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Legal analysis on the application of financial regulations to security tokens and precisions on bulletin board

In a context of growing interest in the issuance of financial instruments on a blockchain, the AMF examined the legal obstacles to the development of security tokens. Among other propositions, a European "Digital Lab" would enable national authorities to waive certain regulatory requirements relating to securities settlement and delivery in return of appropriate guarantees. Following this legal analysis, the AMF also publishes precisions on the notion of trading platforms and bulletin boards.

Besides Initial Coin Offerings (ICOs), which are public offers of tokens governed by the PACTE Law, actors in the blockchain ecosystem and traditional actors have shown strong interest in Security Token Offerings (STOs) and, more generally, in registering financial instruments in the blockchain.

Legal analysis on the application of financial regulations to security tokens

The AMF's legal analysis covers both the issuance and exchange of security tokens and their registration in investment funds. Regarding the issuance, the Prospectus Regulation appears to be compatible with STOs. In the area of asset management, European and national regulations do not prevent the development of security tokens. Asset managers wishing to develop this activity would have to apply to the AMF for authorisation or update their programs of operations. The AMF's legal analysis provides clarifications on the regime

applicable to financial instruments registered on a shared electronic registration system (DEEP) and on the obligations of collective investment scheme depositaries.

However, the exchange of security tokens is facing major legal obstacles because of the decentralised nature of blockchain technology.

The trading of security tokens could be subject to the current financial regulation. Platforms could provide certain investment services in security tokens (reception and transmission of orders, execution of orders on behalf of third parties) by applying for an investment services provider (ISP) or financial investment adviser (FIA) authorisation, conditional upon having an identified manager, which excludes decentralised platforms.

To offer a genuine secondary market for security tokens and operate a trading platform within the meaning of MiFID 2, authorisation as a multilateral trading facility (MTF) or organised trading facility (OTF) would be required, which also excludes decentralised platforms.

As for the delivery of securities against payment (settlement), although it is already possible for unlisted financial instruments due to the Blockchain Order of 8 December 2017, it poses major difficulties for other security tokens. The current regulations (European Regulation on Central Securities Depositories CSDR, Finality Directive, national account keeping and custody requirements) do not allow for full settlement in the blockchain. Consequently, a platform listing security tokens would have to either go through an intermediary approved as a central depository or be itself approved as such.

An adjustment of the CSDR regulation is therefore necessary to allow settlement in cryptocurrency.

A recommendation: creating a European "Digital Lab" to secure the settlement of financial instruments in the blockchain

Among the suggestions made, the AMF recommends to create an exemption mechanism at the European level, which could be called a Digital Lab, that would allow the competent national authorities to waive, in return for appropriate guarantees, certain requirements imposed by European regulations that have been identified as incompatible with the blockchain environment. This exemption would be granted on condition that the beneficiary complies with the key principles of the financial regulation and that it is subject to increased supervision.

Such an arrangement would allow the emergence of security tokens market infrastructure projects that could develop in a secure legal environment. It would be accompanied by a follow-up mechanism at European level (ESMA).

This experimentation in the framework of a Digital Lab would make it possible to envisage, after a three-year review clause, the necessary adjustments to the European financial regulations, based on the expertise acquired by the national authorities and ESMA.

Clarifications on the concept of trading platform and bulletin board

Following its legal analysis and at the request of industry participants, the AMF also issued a position specifying the extent to which certain interfaces for trading financial instruments, including financial securities registered in DEEP, can be qualified as bulletin boards within the meaning of Recital 8 of the Markets in Financial Instruments Regulation (MIFIR). Bulletin boards allow for the display of bid and offer interests, without matching orders, and do not require authorisation as a trading venue within the meaning of MiFID 2. The AMF's position also reminds the criteria for constituting a trading venue and the obligations governing the provision of investment services other than the operation of a trading venue.


Read more

- 📄 Review and analysis of the application of financial regulations to security tokens
- 📄 Position DOC-2020-02: Clarifications regarding the notion of trading venue, applicable in particular to financial instruments registered in a distributed ledger

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