

REGULATION ON ISSUING AND CIRCULATING FINANCIAL INSTRUMENTS IN DIGITAL FORM (Adopted by Consob with resolution no. 22923 of 6 December 2023)¹.

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¹ Resolution no. 22923 of 6 December 2023 and the attached Regulation are published in the Official Gazette no. 294 of 18 December 2023 and in Consob's Bulletin 12.1, December 2023 and comes into effect the day following its publication in the Official Gazette.

PART I
GENERAL PROVISIONS

Art. 1
(Regulatory sources)

1. This regulation is adopted pursuant to article 28, paragraphs 1 and 2, of Decree-Law no. 25 of 17 March 2023, converted, with amendments, by Law no. 52 of 10 May 2023.

Art. 2
(Definitions)

1. In this Regulation:

- a) “decree” means Decree-Law no. 25 of 17 March 2023 on “Urgent provisions on issuing and circulating certain financial instruments in digital form and on simplifying the FinTech experiment” converted, with amendments, by Law no. 52 of 10 May 2023;
- b) “list” means the list referred to in article 19 of the decree, kept by Consob;
- c) “CONSOB’s general regulation on administrative proceedings” means the general regulation on CONSOB’s administrative procedures pursuant to article 24 of Law no. 262 of 28 December 2005 and article 2, paragraph 5, of Law no. 241 of 7 August 1990, as amended, adopted by CONSOB resolution no. 18388 of 29 November 2012, as amended.

2. Unless otherwise specified, for the purposes of this Regulation, the definitions contained in the decree shall apply.

Art. 3
(Organisational unit responsible for proceedings)

1. The Markets Division is the organisational unit responsible for the proceedings set out in this regulation.

Art. 4
(Method of communication)

1. The applications, communications, deeds, documents and any other information required by this regulation are sent via certified electronic mail to dme@pec.consob.it or to any other address that may be indicated from time to time by Consob on its website.

PART II
LIST OF PARTIES RESPONSIBLE FOR THE REGISTER
FOR DIGITAL CIRCULATION AND THEIR REGULATION

Title I
Establishment of the list

Art. 5
(Formation of the list)

1. The list of parties responsible for the register for digital circulation referred to in article 19 of the decree is established.
2. The list includes:
 - a) in section 1, the parties referred to in article 19, paragraph 1, letter a), of the decree;
 - b) in section 2, the parties referred to in article 19, paragraph 1, letter b), of the decree;
 - c) in section 3, the parties referred to in article 19, paragraph 1, letter c), of the decree;
 - d) in section 4, the parties referred to in article 19, paragraph 1, letter d), of the decree;
 - e) in section 5, the parties referred to in article 19, paragraph 2, of the decree.

Art. 6
(Contents of the list)

1. In each section of the list, for each registered party responsible for the register, the following information is indicated:
 - a) the company name;
 - b) the registered office and administrative headquarters;
 - c) the identification details of the register or registers for which the role of the party responsible for the register is assumed.

Also indicated is whether the activity is carried out: i) in relation to instruments issued by the same party; (ii) in relation to instruments issued by the same party and by the members of the group to which it belongs; (iii) also in relation to instruments issued by parties not belonging to the group to which the party responsible for the register belongs.

2. Sections 1, 2, 3 and 4, for each registered party responsible for the register, also indicate the details of the registration resolution, the registration order number and the details of the measures to extend the operation.
3. For parties not having a registered office in Italy, their branch or secondary office is indicated in sections 1 and 2 and the secondary office is indicated in section 4.

Art. 7
(Publicising the list)

1. The list is published in the appropriate section of the Consob website.

Title II
Additions to and removals from the list

Art. 8
(Application and investigation for registration)

1. The application for registration in the list contains all the information needed to demonstrate compliance with the requirements of the decree for registration. It is prepared in accordance with Annex 1 and is accompanied by an illustrative technical report on the initiative, which is to be prepared in compliance with Annex 2.

In those cases in which the documentation indicated in the previous paragraph is already in Consob's possession, the applicant company is exempt from having to reproduce it. The application indicates this situation and the date on which the documentation was sent to Consob.

2. Within twenty working days of receipt, Consob verifies the compliance and completeness of the application and notifies the applicant of any missing documentation, which is to be sent to Consob within thirty working days of the receipt of this notification, at the risk of inadmissibility.

3. The application is dated from the day of its submission or, in the case of incomplete documentation, from the day the documentation is complete.

4. During its investigation, Consob may request further information:

- a) from the applicant company;
- b) from those parties performing administrative, management and control functions for the applicant company;
- c) from any other party, including non-Italian parties;

setting a deadline for transmission.

In these cases, the deadline for concluding proceedings is suspended from the date on which the information request is sent to the date on which Consob receives the same and, in any case, for a period not exceeding sixty days. Proceedings are terminated if the applicant company fails to send the supplementary information within the deadline set for this purpose by Consob.

5. If, during the investigation, it is deemed necessary (in order to assess the suitability of the register to ensure all the requirements of the decree are met) to request an audit by an independent auditor, one shall be appointed and assigned a deadline of no more than forty-five working days within which to send Consob the results of the audit. For this role, the professionalism, experience and independence of potential independent auditors shall be taken into account, as well as the need to contain costs for the applicant parties. In the event that it intends to appoint an independent auditor, Consob shall notify the auditor immediately and at least five working days before the assignment; this notification shall also contain an indication of the maximum cost of the audit. The deadline for concluding proceedings is suspended from the date on which the independent auditor is appointed until the date of the aforementioned deadline assigned to them. If the appointed independent auditor proposes any particular investigative needs within the period referred to in the previous sentence, the suspension of proceedings shall be extended, once, for a maximum of a further thirty working days. If the appointed independent auditor fails to send the results of their audit or does not present any investigative needs within the period referred to above, a different independent auditor shall be appointed, with equivalent qualifications and technical ability.

6. Any modification concerning the investigative elements relevant to the decision, which may arise during the investigation, shall be brought to the attention of Consob before it becomes effective, or in the event that this is not possible, within ten working days. In this case, the deadline

for concluding proceedings is interrupted from the date on which the communication concerning the changes made is received and begins again from the date on which Consob receives the relevant documentation.

7. Consob notifies the interested parties of the start and end dates of the suspension or interruption of the investigation and the reasons that led to it.

8. Without prejudice to the causes of suspension or interruption of the terms of the proceedings, Consob resolves on the application within ninety days by adopting an express provision and notifies the applicant company of the decision taken. Registration is denied when it appears that the applicant company fails to meet the requirements prescribed by article 20 of the decree. Failure to adopt, within the established deadlines, an express provision on the application for registration does not amount, in any case, to the provision of accepting the application.

9. The decision referred to in paragraph 8 is taken by Consob after consultation with the Bank of Italy, in the case of banks, investment firms and operators of wholesale markets for government bonds that intend to act as parties responsible for the register with respect to digital financial instruments of third-party issuers other than their group members. In such cases, the deadline for concluding proceedings shall be suspended for a period not exceeding sixty days. If the Bank of Italy has proposed certain investigative needs, the suspension period shall be extended by a further sixty days.

10. The party responsible for the register shall immediately communicate any change in the information transmitted for registration purposes that may affect the requirements for registration.

11. Each substantial modification of the characteristics of the register is to be communicated to Consob at least thirty working days before the expected approval.

12. If the party registered on the list intends to assume the role of the party responsible for the register with reference to a different or additional register to the one in relation to which it obtained the registration order, it shall submit an application for the purpose of extending the operation. In such cases, the procedure set forth in the preceding paragraphs shall apply. The applicant is not required to prove that they have the requirements whose existence has already been ascertained at the time of the initial registration.

Art. 9

(Additions to the list of Italian central depositories)

1. The Italian central depositories authorised pursuant to articles 16 and 19 of Regulation (EU) 909/2014 to act as the party responsible for the register shall simultaneously be automatically entered in section 5 of the list.

Art. 10

(Removal from the list upon request)

1. The parties responsible for the register who intend to cancel their registration in the list shall submit a specific removal request to Consob. Consob shall, within the maximum period of ninety days, resolve this by adopting an express provision. Failure to adopt, within the established deadlines, an express provision on the application for removal does not amount, in any case, to the provision of accepting the application.

2. Once the practical feasibility of the transition strategy has been assessed, Consob may promote the agreements necessary to ensure its implementation pursuant to article 21, paragraph 4, of the decree. In this case, the term referred to in paragraph 1 may be suspended until the conclusion of the agreements themselves.
3. The deadline referred to in paragraph 1 shall not run or shall be suspended in the event that market surveillance activities are in progress or have been launched with regard to the party responsible for the register for digital circulation. In this case, the deadline shall run from the moment the investigations have been completed.
4. Article 8, paragraphs 4 and 7 shall apply.

Art. 11

(Automatic removal from the list)

1. Outside the cases referred to in article 10, Consob removes the parties responsible for the registers for digital circulation from the list if the conditions referred to in article 21, paragraph 1, of the decree are met.
2. The removal resolution shall be adopted after consultation with the Bank of Italy when the conditions set out in article 21, paragraph 1, letters *d)* to *f)*, of the decree are met, and the activity of the party responsible for the register is carried out by:
 - a) banks, investment firms or operators of wholesale markets for government bonds, that carry out the activity of the party responsible for the register with respect to digital financial instruments of third-party issuers other than members of their group;
 - b) significant parties responsible for the register as referred to in article 22 of the decree.

In such cases, the deadline for concluding proceedings shall be suspended for a period not exceeding sixty days. If the Bank of Italy has proposed certain investigative needs, the suspension period shall be extended by a further sixty days.

4. Article 8, paragraphs 4 and 7, and article 10, paragraph 3, shall apply.

Art. 12

(Further procedural provisions)

1. Although not expressly provided for in this regulation, insofar as they are compatible, CONSOB's general regulation on administrative proceedings shall apply to the proceedings governed by it.

Art. 13

(Communications on carrying out the activity)

1. The parties responsible for the register shall immediately notify Consob of the start, any interruption and resumption of the activity.

Title III
Regulating the activity of the parties responsible for the register

Art. 14

(Minimum content of the document on the operating methods of the register)

1. Parties responsible for the register shall include the information indicated in Annex 3 in the document referred to in article 23, paragraph 3, of the decree.

ANNEX 1

INSTRUCTIONS FOR SUBMITTING AN APPLICATION TO BE ADDED TO THE LIST OF PARTIES RESPONSIBLE FOR THE REGISTER AND FOR THE EXTENSION OF OPERATIONS

A. Application to be added to the list

1. The application to be added to the list, signed by the company's legal representative, is to indicate:

- the company name;
- the company's registered office and administrative headquarters;
- the headquarters of the branch or secondary office in Italy;
- the name and contact details of a company contact person; and
- the list of attached documents.

For the parties referred to in article 19, paragraph 1, letters *a)* and *b)*, of the decree, the application also includes the reference of the authorisation to operate as banks, investment firms, market operators, financial intermediaries registered in the register referred to in article 106 of the Consolidated Law on Banking, payment institutions, electronic money institutions, insurance or reinsurance operators or companies.

2. In every case, the application for registration in the list is accompanied by the following documents:

- a) an illustrative technical report on the initiative prepared in compliance with Annex 2;
- b) the transition strategy referred to in article 14 applicable to the categories of financial instruments referred to in the register;
- c) any other documentation suitable to demonstrate compliance with the requirements of the decree for registration.

3. For the parties referred to in article 19, paragraph 1, letters *c)* and *d)*, the application for registration shall also be accompanied by the following documents:

- a) a copy of the company documents and proof of registration with the national companies' register, where applicable;
- b) a copy of the minutes of the meeting in which an external independent auditor or an audit firm listed in the special register referred to in article 6 of Legislative Decree no. 39 of 27 January 2010 has been appointed;
- c) the policies for the identification, prevention, management and transparency of conflicts of interest adopted by the company;
- d) a copy of the insurance policy or the preliminary insurance contract, or further documentation certifying the presence of another appropriate form of guarantee or the declaration of the

commitment, by the parties entitled to provide such an appropriate form of guarantee, to cover the liability for damages that may arise from the assumption of the role of the party responsible for the register;

4. For the parties referred to in article 19, paragraph 1, letter *d*), the application for registration shall also be accompanied by the following documents:

- a) a list of all the parties who perform administrative, management and control functions;
- b) the minutes of the meeting in which the administrative body verified that each of the parties called upon to perform administrative, management and control functions meets the requirements of integrity, together with the relevant annexes;
- c) a report on the organisational structure including at least the following information:
 - i. a description of the company structure (organisation chart, functional chart, etc.) with an indication of the details of any powers of attorney in place within the company organisation and any other useful information to illustrate the operational characteristics of the party responsible for the register;
 - ii. a description of the internal control system in place;
 - iii. a description of the information and communication technology (ICT) systems used, together with the relevant technical documentation;
 - iv. any outsourcing policies and a list of outsourced (or intended to be outsourced) functions, services and activities;
 - v. a description of the administrative and accounting procedures adopted to ensure compliance with the decree, including by staff.

B. Application for the extension of operations

In the cases referred to in article 8, paragraph 12, of the regulation, the request for the extension of operations shall be accompanied by the documents indicated in point 2 of Section A.

The parties referred to in article 19, paragraph 1, letters *c*) and *d*), of the decree shall also send a copy of the insurance policy or the preliminary insurance contract, or further documentation certifying the presence of another appropriate form of guarantee or the declaration of the commitment, by the parties entitled to provide such an appropriate form of guarantee, to cover the liability for damages that may arise from the extension of the role of the party responsible for the register;

The parties referred to in article 19, paragraph 1, letter *d*), of the decree, shall send any changes to the report on their organisational structure resulting from the assumption of the role of party responsible for the register with reference to a register that is different or additional to the one in relation to which the registration provision was obtained.

ANNEX 2

ILLUSTRATIVE TECHNICAL REPORT ON THE INITIATIVE

The applicant shall prepare the illustrative technical report referred to in article 20, paragraph 3, letter *e*), of the decree, including at least the detailed information in the following table.

<p>A) THE CHARACTERISTICS OF THE REGISTER AND THE ADDITIONAL MECHANISMS AND DEVICES PROVIDED FOR BY THE DECREE</p> <p>Provide a description of the technical/implementation characteristics of the technological infrastructure, including at least the following information:</p> <ol style="list-style-type: none"> 1. a general description of the technological infrastructure, which highlights the functions performed by the components based on Distributed Ledger Technology and those performed by any other components (functions performed <i>off-chain</i>). The description must highlight how the different components of the infrastructure interact with each other; 2. a specific description relating to the use of Distributed Ledger Technology, which provides details about the operation for each type of user (for example: the methods by which and the purposes for which the system can be used, how users connect to the system, a description of the services provided). <p>The description must, in particular, illustrate the operating rules and the methods for granting access for the main functions performed by the DLT, including those relating to:</p> <ol style="list-style-type: none"> i. the execution of consent protocols, clarifying whether the DLT is <i>permissionless</i>, <i>permissioned</i>, or hybrid. In the latter case, illustrate which operations are <i>permissionless</i> and which, on the other hand, are <i>permissioned</i>; ii. the execution of the validation functions and immutability guarantee mechanisms: updating the status of the register / shared consent / non-repudiability / differences between validating nodes and non-validating / other nodes; iii. access to information stored in the distributed register; iv. sending transfer instructions relating to the financial instruments registered on the infrastructure; v. sending instructions relating to the life cycle management of the financial instruments registered on the infrastructure; vi. the techniques adopted for the identifiability of users operating on the platform; <ol style="list-style-type: none"> 3. the description of the supporting infrastructure (systems, networks, applications) indicating, among other things: <ol style="list-style-type: none"> i. the technical requirements required for the nodes that make up the network, specifying any differentiations based on the functions performed; ii. the diagrams relating to data and network flows, as well as the communication protocols

adopted;

- iii. information on the possible use of cloud services, where relevant;
 - iv. the protocol used to create the interface with the node;
 - v. the geolocation of nodes and the transactional data of the register;
 - vi. estimated *disaster recovery*, *recovery time objective* and *recovery point objective* models;
4. the characteristics of the consent protocol used by the DLT infrastructure and the expected performance in terms of:
- i. the maximum number of users manageable, including the nature of the maximum limitation, *i.e.* whether absolute or for a specific period of time;
 - ii. the maximum number of transactions that can be processed in the unit of time;
 - iii. the typical transaction processing times (e.g. the expected time that elapses between entering a transfer instruction and the register actually being updated);
 - iv. the resilience to node malfunctions or compromises (e.g. in terms of the maximum number of nodes that can malfunction without compromising the operational ability of the register);
 - v. the maximum capacity of recordable information in the unit of time;
 - vi. the *performance* measured on the basis of *transactions per second* (TPS) or transactions per relevant unit of measurement;
 - vii. the minimum and recommended system requirements to run the node: RAM / CPU / disk space / network bandwidth;
5. a description of the characteristics of the *smart contracts* used to issue and manage the financial instruments;
6. a description of additions:
- i. the presence of external data sources (for example “oracles”) and integration mechanisms and, where appropriate, with the adoption of which control and verification systems;
 - ii. the presence of *bridges* or other mechanisms to exchange digital financial instruments with other networks and, where appropriate, which ones;
 - iii. the use of third-party *identity providers* for the identification of users on the platform and, where appropriate, which ones;
 - iv. the real-time reporting and notification tools available to investors and/or authorities;
7. a description of the operating models made available to investors to control the means of access to financial instruments;

8. an indication of the technical methods that the applicant intends to adopt to make a unique connection to the digital financial instrument of the information relating to the issue, as referred to in article 12 of the decree;
9. a description of the mechanisms and devices that the applicant intends to adopt in order to:
 - i. prevent the use of digital financial instruments by parties other than those entitled to do so;
 - ii. ensure that the overall number of digital financial instruments constituting a single issue cannot be changed.
 - iii. ensure business continuity and business recovery, specifying the characteristics of the system adopted for external information security.

The description of the technical-implementation characteristics of the technological infrastructure must be such as to demonstrate an adequate knowledge, by the party responsible for the register, of the logic and mechanisms regarding the operation of the technologies underlying the register itself and must be done using plain, understandable language.

The description in question cannot be limited to one or more references to technical papers illustrating the operation of Distributed Ledger Technology, nor to the systematic citation of parts of the same papers.

If the technological infrastructure used provides for the use of several distributed registers, the information elements identified in this Section must be provided, where relevant, for each of them and the description must also include an illustration of the interaction and communication methods, where provided, between the different distributed registers.

B) RISK ANALYSIS

Provide a detailed description:

1. of the risks that could potentially compromise the proper functioning of the infrastructure, including risks of a cyber nature; and
2. of the safeguards put in place to mitigate risk.

C) COMPLIANCE WITH THE TECHNICAL REQUIREMENTS PROVIDED FOR BY THE DECREE

On the basis of the technical-implementation characteristics of the infrastructure and the risk analysis illustrated in points A and B, provide an assessment of the compliance of the register and the further measures that the applicant intends to adopt in relation to the requirements prescribed by the decree, as detailed below:

1. art. 4, paragraph 1, of the decree: highlight how the suitability of the register is guaranteed to:
 - a) ensure the integrity, authenticity, non-repudiability, non-duplicability and validity of the entries attesting ownership and transfer of digital financial instruments and the related lien (letter a);

- b) make it possible, to identify at any time, directly or indirectly, the parties in whose favour the entries are made, the kind and number of digital financial instruments held by each, and also make the circulation thereof possible (letter b);
 - c) allow the party in whose favour the entries are made to access the entries in the register relating to their digital financial instruments at any time and to extract a copy in electronic form for all purposes envisaged by law (letter c);
 - d) prevent the loss or unauthorised alteration of data and entries relating to digital financial instruments for the entire duration of the entry (letter *c-bis*);
 - e) allow liens of any kind to be entered on the digital financial instruments (letter d);
 - f) ensure accessibility by Consob and the Bank of Italy in order to exercise their respective functions (letter e);
 - g) allow identification for the purposes of applying the regulations on the liens regarding:
 - i. the date the lien was established;
 - ii. the digital financial instruments or the type thereof;
 - iii. the nature of the lien and any additional information;
 - iv. the reason for the lien and the date of the transaction being entered;
 - v. the quantity of digital financial instruments;
 - vi. the holder of the digital financial instruments;
 - vii. the beneficiary of the lien and, where disclosed, the existence of an agreement between the parties in order to exercise their rights;
 - viii. the date of expiry of the lien, if any (letter f).
2. art. 13, paragraph 2, of the decree: provide an assessment of the adequacy of the measures intended to be implemented in order to ensure:
- a) the correctness, completeness and continuous updating of the facts relating to issuance information;
 - b) the integrity and security of the system;
3. art. 23, paragraph 2, of the decree: provide an assessment of the adequacy of the mechanisms and devices that are intended to be adopted in order to:
- a) prevent the use of digital financial instruments by parties other than those entitled to do so;
 - b) ensure business continuity and business recovery;
 - c) ensure that the overall number of digital financial instruments constituting a single issue

cannot be changed.

D) FURTHER INFORMATION

Provide:

1. an indication of the categories of financial instruments referred to in the register and the services that the party responsible for the register intends to offer, also indicating whether the activity is intended to be carried out: (i) in relation to instruments issued by the same party; (ii) in relation to instruments issued by the same party and by the members of the group to which it belongs; (iii) also in relation to instruments issued by parties not belonging to the group to which it belongs.
2. an assessment of how well the transition strategy complies with the applicable regulatory requirements;
3. a description of the payment methods, if any, envisaged to enable transactions on digital financial instruments, including through interaction with other registers, services or systems;
4. an indication of any third parties that the party responsible for the register intends to use and a description of the activities carried out by them.

In this regard, also provide an indication (a) of the ways in which it is planned to ensure accessibility to all the information useful for the monitoring and assessment of the activities entrusted to third parties; (b) of the verification methods relating to the activity entrusted to third parties; (c) of the contact people for the entrusted activities, both with the applicant and with the third party, and send a draft of the related contracts, where available.

ANNEX 3

PUBLIC DOCUMENT ON THE OPERATING METHODS OF THE REGISTER AND THE DEVICES TO SAFEGUARD ITS OPERATION

The party responsible for the register shall prepare the document referred to in article 23, paragraph 3, of the decree, including at least the information detailed in the following table and indicating the methods chosen for making the aforementioned document available to the public.

A) FINANCIAL INSTRUMENTS REFERRED TO AND THE SERVICES OFFERED

Provide a description:

1. of the categories of financial instruments referred to in the register;
2. of the services offered;
3. of the operating models made available to investors to control the means of access to the financial instruments;
4. of the payment methods, if any, envisaged to enable transactions on digital financial instruments, including through interaction with other registers, services or systems.

B) OPERATING METHODS OF THE REGISTER AND DEVICES TO SAFEGUARD ITS OPERATION

Provide at least the following information:

1. a general description of the technological infrastructure, which highlights the functions performed by the components based on Distributed Ledger Technology and those performed by any other components (functions performed *off-chain*). The description must highlight how the different components of the infrastructure interact with each other;
2. a specific description relating to the use of Distributed Ledger Technology, specifying its main characteristics;

in particular, details must be provided on the type of Distributed Ledger Technology used and how it operates for each type of user (for example: the methods by which and the purposes for which the system can be used, how users connect to the system, access methods to the services provided). If the technological infrastructure used provides for the use of several distributed registers, the information elements in this section must be provided, where relevant, for each of them and the description must also include an illustration of the interaction and communication methods, where provided, between the different distributed registers.

3. a description of any agreements for recourse to third parties;
4. a description of the mechanisms and devices used, adequate to ensure business continuity and business recovery, including the means to ensure external information security;

5. a description of the transition strategy referred to in article 14 of the decree, applicable to categories of financial instruments that are referred to in the register;
6. for the parties referred to in article 19, paragraph 1, letters *c)* and *d)*, of the decree, a description of the insurance policy including the related identification details, or another appropriate form of guarantee, to cover any liability for damages that may arise from their assumption of the role of the parties responsible for the register.