



Decree No.2019-1213 of 21st November 2019

relating to Digital Assets Service Providers

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Target audience: *Digital assets service providers, Autorité des Marchés Financiers, Autorité de Contrôle Prudentiel et de Résolution, retail investors, credit institutions.*

Purpose: *To implement the provisions relating to digital assets service providers and token issues.*

Entry into force: *The text enters into force the day after its publication.*

Notice: *The text enriches access to an account for their token issuance and of registered or licensed digital assets service providers by a right of appeal to the Autorité de Contrôle Prudentiel et de Résolution in the event of failure to comply by the credit institution with the objective, non-discriminatory and proportionate rules governing the access of token issuers and digital assets service providers to an account (Article 1). The text also makes adjustments to the Monetary and Financial Code following the introduction of direct marketing and quasi-direct marketing supervision, practices now reserved for licensed service providers or for issuers that have received an approval for their token issuance (Article 2). Finally, the text specifies the definitions of the various digital assets services established by law and the rules and procedures applicable for a service provider to be registered or licensed (Article 3).*

References: *The Decree is issued to implement Article 85 to 87 of the Law n°2019-486 of 22 May 2019, The Action Plan for Business Growth and Transformation. The Articles of the Monetary and Financial Code created or amended by this Decree may be viewed, as drafted pursuant to this Decree, on the Légifrance website (<http://www.legifrance.gouv.fr>).*

The Prime Minister,

Based on the report of the Minister for the Economy and Finance,

In view of the directive (UE) 2018/843 of the European Parliament and the Council of 30 May 2018 amending the directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, the directive 2009/138/EC and 2013/36/EU ;

In view of the Monetary and Financial Code, in particular Article L. 312-23, L. 341-1 and L. 54-10-1 to L. 54-10-5;

In view of the opinions of the Consultative Committee on Financial Legislation and Regulation dated 11 July 2019 and 26 July 2019;

Decrees:

Article 1

Chapter II of Title I of Book III of the Monetary and Financial Code is supplemented by a section worded as follows:

“Section 5: Access to payment account services held by credit institutions

“Article D. 312-23 If a credit institution has not established the rules referred to in the second paragraph of Article L.312-23 or in case of infringement of the these rules, the persons mentioned within the same paragraph whose access have been refused to the deposit and payment account services of the aforementioned institution can refer the matter to the Autorité de Contrôle Prudentiel et de Résolution.

Such refusal shall deemed to be constituted in case of silence of the institution for more than two month after the receipt by the latter of a complete request for the access sent via registered letter with return receipt or by electronic registered post.

“The referral shall be accompanied by a statement of reasons why the applicants consider that this refusal is contrary to the requirements resulting of the provisions of L.312-33 applicable to the institution. A copy of the statement shall be sent by the Authority to the credit institution, which has fifteen days to inform the former about the reasons of the refusal.

“The Autorité de contrôle prudentiel et de resolution makes a decision within two months from the referral. It can, if needed, decide to exercise powers relating to supervision and imposition of sanctions, which it holds from Chapter II of Title I of Book VI of the present Code. It can, furthermore, propose to the applicant to refer in his name and on his behalf the Bank of France for an application for designation of a credit institution according to the procedure laid down in paragraph III of Article L.312-1.

“Art. D. 312-24. – The communication laid down in the third paragraph of Article L.312-23 shall be carried out, for each refusal, within one month.”

Article 2

Chapter I of Title IV of Book III of the Monetary and Financial Code is amended as follows:

1° In the first and second paragraph of Article D. 341-2 2°, the references “Article L. 341-1 1° to 5°” are replaced by the references “Article L. 341-1 1° to 9°”;

2° In Article D. 341-3 3° and 4°, the references “, Article L. 341-1 3°, 4° and 5°” are replaced by the references “and Article L. 341-1 3° to 9°”;

3° In the first and second paragraphs of Article D.341-4 the words “Autorité de contrôle prudentiel” are replaced by the words “Autorité de contrôle prudentiel et de resolution”.

2° In Article D. 341-12 5°, the reference “Article L. 341-1 5°” is replaced by the reference “Article L. 341-1 9°”.

Article 3 Find out more on this Article...

Title IV of Book V of the Monetary and Financial Code is supplemented by a chapter written as follows:

“Chapter X

“Digital Assets Service Providers

“Art. D. 54-10-1 – 1° The service of digital assets custody on behalf of third parties is defined as the act of controlling, on behalf of third parties, the means of access to the digital assets registered in the distributed ledger system and of keeping a register of positions, opened in the name of the third party, corresponding to the third party’s rights to said digital assets.

“The custody service provider thus defined processes events affecting the digital assets or associated rights under conditions defined by the General Regulation of the Autorité des Marchés Financiers.

“When the cryptographic technique used by the distributed ledger system on which the digital assets are registered is asymmetric cryptography, the means of access to a digital asset consist of private cryptographic keys.

“2° The service of purchasing or selling digital assets against currency that is legal tender is defined as the act of concluding, for a third party, purchase or sale contracts concerning digital assets against currency that is legal tender, including, where applicable, dealing on the service provider’s own account;

“3° The service of trading of digital assets against other digital assets is defined as the act of entering into contract providing trading of digital assets against other digital assets on behalf of third parties including, where applicable, dealing on the service provider’s own account;

“4° The service of operating a trading platform for digital assets is defined as the act of managing one or more digital assets trading platforms, within which multiple buying and selling interests expressed by third parties for digital assets against other digital assets or a currency that is legal tender can interact in a manner that results in a contract;

“5-1. The service of reception and transmission of orders for digital assets on behalf of third parties is defined as the act of receiving and transmitting orders concerning digital assets for a third party;

“5-2. The service of digital assets portfolios management on behalf of third parties is defined as the act of managing, on a discretionary and client-by-client basis, portfolios that include one or more digital assets under a mandate given by a third party;

“5-3. The advisory service to investors in digital assets is defined as the act of giving personalised recommendations to a third party, either at their request or on the initiative of the service provider providing the advice, concerning one or more digital assets;

“5-4. The digital assets underwriting service is defined as the act of purchasing digital assets directly from a digital assets issuer, with a view to subsequently selling them;

“5-5. The service of placing on a firm commitment basis of digital assets is defined as the act of searching for buyers on behalf of a digital assets issuer and guaranteeing them a minimum amount of purchases by undertaking to buy the digital assets not placed;

“5-6. The service of placing without a firm commitment basis of digital assets is defined as the act of searching for buyers on behalf of a digital assets issuer without guaranteeing them an amount of purchases.

“*Article D. 54-10-2* In order to register in accordance with Article L. 54-10-3 applicant shall provide the Autorité des Marchés Financiers with the following information:

“1° The identity of the persons referred to in Article L. 54-10-3 1° and 2°, the documents relating to the good repute of those persons, notably an excerpt of the criminal record of the chairman, managing director, assistant managing directors or managers, and any other person performing equivalent duties, or any other information concerning any refusal of registration, license, affiliation or granting of a licence required to perform commercial or professional activities, and concerning any withdrawal, revocation or cancellation of a registration, license, affiliation or licence, or any annulment by a public authority or by a professional association, and information concerning the minimum time that will be devoted by these persons to performing their duties;

“2° an attestation by the persons referred to in Article L. 54-10-3 1° and 2° declaring that they are not subject to the injunctions set out in Article L. 500-1

“3° The attestation of persons referred to in Article L. 54-10-3 1° and 2° regarding the possession of sufficient knowledge and skills to perform their duties so as to be able to understand the main risks to which the service provider is exposed, and to comply with the requirements that are applicable to it by virtue of Chapters I and II of Title VI of this Book

“The persons referred to in Article L. 54-10-3 1° and 2° shall provide, as evidence of their competence by providing a curriculum vitae;

“4° The information referred to in Article L. 54-10-3 3°;

“The General Regulation of the Autorité des marchés financiers specifies the documents that the applicants shall provide.

“When a registration is requested by an organization mentioned in Article L.561-2 1° to 7° of the Monetary and Financial Code, the requirements relating to good repute are deemed to be satisfied.

Art. D. 54-10-3 – I. – Upon receiving a complete application, the Autorité des Marchés Financiers, proceeds to examine it and forwards it within five working days to the Autorité de Contrôle Prudentiel et de Résolution for its opinion. The latter sends its opinion to the Autorité des Marchés Financiers within three months after receiving the complete application.

“When the Autorité des Marchés Financiers finds that the application is not complete, it shall ask the applicant to send the missing information.

“II. – The Autorité des Marchés Financiers shall notify the applicant of its decision regarding registration within ~~three~~ six months after receiving the complete application and inform the Autorité de Contrôle Prudentiel et de Résolution of this.

“Article D. 54-10-5 – I. – Pursuant to paragraph six of Article L. 54-10-3, the service provider shall declare to the Autorité des marchés financiers any change concerning the persons referred to in Article L. 54-10-3 1° and 2°, or of event liable to call into question the assessment previously made of their good repute, no later than fifteen days after their materialisation.

“In support of this declaration the service provider shall forward a file describing said change of situation, together with the relevant documents referred to in Article D. 54-10-2.

“The Autorité des Marchés Financiers shall inform the Autorité de Contrôle Prudentiel et de Résolution within five working days after receiving the complete declaration and request its opinion on the state of compliance of the service provider. The Autorité de Contrôle Prudentiel et de Résolution shall forward its opinion to the Autorité des Marchés Financiers within one month after receiving it.

The Autorité des Marchés Financiers has three months to assess the consequences of the change of situation.

II. “When the Autorité des Marchés Financiers considers that, in view of the declared change of situation, the service provider no longer complies with the obligations provided for in Article L. 54-10-3 it instructs with a formal notice the service provider to rectify its situation within three months. Failing that, the Autorité des Marchés Financiers may initiate a delisting procedure under the conditions laid down in paragraph III. of the present Article. Prior to the decision of the Autorité des Marchés Financiers to withdraw a digital assets service provider license, it shall first indicate to the latter the reasons why it considers that it can no longer claim registration and that it has a period of twenty working days to express its observations in writing.

“The Autorité des Marchés Financiers shall examine any observations expressed by the service provider in question and shall inform the Autorité de Contrôle Prudentiel et de Résolution within five working days. The latter shall notify the Autorité des Marchés Financiers of its opinion within two months.

“The Autorité des Marchés Financiers shall notify the service provider of its reasoned decision within three months after receiving the service provider’s observations. The Autorité des Marchés Financiers shall publish the decision on its website and update the list provided for in the last paragraph of Article L. 54-10-3.

“The digital assets service provider shall inform the public of its delisting no later than the day after receiving notification of the AMF’s decision. It shall update its website by removing all references to the AMF registration.

“The delisted service provider providing the service of digital assets custody on behalf of third parties shall return to its clients as soon as possible control of the means of access to the digital assets in accordance with the procedures indicated beforehand by its clients. If a client has not provided return instructions within a reasonable period of time, the service provider shall transfer as soon as possible control of the means of access to the digital assets to a service provider registered with the Autorité des Marchés Financiers and immediately inform its clients of this.

“IV. – When the Autorité de Contrôle Prudentiel et de Résolution wants a delisting procedure to be undertaken against a digital assets service provider, it shall refer the matter to the Autorité des Marchés Financiers which shall apply paragraph III of this Article.

“V. When the Autorité de Contrôle Prudentiel et de Résolution decides to open a disciplinary procedure against a digital assets service provider, it may suspend the examination of a request for delisting until the decision of its Enforcement Committee.

“Article D. 54-10-6 - In order to obtain the licence referred to in Article L. 54-10-5, the applicant shall forward to the Autorité des Marchés Financiers a complete application containing the following information:

“I. – Information of a general nature, and in particular:

“1° its name or its company name and corporate form, the organisation’s address and the contact details of the contact point nominated by the applicant;

“2° the list of digital assets services for which the license is requested and, where applicable, the services that would be provided without an license ;

“3° a copy of the documents of incorporation of the company and, if applicable, the unique identification number.

“II. – For the digital assets service providers referred to in Article L. 54-10-5 3° to 5°, the information referred to in Article D. 54-10-2.

“III. – The identity of the shareholders, direct and indirect, natural or legal persons, who own at least 10% of the capital or the voting rights, or have any other possible means of exerting a significant influence over the management of said company, and the amount of their stake.

“IV. – Information of a financial nature, and in particular:

“1° information on the financial position of the applicant on the individual level and, where applicable, the consolidated and sub-consolidated levels, comprising forecast figures including projected charts of accounts for the first three financial years, the planning assumptions used for the projections referred to above, and explanations concerning the figures, including the expected number and type of clients, the expected volume of transactions and orders, and, where applicable, calculations of estimated equity requirements;”

“2° for companies that are already operational, the statutory financial statements, on the individual level and, where applicable, the consolidated and sub-consolidated levels for the last three financial years, approved, when they are audited, by a statutory auditor, including the balance sheet, profit and loss account, annual reports and financial notes and, where applicable, an auditor’s report covering the last three years or the period elapsed since the start of operations.”

“V. – Pursuant to Article L. 54-10-5 I 1°, an insurance certificate and the professional indemnity insurance policy subscribed to, or any means of ensuring that the applicant has the required level of equity.”

“VI. – For the services referred to in Article L. 54-10-2 1° to 5, information relating to the service provider’s organisation and its programme of activity, the content of which is specified in the General Regulation of the Autorité des Marchés Financiers.”

“VII. – For the service referred to in Article L. 54-10-2 4°, the operating rules of the digital assets trading platform.”

“Art. D. 54-10-7. – Upon receiving a request for license pursuant to Article L. 54-10-5, the Autorité des Marchés Financiers shall proceed to examine it. It may ask the applicant for any additional items of information needed to examine the application. “

“When the Autorité des Marchés Financiers requests the opinion of the Agence Nationale de la Sécurité des Systèmes d’Information to check the information systems security of digital assets service providers, the Agence Nationale de la Sécurité des Systèmes d’Information shall send its opinion within two months after the matter was referred to them. The Autorité des Marchés Financiers shall forward all documents that are useful for this purpose.”

“The Autorité des Marchés Financiers may ask the applicant to use evaluated and certified products in the conditions provided for by Decree 2002-535 of 18 April 2002 relating to the evaluation and certification of the security offered by information technology products and systems, or to have a security audit performed by a trusted service provider qualified in the conditions provided for by Decree 2015-350 of 27 March 2015 relating to the qualification of security products and trusted service providers for information systems security requirements or Decree 2010-112 of 2 February 2010 adopted for the application of Articles 9, 10 and 12 of Ordinance 2005-1516 of 8 December 2005 relating to electronic exchanges between users and administrative authorities, and between administrative authorities. The Autorité des Marchés Financiers may ask the applicant for the audit report established by the qualified trusted service provider and may request the opinion of the Agence Nationale de la Sécurité des Systèmes d’Information on this report.”

“The Autorité des Marchés Financiers shall notify the applicant of its decision within six months from the date of receiving the complete application.”

“Art. D. 54-10-9. – The Autorité des Marchés Financiers shall be informed beforehand of any planned modification relating to elements taken into account amid the examination of an application for approval of an asset-servicing provider. It shall inform the reporting body of any consequences of the planned modification on the upholding of the approval. The Autorité des Marchés Financiers may request the submission of any additional information.”

“When the Autorité des Marchés Financiers requests the opinion of the Agence Nationale de la Sécurité des Systèmes d’Information, the procedure provided for in Article D. 54-10-7 shall apply. The time for reply is one month after the matter has been referred to it by the Autorité des Marchés Financiers.”

“The Autorité des Marchés Financiers may ask digital assets service providers to use evaluated and certified products or to have a security audit performed under the same conditions as those provided for in Article D. 54-10-7.”

“When the planned modifications result in a modification of the license granted, the Autorité des Marchés Financiers shall have a period of one month to give a decision on them. The Autorité des Marchés Financiers may extend this period by a maximum of one month, when it considers this necessary due to the particular circumstances of the case, and after notifying the digital assets service provider.”

Article 4 find out more on this Article...

Book VII of the Monetary and Financial Code is amended as follows:

1° In section I of Articles D. 743-2, D. 753-2 and D. 763-2, the following line is added after the last line of the table:

“

D. 312-23 and D. 312-24	Decree No. 2019-1213 of 21 November 2019
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”

2° Article D. 743-8 is replaced by an Article worded as follows:

“Art. D. 743-8- I – The provisions of the Articles referred to in the left-hand column of the following table, in the version referred to in the right-hand column of the same table, shall apply in New Caledonia:

“

APPLICABLE ARTICLES	IN THEIR VERSION RESULTING FROM
D. 341-1	Decree No. 2005-1007 of 25 August 2005
From Art.D. 341-2 to D. 341-4	Decree No. 2019-1213 of 21 November 2019
D. 341-5 to D. 341-8	Decree No. 2005-1007 of 25 August 2005

”

“II – For the purposes of applying Article D. 341-2, in 3°, the phrase ‘or in Article L. 310-18 3° to 5° of the Insurance Code’ is removed.

“For the purposes of applying Article D. 341-4, in the first and second paragraphs, the words ‘and venture capital companies’ are removed.

3° Article. D. 753-8 is replaced by an Article worded as follows:

“Art. D. 758.-I. – The provisions of the Articles referred to in the left-hand column of the following table, in the version referred to in the right-hand column of the same table, shall apply in French Polynesia:

“

APPLICABLE ARTICLES	IN THEIR VERSION RESULTING FROM
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D. 341-1	Decree No. 2005-1007 of 25 August 2005
From D. 341-2 to D. 341-4	Decree No. 2019-1213 of 21 November 2019
D. 341-5 to D. 341-8	Decree No. 2005-1007 of 25 August 2005

”

4° The second paragraph of the same Article is replaced by a section II worded as follows:

“II – For the purposes of applying Article D. 341-2, in 3°, the phrase ‘or in Article L. 310-18 3° to 5° of the Insurance Code’ is removed.

“For the purposes of applying Article D. 341-4, in the first and second paragraphs, the words ‘and venture capital companies’ are removed.

5° Article D. 763-8 is replaced by an Article worded as follows:

“Art. D. 763-8. - I – The provisions of the Articles referred to in the left-hand column of the following table, in the version referred to in the right-hand column of the same table, shall apply in the islands of Wallis and Futuna:

“

APPLICABLE ARTICLES	IN THEIR VERSION RESULTING FROM
D. 341-1	Decree No. 2005-1007 of 25 August 2005
From D. 341-2 to D. 341-4	Decree No. 2019-1213 of 21 November 2019
D. 341-5 to D. 341-8	Decree No. 2005-1007 of 25 August 2005

”

“II – For the purposes of applying Article D. 341-2, in 3°, the phrase ‘or in Article L. 310-18 3° to 5° of the Insurance Code’ is removed.

“For the purposes of applying Article D. 341-4, in the first and second paragraphs, the words ‘and venture capital companies’ are removed.

6° Article D. 743-9 is replaced by an Article worded as follows:

“Art. D. 743-9. - The provisions of the Articles referred to in the left-hand column of the following table, in the version referred to in the right-hand column of the same table, shall apply in New Caledonia:

“

APPLICABLE ARTICLES	IN THEIR VERSION RESULTING FROM
D. 341-9 to D. 341-11	Decree No. 2005-1007 of 25 August 2005
D. 341-12	Decree No. 2019-1213 of 21 November 2019
D. 341-13 to D. 341-15	Decree No. 2005-1007 of 25 August 2005

”

“II – The second sentence of the first paragraph of Article D. 341-10 is not applicable.

For the purposes of applying the fifth and seventh paragraphs of Article D. 341-12, the words ‘or equivalent numbers’ are added after the words ‘SIREN numbers’.

7° Article D. 753-9 is replaced by an Article worded as follows:

“Art. D. 753-9. -I– The provisions of the Articles referred to in the left-hand column of the following table, in the version referred to in the right-hand column of the same table, shall apply in French Polynesia:

“

APPLICABLE ARTICLES	IN THEIR VERSION RESULTING FROM
D. 341-9 to D. 341-11	Decree No. 2005-1007 of 25 August 2005
D. 341-12	Decree No. 2019-1213 of 21 November 2019
D. 341-13 to D. 341-15	Decree No. 2005-1007 of 25 August 2005

”

“II – The second sentence of the first paragraph of Article D. 341-10 is not applicable.

For the purposes of applying the fifth and seventh paragraphs of Article D. 341-12, the words ‘or equivalent numbers’ are added after the words ‘SIREN numbers’.

8° Article D. 763-9 is replaced by an Article worded as follows:

“Article D. 763-9- I – The provisions of the Articles referred to in the left-hand column of the following table, in the version referred to in the right-hand column of the same table, shall apply in the islands of Wallis and Futuna:

“

APPLICABLE ARTICLES	IN THEIR VERSION RESULTING FROM
D. 341-10 to D. 341-11	Decree No. 2005-1007 of 25 August 2005
D. 341-12	Decree No. 2019-1213 of 21 November 2019
D. 341-13 to D. 341-15	Decree No. 2005-1007 of 25 August 2005

”

“II – The second sentence of the first paragraph of Article D. 341-11 is not applicable.

For the purposes of applying the fifth and seventh paragraphs of Article D. 341-12, the words ‘or equivalent numbers’ are added after the words ‘SIREN numbers’.

9° At the end of Section 6 of Chapter V of Title IV of Book VII, an Article D. 745-9-7 is added as follows:

“*Art. D. 745-9-7* – The provisions of the Articles referred to in the left-hand column of the following table, in the version referred to in the right-hand column of the same table, shall apply in New Caledonia:

“

APPLICABLE ARTICLES	IN THEIR VERSION RESULTING FROM
D. 54-10-1 to D. 54-10-3, D. 54-10-5, D. 54-10-7, D. 54-10-9	Decree No. 2019-1213 of 21 November 2019

”

10° At the end of Section 5 of Chapter V of Title V of Book VII, an Article D. 755-9-7 is added as follows:

“*Art. D. 755-9-7* – The provisions of the Articles referred to in the left-hand column of the following table, in the version referred to in the right-hand column of the same table, shall apply in French Polynesia:

“

APPLICABLE ARTICLES	IN THEIR VERSION RESULTING FROM
D. 54-10-1 to D. 54-10-3, D. 54-10-5, D. 54-10-7, D. 54-10-9	Decree No. 2019-1213 of 21 November 2019

”

11° At the end of Section 5 of Chapter V of Title V of Book VII, an Article D. 765-9-7 is added as follows:

“*Art. D. 765-9-7* – The provisions of the Articles referred to in the left-hand column of the following table, in the version referred to in the right-hand column of the same table, shall apply in the islands of Wallis and Futuna:

“

APPLICABLE ARTICLES	IN THEIR VERSION RESULTING FROM
D. 54-10-1 to D. 54-10-3, D. 54-10-5, D. 54-10-7, D. 54-10-9	Decree No. 2019-1213 of 21 November 2019

”

Article 5

The Minister for the Economy and Finance and the Minister for Overseas Territories, shall be each responsible for the execution of this Decree, which shall be published in the Official Journal of the French Republic.

November 21, 2019.

Edouard Philippe

By the Prime Minister:

The Minister for the Economy and Finance

Bruno Le Maire

The Minister for Overseas Territories

Annick Girardin