



FEDERAL ACT ON THE ENTRY INTO FORCE OF REGULATION
(EU) 2022/858 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

DLT REGULATION ENFORCEMENT ACT (DLT-VVG)

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TEXT

Competent Authority

Article 1. (1) The Austrian Financial Market Authority (FMA) is the competent authority for Austria pursuant to Article 12 (1) to (3) of Regulation (EU) 2022/858 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, 02.06.2022, p. 1. Regardless of the tasks allocated to the FMA in other Federal Acts, it shall exercise the tasks and powers conferred upon competent authorities pursuant to Article 12 (1) to (3) of Regulation (EU) 2022/858 and shall monitor compliance with the provisions set out in this Federal Act and in Regulation (EU) 2022/858.

(2) The FMA shall take into account European convergence in respect of supervisory tools and supervisory procedures in the enforcement of this Federal Act and Regulation (EU) 2022/858. For this purpose, the FMA shall apply the Guidelines, Recommendations and other measures decided upon by the European Securities and Markets Authority (ESMA) within the scope of application of Regulation (EU) 2022/858. The FMA may deviate from the guidelines and recommendations, provided that justified grounds exist to do so, in particular where they conflict provisions set out under national law.

(3) Article 1 paras. 2 and 4 of the Central Securities Depositories Enforcement Act (*ZvVG; Zentralverwahrer-Vollzugsgesetz*) published in Federal Law Gazette I No. 69/2015 shall apply accordingly within the scope of supervision over central securities depositories pursuant to Article 12 (3) of Regulation (EU) 2022/858 that operate a DLT settlement system pursuant to Article 2 no.7 of Regulation (EU) 2022/858 or a DLT trading and settlement system pursuant to Article 2 No.10 of Regulation (EU) 2022/858, shall apply accordingly, with the respective duties, rights and obligations in accordance with this Federal Act and the *ZvVG* being normative, and the logical application in relation to a DLT trading and settlement system pursuant to Article 2 point 10 of Regulation (EU) 2022/858 only applies with regard to services to be performed by a DLT settlement system pursuant to Article 2 point 7 of Regulation (EU) 2022/858.

(4) Article 1 paras. 2 and 4 *ZvVG* shall logically apply within the scope of supervision over investment firms pursuant to Article 12 (1) of Regulation (EU) 2022/858 and market operators pursuant to Article 12 (2) of Regulation (EU) 2022/858 that operate a DLT trading and settlement system pursuant to Article 2 No.10 of Regulation (EU) 2022/858, with the respective duties, rights and obligations in accordance with this Federal Act and the *ZvVG* being normative, and the logical application in relation to a DLT trading and settlement system pursuant to Article 2 point 10 of Regulation (EU) 2022/858 only applies with regard to services to be performed by a DLT settlement system pursuant to Article 2 point 7 of Regulation (EU) 2022/858.

Supervision

Article 2. (1) Within the scope of monitoring of compliance by operators of DLT market infrastructures with the provisions of this Federal Act and of Regulation (EU) 2022/858, the FMA shall be authorised at all times pursuant to points 1 to 3 of Article 12 of Regulation (EU) 2022/858 to:

1. inspect and receive copies of the operator of a DLT market infrastructure's bookkeeping records, documents and data media,
2. request information from an operator of a DLT market infrastructure and its bodies, and to summon and interview persons,
3. conduct on-site inspections, by instructing external auditors and external auditing companies, using its own inspectors or other experts,
4. appoint the *Oesterreichische Nationalbank* to inspect a central securities depository pursuant to Article 12 (3) of Regulation (EU) 2022/858, which operates a DLT settlement systems pursuant to Article 2 (7) of Regulation (EU) 2022/858 or a DLT trading and settlement system pursuant to Article 2 (10) of Regulation (EU) 2022/858, or to inspect an investment firm pursuant to Article 12 (1) of Regulation (EU) 2022/858 or a market operator pursuant to Article 12 (2) of Regulation (EU) 2022/858, which operate a DLT trading and settlement system pursuant to Article 2 (10) of Regulation (EU) 2022/858; the *Oesterreichische Nationalbank's* competence to conduct on-site inspections in the area of the supervision of such central securities depositories, investment firms and market operator however only extends to the inspection of those business lines and types of risk that are associated with services to be provided by a DLT settlement system pursuant to Article 2 (7) of Regulation (EU) 2022/858, irrespective of whether such services are to be provided as part of a DLT settlement system pursuant to Article 2 (7) of Regulation (EU) 2022/858 or a DLT trade and settlement system pursuant to Article 2 (10) of Regulation (EU) 2022/858; the *Oesterreichische Nationalbank* shall ensure that it has sufficient personnel and organisational resources at its disposal to conduct the inspections indicated; the FMA is authorised to allow its own employees participate in inspections conducted by the *Oesterreichische Nationalbank*,
5. request recordings of telephone calls and data transmissions that already exist from an operator of a DLT market infrastructure, and
6. obtain information from the auditors of an operator of a DLT market infrastructure.

(2) For an inspection pursuant to para. 1 nos. 3 and 4, the auditing bodies engaged shall be issued a written inspection engagement and shall verify their identity and present the inspection engagement, without being requested to do so, prior to commencing the inspection. Otherwise, Article 71 paras. 1 to 6 of the Banking Act (*BWG; Bankwesengesetz*), published in Federal Law Gazette no. 532/1993, shall apply accordingly. Article 70 paras. 1a to 1c and Article 79 paras. 1 to 4a, par. 4b no. 4 and para. 5 BWG shall apply with regard to the cooperation between the FMA and *Oesterreichische Nationalbank* and the conducting of inspections by these parties.

(3) To avert any threat to the fulfilment of an operator of a DLT market infrastructure's obligations, the FMA may impose temporary measures by means of an administrative decision, which shall expire no later than 18 months following their entry into force. In particular, the FMA by way of an administrative decision may

1. prohibit the withdrawal of capital and earnings as well as distributions of capital and earnings either in full or in part;
2. appoint an expert supervisor (government commissioner), who is either a lawyer or auditor; the supervisor, who shall be granted all rights pursuant to Article 2 para. 1 shall
 - a. prohibit the operator of a DLT market infrastructure from any transactions which might serve to exacerbate the aforementioned threat, and
 - b. in the event that the operator of a DLT market infrastructure is prohibited fully or in part from continuing business, permit individual transactions, which do not increase the aforementioned threat;
3. prohibit managers of the operator of a DLT market infrastructure from managing the company in general or in part, at the same time notifying the body responsible for appointing managers; the competent body shall within one month reappoint the relevant number of managers; in order to be valid, such appointment shall require the FMA's approval, which shall be refused if the newly appointed managers appear not suitable to avert the above-mentioned threat;
4. to partially or full prohibit the continuation of business operations.

(4) The FMA may at the government commissioner's request appoint a deputy, where and for as long as is necessary for important reasons, especially due to the temporary incapacitation of the government commissioner. The same provisions shall apply to the appointment of any deputy as well as their rights and duties as for the government commissioner. With the approval of the FMA, the government commissioner may use suitably qualified persons to perform their duties, where doing so is necessary in light of scope and difficulty of the duties. The FMA's approval shall specify such persons by name and shall also be delivered to the operator of a DLT market infrastructure. Such persons shall act on instructions from and on behalf of the government commissioner or their deputy.

(5) The FMA shall obtain information regarding suitable government commissioners from the Austrian Bar Association (*Österreichischer Rechtsanwaltskammertag*) as well as from the Austrian Chamber of Professional Accountants and Tax Advisors (*Kammer der Wirtschaftstreuhänder*). If a government commissioner needs to be appointed pursuant to para. 3 no. 2 or a deputy pursuant to para. 4, and where it is not possible to make such an appointment based on such notifications, then the FMA shall notify the competent bar association or Chamber of Professional Accountants and Tax Advisors for the registered office or head office of the operator of a DLT market infrastructure, for them to name a suitably qualified lawyer or auditor as government commissioner. In case of imminent danger, the FMA may appoint:

1. a lawyer, or
2. an external auditor

as temporary government commissioner. This appointment will cease to be effective upon appointment of a lawyer or an external auditor in accordance with the first sentence or pursuant to para. 3 no. 2.

(6) The government commissioner shall be remunerated (function fee) by the FMA that shall be commensurate to the work associated with such supervision and expenses incurred. The government commissioner shall be entitled to render accounts for each preceding quarter and after completion of its activities. The FMA shall pay such remuneration without delay after reviewing the invoice.

(7) The FMA shall communicate administrative decisions, prohibiting directors, either partly or completely (para. 3 no. 3 and para. 8), from managing an operator of a DLT market infrastructure, as well as repealing of such a measure, to the Commercial Register Court for entry into the Commercial Register.

(8) If an operator of a DLT market infrastructure breaches provisions in this Federal Act, of a Regulation enacted based on this Federal Act or of Regulation (EU) 2022/858, then the FMA may

1. instruct the operator of a DLT market infrastructure, under threat of a coercive penalty, to restore legal compliance within a period of time which is appropriate in light of the circumstances, and
2. in cases of repeated or continued breaches, completely or partly prohibit the directors from managing operator of a DLT market infrastructure, unless this would be inappropriate based on the nature and severity of the breach, and where restoration of legal compliance may be expected pursuant to no. 1; in such cases, the initial coercive penalty imposed shall be enforced and the instruction repeated along with the threat of a larger coercive penalty.

(9) The FMA shall be authorised to process personal data, provided that doing so is an essential condition for performance of the duties and powers conferred upon it pursuant to Articles 1 to 3 of this Federal Act.

(10) The FMA may cooperate with authorities in third countries for the purpose of the fulfilling duties that correspond to the FMA's duties in accordance with this Act. Such cooperation shall especially also extend to the exchange of information including the submission of data pursuant to para. 9 by the FMA to third country authorities.

(11) Article 90 para. 6 and 7 as well as Article 111 of the Securities Supervision Act of 2018 (*WAG 2018; Wertpapieraufsichtsgesetz 2018*) published in Federal Law Gazette I No. 107/2017 shall apply accordingly to cooperation with authorities in third countries pursuant to para. 10 with regard to investment firms pursuant to Article 12 (1) of Regulation (EU) 2022/858 and the market operator pursuant to Article 12 (2) of Regulation (EU) 2022/858.

(12) Article 2 para. 9 ZvVG shall apply accordingly for cooperation with authorities from third countries pursuant to para. 10 with regard to central securities depositories pursuant to Article 12 (3) of Regulation (EU) 2022/858, with central bank in third countries also being considered as third country authorities. The submission of information to authorities in third countries shall only be permissible in addition to the rules set forth in Article 2 para. 9 ZvVG, where there is a justified request, and where the submitted information are subject at these authorities to professional

secrecy that is equivalent to the professional secrecy pursuant to Article 14 of the Financial Market Authority Act (FMABG; *Finanzmarktaufsichtsbehördengesetz*), published in Federal Law Gazette I no. 97/2001 and where the submission of data is consistent with Chapter V of Regulation (EU) 2016/679.

Costs

Article 3. (1) The FMA's costs from its activity as the competent authority for the granting of a specific permission for operating DLT market infrastructures and the supervision of operators of DLT market infrastructures constitute costs of the securities supervision accounting group (Article 19 para. 1 no. 3 and para. 4 FMABG).

(2) Article 89 WAG 2018 including the duty of the FMA to determine a more detailed arrangement by means of a Regulation pursuant to Article 89 para. 2 WAG 2018 shall apply for the allocation of costs of the FMA from its activities as the competent authority for investment firms pursuant to Article 12 (1) of Regulation (EU) 2022/858 and shall apply accordingly with the proviso that

1. investment firms pursuant to Article 12 (1) of Regulation (EU) 2022/858 are liable to pay costs, and
2. The costs of its supervision in accordance with this Federal Act are to be allocated to the collective sub-accounting group, which is to be formed pursuant to Article 89 para. 1 WAG 2018 for the supervision costs for investment firms, investment services provider and investment firms pursuant to Article 19 para. 1 WAG 2018 as well as third-country firms pursuant to Article 21 para. 1 WAG 2018, which perform investment services or investment activities in Austria through a branch.

(3) Article 94 of the Stock Exchange Act of 2018 (*BörseG 2018; Börsegesetz 2018*), published in Federal Law Gazette I No. 107/2017 shall apply accordingly for the allocation of costs of the FMA from its activity as the competent authority for market operators pursuant to Article 12 (2) of Regulation (EU) 2022/858 and applied with the proviso that

1. market operators pursuant to Article 12 (2) of Regulation (EU) 2022/858 are liable to pay costs, and
2. the costs of its supervision in accordance with the Federal Act are to be allocated to the collective sub-accounting group that is to be formed pursuant to Article 94 para. 1 BörseG 2018 for the costs of supervision for market infrastructures.

(4) Article 11 ZvVG shall apply accordingly for the allocation of costs of the FMA from its activity as the competent authority for central securities depositories pursuant to Article 12 (3) of Regulation (EU) 2022/858, and applied with the proviso that

1. central securities depositories pursuant to Article 12 (3) of Regulation (EU) 2022/858 are liable to pay costs, and
2. the costs of their supervision in accordance with the Federal Act are to be allocated to the collective sub-accounting group that is to be formed pursuant to Article 11 para. 1 ZvVG for the costs of supervision for market infrastructures.

(5) Operators of DLT market infrastructures shall provide the FMA with all required information regarding the bases for the cost assessment.

Gender-neutral use of language

Article 4. The designations for natural persons in this Federal Act shall apply to persons of all genders.

Enforcement

Article 5. The Federal Minister of Finance shall be responsible for enforcing this Federal Act.

References

Article 6. Where references to other Federal Acts are made in this Federal Act, those acts are to be applied in their respective current versions.

Entry into force

Article 7. This Federal Act shall enter into force on 01 July 2023.