



FINPLANET

DLT-BASED SECURITIES

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Crypto Securities, Cryptographic Instruments or DLT Financial Instruments?

**Comparison of Structuring Options and
Implications for the Operating Model**

COMPARISON OF STRUCTURING OPTIONS

	Crypto Security (eWpG)	Cryptographic Instruments	DLT Financial Instrument (DLTR)
Definition	MiFID II financial instrument regulated under prospectus/supervisory law and civil law	▶ Tokenised security (EU Prospectus Regulation) ▶ Tokenised other investment rights (VermAnlG)	MiFID II financial instrument that is issued, traded or settled on a DLT market infrastructure under the DLT Pilot Regime
Possible Asset Classes	Broad structuring options: bonds (bearer bonds), funds, registered shares, structured certificates	Broad structuring options in the area of debt, typically crowdfunding or subordinated corporate financing instruments. Other asset classes possible in principle, but often restricted	Shares, bonds and other eligible debt instruments, UCITS
Advantages	▶ High legal certainty ▶ Protection of good-faith acquisition ▶ Established German legal framework ▶ Possibly required by DLT market infrastructures as an admission criterion	▶ Greater flexibility in designing and further developing smart contracts ▶ Direct peer-to-peer transfer without prior onboarding with a crypto securities registrar	▶ EU-wide harmonised market infrastructure ▶ Enables DLT-based trading & settlement
Drawbacks/Restrictions	▶ Primarily national legal regime ▶ Registrar required ▶ Cross-border recognition of register effects not fully harmonised	▶ No protection of good-faith acquisition ▶ Limited legal certainty ▶ Differing classification across EU member states	▶ Pilot character ▶ Admission and volume limits¹⁾ ▶ Still a limited number of authorised DLT market infrastructures
EU Scaling	Currently the most attractive model for institutional investors and scaling within the EU. Some other EU jurisdictions have (register) rules comparable to the eWpG	▶ Selectively attractive for specific asset classes and individual setups (DeFi applications) ▶ Hardly any scaling effect (on the product side)	Strategic target picture for a capital market scalable across Europe

Footnote: 1) Product and threshold limits under Art. 3 DLT Pilot Regime must be observed, incl. market capitalisation < EUR 500m or issuance volume < EUR 1bn + total value on the DLT market infrastructure max. EUR 9bn; however, possible relaxation in future – cf. the Market Integration and Supervision Package (MISP)

IMPLICATIONS FOR THE OPERATING MODEL

	Crypto Security (eWpG)	Cryptographic Instruments	DLT Financial Instrument (DLTR)
Issuance	Issuance via a German-regulated crypto securities registrar required	Issuance under national legislation. No crypto securities registrar required	Issuance under national legislation combined with the requirements of the DLT Pilot Regime (common intersection)
Custody	▶ Collective registration: safe custody business and, where applicable, qualified crypto custody business KWG-E¹⁾, ▶ Individual registration: qualified crypto custody business KWG-E	Qualified crypto custody business KWG-E	Depending on whether the asset is a crypto security or a cryptographic instrument, the respective regulatory custody requirements apply
Settlement	▶ Registration/ transfer of ownership via the crypto securities register ▶ If a trading venue is involved, settlement takes place in conjunction with the DLT-(T)SS ▶ Settlement between two custodian banks only possible if both are participants of the register. Foreign custodian banks must have notified the custody business in Germany (passporting)	▶ Settlement by transfer (finality) ▶ If a trading venue is involved, settlement takes place in conjunction with the DLT-(T)SS	▶ Registration/ transfer required in the crypto securities register for crypto securities. In addition, the DLT-(T)SS performs the record-keeping. Synchronisation between the DLT-(T)SS and the crypto securities registrar is required ▶ For cryptographic instruments, the record-keeping of the DLT-(T)SS is decisive
Trading	Bilateral trading (OTC) or via the DLT Pilot Regime (DLT MTF or DLT TSS) ²⁾	Bilateral trading (OTC) or via the DLT Pilot Regime (DLT MTF or DLT TSS) ²⁾	Trading via a licensed DLT MTF or DLT TSS

Footnote: 1) Unless the custodian bank safeguards the keys itself; 2) Provided the requirements of the DLT Pilot Regime are met

Which structure of DLT-based securities fits your business model?

We support you in selecting and implementing the right model.