

As of 1 May 2022, certain crypto-related activities in Belgium will become regulated. The providers of these services will have to register with the Financial Services and Market Authority ('FSMA').

On 8 February 2022, the Belgian government finally adopted its much-awaited Royal Decree on the status and supervision of providers of exchange services between virtual currencies and fiat currencies and providers of custodian wallet services (the "Royal Decree"), which enters into force on 1 May 2022.

VIRTUAL ASSET SERVICE PROVIDERS (VASPS) IN BELGIUM

NEW REGISTRATION OBLIGATIONS

WHO IS CONCERNED?

The registration obligation concerns all EEA legal persons providing (i) custodian wallet services or (ii) exchange services between fiat and virtual currencies (together referred to as Virtual Assets Service Providers or VASPs), through a physical establishment in Belgium.

Besides the more classical forms of establishment (subsidiary, branch or agent), **VASPs** will also be considered as being established in Belgium if they offer the possibility to exchange crypto-assets in fiat or vice versa through ATMs located in Belgium.

The **custodian wallet services** consist in holding, on behalf of clients, private cryptographic keys for the purpose of holding, storing, and transferring virtual currencies. Transactions on crypto-assets rely on asymmetric encryption, an encryption system using two non-identical keys to encrypt and decrypt data: a public key, known to everyone and used for identification purposes (such as an email address), and a private key, known only to its holder and used to decrypt the information sent to the public key and control the ownership of crypto-assets.

Only service providers holding those private keys on behalf of their customers are subject to the registration requirement. On the contrary, providers of non-custodial wallets (also called "cold wallets"), where the private key is held by the users themselves (for instance, on a USB drive), are not subject to that obligation.

The notion of "exchange services between virtual currencies and fiat currencies" refers to selling or purchasing crypto-assets, provided (i) the entity offering the service uses its own funds to do so (excluding pure intermediaries, for instance) and (ii) the transactions involve a conversion between fiat currencies (i.e. currencies having a legal tender) and virtual currencies. That definition excludes from its scope issuers of virtual currencies or exchange platforms between virtual currencies only.



WHAT ABOUT ENTITIES NOT ESTABLISHED IN BELGIUM?

VASPs incorporated in another EEA member state are not required to register with the FSMA if they offer their services on the Belgian territory without any establishment (services exclusively offered through the internet or a mobile app, for example). If they have a Belgian establishment, they are subject to the Belgian legal framework described above.

Companies incorporated in a third country (i.e. a country that is not an EEA Member State) are prohibited from providing custodian wallet services or crypto/fiat exchange services on the Belgian market, with or without an establishment in Belgium. In practice, to offer their services in Belgium, they have to establish a legal entity either in Belgium or in another EEA country.

ARE YOU A VASP ACTIVE IN BELGIUM?

If you are a VASP falling within the scope of the law, you will be subject to two different sets of requirements:

1. Registration with the FSMA and prudential supervision

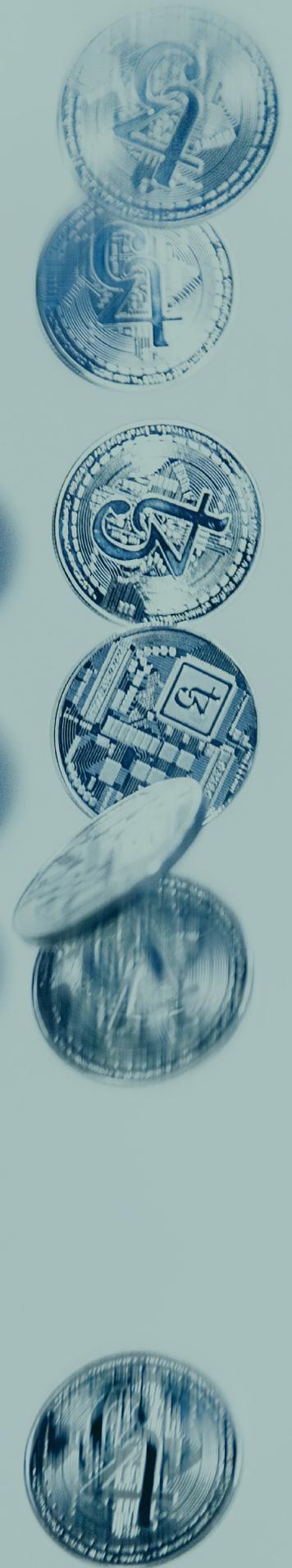
Before providing your services in Belgium, you must register with the FSMA for the crypto-related service(s) that you intend to provide.

The registration is subject to several requirements, which slightly differ depending on the type of services (wallet provider or exchange service provider). The registration application should include documents and information regarding your business, your organisation, the persons involved in the project (important shareholders and management), etc. to demonstrate compliance with all applicable requirements.

The key requirements relate to:

- the legal form and minimum capital: VASP must provide their services through a legal entity (SA, SRL, etc.) with a minimum fully paid-up capital of EUR 50,000;
- the effective management: all persons managing the activity should be 'fit and proper'
- the shareholders: the persons holding 5% or more of the VASP must present the necessary qualities to ensure a sound and prudent management;

the organisation: your organisation and governance should be appropriate to ensure compliance with all legal obligations and adequately manage all risks linked to the activities.



Once registered, you will have to comply with the above-mentioned conditions on an ongoing basis, and the FSMA will supervise your compliance with those.

2. Compliance with AML requirements

You will be subject to the Belgian anti-money laundering laws, which entail obligations such as Know-Your-Customer processes, transaction monitoring, risk management, etc.

WHAT ABOUT TIMING?

The Royal Decree enters into force on 1 May 2022. From that date, all VASPs established in Belgium will have to comply with the Belgian registration requirements.

The Royal Decree provides for a grandfathering provision for VASPs already carrying out VASPs activities in Belgium on 1 May 2022. These VASPs can continue their activities after 1 May 2022 without being registered until receiving a positive decision from the FSMA on their registration application.

To benefit from that grandfathering provision, they must notify their activities to the FSMA before 1 July 2022 and submit a complete registration file before 1 September 2022.

If you have a crypto-related activity, don't forget to begin your compliance and registration process now.

Our team would be delighted to assist you and answer all your questions on this new regulatory framework. Please reach out to our team of experts.

digitalfinance@simontbraun.eu

+32 2 543 70 80

This article is not legal advice or opinion. You should seek advice from a legal counsel of your choice before acting upon any of the information in this article.



SIMONT BRAUN

Avenue Louise 250 / 10
1050 Brussels

+32 (0)2 543 70 80

www.simontbraun.eu
Follow us on  