

A regulated framework for crypto-asset service providers

Recently, the Belgian AML Law has been amended in order to introduce new provisions regulating crypto-exchanges and custodian wallet providers.

As from 1 May 2022, entities established in Belgium providing crypto exchange services and offering custodian wallets on Belgian territory will be required to register with the Belgian Financial Services and Markets Authority (FSMA). An entity operating an ATM located within Belgium will be considered having a Belgian establishment.

There are two important exceptions to this rule:

- will be exempted from this registration requirement: EEA crypto-exchange and custodian wallet service providers without a physical establishment in Belgium and operating under the freedom to provide services;
- are (with immediate effect) prohibited from providing these services: non-EEA crypto-exchange and custodian wallet service providers.

While applying for a registration with the FSMA the service providers must demonstrate that they comply with the following conditions:

- compliance with the Belgian AML-obligations (and the requirement of having an independent audit function) ;
- only certain forms of companies will be authorised (e.g. besloten vennootschap/société à responsabilité limitée is excluded) ;
- minimum capital requirement of EUR 50,000 ;

- the effective managers must be natural persons and must be fit and proper ;
- the shareholders must have the necessary qualities with regard to the need to ensure sound and prudent management ;
- having an appropriate internal organisation and contributing to the operating costs of FSMA.

Entities wishing to provide these services for the first time after 1 May 2022, will have to apply for a registration before starting their activities.

For those entities already providing the relevant services on 1 May 2022 a transitional regime is provided for. They must first apply for a provisional authorisation from the FSMA before 1 July 2022 and file a formal application before 1 September 2022.

For any questions or assistance, reach out to our team (Liesbeth Truyens, Marie-Aude Deslandes and Valentine Querton).

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