

Legal Alert

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The first EU regulations on virtual currency exchanges and wallets

On April 19, the European Parliament approved a directive whereby, among others, provides for the first time at European level a legal framework for virtual-fiat currency exchange platforms and custodian wallet providers.

In addition, the approved directive regulates expressly remote and electronic client identification, thus facilitating the digitalization of customer on-boarding across Europe.



The first EU regulations on virtual currency exchanges and wallets

On April 19, the European Parliament adopted a legislative resolution approving a directive to amend the Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing – also known as “AMLD IV”.

In the approved text of the directive to amend AMLD IV, among others, virtual-fiat currency exchange platforms and custodian wallet providers have a legal framework for the first time at European level. In addition, it expressly regulates remote and electronic client identification, thus facilitating the digitalization of customer on-boarding across Europe.

Key aspects for the crypto industry

- 1) Partial regulation of virtual-fiat currency exchange platforms and custodian wallet providers:
 - Virtual-fiat currency exchange platforms and custodian wallet providers will be subject to AML obligations and will have to adjust their business processes to meet their new regulatory obligations;
 - Virtual-fiat currency exchange platforms and custodian wallet providers will be subject to registration formalities, but each Member State will determine the registration procedure and the obligations deriving from registered status. An indication on the type of obligations crypto exchanges may expect is that the registration obligation has been regulated in the same article as licensing and registration formalities for fiat currency exchanges. Thus member states may consider applying a similar regime;
 - Virtual currencies and custodian wallet providers have a legal definition which is technologically neutral and which provides clarity on how are crypto currencies defined in Europe.
- 2) Express EU legal provisions regarding remote and electronic client identification:
 - The approved text of the directive expressly mentions that the customer's identity may be verified by electronic identification means and relevant trust services, as defined in eIDAS Regulation, or on any other secure, remote or electronic identification process regulated, recognized, approved or accepted by the relevant national authorities;
 - The proposed changes bring more clarity on remote and electronic means accepted for client identification purposes and create necessary legal grounds for more conservative national authorities;
 - Notably, the text of the directive does not refer only to qualified trust services as a permitted client identification method. However, each entity under customer due diligence obligations will have to prove its specific AML risks are balanced by reference to the client identification method used.

When it applies

In order to enter into force, the Council of the European Union has to approve the text of the directive as well. However, the Council is expected to approve it, as the two institutions have already agreed the text of the directive during inter-institutional negotiations.

Once published in the Official Journal of the European Union, the directive will enter into force within 20 days. Member States have to transpose it into national law in 18 months as of its entry into force. We expect that the changes will be applicable starting with the end of 2019.

For further questions regarding the aspects mentioned in this alert, please contact us.



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