

Platis - Anastassiadis & Associates

The associate law firm of EY Greece

Regulation (EU) 2022/858 on Distributed Ledger Technology Market Infrastructures



Regulation (EU) 2022/858 on Distributed Ledger Technology Market Infrastructures sets out a pilot regime for the regulation of crypto-assets that qualify as financial instruments within the Union, on the one hand, and, on the other hand, the operation of distributed ledger technology market infrastructures, aiming to accommodate and facilitate the trading of DLT financial instruments in the Union and to facilitate digital innovation in the interest of consumers and market efficiency and move Europe forward as a global digital player.

On 2 June 2022, Regulation (EU) 2022/858 on a pilot regime for market infrastructures based on distributed ledger technology ("DLT") was published in the Official Journal of the European Union ("DLTR" or "Regulation"). The adoption of the DLTR has been an integral part of the 2020 EC Digital Finance

Strategy with the aim to facilitate digital innovation in the interest of consumers and market efficiency and move Europe forward as a global digital player.

1. Context & Purpose

The DLTR addresses the challenges arising from the “tokenisation” of financial instruments in terms of, among other things, investor protection, market integrity, energy consumption and financial stability. The phenomenon of “tokenisation” refers to crypto-assets, which are digitally represented on distributed ledgers, or traditional financial instruments issued in tokenised form by means of distributed ledgers, that, as a rule, fall outside the scope of European Union (“EU”) financial services law.

In this context, the purpose of the DLTR is to establish a pilot regime for market infrastructures based on distributed ledger technology to test such DLT market infrastructures, with the aim of allowing the development of crypto-assets that qualify as financial instruments and the development of DLT, while preserving a high level of investor protection, market integrity, financial stability and transparency, and avoiding regulatory arbitrage and loopholes.

2. Subject Matter & Scope

The DLTR lays down requirements in relation to DLT market infrastructures and their operators in respect of (i) granting and withdrawing specific permissions to operate DLT market infrastructures along with specific exemptions from the requirements of EU financial services legislation, including the Markets in Financial Instruments Directive and Regulation (MiFID2/MiFIR), and the Central Securities Depositories Regulation (CSDR); (ii) mandating, modifying and withdrawing compensatory or corrective measures; (iii) operating DLT market infrastructures; (iv) supervising DLT market infrastructures; and (v) cooperation between operators of DLT market infrastructures, competent authorities and the European Securities and Markets Authority (“ESMA”).

The DLTR defines “distributed ledger” 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. Following that, DLT financial instruments are defined as financial instruments issued, recorded, transferred and stored using distributed ledger technology.

Furthermore, the DLTR introduces the following three categories of DLT market infrastructures (“DLT MIs”):

- DLT Multilateral Trading Facilities (“DLT MTFs”), multilateral trading facilities that only admit to trading DLT financial instruments

- DLT Settlement Systems (“DLT SS”), i.e. settlement systems that settle transactions in DLT financial instruments against payment or against delivery
- DLT Trading and Settlement Systems (“DLT TSS”), i.e. DLT MIs combining services performed by a DLT MTF and a DLT SS.

Finally, the DLTR sets out qualitative limitations on the financial instruments, which fall under its scope, i.e. shares, debt securities, units in collective investment undertakings, and quantitative limitations on the value of financial instruments admitted to trading or recorded on DLT MIs, whereas it imposes relevant obligations to DLT MI Operators to calculate such value on a monthly basis.

In this respect, it should be noted that crypto-assets not qualifying as financial instruments within the meaning of MiFID II will fall under the scope of the forthcoming MiCA Regulation.

3. Permissions

The operation of a DLT MI is subject to prior permission and supervision by the competent authority designated by each member state by virtue of national supplementary legislation. Such permission may be granted to authorised investment firms, central securities depositories or regulated market operators. The relevant application should, among others, contain the applicant’s business plan, the rules of the DLT MI, a description of the DLT used along with overall IT and cyber arrangements, the safekeeping arrangements for clients and arrangements for ensuring investor protection. A specific permission shall be valid throughout the Union for a period of up to six years from the date of issuance. Under the framework of the permission, operators of DLT MIs shall be obliged to cooperate with competent authorities.

4. Exemptions

The pilot regime of the DLTR conditionally allows for DLT MIs to be temporarily exempted from 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.

Hence, according to the Regulation, DLT MIs are generally subject to MiFID II and the CSDR, yet may request limited exemptions from specific requirements, provided they comply with the conditions attached to those exemptions and compensatory measures ordered by the competent authority.

5. Additional Requirements

The DLTR also provides for additional requirements for operators of DLT MIs in order to tackle the risks associated with DLT financial instruments. In this respect, operators of DLT MIs are required, among others, to:

- Establish clear and detailed business plans describing how they intend to carry out their services and activities, which shall include a description of their critical staff, the technical aspects and use of DLT
- Make publicly available up-to-date, clear and detailed written documentation that defines the rules under which the DLT MI and its operator are to operate,

including the legal terms defining the rights, obligations, responsibilities and liabilities of operators, as well as those of the members, participants, issuers and clients using their DLT market infrastructure;

- Provide their members, participants, issuers and clients with clear and unambiguous information on their website regarding how the operators carry out their functions, services and activities, including the type of DLT used;
- Ensure that the overall IT and cyber arrangements related to the use of their DLT are proportionate to the nature, scale and complexity of their businesses and have in place specific operational risk management procedures for the risks posed;
- Have adequate arrangements in place to prevent the use of funds, collateral or DLT financial instruments under safekeeping on the operator's own account;
- Establish transparent and adequate arrangements to ensure investor protection, and shall establish mechanisms for handling client complaints and procedures for compensation or redress;
- Be liable vis-à-vis investors in the event of a loss of funds, a loss of collateral or a loss of a DLT financial instrument and establish transparent and adequate arrangements to ensure investor protection;
- Have in place additional prudential safeguards in

the form of own funds or an insurance policy;

- Carry out data processing in accordance with applicable Union law on the protection of personal data.

6. Principles of Supervision

When applying the DLTR, competent authorities should take into account the principles of technology neutrality, proportionality, the level playing field, and 'same activity, same risks, same rules' in order to ensure that market participants have the regulatory space to innovate, in order to uphold the values of transparency, fairness, stability, investor protection, accountability and market integrity, and in order to ensure the protection of privacy and personal data.

7. Next Steps

The Regulation shall enter into force on 22 June 2022 and will partly apply from 23 March 2023, except for the provisions of its articles 8 § 5, 9 § 5, 10 § 6 (ESMA Guidelines on Standard Forms and Templates) and 17 (Amendment to Regulation (EU) No 909/2014), which will apply from 22 June 2022, and its article 16 (Amendment to Regulation (EU) No 600/2014), which will retroactively apply from 4 July 2021.

ESMA has already launched its public consultation on two sets of guidelines, setting out, on the one hand, the minimum instructions that NCAs should provide to DLT MI Operators for submitting their applications to them and, on the other hand, the standard forms, formats and templates that DLT MI Operators will be required to use when applying before NCAs to operate DLT MIs.

In essence, the DLTR establishes a temporary pilot regime for the regulation of DLT financial instruments. It is, therefore, expected that the experience gained from the application of the DLTR pilot regime will help identify possible practical proposals for a suitable and more permanent regulatory framework which will succeed the DLTR as regards the issuance, safekeeping and asset servicing, trading and settlement of DLT financial instruments.

The Regulation is available [here](#).

The ESMA proposed Guidelines are available [here](#).

About Platis - Anastassiadis & Associates

Platis - Anastassiadis & Associates is part of the EY Law network operating in 90 countries globally and is comprised of 3,500+ people.

We are an independent law office with a core team of 35 lawyers. Our office provides high quality legal services across the full range of commercial and financial transactions.

Especially in our geographical area, we have established an ongoing cooperation with the respective law firms which are associated with EY, in order to offer seamless and consistent regional services to our clients that have cross country operations.

Our experience allows us to better understand our clients' needs and offer them integrated multidisciplinary solutions in the fields of accounting, tax and financial advisory services. Platis - Anastassiadis & Associates law office is solution focused. We work closely with our clients to seek innovative and practical ways of dealing with their issues. Our priority is to help our clients meet their business objectives. Our expertise, commitment and enthusiasm has resulted in the build up of a client base which includes local and international listed, state and private sector companies and financial institutions.

For more information on digital law issues, please contact:

Eirinikos Platis

Partner

eirinikos.platis@gr.ey.com

Antonios Broumas

Manager

antonios.broumas@gr.ey.com

at the

Platis - Anastassiadis & Associates Law Partnership

Tel.: +30 210 2886 512

Email: platisanastassiadis@gr.ey.com

© 2022

All rights reserved

Platis - Anastassiadis & Associates Law Partnership is associated with EY.

Partners: E. Platis, A. Anastassiadis

Partnership is registered with the Athens Bar, registration number 80240

List of our associates upon request.

This document contains information in summary form and is therefore intended for general guidance only. It is not intended to be a substitute for detailed research or the exercise of professional judgment. Neither EYGM Limited nor any other member of the global EY organization can accept any responsibility for loss occasioned to any person acting or refraining from action as a result of any material in this publication. On any specific matter, reference should be made to the appropriate advisor.