

Luther.

Vote of the bill of law n°8055 in relation with the Pilot Regime Regulation: Luxembourg is getting its ducks in a row



Pilot regime is about to kick off

In order to allow financial market participants to fully explore and take advantage of the opportunities offered by the distributed ledger technology (DLT), which at the same time tackles the lack of authorised financial market infrastructures using DLT to provide trading and/or settlement services without however impairing investor protection, Regulation (EU) 2022/858 on a pilot regime for market infrastructures based on DLT (the **Pilot Regime Regulation**) has been adopted and is supposed to apply from 23 March 2023.

The Pilot Regime Regulation introduces a pilot regime setting up the conditions for operating a DLT market infrastructure and admission and trading of DLT based financial instruments on such infrastructures and allowing the competent authorities of Member States to waive certain provisions which may

impair the foregoing. The provisions of the Pilot Regime Regulation are directly applicable under Luxembourg law.

To support the above and in the continuing effect to promote the DLT, the definition of financial instruments included in the MiFID II Directive has been amended by the Pilot Regime Regulation, so to encompass instruments issued by means of DLT.

Luxembourg is getting ready

To implement under local law, amongst other items, the above-mentioned amended definition of “financial instruments”, the bill of law n° 8055 (the **Bill of Law**) was adopted on 9 March 2023 by the Luxembourg parliament and expecting to come into force on 23 March 2023 (pending waiver of a second vote).

The definition of financial instruments included in the law of 5 April 1993 on the financial sector and the law of 30 May 2018 on markets in financial instruments has been amended so that financial instruments issued through DLT are explicitly recognised under Luxembourg law as financial instruments and therefore subject to related legislation.

In order to take the afore-mentioned into account, the Bill of Law also amends the definition of financial instruments included in the law of 5 August 2005 on financial collateral arrangements, as amended (the **Collateral Act**).

Indeed, although the law of 1 August 2001 relating to the circulation of securities, as amended, already provided that the validity or effectiveness of the collateral set up in accordance with the Collateral Act shall not be affected by the uptake of the DLT, the Collateral Act did not refer to any DLT operated financial instruments. Express reference to DLT has now been included in the definition of financial instruments and the legal certainty of financial collateral arrangement over financial instruments operated under the DLT has been strengthened. It is now clarified that creditors to which have been granted financial collateral arrangements over crypto assets benefit from the same protection as creditors accepting financial collateral arrangements over more traditional assets.

Luxembourg is now fully prepared for the entry into force of the Pilot Regime Regulation, and it is now up to the market participants to seize these opportunities.

For more information and to stay up to date on this topic or for developing your DLT business in light of the above, feel free to reach out to us.

Your contact persons



Bob Scharfe
Avocat à la Cour, Partner
Luther S.A. Luxembourg
+352 27484 667
bob.scharfe@
luther-lawfirm.com



Marion Lanne
Avocat, Senior Associate
Luther S.A. Luxembourg
+352 27484 674
marion.lanne@
luther-lawfirm.com



Georgios Patsinaridis
Jurist, Managing Associate
Luther S.A. Luxembourg
T +352 661850 999
georgios.patsinaridis@
luther-lawfirm.com

