



European Securities and
Markets Authority

Questions and Answers

On the implementation of Regulation (EU) 2022/858 of the European Parliament and of the Council of 30 May 2022 on a pilot regime for market infrastructures based on distributed ledger technology



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Acronyms and definitions used

CBDC	Central Bank Digital Currency
DLTR	DLT Pilot Regime Regulation - Regulation (EU) 2022/858 of the European Parliament and of the Council
ESMA	The European Markets and Securities Authority
ETF	Exchange Traded Fund
EU	European Union
FIGI	Financial Instrument Global Identifier
FIRDS	Financial Instruments Reference Data System
FITRS	Financial Instruments Transparency System
GLEIF	Global Legal Entity Identifier Foundation
ISIN	International Securities Identification Number
ITS	Implementing Technical Standards
LEI	ISO 17 442 Legal Entity Identifier
LIS	Large in Scale
MAR	Market Abuse Regulation – Regulation 596/2014 of the European Parliament and of the Council
MiFID II	Markets in Financial Instruments Directive (recast) – Directive 2014/65/EU of the European Parliament and of the Council
MiFIR	Markets in Financial Instruments Regulation – Regulation 600/2014 of the European Parliament and of the Council
MTF	Multilateral Trading Facility
NCA	National Competent Authority
NT	Negotiated trade
OTC	Over-the-counter
OTF	Organised Trading Facility
OMF	Order Management Facility



PoS	Proof-of-stake
Q&A	Question and answer
RM	Regulated Market
RTS	Regulatory Technical Standard
SS	Settlement Systems
SSTI	Size specific to the Instrument
UCITS	Undertakings for Collective Investments in Transferable Securities

Table of questions

		Topic of the Question	Level 1/Level 2 issue	Last Updated
Transaction reporting	1	Scope of reporting obligations	MiFIR RTS 22	
	2	Cancellations and corrections	MiFIR RTS 22	
	3	Price and price currency	MiFIR RTS 22	
	4	Complex trade ID	MiFIR RTS 22	
	5	TVTIC	MiFIR RTS 22	
Financial Instruments Reference Data	1	Instrument identification code	MiFIR RTS 23 ¹	
	2	Instrument full name	MiFIR RTS 23	
Order Record Keeping	1	Submitter of the order natural person	MiFIR RTS 24	

¹ Please note that, for ease of reference, RTS have been numbered in this document in accordance with the numbering used in the package sent by ESMA to the Commission in September 2015 (ESMA/2015/1464). Readers are nevertheless invited to consult the Commission and European Parliament websites for updated versions of those RTS.
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1. Introduction

Background

The final legislative text of Regulation (EU) 2022/858² was approved by the European Parliament and by the Council of the European Union on 30 May 2022. The text was published in the Official Journal on 2 June 2022 and entered into force on the twentieth day following this publication, i.e. on 22 June 2022. The DLT Pilot Regime will be applicable from 23 March 2023.

Purpose

The purpose of this document is to promote common supervisory approaches and practices in the application of the DLT Pilot Regime in relation to regulatory data reporting, trading and settlement topics. It provides responses to questions posed by the general public, market participants and competent authorities in relation to the practical application of CSDR, MiFID II, MiFIR in the DLT Pilot Regime.

The content of this document is aimed at competent authorities and firms by providing clarity on the application of the CSDR, MiFID II and MiFIR requirements under the DLT Pilot Regime.

The content of this document is not exhaustive, and it does not constitute new policy.

Status

The questions and answers (Q&As) mechanism is a practical convergence tool used to promote common supervisory approaches and practices under Article 16b of the ESMA Regulation³.

Due to the nature of Q&As, formal consultation on the draft answers is considered unnecessary. However, even if Q&As are not formally consulted on, ESMA may check them with representatives of ESMA's Securities and Markets Stakeholder Group, the relevant Standing Committees' Consultative Working Groups or, where specific expertise is needed, with other external parties.

² Regulation (EU) 2022/858 of the European Parliament and of the Council of 30 May 2022 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 (OJ L 151, 2.6.2022, p. 1)

³ Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331 15.12.2010, p. 84)

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Where the question received requires interpretation of Union law, ESMA forwards the question to the European Commission. Replies from the Commission will be published on ESMA's website and included in Q&A documents, together with the explicit mention that the answer was provided by the Commission.

ESMA will review these Q&As on a regular basis to update them where required and to identify if, in a certain area, there is a need to convert some of the material into ESMA Guidelines and Recommendations. In such cases, the procedures foreseen under Article 16 of the ESMA Regulation will be followed.

Questions and answers

This document is intended to be continually edited and updated as and when new questions are received. The date on which each section was last amended is included for ease of reference.

2. Transaction Reporting [Last update: 16/12/2022]

Question 1 [Last update: 16/12/2022]

1. *How does the reporting obligation under MiFIR Article 26 and RTS 22 apply to transactions in DLT financial instruments?*
2. *Is there any lead-time envisaged to comply with such obligation or does it apply as soon as a DLT MTF/TSS is granted the permission to operate?*

Answer 1

1. In its [Report on the DLT Pilot Regime](#), ESMA concluded that at this stage RTS 22 does not need to be amended to be effectively applied also to securities issued, traded, and recorded on DLT. Therefore, unless an exemption from MiFIR Article 26 is requested as foreseen in Article 4 of the DLTR⁴, the obligations under MiFIR Article 26 and RTS 22 apply in full to DLT MTFs or TSSs and its members in relation to transactions in DLT financial instruments executed on DLT MTFs/TSS. DLT MTFs or TSS should report transactions on behalf of firms that are not subject to MiFIR pursuant to Article 26(5) MiFIR.

In addition, as the scope of the exemption from reporting can only cover the DLT MTF or TSS and its members, the obligations under MiFIR Article 26 and RTS 22 continue to apply to any investment firm that is not a member of the DLT MTF or TSS and is carrying out transactions in a DLT financial instrument under the DLTR irrespective of whether or not such transactions are ultimately executed on the DLT MTF or TSS. For examples of how transactions should be reported to NCAs depending on the specific trading scenario, investment firms executing transactions in DLT financial instruments and DLT MTFs/TSSs should refer to the [ESMA Guidelines](#) on MiFIR transaction reporting, order record keeping and clock synchronisation and [ESMA Q&As](#).

2. Unless an exemption from MiFIR Article 26 is granted, the reporting obligation applies as soon as the DLT-MTF/TSS is granted the permission to operate, no implementation lead-time is envisaged.

⁴ Regulation (EU) 2022/858 of the European Parliament and of the Council of 30 May 2022 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 (OJ L 151, 2.6.2022, p. 1)
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Question 2 [Last update: 16/12/2022]

How should DLT MTFs/TSS ensure that cancellation and/or corrections are correctly reflected in the data to be provided to NCAs?

Answer 2

DLT MTFs/TSSs operating multilateral trading systems on the distributed ledger (i.e., on-DLT), which benefit from the reporting exemption, could explore with their NCA the possibility of providing only the definitive version of the transactions after validation and recording on the ledger⁵.

DLT MTFs operating multilateral trading systems whereby some transactions in DLT financial instruments are executed outside the distributed ledger should have arrangements in place to ensure that the right sequencing as per traditional reporting under RTS 22 is respected (i.e., NEWT/CANC/NEWT)⁶. The principles outlined in section 5.18 of the Guidelines on transaction reporting do apply to these DLT MTFs regardless of whether an exemption from reporting was granted or not.

DLT TSSs operating multilateral trading systems exclusively outside the distributed ledger (i.e., off-DLT) should have arrangements in place to ensure that the right sequencing as per traditional reporting under RTS 22 is respected (i.e., NEWT/CANC/NEWT)⁷. The principles outlined in section 5.18 of the Guidelines on transaction reporting do apply to these DLT TSSs regardless of whether an exemption from reporting was granted or not.

⁵ ESMA Report on DLT Pilot regime. Paras 150: following the feedback received during the subsequent workshop with the respondents to the CfE (see Annex 1 of this Report), the cancellation under the traditional sequential reporting process might not be the most efficient approach in the context of the reporting exemption. Granting the reporting exemption and having direct access to DLT data will allow regulators to explore alternative approaches to the sequential cancellation process.

⁶ ESMA Report on DLT Pilot regime. Paras 149: DLT infrastructures that do not request the reporting exemption should have systems in place to ensure that the right sequencing is respected.

⁷ ESMA Report on DLT Pilot regime. Paras 149: "DLT infrastructures that do not request the reporting exemption should have systems in place to ensure that the right sequencing is respected".

Question 3 [Last update: 16/12/2022]

How should a DLT transaction fee⁸ be considered in the context of populating Field 33 “Price” of RTS 22? Should DLT transaction fees be included in the price related fields?

Answer 3

Irrespective of whether an exemption from reporting was granted or not, DLT MTFs should not include DLT transaction fees in the price information, they should not be treated as commissions. Therefore Field 33 “Price” should reflect only the traded price of the transaction.

Question 4 [Last update: 16/12/2022]

Should DLT MTFs/TSS populate Field 40 – Complex trade ID of RTS 22?

Answer 4

Irrespective of whether an exemption from reporting was granted or not, Field 40 “Complex trade ID” should not be populated because strategies do not fall into the scope as defined in Article 3(1) of the DLT Pilot regime regulation⁹.

Question 5 [Last update: 16/12/2022]

How should Field 3 “Trading venue transaction identification code” (TVTIC) of RTS 22 be populated in case the entity executing the transaction is a natural person and not an investment firm?

⁸ ESMA report on the DLT Pilot regime, paras 145: the transactions recorded on a blockchain are immutable, so it is not possible to modify such records. To report a modification or a cancellation a new block should be created and a “gas fee” is requested to cover the costs arising from the creation of a new block. Gas fees (more generally “blockchain transaction fees”) are the costs to conclude a transaction on a DLT.

⁹ ESMA Report on DLT Pilot regime. Paras 184: ESMA clarifies that this field does not apply in this context because strategies do not fall within the DLT Pilot scope.

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Answer 5

Irrespective of whether an exemption from reporting was granted or not, DLT MTFs/TSS have an obligation under Article 12 of RTS 24 to maintain an individual transaction identification code for each transaction resulting from the full or partial execution of an order. As described in Field 3 of RTS 22, this number should be disseminated to both the buying and the selling parties regardless of whether such parties are investment firms or natural persons. Therefore Field 3 of RTS 22 must be populated also in case the entity executing the transaction is a natural person.

3. Financial Instruments Reference Data [Last update: 16/12/2022]

Question 1 [Last update: 16/12/2022]

How should the “Instrument identification code” fields (Table 2, Field 41 of RTS 22 and Table 3, Field 1 of RTS 23) be populated for DLT financial instruments that are the digital representation of a previously issued financial instrument?

Answer 1

As a general principle, if the characteristics of the financial instrument are the same as its digital representation and the only difference is the technology used for creating the respective instruments, then the ISIN of both should be the same. This would be because the ISIN allocation principles in the ISO 6166:2021 standard are technology-agnostic, meaning that the type of technology used for issuance¹⁰ should not give rise to a different identification and classification system.

¹⁰ The term “issued” has to be understood within the meaning of the DLT Pilot regime and without prejudice to national requirements according to civil and corporate laws, it is for the market operators (including by liaising with competent authorities)

However, the assignment of the same ISIN is also dependent on whether the issuer of the traditional financial instrument considers that its tokenised version is fully “fungible” with the former, within the meaning of ANNA’s “ISIN uniform guidelines”¹¹. Thus, the issuer should inform the NNA about all the characteristics of the new instrument and advise the NNA as to whether the same ISIN of the traditional financial instrument or a new ISIN should be allocated.

Question 2 [Last update: 16/12/2022]

How should Field 6 of RTS 23 “Trading venue” be populated for instruments being traded on the DLT MTF or on the TSS?

Answer 2

Field 6 of RTS 23 should be populated with a separate segment MIC pertaining to the DLT MTF or TSS.

4. Order Record Keeping [Last update: 16/12/2022]

Question 1 [Last update: 16/12/2022]

How should a DLT MTF populate Field 1 of RTS 24 “Identification of the entity which submitted the order” when an order is submitted by a natural person non eligible for an LEI?

Answer 1

As natural persons are not eligible for LEIs, Field 1 should be populated with the LEI of the DLT MTF and the National ID of the natural person should be provided in Field 5 of RTS 24.

to assess legal/practical difficulties and feasibility of different ways to issue or record securities on distributed ledger and, in any event, any such issuance would need to comply with applicable national rules.

¹¹ Association of National Numbering Agencies “ISIN Uniform Guidelines relating to ISO 6166”, 9th edition of November 2020
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