In-Class Assignment TR2: The Legal Stack

Digital Finance – BSc Course | Prof. Dr. Joerg Osterrieder

Context. A Frankfurt-listed corporate plans to issue a €1.2B senior unsecured bond as a *native* tokenised security on an EU-authorised DLT platform. Target investors: professional clients across EU/EEA. Layers to map: **(i)** prospectus & issuance disclosure, **(ii)** trading venue authorisation, **(iii)** settlement & custody, **(iv)** DLT-specific sandbox rules.

Q1. For each of the four layers, identify the *single* EU regulation that governs it. Choices: MiCA, MiFID II, Prospectus Regulation (2017/1129), CSDR (909/2014), DLT Pilot Regime (2022/858).

Solution. (i) Prospectus & disclosure: Prospectus Regulation 2017/1129 (a tokenised bond is still a "transferable security" in MiFID Art. 4(1)(44), so the EU prospectus regime applies in full at €1.2B size). **(ii) Trading venue: MiFID II** (MTF / OTF authorisation for secondary trading). **(iii) Settlement & custody: CSDR** (Central Securities Depositories Regulation — settlement discipline, book-entry form). **(iv) DLT sandbox: DLT Pilot Regime 2022/858** (the only bespoke DLT carve-out, providing limited exemptions from CSDR/MiFID for DLT MTFs and DLT SS systems).

Q2. Why is **MiCA** *silent* on this particular bond? Answer in 1–2 sentences.

Solution. MiCA (2023/1114) deliberately *excludes* crypto-assets that already qualify as MiFID II "financial instruments" (Art. 2(4)(a)) — a tokenised senior bond is a debt security, so it falls under MiFID/Prospectus/CSDR, *not* MiCA. MiCA covers the *gap*: utility tokens, payment/e-money tokens, and asset-referenced tokens that would otherwise be unregulated.

Q3. The DLT Pilot Regime caps a single bond issuance at *€1B* aggregate market cap (Art. 3(2)) on a DLT MTF. Given the €1.2B size, what is the *consequence*, and name *one* structural workaround.

Solution. Consequence: the €1.2B issuance *cannot* trade on a DLT MTF under the Pilot Regime — it must either list on a conventional MiFID MTF/regulated market (losing the CSDR/DLT settlement exemptions) or split the issuance. **Workaround options (any one):** (i) **Tranche the issuance** into ≥ 2 series of $\leq$€1B each, timed across the 2-year Pilot window (the Siemens €300M 2023 bond used this approach); (ii) **List on a regular MiFID-authorised MTF** and run a *non-tokenised* book-entry register via a CSD, forfeiting settlement-latency benefits; (iii) **Wait for the permanent DLT regime** that the ESMA July 2024 report recommends raising the cap to €2B or removing it entirely; (iv) **Use a non-EU DLT venue** (e.g. SIX SDX in Switzerland) and passport via reverse solicitation.