

DATE: May 3rd 2022

TO: [REDACTED]

FROM: Lemur Legal d.o.o.

AUTHOR: dr. Peter Merc, peter@lemur.legal

SUBJECT: legal opinion on the legal nature of [REDACTED] token

I. BACKGROUND AND SCOPE OF WORK

I.1. The legal opinion below outlines the legal status and the nature of [REDACTED] tokens (hereinafter also referred to as: "[REDACTED]" or "[REDACTED]"). [REDACTED] tokens were generated on the Ethereum network during the [REDACTED] token generation event by [REDACTED], a company incorporated in [REDACTED] with its registered address at [REDACTED] (hereinafter referred to as: "Token Issuing Entity"). The Token Issuing Entity was established as a special purpose vehicle, for the purposes of a [REDACTED] token generation event.

I.2. The smart contract for issuing [REDACTED] tokens is the following:

[REDACTED]

I.3. Operating entity is [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

I.4. We refer to the [REDACTED] project that was established and is operated by the Company. As part of the project, a new digital asset was generated and distributed. This digital asset in a form of a [REDACTED] token is utilised on a [REDACTED].

I.5. We have been instructed to provide this opinion solely on the question of whether the design of [REDACTED] token would cause it to be considered:

- a security (i.e. a regulated financial instruments) for the purpose of Markets in Financial Instruments Directive (Directive 2014/65/EU; hereinafter referred to as: "MiFID II") – existing European Union ("EU") legal framework for financial instruments;
- an asset-referenced token or electronic money token for the purpose of Markets in Crypto Assets Regulation (proposal 2020/0265) - future European Union ("EU") legal framework for financial instruments;
- a security (i.e. a regulated financial instruments) for the purpose of Financial Instruments Market Act (Official Gazette of the Republic of Slovenia, No. 77/18, 17/19, 66/19 and 123/21 - ZTFI-1) - existing Slovenian legal framework for financial instruments;
- a security token or regulated financial instrument according to soft law documents (e.g. guidelines) from the perspective of several European regulators (FINMA, FCA) – existing perspective of competent European regulators;
- a security token under so called Howey test - applicability of U.S. security regulation to [REDACTED] token.

I.6. For the purpose of this legal opinion, we have been provided with the following documents:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

I.7. The above stated documents provided by the Company are setting out, among other, the design of [REDACTED] token that was issued, the infrastructure of the [REDACTED] Platform and existing and planned functionalities of the Platform.

- I.8. We have been informed by the Company that the above stated documents are final and will remain in substantially the same form as were provided to us at the moment of writing this legal opinion. We have relied only on the relevant facts, documents and instructions as informed to us. We have not considered any other issues, other than that as set out in the paragraph 1.4. and have also not conducted any independent enquiries or due diligence in respect of the [REDACTED] token issuance or the operation of the Company (or affiliates).
- I.9. Lemur Legal Ltd. is Ljubljana, Slovenia, based legal advisory company advising clients in legal matters based on Slovenian and European Union law. This advice is based on EU and Slovenian law as at 9:00 am of the date hereof, is limited to the matters expressly specified herein and must not be read as extending, by implication or otherwise, to any other matter.
- I.10. We have not examined or expressed any views on, nor will we be deemed to have examined or expressed any views on, any regulatory requirements, restrictions or prohibitions:
- under the laws of any other jurisdictions that may be applicable,
 - in connection with the Company's (or its affiliates') activities, the network / ecosystem, or the circumstances or conduct of the [REDACTED] token issuance or the commercial aspects of any of the foregoing, or
 - any other ancillary digital asset, platform token, synthetic token, wrapped token, staking token, NFTs or asset-backed token, or any fractions thereof, which may be issued / created in connection with the operation of the [REDACTED].
- I.11. Where any reference or opinion is related to the foregoing or expressed beyond the jurisdiction of Slovenian or EU law, we accordingly disclaim reliance thereupon and any obligation arising thereupon, and you are advised to obtain legal advice regarding these issues applicable.
- I.12. Please also note that our opinion does not cover any other areas of law such as tax law, privacy and data protection laws, issues relating to the licensing of information technology, intellectual property, money laundering and countering the financing of terrorism, or regulatory advice (save as mentioned

in this document), and we do not assume any responsibility to update this advice after the date hereof.

I.13. The views expressed in this document are solely our views as to issues expressly dealt with in this opinion. Our opinion does not constitute an assurance, guarantee or warranty that the competent authorities would necessarily agree with the views stated in this opinion or that any challenge would not be made or would necessarily fail. This opinion is not intended to be used, and cannot be used, for the purposes of avoiding penalties that may be imposed by any applicable law.

I.14. Further, it is assumed that:

[REDACTED]

I.15. As of the date hereof, to our knowledge there has been no court case nor any formal notice published by any competent regulator in EU which directly addresses the issues raised in this advice, save for various releases, guidelines and papers. Accordingly, competent authority may reach an alternative conclusion different from on provided in this opinion.

II. OPINION (SUMMARY)

II.1.A “utility token” is not defined term under EU or Slovenian law. Solely considering the design of [REDACTED] token, as set further in the document, we are of the view that, in itself, the design of [REDACTED] token:

- a) constitutes a utility token under MiCA;
- b) constitutes a utility token under FINIMA and FCA guidelines;
- c) does not constitute security under MiFID II;
- d) does not constitute security under ZTFI-1;
- e) does not constitute asset-referenced or electronic money token under MiCA;
- f) accordingly would not cause [REDACTED] token to be deemed “security” or a “capital markets product” for the purposes of applicable EU regulation;
- g) U.S. securities regulation does not apply to [REDACTED] token.

II.2. Our opinion herein is addressed to yourselves solely for the benefit, and may be disclosed exclusively for the purpose of listing [REDACTED] token on a digital asset exchange, on a non-reliance basis. It is not to be relied upon by any other person or quoted or referred to in any public document or filed with any governmental authority or agency in any way other than person without our prior written consent.

III. INTRODUCTION

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

V. [REDACTED] TOKEN FUNCTIONALITIES

V.1. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

V.2. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

V.3. [REDACTED]

[REDACTED]

V.4. [REDACTED]

V.5. [REDACTED]

V.6. [REDACTED]

V.7. [REDACTED]

V.8. [REDACTED]

[REDACTED]

V.9. [REDACTED]

V.10. [REDACTED]

V.11. [REDACTED]

[REDACTED]

V.12. [REDACTED]

V.13. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

V.14. [REDACTED]
[REDACTED]
[REDACTED]

VI. APPLICABLE LEGISLATION FOR [REDACTED] TOKEN

VI.1. There is no existing specific law, directive or regulation in the EU or in Slovenia that provides specifically for regulation of digital assets or digital tokens as such.

VI.2. However, this cannot be taken to mean that digital assets and digital tokens are wholly unregulated in EU and in Slovenia. The existing systemic legal framework can be applied to various crypto assets under specific circumstances.

VI.3. In addition, Markets in Crypto Assets regulation, as future EU regulation covering crypto assets, is expected to be adopted in the EU parliament later this year.

Existing Legal Framework of the European Union:

VI.4. According to Annex I, section C of MiFID II Directive, which legally enumerates Financial Instruments, [REDACTED]
[REDACTED].

VI.5. Financial Instruments are specified in Annex 1, section C, of MiFID II, which explicitly states what constitutes as Financial Instrument, meaning that no other instruments (not specified in that list) may be qualified as Financial Instruments.

According to the cited section of MiFID II, Financial Instruments are: transferable securities, money-market instruments, units in collective investment undertaking, options, futures, swaps, etc.¹

VI.6. When considering whether or not [REDACTED] token may be considered as transferable securities, the definition of transferable securities need to be taken into consideration. According to article 4, point 44 of MiFID II, *transferable securities are classes of securities which are negotiable on the capital market, with the exception of instruments of payment, such as:*

(a) shares in companies and other securities equivalent to shares in companies, partnerships or other entities, and depositary receipts in respect of shares;

(b) bonds or other forms of securitised debt, including depositary receipts in respect of such securities;

(c) any other securities giving the right to acquire or sell any such transferable securities or giving rise to a cash settlement determined by reference to transferable securities, currencies, interest rates or yields, commodities or other indices or measures.

VI.7. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

VI.8. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

¹ Full list of Financial Instruments according to Annex 1, Section C, MiFID II is available on: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32014L0065>.

[REDACTED]
[REDACTED]
[REDACTED]
- [REDACTED]

VI.10. Since Financial instruments are explicitly legally enumerated in Annex 1, Section C of MiFID II Directive and utility tokens are not one of them, nor can

[REDACTED]
[REDACTED]
[REDACTED]

Future Legal Framework of the European Union (MiCA)

VI.11. Markets in Crypto-assets Regulation (MiCA) is at time of writing this legal opinion a proposal for the future EU framework that enables markets in crypto-assets as well as the tokenisation of traditional assets.

VI.12. According to MiCA, there will be several different crypto tokens, namely (article 3, definitions):

- **asset-referenced token:** a type of crypto-asset that purports to maintain a stable value by referring to the value of several fiat currencies that are legal tender, one or several commodities or one or several crypto-assets, or a combination of such assets;
- **electronic money token:** a type of crypto-asset the main purpose of which is to be used as a means of exchange and that purports to maintain a stable value by referring to the value of a fiat currency that is legal tender;
- **utility token:** a type of crypto-asset which is intended to provide digital access to a good or service, available on distributed ledger technology, and is only accepted by the issuer of that token.

VI.13. [REDACTED]
[REDACTED]

Slovenian national legislation

VI.14. Furthermore, we emphasize that Slovenian national legislation has been adopted in accordance with the EU legislation, meaning that also the national law does not consider [REDACTED] token as financial instruments. Article 7 (2) of the Slovenian Financial Instruments Market Act, which is applicable law when considering whether or not [REDACTED] tokens qualify as a financial instrument under the law of Slovenia, defines the Financial Instruments as one of the following:

- transferable securities;
- money-market instruments;
- units in collective investment undertakings; and
- derivative financial instruments.

VI.15. According to the Slovenian Obligation Code (Official Gazette of the Republic of Slovenia, No. 97/07 - official consolidated text and 64/16 – constitutional court revision), tokens not issued either as a written document or in a manner prescribed by another law, are not a security paper (and, consequently, even less transferable security). Consequently, token cannot constitute a transferable security under the Slovenian Financial Instruments Market Act neither can selling tokens represent the public offer of (transferable) securities to the public and the selling of tokens does not fall within the scope of the stated legislation. Since utility tokens do not meet the definition of any of the other specified Financial Instruments, which was also expressly confirmed by *The Securities Market Agency* of Slovenia in the Consultation Paper on ICO,² [REDACTED]
[REDACTED]
[REDACTED]

² Consultation paper on ICO is accessible in English language on: https://www.atvp.si/Documents/CP_ATVP_EN_FINAL_2.pdf.

Soft Law provisions from various European Regulators

VI.16. FINMA, Swiss regulator competent for the supervision of financial markets, issued ICO guidelines in 2018. Guidelines define three categories of crypto tokens, namely:

[REDACTED]

VI.17. FCA, UK regulator competent for the supervision of financial markets, issued Guidance on Cryptoassets in 2019. Guidance defines three categories of crypto tokens, namely:

[REDACTED]

VI.18. Based on the understanding of different categories of crypto tokens, as expressed in the said documents issued by FCA and FINMA, we are of the opinion, that [REDACTED] token qualifies as a utility token.

Law of the United States

VI.19. Considering the fact that no natural person or legal entity from the U.S. were not given the option to acquire any [REDACTED] tokens in the private distribution or in the crowdsale, the U.S. law shall not apply in the given case, and further analysis would be irrelevant.

VI.20. **Based on the above and based on our opinion, it is therefore evident, that [REDACTED] token or issuance of [REDACTED] tokens are not subject to U.S. security law and therefore cannot qualify as a security or as a securities offering under the U.S. law.**

VI.21. Notwithstanding the above, our opinion is that if applying Howey test to the [REDACTED] token, does not qualify as a security.

VI.22. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

- o [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED];

- o [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED];

- o [REDACTED]
[REDACTED];

VI.23. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

VI.24. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

VII. [REDACTED] TOKEN DISTRIBUTION – PRIVATE PLACEMENT:

VII.1. Since [REDACTED] token is not a security under MiFID II or a transferable security as defined by Article 1(4) of Directive 93/22/EEC, [REDACTED] token distribution does not qualify as a public offering of securities according to Prospectus directive (2003/71/EC) and Directive 2001/34/EC.

VII.2. Consequently, [REDACTED]
[REDACTED]. As clearly reasoned above, it neither falls under the securities or prospectus regulation within the Slovenian legislation.

VII.3. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

VIII. [REDACTED] TOKENS AS INVESTMENTS:

VIII.1. The Company is not an investment company whose main business is holding and managing securities for investment purposes, [REDACTED].

VIII.2. Furthermore, the Company is not holding nor managing [REDACTED]. Each token holder can decide how he/she wants to manage their tokens and if and when they wish to exchange them for other virtual currencies.

VIII.3. Every token holder expressly agreed and acknowledged this by accessing the [REDACTED]. Based on the above it is evident that [REDACTED] and the above is also specified in the Company's materials and agreements with the token holders and expressly acknowledged by them.

VIII.4. The value of [REDACTED] tokens is not guaranteed and the Company also explicitly warns users that there is no reason to believe that [REDACTED] tokens will increase in value, and they might also decrease in value or lose their value entirely.

VIII.5. In addition, by holding [REDACTED].

VIII.6. Moreover, user represents and warrants that user does not consider [REDACTED].

IX. CONCLUSION

Finally, it is in our believe that [REDACTED] [REDACTED]. There is no reasonable expectation of profits from acquiring [REDACTED] tokens.

Any token holder manages [REDACTED] [REDACTED] [REDACTED].

Based on the above analysis, we further believe that [REDACTED] [REDACTED] are not securities, investment or any other financial products under applicable EU and Slovenian, but utility tokens.

[REDACTED] token distribution does not qualify as [REDACTED] [REDACTED]. Users from U.S. and other restricted areas were strictly not allowed to acquire [REDACTED] tokens.

In the event, you wish to discuss any issue further or in greater detail, please let us know and we will be happy to discuss the matter further.

Best Regards,


dr. Peter Merc
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