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Print from the website of the AMF

07 June 2021

Digital assets: the AMF amends its General Regulation and updates its policy

The AMF has added a new article to its General Regulation on the location of digital asset services and has revised its policy (Instruction DOC-2019-23, Instruction DOC-2019-24 and Position DOC-2020-07) on the regulations applicable to digital asset service providers.

The legal regime of digital asset service providers (DASP) created by the PACTE Law of May 22, 2019 has evolved further to the adoption of Order No. 2020-1544 of December 9, 2020, strengthening the anti-money laundering and counter-terrorist financing framework (AML/CFT). The AML/CFT Order, which extended the registration obligation to DASPs that provide services consisting in the exchange of digital assets against other digital assets and the operation of a trading platform for digital assets (services 3° and 4° of Article L. 54-10-2 of the Monetary and Financial Code), has been completed by Decree no. 2021-387 of April 2, 2021.

The AMF informs service providers who were providing services consisting in the exchange of digital assets against other digital assets and who were operating digital asset trading platforms before December 10, 2020 that they have until June 10, 2021 to comply with the registration requirement.

Creation of a new article in the AMF General Regulation specifying the conditions under which a service is deemed to be provided in France

Pursuant to Article L. 54-10-3 of the Monetary and Financial Code, amended by the AML/CFT Order, the AMF has created a new Article 721-1-1 in its General Regulation that defines the conditions under which a digital asset service is deemed to be provided in France. This article takes up the approach previously adopted in Position paper DOC-2020-07. Consequently, a digital asset service is deemed to be provided in France when it is provided by a digital asset service provider with an establishment in France or at the initiative of the digital asset provider to clients resident or established in France.

Position DOC-2020-07 sets out the situations where the AMF considers that the DASP has taken this initiative.

AMF policy update

Instruction DOC-2019-23 on the rules applicable to digital asset providers has been amended, in particular to adapt and specify the list of items requested in the registration and/or license application.

Instruction DOC-2019-24 on cybersecurity requirements states that the DASP's relations with a subcontractor or service provider in connection with its information system must be governed by a contract, the content of which is specified in position DOC-2020-07.

Position DOC-2020-07 (Questions-answers relating to the digital asset service providers regime) has also been updated.

The main changes to which the AMF wishes to draw attention are as follows.

Question 3.2 has been adapted to the new Article 721-1-1 of the AMF General Regulation to remove the general criteria of location of the digital asset service, which have been transferred to the General Regulation, and to keep the examples of marketing material. A new definition of the distribution network has been added.

New questions-answers have also been added:

- on the changes introduced by the AML/CFT Order with regard to the verification of the AML/CFT procedures of applicants for registration;
- on the AMF's consideration of contractual guarantees in the event that the DASP chooses professional indemnity insurance; and

- to recall the provisions of the Consumer Code on the advertising of digital asset services.

Finally, it should be noted that DOC-2020-07 remains a work in progress and may be updated regularly, depending on the issues raised by the market.


Learn more

- 📄 Questions & answers on the digital asset service providers regime
- 📄 Obtain DASP authorisation

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