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Luxembourg Newsflash - 22 March 2023

New DLT Pilot Regime arrives in Luxembourg

On 23 March 2023, both the DLT Pilot Regime and the Blockchain Law III will become applicable.

On 23 March 2023, Regulation (EU) 2022/858 on a pilot regime for market infrastructures based on distributed ledger technology (the “**DLT Pilot Regime**” or “**Regulation**”) will become applicable.

The DLT Pilot Regime will be the first applicable EU text focusing solely on the impact of distributed ledger technology (“**DLT**”) on financial markets.

As a first mover in digital finance, the Luxembourg Parliament voted Bill of law No. 8055 implementing certain aspects of the DLT Pilot Regime into law on 14 March 2023, making it the third Luxembourg law on DLT/Blockchain (“**Blockchain Law III**”).

1. What is DLT?

The DLT Pilot Regime defines a number of concepts around the underlying technology of crypto-assets.

Distributed ledgers are defined under the DLT Pilot Regime as “an information repository that keeps records of transactions and that is shared across, and synchronised between, a set of DLT network nodes using a consensus mechanism”.

In layman’s terms, distributed ledgers are a new manner of recording transactions in a shared way which permits novel forms for providing financial services whilst ensuring transparency and resiliency, and rendering unauthorised changes to those records more difficult.

2. Focus of the DLT Pilot Regime

The DLT Pilot Regime aims to integrate DLT into European financial services legislation, whilst maintaining investor protection, financial stability and transparency.

The DLT Pilot Regime was proposed as part of the European Digital Finance Package to tackle the legal uncertainties and difficulties relating to the issuance, trading and settlement of financial instruments on DLT.

It aims to introduce a pan-European regime to facilitate the use of DLT in the European financial services industry, notably for financial market infrastructures to integrate DLT into their models.

3. Recognition of financial instruments issued by means of DLT

Whilst the DLT Pilot Regime focuses primarily on financial market infrastructures, as a first step to enable the issuance and circulation of financial instruments on DLT, the European legislator has also introduced an amendment to the concept of financial instruments.

To address any legal uncertainties, Article 4(15) of Directive 2014/65/EU on markets in financial instruments ("**MiFID**") now includes an express reference to DLT in the definition of financial instruments:

"those instruments specified in Section C of Annex I, **including such instruments issued by means of distributed ledger technology**".

Therefore, financial instruments within the meaning in MiFID will now be covered by MiFID, whether they are issued by means of DLT or by traditional means. This also means that investment services and activities relating to financial instruments carried out on DLT will also be governed by MiFID rules, and that other European financial services regulations referring to financial instruments will also have direct application in the DLT arena.

In line with the above, Blockchain Law III amends the Luxembourg law of 5 April 1993 on the financial sector by modifying the concept of financial instrument, defined in Article 1.19.

4. (R)evolution of financial market infrastructures

To further bolster the use of DLT in financial markets, the Regulation sets out a temporary and optional regime for central securities depositories ("**CSD(s)**") (which can settle financial instruments under the status of DLT settlement system and multilateral trading facilities ("**MTF(s)**") (which can trade financial instruments under the status DLT MTF) to facilitate the issuance, trading and settlement of financial instruments on DLT.

Accordingly, the DLT Pilot Regime provides for temporary exemptions for up to 6 years from provisions in MiFID, MiFIR^[1] and CSDR^[2] that could preclude or limit the use of DLT, such as:

- Reporting requirements.
- The use of more traditional terminology under CSDR.
- The requirement to use central bank money where practical and available.

In addition, the DLT Pilot Regime also introduces two novelties for financial market infrastructures:

- Admission of natural persons under certain conditions.
- Creation of the status of DLT trading and securities settlement system ("**DLT TSS**"), whereby a CSD or MTF will be authorised to provide trading and settlement services.

CSDs and MTFs will be able to apply to their national competent authority for this status and will be able to trade and/or settle financial instruments on DLT under the asset classes and thresholds set out in the Regulation.

5. Timeline

Both the DLT Pilot Regime and the Blockchain Law III will apply as from 23 March 2023.

It is also worth noting that, on 8 March 2023, and as provided in the DLT Pilot Regime, the European Securities and Markets Authority (“ESMA”) published its Guidelines on standard templates, forms and formats to apply for permission to operate a DLT market infrastructure.

6. Other considerations

Blockchain Law III will modify the law of 5 August 2005 on financial collateral arrangements, as amended, to provide additional legal certainty for financial collateral arrangements over financial instruments booked in securities accounts held using DLT.

Our Expertise

Our experts [Marc Mouton](#), [Frédéric Schmit](#) and [Francisco Torrens Bermo](#) are at your disposal to further assess and advise on the impact of these new measures on your affairs.

If you require any assistance or advice on the Fintech regulatory framework and the new DLT Pilot Regime, please, contact our Fintech experts.

If you require any assistance or advice on the capital markets framework, please, contact our Finance & Capital Markets team.

[Read the Bill of law here_](#)

[Read the DLT Pilot Regime here_](#)

[Read ESMA Guidelines here_](#)

[Read the Arendt Newsflash on Blockchain I here_](#)

[Read the Arendt Newsflash Blockchain II here_](#)

[1] Regulation (EU) 600/2014 on Markets in Financial Instruments.

[2] Regulation (EU) 909/2014 on improving securities settlement in the European Union and on central securities depositories.

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