

# Legal opinion



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To:	Arthur Vauchez	From:	William O'Rorke
Company:	DTSocialize	Cc:	Yannis Smadja
Réf.:		Date:	February 22 <sup>nd</sup> 202
Subject:	Compliance of the DTCoin token under French and EU regulations		

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Dear Arthur,

Please find below our legal opinion regarding the compliance of the DTCoin token under French and EU securities and ICO regulations.

Our analysis is based solely on the documents provided and the available information.

We remain at your disposal for any further information,

Sincerely yours,

A handwritten signature in black ink, consisting of a stylized 'W' and 'O' followed by a long, sweeping horizontal line that extends to the right.

**ORWL Avocats**  
William O'Rorke  
Partner

## 1. Context

1. In light of a specific request, DTSocialize Ltd (the “**Company**”) has asked us to complete a legal opinion (the “**Opinion**”) to assess the compliance of the DTCoin token (hereafter, “**Token**”) with French and EU digital assets and related regulations.
2. The Opinion is solely based on the information provided by the Company and especially on the answers to two requests for information (dated February 14th 2022 and February 15th 2022) and the 2020 Whitepaper edited by the Company (“**Whitepaper**”) (together, the “**Company Statements**”).
3. This Opinion must be considered concerning the purpose of the request, i.e., assessing the compliance of the Token with the European Union and French regulations governing (i) financial instruments (*security tokens*), (ii) digital assets public offerings and (iii) digital assets services on behalf of third parties. We do not express or have a duty to state our Opinion about any other future regulations applicable to the Token.

## 2. Background

4. Based on the Company Statements, we understand that the Token has been issued by Deroka Ltd, an affiliate of the Company regulated in Estonia, and is attached to a private blockchain operated by the Company.
5. The Token may only be used in a closed online ecosystem of online services and applications including a social network and a shopping application (hereafter, the “**DT Circle Ecosystem**”) where users of the DT Circle Ecosystem (“**Users**”) are rewarded Tokens against the data they generate while using such online services and applications.
6. Users may (i) spend the Tokens in selected shops and merchants that have partnered with the Company (but only as to 70% in FIAT and 30% with the Token for each transaction) (ii) or sell the Tokens against FIAT money in the DT Circle ecosystem, through a peer-to-peer mechanism, meaning that the Company is not offering any “buy-back” mechanism for the Tokens.
7. We also understand that each time a User spends the Token within the DT Circle Ecosystem, the corresponding amount of the transaction is “burned”, meaning that the Tokens are withdrawn from the circulating supply within the DT Circle Ecosystem.

### 3. Legal analysis

8. Our analysis focuses on whether the Token complies with EU and French financial regulations (3.1) before assessing its compliance with ICO regulations, including the assessment of its classification as a digital asset (utility token) (3.2).

#### 3.1. Financial regulations

##### 3.1.1. Security tokens regulation

9. **Legally**, according to [Article L. 211-1](#) of the French *Code des marchés financiers* (FMC) implementing into French law Article 4 of the European directive 2014/65/EU of 15 May 2014 on Markets in financial instruments, financial securities include (i) equity securities issued by joint-stock companies; (ii) debt securities and (iii) units or shares in undertakings for collective investment.
10. Equity securities issued by joint-stock companies include “*shares and other securities giving or capable of giving access to capital or voting rights*” (FMC, [art. L. 212-1-A](#)) and are therefore not limited to shares.
11. In that respect, the analysis on Initial Coin Offerings (ICOs) of the French *Autorité des marchés financiers* (“**AMF**”) highlighted that “*tokens may be legally classed as equity securities if they bestow the same financial and governance rights as those traditionally attached to shares or preference shares*”<sup>1</sup>.
12. In a publication made available in 2020<sup>2</sup>, the AMF considers that:  

“(…) **as soon as the token confers financial rights, for which the corresponding financial flows are transferred to the holder of the security by its issuer or an entity linked to it, it can be qualified as transferable security** within the meaning of MiFID. In any event, a “case by case” analysis of the rights conferred by the token in question must be carried out for qualification purposes.”
13. Thus, the AMF adopts an extensive qualification method of a security token adopted as soon as the financial flows, corresponding to a financial right, are paid to its holder by the issuer.
14. This analysis suggests that the presence and the qualification of financial flows are predominant in the qualification as a security token.
15. **In practice**, based on the Company Statements, we understand that the Token may only be used within the DT Circle ecosystem and that it does not grant any financial or governance right over the Company. The Token is mainly used as part of an international loyalty and payment program.

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<sup>1</sup> AMF, *Discussion paper on Initial Coin Offerings (ICOs)*, October 26, 2017, p. 7.

<sup>2</sup> AMF, *Review and analysis of the application of financial regulations to security tokens*, March 6, 2020.

16. **Consequently**, the Token does not fall within the scope of French or European financial regulations, as it does not meet the characteristics of a security.

### 3.1.2. E-money regulation

17. **Legally**, according to Article 2 of e-money Directive (EMD)<sup>3</sup> and Article L. 315-1 of the FMC, e-money is defined as an “*electronically, including magnetically, stored monetary value as represented by a claim on the issuer which is issued on receipt of funds for the purpose of making payment transactions (...) and accepted by a natural or legal person other than the electronic money issuer*”.
18. According to Title II of the EMD<sup>4</sup> and Article L. 525-3 of the FMC, the issuance, management, or provision of e-money requires prior authorisation as an electronic money institution.
19. **In practice**, the Token does not represent a claim against the Company since it does not offer any buy-back mechanism. It may only be exchanged on a peer-to-peer basis between Users inside the DT Circle ecosystem.
20. **Consequently**, the Token does not fall within the scope of e-money regulations.

## 3.2. ICO Regulations

### 3.2.1. Classification of the Token as a digital asset under French law

21. Virtual currencies are a notion provided for by European Union legislation<sup>5</sup>. However, the token is not defined at the European law level. Therefore, we will focus our analysis regarding token qualification on French law.
22. **Legally**, according to [Article L. 54-10-1](#) of the FMC, digital assets are divided into **tokens** and **virtual currencies**.
23. **Tokens**. According to [Article L. 552-2](#) of the FMC, a token is defined as an “*intangible asset digitally representing one or more rights that may be issued, recorded, stored or transferred through a distributed ledger technology allowing its owner identification, directly or indirectly*”. Nevertheless, this qualification implies that the token does not fall within the scope of other financial regulations<sup>6</sup>.
24. A token has to meet three cumulative conditions to fall within such definition:

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<sup>3</sup> EU Directive, 2009/110/EC, September 16th 2009, *Electronic money institutions*, Article 2.

<sup>4</sup> EMD, [Title II](#) (Article 3 and s.).

<sup>5</sup> EU Directive, 2015/849, May 20<sup>th</sup> 2015, *prevention of the use of the financial system for the purposes of money laundering or terrorist financing* (“*AML5*”).

<sup>6</sup> FMC, [Art. L. 552-1](#) and subsequents.

- (i) be an intangible asset; and given the exclusively digital nature of tokens, this condition is systematically fulfilled;
- (ii) represent one or more rights; i.e., a right on the issuer, such as access to a service and;
- (iii) be issued, stored or transferred through a distributed ledger technology allowing its owner identification, directly or indirectly; this condition refers to any form of blockchain, public or private, allowing the identification by a set of public and private keys.

25. Thus, utility tokens can be defined as tokens issued on a blockchain and give access to a right on the issuer (i.e., to access a service).

26. This analysis is reinforced by the analysis of the European Market in Crypto Assets (MiCA) regulation, still under negotiation, which defines a token as “*a type of crypto-asset which is intended to provide digital access to a good or service, available on DLT, and is only accepted by the issuer of that token*”<sup>7</sup>.

27. **Virtual currency.** Legally, virtual currency is defined as “*any digital representation of value that is not issued or guaranteed by a central bank or public authority, that is not necessarily attached to a legal tender and that does not have the legal status of a currency, but that is accepted by natural or legal persons as a medium of exchange and that can be transferred, stored or exchanged electronically*”. In practice, it refers to bitcoins or ether.

28. The main characteristic of virtual currencies is their use as an electronic medium of exchange.

29. **In practice**, the Token has the following characteristics :

- It is a “*digital asset*”;
- It *represents one or more rights*, i.e., the right to spend the Tokens in selected online shops within the DT Circle Ecosystem, as well as the right to sell the Token to the Company against [...]
- It is *stored and transferred through a distributed ledger technology*, i.e., the Company’s own private blockchain.

30. **Consequently**, the Token qualifies as a token under the French ICO regulations.

### 3.2.2. Compliance with the ICO regime

31. ICOs and tokens are unregulated at the European Union level. Consequently, we will assess the ICO's compliance with French law.

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<sup>7</sup> Article 3, (3) of the MiCA project.

32. **Legally**, according to [Article L. 552-3](#) of the FMC, a token public offering involves “*an offer to the public, in any form, to purchase the tokens*”. In other words, the sale of a token from a website constitutes a token public offering within the meaning of the aforementioned article.
33. Under the terms of [Article L. 552-4](#) of the FMC, the issuers “*may request prior to any public offering of tokens an approval from the AMF*”. This approval is **optional** and implies complying with the legal and regulatory provisions governing AML/CFT.
34. According to [Article 711-2 of the General Regulation of the AMF](#), a token offering may qualify as such if the number of people is open to more than 150 people.
35. Therefore, as to the French token public offering regime, a token issuer may or may not request the AMF’s approval to conduct a token public offering, as the regime is optional.
36. In addition, the French Consumer Code prohibits tokens issuers without visa and DASP registered but not licensed by the AMF to carry out :
- **sponsorship or patronage** (“*mécénat*”) operations “*when their object or effect is advertising, direct or indirect, in favor of an offer to the public of tokens (...) unless the sponsor or patron has obtained the visa*”<sup>8</sup> ; Sponsorship is defined as “*material support given to an event, to a person, to a product or to an organization with a view to obtaining a direct benefit from it*” being specified that “*sponsorship operations are intended to promote the image of the sponsor and include the indication of his name or brand*”<sup>9</sup>;
  - **direct marketing**<sup>10</sup> and **online direct marketing**<sup>11</sup>. However, “*the publication to natural or legal persons of simple advertising information, to the exclusion of any contractual or pre-contracting document, whatever the medium*”, remains authorized without an approval<sup>12</sup>.
37. **In practice**, we understand that the Token has been issued by Deroka LTD, a company regulated in Estonia. It is unclear whether or not the sale was a public offering or limited to a specific number of people. In any event, the *visa* is optional.
38. To the best of our knowledge, the Company has not carried out any patronage or sponsorship operations related to the Token sale, nor direct or online marketing targeting the French public.
39. **Consequently**, the Company did not violate any legal provision from the French ICO regime while issuing the Token.

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<sup>8</sup> Consumer Code, art. L. 222-16-2.

<sup>9</sup> Arrêté du 6 janvier 1989 relatif à la terminologie économique et financière.

<sup>10</sup> FMFC, art. L. 341-1, 8°.

<sup>11</sup> FMFC, art. L. 222-16-1, al. 2.

<sup>12</sup> FMFC, art. L. 341-2, 11°.