate, reliable and retrievable records of the funds, collateral and DLT **financial instruments** held by its DLT market infrastructure for members, participants, issuers or clients as well as of the means of access to such assets.

The operator of a DLT market infrastructure shall segregate the funds, collateral and DLT **financial instruments** as well as the means of access to such assets, of the members, participants, issuers or clients using its DLT market infrastructure from its own assets as well as from the same assets of other members, participants, issuers or clients.

The overall IT and cyber arrangements, referred to in paragraph 4, shall ensure that the said funds, collateral and DLT **financial instruments**, as well as the means of access to such assets, are protected from the risks of unauthorised access, hacking, degradation, loss, cyber-attack, theft, **fraud, negligence or other serious operational malfunctions**.

- 5a. *The operator of a DLT market infrastructure shall be liable to its clients for any loss of funds, collateral and DLT financial instruments, or of means of access to such assets, resulting from unauthorised access, hacking, degradation, loss, fraud, cyber-attack, or from theft or negligence or other serious malfunctions up to an amount not exceeding the market value of the assets lost.*

The operator of a DLT market infrastructure shall establish transparent and adequate arrangements to ensure investor protection, and provide clients with mechanisms for handling complaints and procedures for compensation or redress in cases of investor detriment as a result of the serious malfunctions mentioned in the first sub-paragraph or of the cessation of the business due to any of the circumstances referred to in Article 7, paragraph 6, or Article 8, paragraph 6, as appropriate.

ESMA may decide, on a case by case basis, to require additional prudential safeguards from the operator of a DLT market infrastructure in the form of own funds or insurance policy, if it is assessed that potential liabilities resulting from damages caused to its clients due to any of the serious malfunctions mentioned in the first sub-paragraph are not adequately covered by the prudential requirements provided for in Directive 2014/65/EU of the European Parliament and of the Council and Regulation (EU) No 909/2014 of the European Parliament and of the Council, in order to ensure investor protection.

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’), **including the transition/reversion of their DLT operations to traditional infrastructures**, 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 the thresholds envisaged in this Regulation have been reached**, or in the event of any voluntary or involuntary cessation of the business of the DLT market infrastructure **or under any of the events envisaged under Article 10 paragraph 2**. 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 competent authority which granted the permission to operate and related exemptions under Article 4 and Article 5.
- 6a. *Where a DLT market infrastructure is authorised to operate with exemptions, in accordance with Article 7 (1a) and Article 8 (1a), and did not apply for full*

authorisation under Directive 2014/65/EU or under Regulation (EU) No 909/2014, the transition strategy shall include specific arrangements with CSDs authorised under Regulation (EU) No 909/2014 in order to ensure business continuity in the best interests of members, participants, issuers and clients.

CSDs authorised under Regulation (EU) No 909/2014 shall offer to conclude the arrangements referred to in the first subparagraph in a non-discriminatory manner against a reasonable commercial fee based on actual costs.

Article 7

Specific permission to operate a DLT multilateral trading facility

1. A legal person authorised either as an investment firm or to operate a regulated market, under Directive 2014/65/EU, may apply for a specific permission to operate a DLT MTF under this Regulation.
 - 1a. By way of derogation from paragraph 1, a legal person that is not authorised as an investment firm or to operate a regulated market under Directive 2014/65/EU may apply for a specific permission to operate a DLT MTF in accordance with paragraph 2 of this Article, provided that it complies with all the requirements applicable to an investment firm or market operator operating a MTF under Directive 2014/65/EU, in a manner proportionate to the nature, scale and risks of its business, except for those requirements in respect of which the applicant has been granted an exemption in accordance with Article 4 of this Regulation. If the DLT MTF is to provide core CSD services, the operator of the DLT MTF shall ensure compliance with all the requirements applicable to a CSD operating a securities settlement system under Regulation (EU) No 909/2014, in a manner proportionate to the nature, scale and risks of its business, except for those requirements in respect of which the applicant has been granted an exemption under this Regulation.*
 - 1b. 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 a specific permission to operate a DLT TSS under this Regulation by requesting the specific permissions set out in Articles 7 and 8 of this Regulation.*
2. Applications for a specific permission to operate a DLT MTF under this Regulation shall be accompanied by the following information:
 - (a) the information required under Article 7(4) of Directive 2014/65/EU;
 - (b) the business plan, rules of the DLT MTF and associated legal arrangements as referred to in Article 6(1) as well the information regarding the functioning, services and activities of the DLT MTF as referred to in Article 6(3);
 - (c) **■** the functioning of **■** *the distributed ledger* as referred to in Article 6(2);
 - (d) its overall IT and cyber arrangements as referred to in Article 6(4);
 - (da) evidence that the applicant has in place sufficient prudential safeguards to meet its liabilities and compensate its clients in case of malfunctions of the distributed ledger, as referred to in Article 6 (5b);*

- (e) where applicable, a description of the safekeeping arrangements of clients' DLT **financial instruments** as referred to in Article 6(5);
 - (ea) *a description of the arrangements to ensure investor protection and the mechanisms for handling complaints and consumer redress, as referred to in Article 6 a (new);*
 - (f) its transition strategy, as referred to in Article 6(6); and
 - (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 conditions attached to such exemptions under Article 4.
3. Before deciding on an application for a specific permission to operate a DLT MTF under this Regulation, **ESMA shall notify** the competent authority of the home Member State **and provide all relevant information on the DLT MTF**, *in the case of an application by a credit institution, to its prudential supervisor, including the ECB for significant credit institutions, including* an explanation of the exemptions requested, their justifications and any compensatory *or corrective* measures proposed by the applicant or required by the competent authority. *In addition, where an applicant intends to provide core services listed in Section A of the Annex to Regulation (EU) No 909/2014, the competent authority of the home Member State shall, before deciding on an application for a specific permission to operate a DLT MTF under this Regulation, transmit all information included in the application to the relevant authorities specified in Article 12 of Regulation (EU) No 909/2014 and consult those authorities on the features of the securities settlement system operated by the applicant. A relevant authority may inform the competent authority of its views within 3 months of receipt of the information from the competent authority.*
- Within three months of receipt of the **application**, ESMA shall **issue a decision** on the application and shall **require any additional compensatory or corrective measures** on the exemptions requested by the applicant, that are necessary to ensure investor protection, market integrity and financial stability. ESMA shall **adopt a risk-based approach and ensure** the consistency and proportionality of exemptions granted by **ESMA** to **operators of 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.
4. Without prejudice to Article 7 and Article 44 of Directive 2014/65/EU, **ESMA** shall refuse to grant the applicant a permission to operate a DLT MTF under this Regulation if there are objective grounds for believing any of the following:
- (a) significant risks to investor protection, market integrity or financial stability are not properly addressed and mitigated by the applicant; or
 - (b) the specific permission to operate a DLT MTF under this Regulation and the exemptions requested are sought to circumvent legal and/or regulatory requirements.
5. The specific permission granted to **an applicant** to operate a DLT MTF shall be valid throughout the Union for up to six years from the date of the specific permission. It shall specify the exemptions that are granted, in accordance with Article 4.

ESMA shall publish on its website:

- (a) the list of DLT MTFs, the start and end dates of their specific permissions and the list of exemptions granted to each of them; **and**
- (b) **the total number of requests for exemptions that have been made under this Regulation, indicating the number and types of exemptions accepted or refused together with the respective justifications, on an anonymous basis.**

6. Without prejudice to Article 8 and Article 44 of Directive 2014/65/EU, **ESMA** shall withdraw such permission or any of the exemptions granted, after consultation with **ESMA**, **and informing the relevant authorities specified in Article 12 of Regulation (EU) No909/2014 and, in the case of a specific permission granted to a credit institution, its prudential supervisor, including the ECB for significant credit institutions**, in accordance with paragraph 3, if any of the following has occurred:

- (a) a flaw has been discovered in the functioning of the DLT or in the services and activities provided by the operator of the DLT MTF that poses a risk to investor protection, market integrity or financial stability, which outweighs the benefits of the services and activities under experimentation;
- (b) the [] operator [] **of** the DLT MTF has breached the conditions attached to the exemptions granted by [] **ESMA**;
- (c) the [] operator **of the** [] DLT MTF has admitted to trading financial instruments that do not fulfil the conditions laid down in Article 3(1) and 3(2);
- (d) the [] operator **of the** [] DLT MTF, that has requested [] **a permission to record and settle DLT [] financial instruments** that do not fulfil the conditions laid down in Article 3(1) and 3(2);
- (e) the [] operator **of the** [] DLT MTF [] has requested a [] permission [] **to record and settle DLT financial instruments under Article 4(2) and** has exceeded the thresholds referred to in Article 3(3) or (5), third subparagraph; or
- (f) the competent authority becomes aware that the [] **applicant** for a specific permission to operate a DLT MTF, obtained such permission or related exemptions on the basis of misleading information including any material omission.

7. Where in the course of its activity, an [] operator [] **of** 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 [] **ESMA**, in accordance with paragraphs 2 to 5.

Where in the course of its activity, an [] operator [] **of** a DLT MTF requests a new permission or exemption, it shall do so in accordance with Article 4. Such permission or exemption shall be processed by [] **ESMA**, in accordance with paragraphs 2 to 5.

Article 8

Specific permission to operate a DLT securities settlement system

1. A legal person authorised as a CSD under Regulation (EU) No 909/2014, may apply for a specific permission to operate a DLT **■** SSS under this Regulation.
 - 1a. ***By way of derogation from paragraph 1, a legal person that is not authorised as a CSD under Regulation (EU) No 909/2014 may apply for a specific permission to operate a DLT SSSs in accordance with paragraph 2 of this Article, provided that it ensures compliance with the authorisation requirements and all the obligations laid down under Regulation (EU) No 909/2014, in a manner proportionate to the nature, scale and risks of the business, except for those requirements in respect of which the applicant has been granted an exemption under this Regulation. If the DLT SSS is to admit to trading DLT financial instruments, the DLT SSS shall be considered to be a TSS and its operator shall ensure compliance with all the requirements applicable to a DLT MTF and its operating investment firm or market operator under Directive 2014/65/EU, in a manner proportionate to the nature, scale and risks of the business, except for those requirements from which the applicant has been granted an exemption under this Regulation.***
 - 1b. ***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 of this Regulation.***
2. Applications for a specific permission to operate a DLT **■** SSS under this Regulation shall be accompanied by the following information:
 - (a) the information required under Article 7(9) of Regulation (EU) No 909/2014;
 - (b) the business plan, rules of the DLT **■** SSS and associated legal arrangements as referred to in Article 6(1) as well as information regarding the functioning, services and activities of the DLT **■** SSS as referred to in Article 6(3);
 - (c) the functioning of **■** *the distributed ledger* as referred to in Article 6(2);
 - (d) its overall IT and cyber arrangements as referred to in Article 6(4);
 - (da) ***evidence that the applicant has in place sufficient prudential safeguards to ensure consumer and investor protection;***
 - (db) ***a description of the arrangements to ensure consumer and investor protection and of the mechanisms for handling complaints and consumer redress, as referred to in Article 6a (new);***
 - (e) the safekeeping arrangements as referred to in Article 6(5);
 - (f) the transition strategy as referred to in Article 6(6);
 - (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.

3. Before deciding on an application for a specific permission to operate a DLT **SSS** under this Regulation, *ESMA shall notify the competent authority of the home Member State and the relevant authorities specified in Article 12 of Regulation (EU) No 909/2014, and, in the case of an application by a credit institutions, the prudential supervisor, including the ECB for significant credit institutions, and shall consult those authorities on the features of the securities settlement system operated by the applicant.*

Within three months of receipt of the **application, the relevant authorities specified in Article 12 of Regulation (EU) No 909/2014 may respond to ESMA, and ESMA shall issue a decision on the application and shall require any additional compensatory or corrective measures on the exemptions requested by the applicant, that are necessary to ensure investor protection, market integrity and financial stability. ESMA shall adopt a risk-based approach and ensure the consistency and proportionality of exemptions granted by ESMA to operators of DLT SSSs, across the Union.**

4. Without prejudice to Article 17 of Regulation (EU) No 909/2014, *and after having informed the relevant authorities specified in Article 12 of Regulation (EU) No 909/2014 and, in the case of a credit institution, its prudential supervisor, including the ECB for significant credit institutions, ESMA shall refuse to grant a specific permission under this Regulation, if there are grounds for believing any of the following:*
- (a) significant risks to investor protection, market integrity or financial stability are not properly addressed and mitigated by the applicant; or
 - (b) the specific permission to operate a DLT **SSS** and the exemptions requested are sought to circumvent legal and/or regulatory requirements.
5. The specific permission granted to operate a DLT **SSS** shall be valid throughout the Union for up to six years from the date of the specific permission. It shall specify the exemptions that are granted, in accordance with Article 5.

ESMA shall publish on its website:

- (a) the list of DLT **SSS**, the start and end dates of their specific permissions and the list of exemptions granted to each of them; *and*
 - (b) *the total number of requests for exemptions that have been made under this Regulation, indicating the number and types of exemptions accepted or refused together with the respective justifications, on an anonymous basis.*
6. Without prejudice to the application of Article 20 of Regulation (EU) No 909/2014, **ESMA shall withdraw such permission or any of the exemptions granted, and inform the relevant authorities specified in Article 12 of Regulation (EU) No 909/2014 and, in the case of a credit institution, its prudential supervisor, including the ECB for significant credit institutions, in accordance with paragraph 3, if any of the following has occurred:**
- (a) a flaw has been discovered in the functioning of the DLT or in the services and activities provided by the **operator of a DLT SSS** that poses a risk to market integrity, investor protection or financial stability, which outweighs the benefits of the services and activities under experimentation; or

- (b) the **operator of the DLT SSS** has breached the conditions attached to the exemptions granted by the competent authority; or
 - (c) the **operator of the DLT SSS** has recorded financial instruments that do not fulfil the conditions laid down Article 3(1) and (2); or
 - (d) the **operator of the DLT SSS** has exceeded the thresholds referred to in Article 3(3) and (5), third subparagraph; or
 - (e) the competent authority becomes aware that the **operator of the DLT SSS** that applied for a specific permission to operate a DLT SSS, obtained such permission or related exemptions on the basis of misleading information including any material omission.
7. Where in the course of its activity, **an operator of a DLT SSS** proposes to introduce a material change to the functioning of the DLT, or to its services or activities, which require a new permission, a new exemption or the modification of one or more of its existing exemptions or of any attached conditions, it shall request such permission, exemption or modification, in accordance with Article 5. Such permission, exemption or modification, shall be processed by **ESMA**, in accordance with paragraphs 2 to 5.

Where in the course of its activity, **an operator of a DLT SSS** requests a new permission or exemption, it shall request such permission or exemption, in accordance with Article 5. Such permission or exemption or modification shall be processed by **ESMA**, in accordance with paragraphs 2 to 5.

Article 9

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

1. Without prejudice to the application of any relevant provisions of Directive 2014/65/EU and Regulation (EU) No 909/2014, the operators of DLT market infrastructures shall cooperate with the competent authorities which are entrusted with granting specific permissions under this Regulation and with ESMA.

In particular, immediately upon becoming aware of any of the matters listed below, the operators of DLT market infrastructures shall notify, the said competent authorities and ESMA, thereof. Such matters include, without limitation:

- (a) any proposed material change to their business plan including critical staff, the rules of the DLT market infrastructure and associated legal arrangements at least four months before the change is planned, notwithstanding whether the proposed material change requires a change in the specific permission or related exemptions or conditions attached thereto, in accordance with Article 7 or Article 8;
- (b) any evidence of unauthorised access, material malfunctioning, loss, cyber-attacks or other cyber-threats, fraud, theft or other serious malpractice suffered by the DLT market infrastructure;
- (c) any material change in the information provided to the competent authority which granted the specific permission;

- (d) any technical or operational difficulty in delivering the activities or services subject to the specific permission, including difficulties related to the development or use of the DLT and DLT **financial instruments**; or
- (e) any risks to investor protection, market integrity or financial stability that have arisen and were not anticipated in the application requesting the specific permission or at the time of granting the specific permission.

Where notified of such information, the competent authority may require the DLT market infrastructure concerned to make an application under Article 7(7) or Article 8(7) and/or may take any corrective measures required as referred to in paragraph 3.

2. The operators of DLT market infrastructures shall provide the competent authority which granted the specific permission and ESMA with any relevant information they may require.
3. The competent authority which granted the specific permission may require any corrective measures to the business plan, the rules of the DLT market infrastructure and associated legal arrangements to ensure investor protection, market integrity or financial stability. Before requiring any corrective measures, the competent authority shall consult ESMA, in accordance with Article 7(3) or Article 8(3). The DLT market infrastructure shall report on the measures taken to implement any corrective measures required by the competent authority, in its reports referred to in paragraph 4.
4. Every six months from the date of the specific permission, the operator of a DLT market infrastructure shall submit a report to **ESMA and the competent authorities, including, in the case of a credit institution, its prudential supervisor, and including the ECB in the case of significant credit institutions. In the case of a DLT SSS or a DLT TSS, the competent authority shall transmit that information to the relevant authorities specified in Article 12 of Regulation (EU) No 909/2014 as soon as possible.** Such report shall include, without limitation:
 - (a) a summary of any information listed in the second sub-paragraph of paragraph 1;
 - (b) the number and value of DLT **financial instruments** admitted to trading on the DLT MTF, the number and value of DLT **financial instruments** recorded by a CSD operating DLT **SSSs**, and where applicable, the number and value of **financial instruments** recorded **on a DLT SSS or DLT TSS**;
 - (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**;
 - (d) a reasoned assessment of any difficulties in applying Union financial services legislation or national law; and
 - (e) the measures taken to implement any compensatory or corrective measures required by the competent authority or conditions imposed by the competent authority.
- 4a. ESMA shall make the reports referred to in the first subparagraph publicly available on its website, while safeguarding anonymity.**
5. ESMA shall fulfil a coordination role between competent authorities, with a view to building a common understanding of distributed ledger technology and DLT market

infrastructure as well as a common supervisory culture and convergent supervisory practices, ensuring consistent approaches and convergence in supervisory outcomes.

ESMA shall inform all competent authorities on a regular basis of:

- (a) the reports submitted in accordance with paragraph 4;
 - (b) the specific permissions and exemptions granted in accordance with Article 7 and Article 8 as well as the conditions attached thereto;
 - (c) any refusal by a competent authority to grant a specific permission or any exemption in accordance with Article 7 and Article 8, any withdrawal of such a specific permission or exemptions and any cessations of business by a DLT market infrastructure.
6. ESMA shall monitor the application of the specific permissions, related exemptions and conditions attached thereto, granted in accordance with Article 7 and Article 8, as well as any compensatory or corrective measures required and shall submit an annual report to the Commission on how they are applied in practice.

Article 9a

Reporting of breaches and protection of reporting persons

Directive (EU) 2019/1937 shall apply to the reporting of breaches of this Regulation and the protection of persons reporting such breaches.

ESMA shall provide one or more secure communication channels for reporting breaches of this Regulation and comply with the requirements set out in Directive (EU) 2019/1937.

Article 10

Report and review

1. ***ESMA shall present to the Commission an early stocktaking report by ... [The three-year period assessment for the early-exit assessment should be calculated from the date of the entry into force of this Regulation] and, if the regime prescribed in this Regulation is not made permanent by modifications to relevant Union financial services legislation by then, a final report by [five years from the entry into application of this Regulation] on:***
 - (a) the functioning of DLT market infrastructures across the Union;
 - (b) the number of DLT MTFs **DLT SSSs and DLT TSSs** which have been granted a specific permission under this Regulation;
 - (c) the type of exemptions requested by DLT market infrastructures and the type of exemptions granted by competent authorities;

- (d) the number and value of DLT **financial instruments** admitted to trading on DLT MTFs, the number and value of DLT **financial instruments** recorded by CSDs operating DLT **SSSs**, and the number and value of **financial instruments traded and** recorded by DLT **TSSs**;
- (e) the number and value of transactions traded on DLT MTFs, settled by **DLT SSSs and traded on and settled by DLT TSSs**;
- (f) the type of DLT used and technical issues related to the use of DLT, including the matters referred to in point (b) of the second sub-paragraph of Article 9(1);
- (g) the procedures put in place by DLT MTFs **or DLT TSSs** in accordance with Article 4(3)(g);
- (h) any risks, **vulnerabilities and inefficiencies** presented by the use of a DLT **to investor protection, market integrity and financial stability, including novel types of legal, systemic and operational risks, which are not sufficiently addressed and any unintended effects on liquidity, volatility, financial stability, investor protection, and market integrity**;
- (ha) **risks of regulatory arbitrage or level playing field issues between DLT market infrastructures within the DLT pilot regime and between DLT market infrastructures and other market infrastructures using legacy systems**;
- (i) any interoperability issues between DLT market infrastructures and other infrastructures using legacy systems;
- (j) **any benefits and costs** resulting from the use of a DLT, in terms of **additional liquidity and financing to start-ups and SMEs, safety and** efficiency improvements, **energy consumption** and risk **mitigation** across the entire trading and post-trading chain, including without limitation, with regard to the recording and safekeeping of DLT **financial instruments**, the traceability of transactions **and enhanced compliance with know your customer and anti-money laundering processes**, corporate actions **and direct exercise of investor rights via smart contracts**, reporting and supervision functions at the level of the DLT market infrastructure;
- (k) any refusals by a competent authority to grant specific permissions or exemptions in accordance with Article 7 and Article 8, modifications or withdrawals of such specific permissions or exemptions as well as of any compensatory or corrective measures; and
- (l) any cessations of business by a DLT market infrastructure and the reasons for such cessation;
- (la) **the potential implications resulting from an increase of the thresholds referred to in Article 3, taking into account in particular systemic considerations and different types of DLT**;
- (lb) **an overall assessment of the costs and benefits of the pilot regime and a recommendation whether or not and under which conditions to proceed with the pilot regime.**

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

- (a) extended for another period *of two years, in the case of the early-stocktaking report referred to in paragraph 1*;
- (b) extended to other types of financial instruments that can be issued, recorded, transferred or stored on a DLT;
- (c) amended;
- (d) made permanent **■** *by appropriate modifications to relevant Union financial services legislation*; or
- (e) terminated, *with all permissions granted in accordance with Articles 3, 4, 57, 8, and 9 withdrawn*.

In its report *based on the ESMA report received at the latest five years from the entry into application of this Regulation in accordance with Paragraph 1*, the Commission **■** *shall make a recommendation to either terminate the pilot regime in accordance with point e) or to propose in accordance with point d) ■ appropriate modifications to the Union framework on financial services legislation or harmonisation of national laws that would facilitate the use of distributed ledger technology in the financial sector as well as any measures needed to bridge the transition of DLT market infrastructures out of the pilot regime.*

In the case of an extension as per point a), the Commission shall ask ESMA to submit, no later than three months before the end of the extension period provided for in point a), a report in accordance with paragraph 1. Upon receipt of that report from ESMA, the Commission shall submit to the European Parliament and the Council a report in accordance with this paragraph.

Article 10a

Interim reports

ESMA shall publish annual interim reports in order 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 to update previous indications based on the evolution of DLT. Those reports shall also provide an overall description of the pilot regime focusing on trends and emerging risks and shall be submitted to the European Parliament, the Council and the Commission. The first such report shall be published... [12 months after the date of entry into application of this Regulation].

Article 10b

Extension of deferral of MiFIR non-discriminatory access provisions for Exchange-Traded Derivatives (ETDs)

In Article 54, paragraph 2, of Regulation (EU) 600/2014, the date "3 July 2021" is replaced by the date "3 July 2023".

Article 11

Entry into force and application

This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

It shall apply from ... [please insert date **9** months after the date of entry into force of this Regulation].

Within three months from the entry into force of this Regulation, the Member States shall notify their competent authorities within the meaning of Article 2(21)(c), if any, to ESMA and the Commission. ESMA shall publish a list of such competent authorities on its website.

This Regulation shall be binding in its entirety and directly applicable in all Member States.
Done at Brussels,

For the European Parliament
The President

For the Council
The President

PROCEDURE – COMMITTEE RESPONSIBLE

Title	Pilot regime for market infrastructures based on distributed ledger technology		
References	COM(2020)0594 – C9-0305/2020 – 2020/0267(COD)		
Date submitted to Parliament	24.9.2020		
Committee responsible Date announced in plenary	ECON 13.11.2020		
Committees asked for opinions Date announced in plenary	ITRE 13.11.2020	IMCO 13.11.2020	LIBE 13.11.2020
Not delivering opinions Date of decision	ITRE 15.10.2020	IMCO 27.10.2020	LIBE 9.10.2020
Rapporteurs Date appointed	Johan Van Overtveldt 15.10.2020		
Discussed in committee	14.4.2021	14.6.2021	
Date adopted	13.7.2021		
Result of final vote	+: –: 0:	47 4 8	
Members present for the final vote	Gunnar Beck, Marek Belka, Isabel Benjumea Benjumea, Lars Patrick Berg, Stefan Berger, Francesca Donato, Engin Eroglu, Markus Ferber, Jonás Fernández, Frances Fitzgerald, José Manuel García-Margallo y Marfil, Luis Garicano, Sven Giegold, Valentino Grant, Claude Gruffat, José Gusmão, Eero Heinäluoma, Michiel Hoogeveen, Danuta Maria Hübner, Stasys Jakeliūnas, France Jamet, Othmar Karas, Billy Kelleher, Ondřej Kovařík, Georgios Kyrtos, Aurore Lalucq, Philippe Lamberts, Aušra Maldeikienė, Pedro Marques, Costas Mavrides, Jörg Meuthen, Csaba Molnár, Siegfried Mureşan, Caroline Nagtegaal, Luděk Niedermayer, Lefteris Nikolaou-Alavanos, Piernicola Pedicini, Kira Marie Peter-Hansen, Sirpa Pietikäinen, Dragoş Pîslaru, Evelyn Regner, Antonio Maria Rinaldi, Joachim Schuster, Ralf Seekatz, Paul Tang, Irene Tinagli, Ernest Urtasun, Inese Vaidere, Johan Van Overtveldt, Stéphanie Yon-Courtin, Marco Zanni, Roberts Zīle		
Substitutes present for the final vote	Manon Aubry, Herbert Dorfmann, Eugen Jurzyca, Eva Kaili, Margarida Marques, Jessica Polfjärd, Stéphane Séjourné		

FINAL VOTE BY ROLL CALL IN COMMITTEE RESPONSIBLE

47	+
ECR	Lars Patrick Berg, Michiel Hoogeveen, Johan Van Overtveldt, Roberts Zile
PPE	Isabel Benjumea Benjumea, Stefan Berger, Herbert Dorfmann, Markus Ferber, Frances Fitzgerald, José Manuel García-Margallo y Marfil, Danuta Maria Hübner, Othmar Karas, Georgios Kyrtos, Aušra Maldeikienė, Siegfried Mureşan, Luděk Niedermayer, Sirpa Pietikäinen, Jessica Polfjärd, Ralf Seekatz, Inese Vaidere
Renew	Engin Eroglu, Luis Garicano, Billy Kelleher, Ondřej Kovařík, Caroline Nagtegaal, Dragoş Pîslaru, Stéphane Séjourné, Stéphanie Yon-Courtin
S&D	Marek Belka, Jonás Fernández, Eero Heinäluoma, Eva Kaili, Aurore Lalucq, Margarida Marques, Pedro Marques, Costas Mavrides, Csaba Molnár, Evelyn Regner, Joachim Schuster, Paul Tang, Irene Tinagli
Verts/ALE	Sven Giegold, Claude Gruffat, Philippe Lamberts, Piernicola Pedicini, Kira Marie Peter-Hansen, Ernest Urtasun

4	-
NI	Lefteris Nikolaou-Alavanos
The Left	Manon Aubry, José Gusmão
Verts/ALE	Stasys Jakeliūnas

8	0
ECR	Eugen Jurzyca
ID	Gunnar Beck, Francesca Donato, Valentino Grant, France Jamet, Jörg Meuthen, Antonio Maria Rinaldi, Marco Zanni

Key to symbols:

+ : in favour

- : against

0 : abstention