

On Friday 17 March 2023, the Financial Services and Market Authority (FSMA) regulation on the marketing of virtual currencies to consumers (as approved by Royal Decree) has been published in the Official Gazette (the Regulation).

## FSMA REGULATION ON MARKETING OF VIRTUAL CURRENCIES

### NEW RULES

### WHAT IS IT ABOUT?

The Regulation imposes new requirements regarding the marketing of virtual currencies to consumers. It will apply if the following circumstances are met:

- there must be an **advertisement**, defined by reference to FSMA's Circular FSMA\_2015\_16, i.e., any communication aimed specifically at promoting the purchase of, or subscription to, one or several virtual currencies, regardless of the medium used or means of dissemination. Pure branding campaigns are not captured by the Regulation;
- concerning **virtual currencies**: defined as per Directive 2018/843 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing (AMLD5), being a "digital representation of value that is not issued or guaranteed by a central bank or a public authority, is not necessarily attached to a legally established currency and does not possess a legal status of currency or money, but is accepted by natural or legal persons as a means of exchange and which can be transferred, stored and traded electronically"; and
- addressed to **consumers**: defined by reference to Article I.1 of the Belgian Code of Economic Law, being any natural person acting for purposes which are outside his or her trade, business, craft or profession. The Regulation will not apply to marketing campaigns addressed exclusively to professionals nor communication between consumers only.

According to the FSMA, the objective of the Regulation is (a.o.) to "ensure that the risks associated with virtual currencies are sufficiently prominent in such advertisements".

### WHO IS IN THE SCOPE OF THE REGULATION?

The Regulation applies to anyone who makes an advertisement on virtual currencies (being commercialised at the time of the advertisement), and

who either does so in the context of his/her professional occupation or occasionally if he/she is compensated.

The Regulation may therefore apply to different categories of persons:

- anyone who markets virtual currencies to consumers and who advertises for it;
- service providers who provide consumers with an infrastructure for investing in (e.g., trading platforms);
- anyone who broadcasts an advertisement on virtual currencies against remuneration (e.g., agents, brokers, business introducers, influencers on social media, etc).

The Regulation will apply to those persons irrespective of their localisation (in Belgium or outside) if the marketing activities are directed to Belgium (e.g., famous Belgian sportspersons or influencers appearing in ads broadcasted in Belgian media).

---

## WHAT ARE THE NEW RULES?

The Regulation contains three sets of rules:

- **general requirements** on the content and wording of the advertisement (e.g., ads should be recognised as such, their content may not be misleading or inaccurate (e.g., no expression of positive feeling), ads information must be presented in an understandable way and non-technical language, etc.);
- an obligation to **include warnings** in the advertisement (e.g. “Virtual money, real risks. In crypto, only the risk is guaranteed”);
- the obligation to notify in advance mass media campaigns to the FSMA: any ad intended for at least 25,000 consumers must be notified to the FSMA at least ten days prior to its broadcasting.

---

## WHEN DOES THE REGULATION ENTER INTO FORCE?

The new rules come into force two months after the publication of the Royal Decree in the Official Gazette (17 May 2023). All existing ads should be made compliant by 17 June 2023.

---

**For any questions or assistance, please reach out to our Digital Finance Team**

[digital.finance@simontbraun.eu](mailto:digital.finance@simontbraun.eu) | +32 (0)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](http://www.simontbraun.eu)  
Follow us on 