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| Response Form to the Consultation Paper on guidelines on standard forms, formats and templates to apply for permission to operate a DLT market infrastructure |
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**Responding to this paper**

ESMA invites comments on all matters in this consultation paper and in particular on the specific questions. Comments are most helpful if they:

* respond to the question stated;
* indicate the specific question to which the comment relates;
* contain a clear rationale; and
* describe any alternatives ESMA should consider.

ESMA will consider all comments received by **9 September 2022**

**Instructions**

In order to facilitate analysis of responses to the Consultation Paper, respondents are requested to follow the below steps when preparing and submitting their response:

1. Insert your responses to the questions in the Consultation Paper in the present response form.
2. Use this form and send your responses in Word format (**pdf documents will not be considered except for annexes**);
3. Please do not remove tags of the type <ESMA\_QUESTION \_DLTM\_1>. Your response to each question has to be framed by the two tags corresponding to the question.
4. If you do not wish to respond to a given question, please do not delete it but simply leave the text “TYPE YOUR TEXT HERE” between the tags.
5. When you have drafted your response, name your response form according to the following convention: ESMA\_DLTM\_nameofrespondent\_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESMA\_DLTM\_ABCD\_RESPONSEFORM.
6. Upload the form containing your responses, **in Word format**, to ESMA’s website (www.esma.europa.eu under the heading “Your input – Open Consultations” -> Consultation Paper on the clearing and derivative trading obligations in view of the benchmark transition”).

**Publication of responses**

All contributions received will be published following the close of the consultation, unless you request otherwise. Please clearly and prominently indicate in your submission any part you do not wish to be publically disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. A confidential response may be requested from us in accordance with ESMA’s rules on access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by ESMA’s Board of Appeal and the European Ombudsman.

**Data protection**

Information on data protection can be found at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading [Legal Notice](http://www.esma.europa.eu/legal-notice).

**Who should read this paper**

# All interested stakeholders are invited to respond to this consultation. In particular, this paper may be specifically of interest to trading venues, CSDs or other entities envisaging to apply for specific permission to operate a DLT market infrastructure.

**General information about respondent**

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| --- | --- |
| Name of the company / organisation | DekaBank Deutsche Girozentrale |
| Activity | Banking sector |
| Are you representing an association? |  |
| Country/Region | Germany |

**Questions**

1. Do you have any comments or suggestions regarding the proposed guidelines? If so, please provide arguments supporting your comments and suggestions.

<ESMA\_QUESTION\_DLTM\_1>

Suggestion:

In most EU countries the regulatory basis for the issuance of native digital assets does not yet exist. In countries where such regulatory basis exists (such as Germany), authorised investment firms already use distributed ledgers to provide issuance, trading or custody services, or a combination of such services, for crypto-assets that qualify as financial instrument. Such financial instrument do not have any other representation outside the DLT Network operated by specifically authorised investment firms (as outlined below).

If we do not want to have DLT financial instruments trapped in silos, the role of such specific investment firm should be taken into due consideration in the proposed guidelines, f.i. by integrating a third scenario under Section 20 of the guidelines and /or allowing such investment firms to fulfill part of the requirements for a DLT MI by reference to the nationally regulated authorization.

Arguments:

Germany is among the few European jurisdictions having crypto-securities eligible under the DLTR. With the *Electronic Securities Act* of 2021 Germany made securities issuance on the distributed ledger operable. The assets recorded on the distributed ledger qualify as securities, more precisely either bonds or fund units. Ownership of the securities or other interests in securities are evidenced by the distributed ledger; the transfer of securities to another party occurs by way of corresponding updates to the ledger. The Electronic Securities Act recognizes the status of records on the ledger as well as its legal enforceability. The ledger constitutes by itself the relevant – and only - bookkeeping system.

Due to the importance of the distributed ledger where such crypto-securities are recorded, such ledger must be operated by a financial institution subject to prudential supervision acting as the so called *crypto-security-registrar* (hereinafter: the Crypto-Registrar). Issuance and settlements occur in principle by means of distributed ledger updates for which the Crypto-Registrar is legally responsible and liable.

In addition to recording ownership or legal holdings in securities, the Crypto-Registrar provides a bundle of functions that are close to those of a CSD in terms of investor protection, market integrity or financial stability. Just to mention an few, the Crypto-Registrar bears responsibility for reconciling individual holdings with the number for the total amount of the issue. It provides the notary and registration functions from a functional point of view and is legally responsible and liable for it. Once the Registrar updates the ledger, the settlement is considered legally enforceable and binding on third parties. The Crypto-Registrar must have full control over who can participate and who maintains a node in the Registrar’s DLT-based infrastructure. It must put in place a formal set of rules governing the relationship between the participants (i.e. issuers, intermediaries and investors) and itself.  The Crypto- Registrar must give access to other market participants on a non-discriminatory and transparent basis.

Last but not least, the Crypto-Registrar must put in place a description of the DLT used along with overall IT and cyber arrangements, the safekeeping arrangements for clients and arrangements for ensuring investor protection.

In this context there might be an overlapping between a) national legislation, where crypto securities do not have any other representation outside the DLT Network operated by the Crypto-Registrar and b) the DLTR that would oblige to replicate such recording on the distributed ledger of a CSD, potentially imposing a functionally redundant overlay to the trade lifecycle of a financial instrument.

For preventing such redundancy, authorized Crypto-Registrars should have the opportunity to fulfill part of the requirements for a DLT SS by reference to the nationally regulated authorization as Crypto-Registrar. The guidelines should at least take this option into consideration. <ESMA\_QUESTION\_DLTM\_1>

1. Is any clarification needed in respect of the content of certain items listed in the tables below? If so, please indicate.

<ESMA\_QUESTION\_DLTM\_2>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_DLTM\_2>

1. Do you consider more specific forms or templates should be developed for certain items? If so, please specify.

<ESMA\_QUESTION\_DLTM\_3>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_DLTM\_3>