

EU legal framework for crypto assets and financial sector resilience: quick update

The EU is working on setting out the legal framework for Fintech. On a separate but connected note, the EU legislator also addresses risks carried by technological evolutions. This paper focuses on three pieces of legislation and legislation in preparation for shaping the future of financial markets.

The Pilot Regime for market infrastructure based on distributed Ledger Technology Regulation (the "EU DLT Pilot Regime")

- The EU DLT Pilot Regime provides for a temporary testing environment offering derogations from existing rules, which provides a legal framework for the trading and settlement of transactions in crypto assets that qualify as financial instruments within the meaning of MiFID II (true digital securities or security tokens).
- Through their relevant national authorities, authorised investment firms and market operators may apply to trading on a DLT Multilateral trading facility. Authorised Central securities depository (CSD) can apply for specific permission to operate a DLT settlement system. These two groups may apply for the operation of a combined DLT trading and settlement system, whereas new entrants will have the option to apply for temporary authorisations as investment firms, market operators or CSD to apply for the pilot regime.
- Adopted in May 2022, the EU DLT Pilot Regime will enter into force on 23 March 2023.
- On 27 September 2022, a bill of law was filed aiming at implementing the EU DLT Pilot Regime in Luxembourg by amending the Law of 5 April 1993 on the financial sector, the Law of 5 August 2005 on financial collateral arrangements and the Law of 30 May 2018 on markets in financial instruments. The bill of law is currently receiving the opinions of professional chambers and should thereafter be discussed in Parliament.

The Market in Crypto Assets Regulation proposal ("MiCA")

- MiCA is set to regulate the market of crypto-assets and set up obligations of registrations, authorisations, publication to the competent authorities, governance and

compliance for the issuers of crypto-assets.

- Once adopted, the Regulation will apply to all natural and legal persons and other undertakings that are engaged in the issuance, offer to the public and admission to trading of crypto assets or that provide services related to crypto assets in the Union. However, the Regulation will not apply to crypto assets qualifying as financial instruments under MiFID I and to UCITS funds.
- The European Parliament approved the current text of MiCA on 10 October 2022. The legislative procedure will continue through 2023. Formal adoption is expected in 2024-2025.

The Digital Operational Resilience for the financial sector Regulation proposal ("DORA")

- DORA sets out rules for financial entities, including full responsibility of the management body in ICT risks, the requirement to set up, maintain and test resilient ICT systems and tools or the requirement to report to the competent authorities only deemed major ICT-related incidents.
- All investment firms, managers of alternative investment funds, management companies and multiple other financial entities regulated at EU level will fall under DORA's scope of application.
- The Council of the European Union and the European Parliament are discussing the proposal in first reading under the ordinary legislative procedure. Formal adoption is expected in 2024-2025.

What's next?

Once adopted, the Regulations will be directly applicable across the European Union.

This may also interest you:

- [EU pilot regime for market infrastructures based on DLT](#)
- [CSSF White Paper on DLT and blockchain](#)
- [The CSSF publishes a White Paper on Distributed Ledger Technologies \(DLT\) and blockchain](#)
- [Issues with trading of tokenized securities in Luxembourg: the DLT Pilot Regime as solution?](#)
- [Luxembourg law recognises issuance of dematerialised securities in blockchains](#)
- [Luxembourg Bill of law to allow issuance of securities in DLT](#)
- [Securities can legally be held through blockchains](#)
- [Bill of Law 7363 was approved on 14 February 2019 – Luxembourg's confirmation that securities can be held through DLT-like technologies, including blockchains!](#)

[Subscribe to EHLO, our dedicated ICT, IP, media and data protection news](#)

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.