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21 December 2022

## **Digital assets: the AMF strengthens its policy on DASPs in relation to good repute and skills and promotional communications**

The Autorité des Marchés Financiers (AMF) has revised its policy (Position-Recommendation AMF DOC-2020-07 and Instruction AMF DOC-2019-23) on the regime of digital asset service providers (DASP) mainly in order to clarify expectations in terms of good repute and skills of the senior managers and holders of the control of the DASPs.

The AMF Position-recommendation DOC-2006-23 (Questions and answers on the rules that apply to financial investment advisers) is adjusted to take into account these changes. The AMF provides details with regard to promotional communications and client relations. In these domains, recommendations are also made on these points for registered DASPs.

The AMF Instruction 2019-23 "Regime applicable to digital asset service providers" is amended to adjust the documents requested by the AMF concerning the good repute and skills of applicants for DASP registration.

The AMF first clarifies the possibility for a financial investment adviser (FIA) to provide an advisory service to subscribers of digital assets (service 5°c listed in Article L. 54-10-2 of the French Monetary and Financial Code). Thus, a FIA may decide to apply for DASP license

(under Article L. 54-10-5 of the French Monetary and Financial Code) or to provide this service without license as part of its "other asset management advisory activities". The method of provision without license implies compliance by the FIA with the rules of good conduct applicable to FIAs when they exercise such "other wealth advisory activities" (question and answer 2.2). This point is reflected in Position-Recommendation AMF DOC-2006-23 applicable to FIAs (question and answer 1.8).

A new question (2.4) presents the analysis grid used by the AMF to verify the good reputation and skills of the senior managers and holders of the control of the DASPs. This question and answer explains the approach chosen by the AMF when analysing the suitability and integrity of the senior managers and holders of the control of the DASPs, which is similar to that adopted in the joint European Securities and Markets Authority (ESMA) and European Banking Authority (EBA) guidelines on the assessment of the suitability of members of the management body and key functions holders.

In addition, the AMF specifies the conduct to be adopted by DASPs in the event of a change in their situation and clarifies the cases in which these changes must be reported to the AMF and those in which a new registration file must be submitted to the AMF to provide new services (new question and answer 3.7)

A new paragraph relating to promotional communication and relations with clients of digital asset services is added (paragraph 12). When a DASP provides its services to a client base consisting, at least in part, of consumers within the meaning of the introductory article of the French Consumer Code, it shall ensure compliance with the requirements set out in the provisions of the same code. Thus, when its client base consists at least in part of consumers, a registered or licensed DASP must ensure that its promotional communication is clear and not misleading.

The AMF issues recommendations to encourage DASPs to include warnings for clients or potential clients as well as to communicate specific information on risks, adapted to the nature and complexity of the digital assets and services in question (new question and answer 12.1).

The AMF also reminds the provisions of the French Consumer Code regarding sponsorship. When the DASP is not licensed and carries out activities other than services on digital assets, it shall ensure that the advertising effect of the sponsorship operation is identifiable by the public as not targeting digital asset services.

Finally, the AMF reminds that the licensed DASP must establish, implement and maintain a complaints management policy and that Instruction AMF DOC-2012-07 "Complaints

handling" applies to licensed DASPs. The AMF recommends that registered DASPs set up such a complaints handling system.

In line with the clarifications made in Position - Recommendation AMF DOC-2020-07 on the good reputation and skills of managers and holders of the control of the DASPs, Instruction AMF DOC-2019-23 entitled "Regime applicable to digital asset service providers" is amended to adjust the documents requested by the AMF concerning the good reputation and skills of applicants for DASP registration.


### En savoir plus

- 📄 DOC-2019-23 : Rules applicable to digital asset service providers
- 📄 DOC-2020-07 : Questions & answers on the digital asset service providers regime
- 📄 Obtaining a DASP registration/optional licensing

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