

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

General

As stated in our more detailed [position paper](#) on the topic from early this year, we highly welcome the pilot regime as an important and innovative regulatory tool to enable both the development of DLT-based secondary markets infrastructure in the private market and regulatory insights on the topic in the political institutions. We strongly commend the European Commission on having chosen this forward-looking approach and consider it a potential role model for further Blockchain-related policies, if implemented correctly.

We are of the opinion that the right balance between innovation and security has to be found when it comes to financial markets regulation. Therefore, we acknowledge that the time-limited pilot regime gives some room for experimentation and could inspire lessons to draw from for adjustments in the existing regulatory framework. However, with regard to the currently discussed entry barriers, limits on transferable securities (thresholds) and timeframes, we believe that the regime is not sufficiently attractive for neither established (low volume thresholds) nor new market players (high entry barriers). This could result in a “non-starter-project” and hence jeopardize its original two-fold goal mentioned above. We therefore urge all involved political stakeholders in the European Commission, the European Parliament and the Council of the EU to consider final adjustments particularly concerning the following aspects.

Specific

▪ Entry barriers

According to the ECON draft report, MiFID firms should no longer be allowed to request exemptions to undertake specific activities currently undertaken only by a central securities depository (CSD) and combine both trading and post-trading activities when operating a DLT MTF within one legal entity. While we acknowledge the “same business, same risk, same rules” approach, this claim should be reconsidered, given the secure and restricted environment of the pilot-regime. This would drastically increase the entry barriers for new players which – in this case – would need to be fully licensed under MiFID II and CSDR, if they would want to offer both kind of activities. This would thwart the original goal to facilitate experimentation within limited regulatory exemptions and limit the desired regulatory findings of the pilot regime. We strongly support the idea to allow for some exemptions for DLT MTFs as outlined in the initial proposal, even as we want to highlight that the necessary level of security must be comparable to the existing frameworks to ensure investor protection, a level playing field between different kind of financial market infrastructures and not to endanger financial stability and market integrity. Further, a higher degree of flexibility and some guidance on possible cooperations with shared responsibilities, e.g. between DLT MTFs or DLT SSS with crypto custodians for the safekeeping of the DLT-based securities, is crucial for the adoption and success of pilot regime in the market.

▪ Thresholds

The EP-Rapporteur proposes to decrease the maximum market capitalization of the DLT transferable securities to less than 50 M Euro for both bonds (from 500 M) and shares (from 200 M), while the total amount of DLT-based securities registered remains at 2,5 B Euro. These lowered thresholds could be deemed less attractive and limit participation. We therefore would ask to use the thresholds proposed by the European Commission, in accordance with the recent [opinion provided by the European Central Bank](#). However, the thresholds could be carefully re-

evaluated and potentially adjusted during regular, e.g. yearly, reviews of the regime in order to guarantee market integrity and financial stability.

- **Timeframe & exit strategy**

In addition to the pilot regime report by ESMA 5 years after its entry into force, the EP-Rapporteur suggests a report after 3 years as well. In line with our advocacy for more flexibility regarding operated functions and volume thresholds agree with this approach of more transparency but would call for yearly reviews in order to account for the rapidly changing DLT ecosystem. Furthermore, the pilot regime should outline criteria for a clear-cut transition-strategy for participating companies (see Art 6.6), as the current proposals on the regime are not precise enough on this requirement for firms. Without calculable projections for the time after the regime and a way to make an effective transition into the regular or potentially adjusted financial regulatory framework, companies will hesitate to invest their resources into it.

- **Technology neutrality**

The EU Commission draft only mentioned “proprietary DLT” explicitly. We strongly support the EP-Rapporteur’s amendment making it clear that liability for the functioning and the rule-compliant offering of any particularly DLT always remains with the responsible actor(s) operating the DLT market infrastructure, regardless of the type of DLT used. Recently, the European Investment Bank (EIB) [issued its first digital bond](#) on a public Blockchain (Ethereum). It would heavily restrain capital market innovation if market infrastructures under the DLT pilot regime weren’t enabled to follow the EIBs example.