

**AFG’S AMENDMENTS ON EUROPEAN COMMISSION’S PROPOSAL FOR A REGULATION ON A PILOT REGIME FOR MARKET INFRASTRUCTURES BASED ON DISTRIBUTED LEDGER TECHNOLOGY (APRIL 15, 2021)**

AFG welcomes the objective of the European pilot regime to create a transitional regulatory framework which covers crypto assets that qualify as financial instruments (within the meaning of the MiFID 2 directive), and to allow in fine the EU institutions to determine whether a more substantial regulatory reform of EU laws (i.e., CSDR, SFD, MiFID 2) is required to accurately regulate DLT financial instruments-based projects. The European pilot regime as proposed by the European Commission is of such a nature as to provide legal certainty which would allow experiments to issue, custody and trade security tokens admitted to trading or traded in a trading venue.

**Amendment n° 1**

Article 2 - paragraph 1 - new point 6a

*Definitions*

Text proposed by the EC	Text proposed by the Rapporteur	AFG’s suggestion of amendment
	<p align="center"><b>Article 2 - paragraph 1 - point 6a (new)</b></p> <p>(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;</p>	<p align="center"><b>Article 2 - paragraph 1 - new point 6a</b></p> <p>(6a) ‘DLT fund units’ or ‘DLT fund units’ means units or shares of either (i) a UCITS within the meaning of Article 1(2) of Directive 2009/65/EC, or (ii) an AIF within the meaning of Article 4(1)(a) of Directive 2011/61/EU, that are issued, recorded, transferred and stored using DLT;</p>
<p align="center"><b>Justification:</b></p> <p>AFG recommends extending the scope of the DLT pilot regime through the inclusion of units of investment funds in the list of instruments admitted to trading on or settled by a DLT market infrastructure</p>		

**Amendment n°2**

Article 3 - paragraph 1 - point a

*Limitations on the transferable securities admitted to trading on or settled by a DLT market infrastructure*

Text proposed by the EC	AFG's suggestion of amendment
<p>Article 3- paragraph 1 - point a</p> <p>(a) shares, the issuer of which has a market capitalisation or a tentative market capitalisation of less than EUR <b>200 million</b>;</p>	<p>Article 3- paragraph 1 - point a</p> <p>(a) shares, <b>with an issuance size of less than EUR 500 million</b>;</p>
<p style="text-align: center;"><b>Justification:</b></p> <p>Regarding listed equities, the threshold of market capitalization of the issuer set at EUR 200 million is too restrictive, because it would allow the listing of equities of only a fraction of the existing SMEs. To strengthen the objective of the pilot regime, it seems reasonable to extend the transaction thresholds to the size of the issuance, and we consider fair to align it to EUR 500 million, same as for bonds issuance size. It should be emphasized that the potential issuers and investors of the experiments under the pilot regime will be primarily listed companies with a financial capacity sufficient to finance such experiment projects. This why we consider reasonable to align the equity threshold to the one applied to bonds, i.e., issuance amount less than EUR 500 million.</p>	

**Amendment n°3**

Article 3 - paragraph 1 - new point ba

*Limitations on the transferable securities admitted to trading on or settled by a DLT market infrastructure*

Text proposed by the EC	Text proposed by the Rapporteur	AFG's suggestion of amendment
	<p>Article 3 - paragraph 1 - new point ba</p> <p>(ba) DLT ETF units, investing in the types of instruments referred to in points(a) and (b).</p>	<p>Article 3 - paragraph 1 - <b>new point ba</b></p> <p><b>(ba) DLT fund units, investing in the types of instruments referred to in points (a) and (b).</b></p>
<p style="text-align: center;"><b>Justification:</b></p> <p>AFG recommends extending the scope of the DLT pilot regime through the inclusion of units of investment funds in the list of instruments admitted to trading on or settled by a DLT market infrastructure</p>		

**Amendment n° 4**

Article 3 - paragraph 3

*Limitations on the transferable securities admitted to trading on or settled by a DLT market infrastructure*

Text proposed by the EC	AFG's suggestion of amendment
<p style="text-align: center;">Article 3- paragraph 3</p> <p>The total market value of DLT transferable securities recorded in a CSD operating a DLT securities system shall not exceed <b>EUR 2.5 billion</b>.</p>	<p style="text-align: center;">Article 3- paragraph 3</p> <p>The total market value of DLT transferable securities recorded in a CSD operating a DLT securities system shall not exceed <b>EUR 10 billion</b>.</p>
<p style="text-align: center;"><b>Justification:</b></p> <p>AFG considers key to provide a flexibility until EUR 10 billion, which would represent the amount of 20 bond issuances at EUR 500 million, due to the fact that the pilot regime will be enforced for several years and therefore will strongly contribute to structure the European market of security tokens. Without such increase of the total market value of financial instruments registered on a DLT, the viability and adoption of the pilot regime by regulated entities in the years following its entry into force is significantly at risk.</p>	

**Amendment n° 5**

Article 9 - paragraph 5

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

Text proposed by the EC	AFG's suggestion of amendment
<p style="text-align: center;">Article 9 - paragraph 5</p> <p>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.</p> <p>ESMA shall inform all competent authorities on a regular basis of:</p> <ul style="list-style-type: none"> <li>(a) the reports submitted in accordance with paragraph 4;</li> <li>(b) the specific permissions and exemptions granted in accordance with Article 7 and Article 8 as well as the conditions attached thereto;</li> <li>(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.</li> </ul>	<p style="text-align: center;">Article 9 - paragraph 5</p> <p>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.</p> <p>ESMA shall inform all competent authorities on a regular basis of:</p> <ul style="list-style-type: none"> <li>(a) the reports submitted in accordance with paragraph 4;</li> <li>(b) the specific permissions and exemptions granted in accordance with Article 7 and Article 8 as well as the conditions attached thereto;</li> <li>(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.</li> </ul> <p style="color: red;">Furthermore, in order to ensure consistent harmonisation of this Article, ESMA may develop draft regulatory technical standards to specify the information to be provided in relation to the granting of specific permissions, related exemptions and conditions attached thereto.</p>

**Justification:**

The AFG recommends strengthening the coordination role attributed to the ESMA, by granting g in article 9.5 the power to develop draft regulatory technical standards similar to the power granted in other EU regulations.