

**Submission Date**

02/06/2023

# ESMA\_QA\_1242

Status: Answer Published

## **Additional Information**

---

### **Level 1 Regulation**

Regulation (EU) 2022/858 - DLT Pilot Regime Regulation (DLTR)

### **Topic**

DLT financial instruments

## **Subject Matter**

DLT Collective investment undertakings

## **Question**

Should ETFs or other collective investment undertakings represented by shares be considered as units in collective investment undertakings, rather than shares (transferable securities), thus falling into the bucket specified in Article 3(1), point (c), DLTPR, and hence assessed against the criteria in Article 25(4), point (a), of MiFID II?

## ESMA Answer

---

02-06-2023

Original language

[ESMA70-460-189 - Heading 7 - Question 5]

### **Answer provided by the European Commission in accordance with Article 16b(5) of the ESMA Regulation.**

Collective investment undertakings represented by shares fall within Article 3(1), point (c), DLTPR. Article 3(1), point (c), DLTPR refers to "units in collective investment undertakings covered by Article 25(4), point (a)(iv), of Directive 2014/65/EU". Since Article 25(4), point (a)(iv), of Directive 2014/65/EU refers to both "shares or units in UCITS" and considering the similar nature of shares and units in collective investment undertakings, shares in collective investment undertakings fall under Article 3(1), point (c), DLTPR. They do not fall under Article 3(1), point (a), which concerns shares, which are transferable securities. Likewise, ETFs which are defined in Article 4(1), point (46), MIFID as funds "of which at least one unit or share class is traded throughout the day on at least one trading venue and with at least one market maker" fall within Article 3(1), point (c), DLTPR when they are UCITS using units or shares.

**Disclaimer in relation to the answers provided by the European Commission in accordance with Article 16b(5) of the ESMA Regulation:** these answers clarify provisions already contained in the applicable legislation. They do not extend in any way the rights and obligations deriving from such legislation nor do they introduce any additional requirements for the concerned operators and competent authorities. The answers are merely intended to assist natural or legal persons, including competent authorities and Union institutions and bodies in clarifying the application or implementation of the relevant legal provisions. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law. The views expressed in the internal Commission Decision cannot prejudge the position that the European Commission might take before the Union and national courts.