

The Luxembourg Blockchain Laws

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SCHILTZ § SCHILTZ
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Genesis

- Press release 14 February 2014
- Luxembourg = the first mover in regulating crypto-exchanges
- The Luxembourg approach toward innovation
 - “applying existing laws and regulations to new models”

Genesis

- Law of 1 March 2019 on the circulation of securities.
- Luxembourg = one of the first European laws governing this technology.
- In addition to the Fintech laws, Fintech actors and activities fall under the scope of existing laws and regulations, with the CSSF issuing specific secondary legislation through circulars or general guidance in a number of areas.
 - CSSF White paper on distributed ledger technologies and blockchain
 - The FAQ Virtual assets for UCI's and banks

Blockchain Law I

- Main objectives of the law :
 - ✓ Show that blockchain transactions are identical to traditional transactions.
 - ✓ Enhance technological neutrality.

Blockchain Law I

- A new Article 18a has been inserted in the Law of 1 August 2001 on the circulation of securities:

“(1) The account keeper may **maintain securities accounts and credit securities on securities accounts** within or through **secured electronic registration mechanisms, including distributed electronic ledgers or databases**. Successive transfers registered within such a secured electronic registration mechanism shall be considered as **book transfers** between securities accounts. Maintaining securities accounts within such a secured electronic registration mechanism or crediting securities on securities accounts through such a secured electronic registration mechanism **does not affect the relevant securities’ fungibility**.

(2) **The application of this law, the situation of the securities that are still held with the relevant account keeper, the validity or effectiveness of the collateral** set up in accordance with the Law of 5 August 2005 on financial collateral arrangements, as amended, **shall not be affected by the maintaining of securities accounts within such a secured electronic registration mechanism or by the credit of securities on securities accounts through such a secured electronic registration mechanism.**”

The main contributions of the Blockchain Law I

- Legal certainty by giving the possibility of using DLTs for **account registration** and **transfer of securities**.
- Confirmation on the use of DLT to **materialize the property** of securities.
- Specification that securities held in a blockchain have **no impact or effect** on the security and guarantees.
- **Neutral definition** of blockchain → “secured electronic registration mechanisms, including distributed electronic ledgers or databases”.

Blockchain Law II

- Law of 22 January 2021 amending two laws:
 - Law of 6 April 2013 relating to dematerialized securities
 - Law of 5 April 1993 relating to the financial sector.
- The main objectives of this law :
 - offer increased legal certainty to contribute to the attractiveness of the financial sector
 - regulate the scope of a use which is rapidly proliferating.

The main contributions of the Blockchain Law II

- Use of DLT now possible for all credit institutions or investment firms, subject to certain conditions.
- Identical effects between successive registrations of securities based on DLT and transfers between securities accounts.
- Use of the DLT in the context of the issuance of dematerialized securities possible for both securities accounts and issuance accounts.

Draft bill n°8055 – blockchain Law III

- Amending the definition of financial instruments
- Allowing to hold financial collaterals on a blockchain
- Introducing the DLT pilot regime into the national framework

Draft bill n°8055 – blockchain Law III

- A new definition for financial instruments
 - Article 1 of the Draft Law together with Article 3, aims at transposing into Luxembourg law, the amendment made by Article 18, point 1, of Regulation (EU) 2022/858.
 - purpose of this amendment is to include in the definition of "financial instruments" referred to in Article 1(19) of the 1993 Law on the financial sector financial instruments issued by **means of distributed ledger technology.**

Draft bill n°8055 – blockchain Law III

- Financial collaterals can be held on a blockchain
 - Article 2 of the Bill:
 - minor targeted amendment to Article 1(8) of the Financial Collateral Arrangements Act 2005 clarifying that the notion of book-entry financial instruments also includes financial instruments registered or existing in securities accounts maintained in or through secure electronic recording devices, including distributed electronic registers or databases.

Draft bill n°8055 – blockchain Law III

- Financial collaterals can be held on a blockchain
 - minimal amendment to the Financial Collateral Arrangements Act 2005, allowing the relevant actors to use DLT's for financial collateral in a legally secure manner.
 - Confirms that the law applies to securities accounts maintained in a DLT
 - makes it possible to include such accounts within the scope of the Financial Collateral Arrangements Act 2005 without having to touch upon the other provisions of that Act, in particular as regards dispossession

Thank you for your attention.

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