



## ESMA's call for evidence on DLT pilot regime and review of MiFIR regulatory technical standards on transparency and reporting

[Link to the paper: Call for evidence on DLT pilot regime and review of MiFIR regulatory technical standards on transparency and reporting](#)

### **1.- Target audience (potential stakeholders):**

This call for evidence is primarily of interest to:

- trading venues, securities settlement systems and entities that are considering operating under the pilot regime for market infrastructures based on distributed ledger technology (DLT); and
- market participants that plan to use market infrastructures based on DLT.

The CNMV would appreciate it if all the above-mentioned potential stakeholders were to send a copy of their responses to the call for evidence to the following email address: [Documentosinternacional@cnmv.es](mailto:Documentosinternacional@cnmv.es)

### **2.- Information Note**

ESMA published this public consultation on 4 January to seek feedback from stakeholders on the need to amend the regulatory technical standards developed under MiFIR on pre- and post-trade transparency and data reporting requirements in the context of the draft Regulation on a pilot regime for market infrastructures based on distributed ledger technology (DLT Pilot Regime).

Recital 41 of the future Regulation requires ESMA to carry out a comprehensive assessment of the regulatory technical standards developed under MiFIR relating to certain pre-and post-trade transparency and data reporting requirements, in order to propose any amendment or adaptation necessary to ensure that the rules contained therein can be effectively applied to financial instruments issued using DLT.

Although the DLT Pilot Regime has not yet been approved, a political agreement was reached between the European Parliament and the Council on 24 November 2021. ESMA considers it important to already consult at this stage since the DLT Pilot Regime is likely to start being applicable in the beginning of 2023, which leaves little time for assessing the potential amendments needed.

The structure of the document is as follows:

Section 3.- Main elements of the DLT Pilot Regime.

The aim of the DLT Pilot Regime is to develop the trading and settlement of financial instruments issued using systems based on DLT, as well as to enable market operators and EU

regulators to gain experience on new opportunities and issues arising from this technology, while ensuring financial stability, investor protection and market integrity.

The DLT Pilot Regime has three categories of DLT market infrastructures: 1) DLT multilateral trading facilities (DLT MTFs); 2) DLT securities settlement systems (DLT SSSs); and 3) DLT trading and settlement systems (DLT TSSs). These market infrastructures must be subject to both MiFID II (for trading services) and to the Central Securities Depositories Regulation (for their registration, settlement or custody services).

DLT market infrastructures shall obtain a specific authorisation allowing for temporary exceptions to some requirements under MiFID II and the Central Securities Depositories Regulation (CSD Regulation), providing that it can be demonstrated that the application of the provision, for which the exception is requested, is incompatible with the use of DLT, they propose compensatory measures to achieve the objectives under the provisions in respect of which the exception is requested and comply with the specific conditions attached to such exemptions. The National Competent Authority (NCA) shall detail in the specific authorisation granted to each DLT market infrastructure any other additional measures required to address the new forms of risks deriving from the use of DLT.

Section 4.- Questions on the use of DLT for trading and settlement of financial instruments.

The use of DLT for trading and settlement is new, and consequently, both market participants as well as NCAs and ESMA have no experience with respect to DLT market infrastructures or the potential challenges for their operation. ESMA is contacting stakeholders that are potentially interested in operating a DLT market infrastructure. Any information enabling it to assess potential amendments to the technical standards to which this consultation refers shall be assessed, as shall any other information enabling it to prepare for further amendments under the future Regulation.

Section 5.- Questions on the regulatory technical standards relating to pre- and post-trade transparency requirements and data reporting requirements for transaction data, as well as the need to amend such requirements.

The paper presents potential amendments/adaptations of a set of regulatory technical standards (RTSs) and in some cases, proposals are made for such amendments. Potential amendments must take into account the overall objective of removing obstacles hampering the use of DLT and to create legal certainty for the use of DLT for trading and settlement of financial instruments. The amendments should not result in an increased regulatory burden for DLT market infrastructures (DLT MIs) compared to traditional market infrastructures.

The regulatory technical standards analysed are the following: RTS 1 (transparency requirements for shares - including UCITS exchange-traded funds); RTS 2 (transparency requirements for instruments other than shares); RTS 3 (double volume cap mechanism and the provision of information for the purposes of transparency and other calculations); RTS 22 (transaction reporting); RTS 23 (standards and formats for financial instrument reference data); RTS 24 (maintenance of relevant data relating to orders in financial instruments); and RTS 25 (business clock synchronisation).

Section 6.- The possibility of regulators directly accessing DLT to perform their functions.

The paper raises the issue concerning the way in which DLT MTFs and DLT SSSs shall grant direct and immediate access of transaction data to regulators by admitting them as observer

participants in their systems. Specifically, it poses the question of whether MiFIR requirements of reporting transactions to NCAs and reference data to ESMA may raise issues in DLT infrastructures. Technical obstacles could be related to the scalability of the system and the use of ISO 20022 (readable format without transformation), the encryption and decryption of data, the governance of the DLT systems (regulators with a node observer cannot be node validators) and the interoperability of the systems.

Annex 1.- List of 60 questions included in the consultation paper.

Next steps

ESMA shall take into account the comments received to determine whether amendments or adaptations to the regulatory technical standards analysed in this paper are necessary. Should ESMA conclude that such amendments are necessary, ESMA would issue a new public consultation before submitting the final draft regulatory technical standards to the European Commission for adoption.

### **3.- Submission of comments**

The consultation period ends on **14 March 2022**.

Respondents may send their comments through ESMA's website: [www.esma.europa.eu](http://www.esma.europa.eu). Both the paper of this call for evidence and the response form are available in the section [Consultations](#) (place the cursor on the word to obtain the link).

Likewise, as indicated above, the CNMV would also appreciate it if stakeholders could send a copy of their responses to the call for evidence to the following address:

[Documentosinternacional@cnmv.es](mailto:Documentosinternacional@cnmv.es)

CNMV  
Dirección de Asuntos Internacionales  
c/ Edison 4  
28006 Madrid