



European Securities and
Markets Authority

Reply form for the Call for Evidence (CfE) on the DLT Pilot Regime



4 January 2022

Responding to this paper

The European Securities and Markets Authority (ESMA) invites responses to the specific questions listed in the Call for Evidence (CfE) on the DLT Pilot Regime for published on the ESMA website.

Instructions

Please note that, in order to facilitate the analysis of the large number of responses expected, you are requested to use this file to send your response to ESMA so as to allow us to process it properly. Therefore, ESMA will only be able to consider responses which follow the instructions described below:

- use this form and send your responses in Word format (pdf documents will not be considered except for annexes);
- do not remove the tags of type <ESMA_QUESTION_DLTP_1> - i.e. the response to one question has to be framed by the 2 tags corresponding to the question; and
- if you do not have a response to a question, do not delete it and leave the text “TYPE YOUR TEXT HERE” between the tags.

Responses 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.

Naming protocol

In order to facilitate the handling of stakeholders’ responses please save your document using the following format:

ESMA_DLTP_NAMEOFCOMPANY_NAMEOFDOCUMENT.

e.g. if the respondent were ESMA, the name of the reply form would be:

ESMA_DLTP_ESMA_REPLYFORM or

ESMA_DLTP_ANNEX1

Deadline

Responses must reach us by **4 March 2022**.

All contributions should be submitted online at www.esma.europa.eu under the heading ‘Your input - Consultations’.



Publication of responses

All contributions received will be published following the end of the consultation period, unless otherwise requested. **Please clearly indicate by ticking the appropriate checkbox in the website submission form if you do not wish your contribution to be publicly disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure.** Note also that 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 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 under the headings 'Legal notice' and 'Data protection'.



General information about respondent

Name of the company / organisation	Deutsche Börse Group
Activity	Other Financial service providers
Are you representing an association?	<input type="checkbox"/>
Country/Region	Germany

Q1 Please provide any general observations or comments that you would like to make on this call for evidence, including any relevant information on you/your organisation and why the topics covered by this call for evidence are relevant for you/your organisation.

<ESMA_QUESTION_DLTP_1>

Deutsche Börse Group (DBG) appreciates the ongoing efforts on the EU- and Member States' level to make Europe fit for the digital age and to develop a Digital Single Market. We welcome the recent regulatory developments fostering innovation and the adoption of new technologies within the financial sector, including Distributed Ledger Technologies (DLT). We have been and continue to participate in the related regulatory initiatives, as DBG is committed to the European digital agenda and supports the organisation of existing and future markets in a secure and transparent manner - with increased innovation, flexibility, and efficiency.

Therefore, we are looking with interest at the political compromise reached last year on the Pilot Regime for DLT-based Market Infrastructures (DLT MI) and are evaluating its inherent opportunities and a potential participation.

We think it is important to ensure that technological progress and the opportunities it creates do not unfold unregulated, as this could result in potentially significant risks to market integrity, financial stability, and consumer protection. Furthermore, fundamental principles such as consumer protection, financial stability and the conduct of an orderly monetary policy must not be compromised and must be ensured, irrespective of the technology used. Rules and requirements are needed to promote confidence in the new technologies and ensure supervisors have the prerogative to take necessary action in the event of misconduct and clearly assign responsibilities, even in a "regulatory sandbox".

As we are still evaluating the DLT Pilot Regime, we are currently not in a position to provide detailed feedback, but may do so in the future. However, as a general comment, we do support ESMA's view regarding "technology neutrality" when it comes to potential amendments to MiFIR regulatory technical standards (RTS) and, we appreciate ESMA's two step approach of collecting market participants' feedback in this Call for Evidence first and consulting on potential concrete changes afterwards. Further we would like to share some overarching comments/general principles:

1. "Technology neutrality" and consistency. We share ESMA's view that the existing RTSs are designed in a "technology neutral" manner and that the introduction of new technologies should not lead to significant changes. Amendments to existing RTSs on reporting should be limited and need to ensure that the data/information regarding traditional financial instruments is comparable to those of their "tokenised" equivalents. Additionally, significant changes to the RTSs should be prevented in order to secure the "same business, same risk, same rules" principle. It should not matter whether a financial instrument is issued "traditionally" or on a DLT. We believe that this is important for all asset classes, regardless of whether they are already in scope of the DLT Pilot Regime or whether they would potentially be included in the future (e.g., derivatives).
2. Consistency between RTSs. Currently used RTSs should apply in the same way for the DLT Pilot Regime. It will be especially important if participants will have to leave the DLT Pilot Regime environment (either by reaching the thresholds or at the end of the regime) and potentially transit into the "regular" financial market regulatory framework. A lack of consistency would trigger complications and undesired developments when participants set off their transitional (exit) strategy, as they would have to abruptly change numerous internal procedures. Further, if the RTSs would remain unchanged, it would be easier to draw conclusive lessons from the DLT Pilot Regime.
3. Clear and quickly available transparency obligations and regulatory reporting rules. Even if it is uncertain whether participants would have the necessary authorisations and/or DLT MI ready at the same time the DLT Pilot Regime officially starts, it must be ensured that the relevant RTSs are in place and the connected requirements and regulatory expectations are clearly communicated as early as possible. Participants need clarity on which requirements they must comply with when

designing their systems to have them ready on day one. It is important to avoid situations where participants would be unsure what to report to whom and competent authorities' expectations would not be met. On the other hand, competent authorities must be able to detect potential misconduct and enforce compliance with the rules at all times.

4. Timely communication. Further, since the DLT Pilot Regime is only designed for a period of a few years, it could be detrimental for the success of the regime to waste time, e.g., due to a postponement of the application of some rules (cf. the introduction of the FIRDS/FITRS databases within the MiFIR context).

We would therefore appreciate if ESMA and national competent authorities could provide guidance on the respective RTSs and other relevant requirements ahead of the application of the DLT Pilot Regime. Even more as participants can ask NCAs for specific exemptions from existing rules and requirements like MiFID II and CSDR within the DLT Pilot Regime: This might lead to a complex situation in which some requirements will apply to some, but not all participants and potentially in different ways.

5. Clear transparency rules. We share ESMA's view that trading of the same DLT financial instruments on more than one DLT MTF or TSS or using more than one DLT SS could be limited without interoperability of the DLT systems (e.g., Paragraph 32). However, as transactions and the transfer of DLT financial instruments within one DLT MI between different investors are still possible due to changes within the same DLT infrastructure, it must be clear which transparency rules will apply in this case and decided which actor would have to report the necessary information.

<ESMA_QUESTION_DLTP_1>

Q2 Please indicate whether you/your organisation is planning to operate a DLT MI under the DLT Pilot and provide some high-level explanation of the business model

<ESMA_QUESTION_DLTP_2>

DBG is currently evaluating the different opportunities of the DLT Pilot Regime.

<ESMA_QUESTION_DLTP_2>

Q3 What are the key elements supporting the increased use of DLT in the field of financial services? What are the main obstacles, including in the technical standards, for the development and up-take of DLT-based solutions (listing, trading and settlement)? Do you plan to operate a restricted (permissioned) or unrestricted (permissionless) distributed ledger?

<ESMA_QUESTION_DLTP_3>

One major element supporting the use of DLT in the financial services sector is the increasing legal certainty on EU-level and on Member-States' level. However, it has to be made sure that the regulatory frameworks are consistent, compatible, and ideally harmonised.

<ESMA_QUESTION_DLTP_3>

Q4 Would you consider operating a DLT MTF Would you consider operating a DLT SS without operating at the same time a DLT MTF? If yes, under which conditions?

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Q5 Please provide an overview of how DLT securities trade in the current market structure (incl. what types of trading system are used, the relevance of secondary market



trading)? Do you see any challenges with the current market structure following the application of the DLT Pilot?

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Q6 Instrument status: Do DLT financial instruments have different characteristics than ‘standard’ shares, UCITS-ETFs and bonds? If yes, please elaborate and explain whether these different characteristics call for a different approach for the application of the transparency requirements?

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Q7 Transactions: Where are DLT financial instruments traded? Could there be OTC trading in those instruments?

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Q8 Transactions: Do the lists of transactions in Article 13 of RTS 1 and Article 12 of RTS 2 reflect relevant transaction types for DLT financial instruments? If not, please explain which types of transactions are missing and why they should be added to the lists of transactions.

<ESMA_QUESTION_DLTP_8>
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Q9 Can the current transparency requirements in RTS 1 and 2 be applied for DLT financial instruments (e.g. liquidity assessment, thresholds, flags, reporting fields) or would they need to be adjusted? If not, what should be the appropriate approach?

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Q10 Are there any standards (e.g. messaging, identification of accounts/users, product identifiers, reporting, etc.) in a DLT environment that should be taken into account when revising the RTS 1 and 2?

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Q11 Do you anticipate any problems that may emerge from the current liquidity concepts in Delegated Regulation (EU) 2017/567 and RTS 2 for the application of



related transparency requirements for DLT financial instruments? Please explain and make proposals on how such problems could be solved.

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Q12 Are DLT securities traded on different trading systems as ‘standard’ shares and UCITS-ETFs (mostly continuous trading and periodic auctions) or bonds (RFQ, voice trading)? Please explain.

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Q13 To what extent would the choice of trading protocols and applications have an impact on the trading of instruments and on the requirements to publish information according to RTS 1 and 2?

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Q14 Do the systems on which DLT financial instruments trade require tailored pre-trade transparency requirements as those per Table 1 Annex I of RTS 1 and Annex I of RTS 2?

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Q15 Would the use of restricted (permissioned) vs unrestricted (permissionless) DLT represent any difference in how the pre-trade transparency requirements should be applied?

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Q16 Is it in your view necessary to make changes to the calibration of waivers for DLT shares and UCITS-ETFs in RTS 1? Do you expect any implementation issues in the application of waivers also taking into account the above considerations?

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Q17 Is it in your view necessary to make changes to the calibration of waivers for DLT bonds in RTS 2? Do you expect any implementation issues in the application of wavers also taking into account the above considerations?



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Q18 What can be considered as close to real-time as possible for the publication of post-trade reports in the context of DLT-securities on DLT MIs?

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<ESMA_QUESTION_DLTP_18>

Q19 Are the current deferral periods for equity and non-equity instruments appropriate for DLT securities? Please, distinguish between DLT shares, ETFs and bonds.

<ESMA_QUESTION_DLTP_19>
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<ESMA_QUESTION_DLTP_19>

Q20 Is it necessary to amend the current fields and flags for post-trade transparency (modifications/cancellations/additions) for their application to DLT shares, ETFs (Tables 2, 3 and 4 of Annex I of RTS 1) and bonds (Annex 2 of RTS 2)? Do you expect any implementation issues on basis of the current fields and flags?

<ESMA_QUESTION_DLTP_20>
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Q21 Is it necessary to amend RTS 3 for the purpose of the DLT Pilot? Do you anticipate any problems with the application of RTS 3 under the DLT Pilot?

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Q22 Do you agree with the approach indicated in the above paragraph? Please justify your answer.

<ESMA_QUESTION_DLTP_22>
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<ESMA_QUESTION_DLTP_22>

Q23 Private individuals: Do you agree that DLT MTFs could report transactions on behalf of the private individual as part of the compensatory measure foreseen by Article 4(1)(c) of the pilot regime? Please explain your statement. What other solutions can be explored to address this data gap?

<ESMA_QUESTION_DLTP_23>
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<ESMA_QUESTION_DLTP_23>

Q24 Reporting status and transaction reference numbers (Fields 1 and 2): How will DLT MTF treat cancellations to correct previously submitted information as per Section 5.18 of ESMA Guidelines on transaction reporting being the information stored on DLTs immutable? Is it necessary to amend the current fields 1 and 2 for their application in the context of a DLT environment? Do you foresee any other reporting status other than New and Cancellation in the context of a DLT environment?

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Q25 Trading Venue Transaction Identification, TVTIC (Field 3): Is it necessary to amend the current field for its application in the context of a DLT environment? Do you expect any implementation issues on basis of the current fields? Should new fields be added in the context of a DLT environment?

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Q26 Executing entity and submission entity identification codes; MiFID II Investment Firm indicator (Fields 4-6); Buyer details and decision maker (Fields 7-15); Seller details and decision maker (Fields 16-24): Is it necessary to amend the current fields for their application in the context of a DLT environment? Do you expect any implementation issues on basis of the current fields? Should new fields be added in the context of a DLT environment?

<ESMA_QUESTION_DLTP_26>
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Q27 Transmission of an order (Fields 25-27): Is it necessary to amend the current fields for the application in the context of a DLT environment? Do you expect any implementation issues on basis of the current fields? Should new fields be added in the context of a DLT environment?

<ESMA_QUESTION_DLTP_27>
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Q28 Trader, algorithms, waivers and indicators (Fields 57-65): Is it necessary to amend the current fields for the application in the context of a DLT environment? Do you expect any implementation issues on basis of the current fields? Should new fields be added in the context of a DLT environment?

<ESMA_QUESTION_DLTP_28>
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Q29 Short selling field (Field 62): Is short selling possible? Does it depend whether it is a DLT MTF or a DLT MTF+DLT SSS? Is it necessary to amend the current field for the application in the context of a DLT environment? Do you expect any implementation issues on basis of the current fields?

<ESMA_QUESTION_DLTP_29>
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<ESMA_QUESTION_DLTP_29>

Q30 Transaction details (Fields 28-40): Is it necessary to amend the current fields for their application in the context of a DLT environment? Do you expect any implementation issues on basis of the current fields? Should new fields be added in the context of a DLT environment?

<ESMA_QUESTION_DLTP_30>
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Q31 What are your views on the arrangements that DLT MTFs would need to establish to ensure the provision of complete and accurate reference data to ESMA? Do you think that the current arrangements described in RTS 23 should be amended to ensure its application in the DLT environment? Do you expect any implementation issues on basis of the current RTS 23?

<ESMA_QUESTION_DLTP_31>
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Q32 Issuer related fields (Field 5): Is it necessary to amend the current field for the application in the context of a DLT environment? Do you expect any implementation issues on basis of the current fields? Should new fields be added in the context of a DLT environment?

<ESMA_QUESTION_DLTP_32>
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Q33 Venue related fields (Fields 6-12): Is it necessary to amend the current field for the application in the context of a DLT environment? Do you expect any implementation issues on basis of the current fields? Should new fields be added in the context of a DLT environment?

<ESMA_QUESTION_DLTP_33>
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Q34 Notional (Field 13): Is it necessary to amend the current field for the application in the context of a DLT environment? Do you expect any implementation issues



on basis of the current fields? Should new fields be added in the context of a DLT environment?

<ESMA_QUESTION_DLTP_34>
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Q35 Bonds or other forms of securitised debt related fields (Fields 14 – 23): Is it necessary to amend the current field for the application in the context of a DLT environment? Do you expect any implementation issues on basis of the current fields? Should new fields be added in the context of a DLT environment?

<ESMA_QUESTION_DLTP_35>
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Q36 Do you agree with ESMA’s assessment that no major amendments to RTS 25 appear necessary for the implementation of the DLT Pilot?

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<ESMA_QUESTION_DLTP_36>

Q37 Do you think the definition of “order” is still applicable to the DLT context? Are the order record keeping requirements in Article 25 and related RTS 25 applicable in the DLT context? If yes, how do you envisage to comply with such requirements? If no, please justify your answer.

<ESMA_QUESTION_DLTP_37>
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Q38 Can chains of transmission on DLT financial instruments occur?

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Q39 Is it possible to split or aggregate orders? In or out the DLT? Or both?

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Q40 Does the concept of “Transmission of an order” defined in Article 4 of RTS 22 make sense in the context of DLT? If so, when would you consider an order to be transmitted?

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Q41 What do you consider are the phases of a DLT transaction? At what point in time can such a transaction in DLT securities be considered executed? How do you think “broadcast the transaction to the network” should be defined?

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Q42 Do you think the definition of “transaction” is still applicable to the DLT context?

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Q43 General fields (Fields 1 - 3), ISIN for RTS 1-3: Is it necessary to amend the current fields for the application in the context of a DLT environment? Do you expect any implementation issues on basis of the current fields? Should new fields be added in the context of a DLT environment?

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Q44 Should a new field indicating the DTI be added to RTS 23 and RTS 1-3? What kind of analysis could be performed on a tokenised security by coupling ISIN and DTI information?

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Q45 Is the ISIN sufficient to ensure uniqueness of a given tokenised financial instrument? Is there any element of the DTI standard that you consider should be added as a separate field in RTS 23 and RTS 1-3?

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Q46 Traditional reporting systems - RTS 22/23: Does the setting up of the traditional reporting systems as illustrated in Annex 1 of the ESMA Guidelines on transaction reporting make sense in the context of the pilot regime?

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Q47 Execution and IT infrastructure - RTS 22/23: Does the fact that execution takes place on a DLT has an impact on the investment firm's reporting system and requires setting up of separate/new IT infrastructures?

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Q48 ISO standards 20022 and RTS 22/23: Can ISO 20022 be implemented and used by DLT MTFs or DLT TSS and/or their members/participants to comply with the reporting required under Article 26 and 27 of MiFIR. Do you think ISO 20022 would represent an opportunity or an issue for DLT MTF? Please explain your statement.

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Q49 XML template of RTS 22/23: do you think that different formats might be more suitable to the DLT while keeping the common ISO 20022 methodology? If yes, please explain what the most appropriate format would be and for which reasons.

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Q50 Do you/your organisation plan to offer settlement of DLT securities in e-money tokens? If yes, what would be the most appropriate way for reporting these transactions? Do you agree with ESMA's proposal on how to populate the currency fields when the financial instrument is priced in e-money tokens?

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Q51 Do you consider it possible that transactions in DLT securities could be settled in different currencies and/or different e-money tokens? If yes, please explain what would be the most appropriate way for converting such transactions in EUR.

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Q52 What are your views on the arrangements that DLT MTFs and DLT TSSs would need to establish to grant direct and immediate access to transaction data to regulators by admitting them as regulatory observer participants? Do you expect any implementation issues in relation to the obligation to make MiFIR transaction data available to the NCAs and MiFIR transparency/ reference data to ESMA?

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Q53 Is it technically feasible to store on the DLT the details of the transaction according to ISO 20022 methodology in order to enable regulators to pull that data directly into a readable format without any transformation of the data? Do you believe that the use of ISO 20022 could have a significant negative impact in terms of scalability of the system and the related congestion risk? If yes, please justify your answer and specify if the impact is dependent on the type of governance model and technology that the DLT is using.

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Q54 Can all information to be reported under MiFIR Article 27 pursuant to Table III of the Annex to RTS 23 be recorded on the DLT according to the ISO 20022 methodology? Please explain your answer also in relation to scalability impact at DLT level.

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Q55 Can all data necessary to perform the transparency (Article 2 of RTS 3) and DVC (Article 6 of RTS 3) calculations be recorded on the DLT according to the ISO 20022 methodology? Please explain your answer also in relation to scalability impact at DLT level.

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Q56 Do you see any issue with obtaining the data elements required by RTS 22 and 23 from external databases like GLEIF, ISO 4217 list (currencies), ISO 10383 (MIC) or ANNA-DSB (ISIN) before the data is permanently stored into the distributed ledger? Please explain your answer.

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Q57 Do you see any major impediments for the regulator as a regulatory observer participant to pull large size of encrypted data from the distributed ledger? Please explain your answer in the context of encryption of data and key management, and in relation to any scalability impact at DLT level.

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Q58 Taking into consideration the variety of technologies available in the DLT world, what is, in your opinion, the most efficient way to admit regulators as regulatory observer participants? Please explain your answer.

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Q59 Do you have any suggestion to ensure interoperability among DLT MTFs, DLT TSS and the regulators as described in Paragraph 126? Please explain your answer.

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Q60 Do you have any suggestion to ensure interoperability among different DLT MTFs and/or DLT TSS as described in Paragraph 127? Please explain your answer.

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