



## DARTE SERIES

### Munich

Initiated by Dr. Nina-Luisa Siedler (siedler legal) and Mariana de la Roche W. (BlackVogel), the DARTE Series aims to enhance legal clarity within the evolving regulatory framework of the MiCAR. Over time, the series has expanded to cover not only MiCAR but also other related regulatory frameworks and region-specific issues.

The Munich DARTE edition was hosted at V-Bank on September 11th, 2025, in collaboration with the European Commission, Project Catalyst, FinPlanet, Bybit, and the TUM Blockchain Conference. The session convened regulators, legal practitioners, market infrastructure providers, and financial institutions to examine the legal friction points between traditional financial instruments (MiFID II) and tokenized securities in light of MiCAR and the DLT Pilot Regime.

Discussions focused on three key topics: secondary market restrictions for hybrid shareholdings (Christopher Görtz, Heuking), unresolved potential within the DLT Pilot Regime (Carola Rathke, YPOG), and the legal imbalance in executing rights attached to security tokens (Roland Gollenbeck, Bybit).

We extend our sincere gratitude to all speakers and supporters for making this roundtable possible. This report consolidates insights from these discussions. It is important to note that the perspectives and conclusions presented herein represent the collective understanding of the topics discussed and do not reflect the individual positions of any participant or the respective rapporteurs.



## 1. Secondary Markets in case of hybrid shareholdings

The first topic of the Munich DARTE roundtable, introduced by Christopher Görtz (Heuking), addressed the liquidity and operational challenges associated with hybrid shareholdings, specifically, securities that can exist both as traditionally certificated shares (held giro-collectively and exchange-traded) and as electronic securities (e-securities) under the German Electronic Securities Act (*eWpG*). While current legislation allows conversion between the two forms, the technical infrastructure and market mechanisms to support such transitions remain underdeveloped.

Participants noted that while hybrid shares are legally feasible, the lack of a liquid secondary market for electronic securities significantly reduces their practical utility. Since these assets may trade on different platforms (centralized exchanges for traditional shares vs. DLT-based systems for tokenized ones), liquidity becomes fragmented, and price discrepancies across markets raise concerns. Conversion between formats is cumbersome and operationally opaque, further discouraging adoption.

Several models were discussed to address this market inefficiency. One approach involved a trustee-based structure, where shares from both formats are pooled and managed collectively.

Another proposal centered on a market-maker model, where a designated intermediary quotes bid/ask prices for electronic shares, ensuring continuous trading. However, both models raise concerns about settlement risks, pricing

divergence, and regulatory implications, particularly around short-selling and capital requirements.

A more pragmatic solution, favored by some of the participants, envisions a bank acting as an intermediary. Under this model, if an investor wishes to sell a tokenized (electronic) share, the bank simultaneously sells a traditional share on the exchange, credits the investor, and receives the electronic share in return. The bank may leverage borrowed traditional shares from major shareholders to avoid short positions during settlement. This “share-loan conversion bridge” could provide the necessary liquidity without creating excessive regulatory overhead.

Importantly, this is not primarily a regulatory issue, but rather a market infrastructure and design challenge. The group discussed whether share loans in this context could be exempted from licensing requirements to facilitate broader implementation.

Participants also flagged the classification inconsistencies across jurisdictions: a token considered a MiFID financial instrument in one country might be viewed as an asset under MiCAR in another, compounding the complexity of cross-border trading for hybrid securities.

The conversation concluded that while the legal foundation exists for hybrid shareholdings, the absence of harmonized operational standards and market liquidity poses a barrier to adoption. A coordinated push involving market participants, financial intermediaries, and regulators is needed to test practical models and create interoperability between traditional and tokenized securities environments.

## Call to actions regarding Secondary Markets in case of hybrid shareholdings

The key call to actions from the discussion are:

- **Pilot bank-intermediated share conversion models:** Encourage financial institutions and large shareholders to experiment with loan-backed conversion mechanisms to improve liquidity for hybrid shareholdings while minimizing regulatory complexity.
- **Clarify treatment of share loans in hybrid contexts:** EU policymakers should assess whether limited-purpose share loans used in hybrid settlements could be exempt from licensing requirements, to enable smoother market function without increasing systemic risk.

### 2. Security-token rights are not equally executable EU-wide

The second topic, introduced by Roland Gollenbeck (Bybit), focused on the lack of harmonized civil law treatment of security tokens across the EU, which results in unequal enforceability of tokenized rights.

While MiFID II and MiFIR provide a harmonized regulatory framework for the licensing, the provision of financial services and classifying financial instruments, the substantive rights embedded in security tokens, such as dividend entitlements, voting rights, and repayment claims, remain governed by national civil, corporate, and property laws, leading to legal fragmentation.

Participants emphasized that once a token qualifies as a financial instrument under MiFID II/MiFIR, it is subject to uniform regulatory oversight across the EU/EEA,

including licensing, investor protection, and conduct rules. However, the execution and enforcement of the underlying rights depend entirely on national legal systems (except when operating under the DLT Pilot Regime), which vary widely in their treatment of ledger-based securities. This misalignment undermines the legal certainty and cross-border operability of security tokens.

For example, a security token issued in one jurisdiction may not offer equivalent shareholder protections or enforceable claims in another Member State, even if it meets the same regulatory classification. This creates friction for issuers, investors, and market operators aiming to scale their operations or offer pan-European products.

The discussion revealed that this issue is not unique to tokenized assets, but rather reflects a broader gap in EU civil securities

law. While financial market regulation has advanced toward harmonization, the civil law foundation underpinning ownership, transfer, and enforcement of rights remains fragmented and underdeveloped, especially in the context of DLT-based instruments.

Participants debated whether Decentralized Exchanges (DEXs) could provide a workaround by offering borderless trading infrastructure. However, most agreed that DEXs do not resolve the underlying legal enforceability issues, especially when disputes arise or when investor rights must be exercised in court.

**Notably, this was the first topic across all DARTE roundtables where participants agreed that the only viable long-term solution appears to be the creation of a new law (preferably an EU Regulation).**

Specifically, the group called for a pan-European “Electronic Securities Law”, akin to Germany’s eWpG, but harmonized at the EU level. Such a framework would define the legal effects of tokenized securities across all Member States, ensuring consistency in how rights are interpreted and enforced. While politically ambitious, this approach was seen as necessary to close the current gap between regulatory classification and enforceability.

In the short term, participants suggested that industry associations or legal consortia could develop model use cases to submit to regulators, illustrating the enforcement challenges and seeking interpretive guidance.

These use cases would highlight real-world scenarios where rights attached to security tokens fail to operate consistently across jurisdictions, helping build the case for eventual harmonization.

**Call to Actions regarding Security-token rights are not equally executable EU-wide**

The key call to actions from the discussion are:

- **Develop cross-border use cases to illustrate enforcement gaps:** Legal experts and market participants should collaboratively draft real-world case studies highlighting where tokenized rights fail to operate consistently under current national laws. These examples can be used to engage with regulators and accelerate legal convergence.
- **Promote the development of a harmonized EU Electronic Securities Law:** Industry stakeholders and policymakers should advocate for a common civil law framework that defines the legal status and enforceability of rights embedded in ledger-based securities across Member States.

### 3. DLT Pilot Regime: Potential Still Unlocked

The final topic introduced by Carola Rathke (YPOG), explored the current limitations and untapped potential of the DLT Pilot Regime, a cornerstone initiative intended to foster experimentation with blockchain-based financial market infrastructure. While the regime represents a major step forward in integrating distributed ledger technology into capital markets, participants agreed that its real-world utility remains severely constrained by both regulatory and technical limitations.

On the regulatory front, the most frequently cited challenge was the quantitative thresholds and restrictive scope imposed on eligible financial instruments and market participants. The pilot is currently limited to relatively small-scale issuances, excluding many complex or illiquid assets that would benefit most from blockchain's efficiency and transparency. Participants noted that these limits may unintentionally

discourage institutional adoption and constrain innovation to theoretical proofs of concept rather than live market trials.

Technically, the group discussed the lack of interoperability between different DLTs and between DLT-based systems and traditional financial infrastructures. The fragmentation across service providers, networks, and tools leads to isolated "island solutions," impeding the creation of a single, unified European capital market. Without common technical standards, cross-platform settlement, or shared data exchange protocols, the promised benefits of DLT, such as real-time clearing, cost reduction, and transparency, remain largely unrealized.

Participants welcomed ESMA's recent review of the DLT Pilot Regime, which proposes adjustments to enhance flexibility and scalability. These include:

- Raising the quantitative caps on instrument issuance.

- Expanding the scope of tradable asset types to include more complex products.
- Making the regime permanent to give financial institutions and service providers long-term legal certainty.

There was broad consensus that regulatory ambition must now match technological capability. Financial institutions are beginning to recognize that blockchain infrastructure could provide a competitive edge, particularly for post-trade processes and cross-border issuance. However, concerns were raised about the readiness of DLT service providers, many of whom still face operational maturity issues.

The session also explored whether standards should be introduced now or left to emerge organically. Some compared the situation to the early days of SWIFT, where standardization ultimately enabled mass adoption. While some warned that premature standard-setting might stifle innovation, others argued that early-stage coordination around interoperability, wallet access, and API communication could accelerate the safe scaling of DLT systems.

Finally, the group touched on Layer 1 regulation, suggesting that clear guidance or baseline compliance expectations for public blockchains might lower the entry barrier for institutional actors without compromising decentralization.

**Call to Actions regarding DLT Pilot Regime: Potential Still Unlocked**

The key call to actions from the discussion are:

- **Support ESMA's proposed amendments to the DLT Pilot Regime:** Policymakers and market participants should collectively advocate for regulatory changes that increase instrument thresholds, broaden the scope of eligible assets, and transition the regime from temporary to permanent, ensuring long-term usability for both retail and institutional markets.
- **Develop common European standards for DLT interoperability:** The industry should initiate collaborative efforts to define and promote open, modular technical and legal standards for data exchange, wallet interaction, and cross-chain communication. These standards should aim to reduce fragmentation and support a cohesive digital capital market across the EU.

We thank all participants of the Munich DARTE event for contributing to the discussion: Ayaan Shehryar, Andreas Kriegel, and Axel von Goldbeck (Möhrle Happ Luther), as well as Carola Rathke (YPOG), Christoph Kreiterling (Universität Trier), and Christopher Görz (Bundesverband elektronische Wertpapiere). The session also welcomed Dr. David An (Dracoon Ventures), Dr. Dirk Sturz (FinPlanet), Dr. Nina-Luisa Siedler (siedler legal), and Dr. Philipp Wagner (Deutsche WertpapierService Bank), alongside Hannes Claut (V-Bank), Holger Köther (ETO Group), Ilja Geier (Coinbase), and Jacek Trzmiel (Crystal Intelligence). Additional participants included Josh (Nova), Julia Lippoth (Bullish), Julian Saal (Edelman Smithfield), Kuan-Ning Tseng (Blockchain Founders Group), and Mariana de la Roche Wills (BlackVogel). Rounding out the group were Mathias Bauer-Langgartner (Chainalysis), Miguel Vaz (Hauck Aufhäuser Digital), Ralf Kaaz (Cashlink), Roland Gollenbeck (Bybit), Thomas Wodnitzki (21X), Tilo Palfner (Luminous Labs), Ulrich Gellersdörfer (CCRI GmbH), Walter Börst (DLT Finance), and Walter Hernandez (Exponential Science Foundation).

