

EU pilot regime for market infrastructures based on DLT

Posted 15.07.2022

The long-awaited EU Pilot Regime creating a provisional regulatory framework to test the use of distributed ledger technologies ("**DLT**") in market infrastructures has been adopted. Regulation (EU) 2022/858 on a pilot regime for market infrastructures based on distributed ledger technology, and amending Regulations (EU) No 600/2014 and (EU) No 909/2014 and Directive 2014/65/EU, was published on 2 June 2022 ("**Pilot Regime**").

EU financial services legislation was not designed with distributed ledger technology and crypto-assets in mind, and contains provisions that potentially preclude or limit the use of DLT in the issuance, trading and settlement of crypto-assets that qualify as financial instruments. At the same time, regulatory gaps exist due to legal, technological and operational specificities related to the use of DLT and to crypto-assets that qualify as financial instruments.

The pilot regime will allow for certain DLT market infrastructures to be temporarily exempted from some of the specific requirements of EU financial services legislation that could otherwise prevent operators from developing solutions for the trading and settlement of transactions in crypto-assets that qualify as financial instruments, without weakening any existing requirements or safeguards applied to traditional market infrastructures. For example, subject to certain conditions, an exemption from the obligation of intermediation under Directive 2014/65/EU (MiFID II) will be possible.

The pilot regime will create a new optional EU status as DLT market infrastructure. The concept of DLT market infrastructure comprises DLT multilateral trading facilities (DLT MTF), DLT settlement systems (DLT SS) and DLT trading and settlement systems (DLT TSS). DLT market infrastructures can only admit to trading or record DLT financial instruments on a distributed ledger. DLT financial instruments are crypto-assets that qualify as financial instruments and which are issued, transferred and stored on a distributed ledger.

DLT market infrastructures and their operators will be subject to additional requirements compared

to traditional market infrastructures. The additional requirements are necessary to avoid risks related to the use of DLT or the way in which the DLT market infrastructure would operate.

Specific permission granted to an operator of DLT market infrastructure will broadly follow the same procedures as those for authorisation under Regulation (EU) No 909/2014 (CSDR) or Directive 2014/65/EU (MiFID II). However, when applying for specific permission under the Pilot Regime, the applicant needs to indicate the exemptions it is requesting.

Specific permission granted by a competent authority to an operator of DLT market infrastructure will indicate the exemptions granted to that DLT market infrastructure. It will be valid throughout the Union. Specific permission and exemptions will be granted on a temporary basis, for a period of up to six years from the date on which the specific permission was granted, and will be valid only for the duration of the pilot regime.

For covered market infrastructures and operators, the Pilot Regime will apply from 23 March 2023.

For any further information please contact us or visit our website at www.elvingerhoss.lu.

The information contained herein is not intended to be a comprehensive study or to provide legal advice and should not be treated as a substitute for specific legal advice concerning particular situations.

We undertake no responsibility to notify any change in law or practice after the date of this newsletter

ELVINGER HOSS PRUSSEN

Société anonyme, Registered with the Luxembourg Bar, RCS Luxembourg B 209469, VAT LU28861577