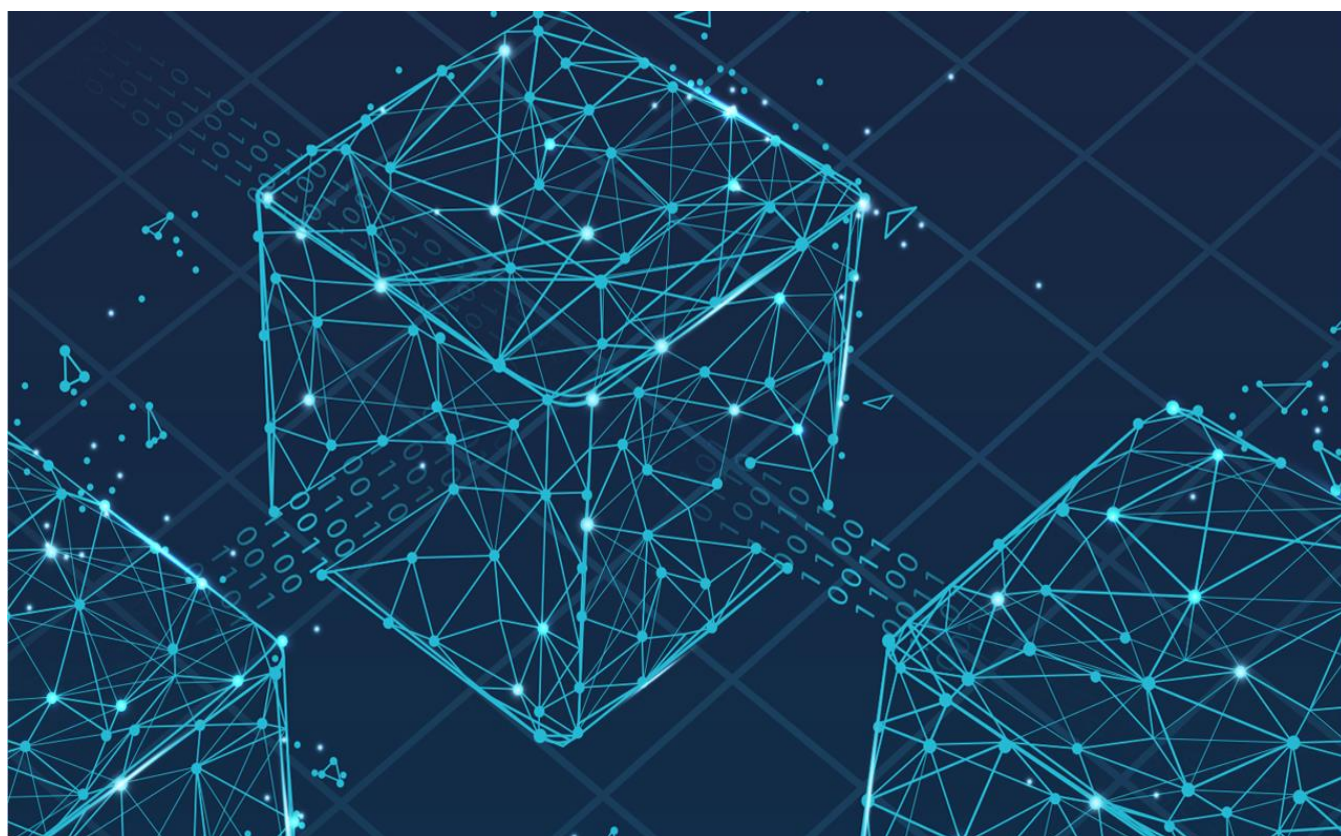


NEWSLETTER DIRITTO BANCARIO E DEI MERCATI FINANZIARI



FINANCIAL MARKETS AND DISTRIBUTED LEDGER TECHNOLOGY EU REGULATION

Reading time: 2 min

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 (“Pilot Regime”) (which you can find [here](#)) accompanied by the Commission Staff Working Document Impact Assessment (which you can find [here](#)) is intended to allow the development of a secondary market for crypto-assets as necessary and ideal complement to MICA. The proposed regime for the DLT

(Distributed ledger technology)-based market infrastructure could be characterized as a sandbox, as it imposes clear limits on operators and grants regulatory exemptions within these limits. Moreover, it has a temporally limited duration (six years) so that, at a later time, it will be possible to carry out the necessary work of adaptation based on the experiences that will be thus gained.

SCOPE

Regarding its scope, the Pilot Regime distinguishes between two types of DLT market infrastructures as it is open for market participants operating multilateral trading facilities (MTF) or securities settlement systems (SSS) using DLT. Notably, such actors have to be authorised as an investment firm or a market operator under Directive 2014/65/EU (MiFID II) or as a Central Securities Depository under Regulation 909/2014 (CSDR)

DEFINITIONS

As to the key terms and definitions, it is important to recall the following:

1. DLT transferable securities means transferable securities within the meaning of Article 4(1) (44) (a) and (b) of MiFID II that are issued, recorded, transferred and stored using DLT;
2. DLT multilateral trading facility' or (DLT MTF) means a 'multilateral trading facility', operated by an investment firm or a market operator, that only admits to trading DLT transferable securities and that may be permitted, on the basis of transparent, non-discretionary, uniform rules and procedures, to: (i) ensure the initial recording of DLT transferable securities; (ii) settle transactions in DLT transferable securities against payment; and (iii) provide safekeeping services in relation to DLT transferable securities, or where applicable, to related payments and collateral, provided using the DLT MTF; and
3. DLT securities settlement system (DLT SSS) means a securities settlement system, operated by a 'central securities depository', that settles transactions in DLT transferable securities against payment. The Pilot Regime also relies on other definitions in MiFID and CSDR.

ELIGIBLE SECURITIES

Only transferable securities that meet the following conditions may be admitted to trading on a DLT MTF and recorded by a CSD operating a DLT SSS:

- shares, the issuer of which has a market capitalisation or a tentative capitalisation of less than EUR200m; or
- convertible bonds, covered bonds, corporate bonds, other public bonds and other bonds, with an issuance size of less than EUR500m.

Noticeably, the total market value of DLT transferable securities recorded by each DLT market infrastructures must not exceed €2.5bn.

REQUIREMENTS

Both MTF and SSS DLT market infrastructures are subject to the requirements applicable to traditional MTF or SSS under the current financial regulations even though the Pilot Regime sets out several exemptions for DLT market infrastructures. Specifically, DLT market infrastructures are subject to requirements as to the business plan, functioning of the DLT, IT/cyber arrangements, safekeeping arrangements, disclosure obligations, and exit strategy. Notably the Pilot Regime sets out a semi-annual report obligation to the NCA and ESMA, which, in their oversight function, may require corrective measures and may even withdraw the authorisation.

EXEMPTIONS

As said, market participants may apply for exemptions from certain requirements that may be hard to comply with in the context of distributed systems. Specifically, a DLT MTF shall be exempted from Article 3(2) of CSDR to allow the admission to trading of DLT transferable securities that are not recorded in a CSD but instead are recorded in the MTF's distributed ledger. Likewise, a DLT SSS may be exempted from several provisions, including but not limited to articles

2(4), 2(9), 2(28), 3, 37 and 38 of CSDR on dematerialised form, transfer of orders, securities accounts, recording of securities, integrity of issue and segregation of assets so that it can record DLT transferable securities on its distributed ledger. Any DLT market infrastructure shall be allowed to use the so-called settlement coins to clear transactions and be able to request an exemption from the obligation of intermediation (to provide direct access to retail clients).

Importantly, in order to be exempted under the Pilot Regime, market participants must demonstrate that the exemption is proportionate and limited to the use of DLT and is not extended to any other MTF or securities settlement system operated by the same investment firm, market operator, or CSD.

CONCLUSION

To conclude, the DLT Pilot Regime proposal is a remarkable step in the right direction as it creates a dynamic regulatory framework. However, the very fast technical and financial progress of DLT may clash with the length of EU legislative process and entry into force of relevant rules.

Andrea Luciano
Partner
FINLAW/Dipartimento di Diritto
Finanziario
a.luciano@lslex.com

Diego Del Principe
Associate
d.delprincipe@lslex.com