

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

ABI's observations

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

ABI welcomes the European Commission's proposed pilot regime for market infrastructures based on distributed ledger technology (DLT), providing a harmonised legal framework that allows European capital markets to adopt this technology. We fully share the Commission's objective to make Europe fit for the digital age by ensuring that the EU's financial services regulatory framework is innovation-friendly and does not obstruct the application of new technologies. This proposal, together with the proposal for a bespoke regime for crypto-assets, represents the first concrete action in this area, seeking to provide appropriate levels of consumer and investor protection, provide legal certainty for crypto-assets, enable innovative firms to make use of DLT, and ensure financial stability.

We support the identified 'sandbox' approach as a space for experimentation in a controlled environment. This would allow temporary exemptions from current regulations to let market operators experiment and deepen their knowledge of the practical application of DLT technology in market infrastructures.

The legal certainty of a regulatory framework applicable to all actors and instruments in this new DLT ecosystem is considered key to the creation of innovative value-added solutions within this market. We therefore support the use of a regulation rather than a directive, as this limits the risk of non-homogeneous transposition into national laws.

Furthermore, it is important that the L1 regulation contains the whole legal framework for crypto-assets. Specifically, the L1 regulation should include not only all the definitions needed to apply the discipline correctly, but also all the requirements, authorizations and supervision to which market operators will be subject. This solution would limit as much as possible non-convergent choices by member states when adapting their existing national regulations.

The L2 regulation should only include operational rules intended to clarify and enrich the content provided in the L1 regulation.

1. ESMA's report

The Regulation requires ESMA to submit a detailed report on the pilot regime to the Commission after a period of five years, at the latest. Based on ESMA's assessment, the Commission will produce a report including a cost-benefit

analysis to determine whether the pilot scheme should be maintained as-is or modified, whether it should be extended to new classes of financial instrument, whether targeted changes to the ordinary EU framework in this area should be considered to allow the widespread use of DLT, or whether the pilot should be terminated. Although the Commission's proposal is welcome, ABI considers 5 years too long for ESMA's report to the Commission, given the evolution of technology and financial innovation. It will be important to have more frequent information on the evolution of the pilot regime, thus allowing operators to understand whether they need to review their activities. The issue of a mid-term report by ESMA, to help understand possible adjustments to the pilot regime based on the evolution of technology and first experiences, would seem to be more appropriate.

2. Termination period

The proposed option to terminate the pilot regime following ESMA's report should be better defined. The investment by operators to start the project will be substantial and it will be necessary to continue the activities in order to recover it. That said, a phase-out should be envisaged that allows operators to leave the pilot regime gradually, recovering as much as possible of the costs incurred.

3. Inclusion of financial institutions

ABI appreciates the proposal's intent to facilitate technological neutrality and promote innovation. However, we would like to suggest extending the scope of the legislation to better achieve the aim of the proposed Regulation. The draft regulation limits the pilot regime exclusively to "investment firms or market operators managing a DLT MTF" and "CSDs managing a DLT securities settlement system".

The exclusion of investment firms and banks offering DLT securities trading and settlement services from the scope of the pilot regime could undermine some of the fundamental objectives formulated by the Commission.

Global custodian banks can provide a unique perspective for the development of European DLT capabilities, thanks to their experience gained in global markets and by offering full middle and back office and trading services. We recommend rethinking the model for the pilot regime to include recognition of the role of these operators and their services.

Intermediaries not only provide services that clients need to make their investments, but they also accomplish the important role of supporting investors in their decisions (i.e. by providing advisory services) and applying rules of conduct aimed at protecting retail and other investors (i.e. MiFID client profiling and appropriateness / suitability testing).

It may be worth considering that the application of a distributed paradigm can reshape traditional roles. Thus, we believe that the scope of the pilot regime should recognize the role of investment firms and banks from the very beginning.