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FSMA NEWS

**Newsletter on the distribution
of virtual currencies**

March 2023

REGULATION OF THE FINANCIAL SERVICES AND
MARKETS AUTHORITY PLACING RESTRICTIVE
CONDITIONS ON THE DISTRIBUTION OF VIRTUAL
CURRENCIES TO CONSUMERS IN BELGIUM

IN THIS NEWSLETTER

For several years now, virtual currencies (such as Bitcoin or Ether, to name but two examples) have been the object of widespread promotion to the general public and now constitute a highly popular form of investment.

Current events have shown, however, that this type of instrument is accompanied by very significant risks and may also undergo extreme fluctuations in value in a very short time, resulting in severe losses for those who invested in them.

Many consumers buy or sell virtual currencies for speculative purposes, often in the hope of being able to earn a considerable profit on the price of such currencies. Virtual currencies are promoted not only via the traditional marketing channels, but also by means of social media or applications such as Tik Tok or Instagram.



In some cases, celebrities (such as influencers) are paid to promote virtual currencies to their followers. Such individuals (top artists or athletes, for example) often have no particular qualifications in finance but use their celebrity status as a sales argument. This type of promotion targets the general public, and thus consumers. Certain categories of people, such as minors, are in some cases targeted specifically, in spite of their vulnerability.



In order to address this phenomenon, and while awaiting the entry into force of specific measures governing (services relating to) crypto-assets at European level, **the FSMA has issued a Regulation governing the distribution of virtual currencies to consumers**. This Regulation has been approved by Royal Decree of 8 February 2023 (Belgian Official Gazette of 17 March 2023). **This text will enter into force on 17 May 2023**. The Regulation imposes various obligations, including:

- / **rules as to content**, to ensure that advertisements are not inaccurate or misleading;
- / the insertion of **mandatory statements** and, in particular, the statement '*Virtual currency, real risks. The only guarantee in crypto is risk.*', as well as a longer warning summing up the main risks associated with an investment in virtual currencies **that is to be included at the beginning of each advertisement**;
- / **the obligation to notify** to the FSMA all advertisements to be used in a **mass media campaign** at least 10 days before their dissemination, in the form in which they will be disseminated.

This Newsletter is intended to guide market players (such as virtual currency platforms, issuers of virtual currency, intermediaries such as influencers) affected by this new Regulation by providing details about the content and application of legal requirements that will apply to them as from 17 May 2023.

1. DEFINITIONS OF KEY CONCEPTS

The regulation of 5 January 2023 defines certain obligations that must be complied with in connection with the **advertisements** disseminated to consumers when **distributing virtual currencies in Belgium** as a regular professional activity or on an occasional basis for compensation:

- / an **advertisement** is 'any communication that is specifically intended to promote the purchase of or subscription to one or more virtual currencies, regardless of the medium used or the channel by which this is done';



The Regulation applies regardless of the form or mode of dissemination of the advertisement. These include, by way of example, posters or advertising signs visible on the public road, banners used on websites, mobile applications, brochures, websites of trading platforms, etc.

- / **distribution** is to be understood as '*presenting a product or a virtual currency, in any way whatsoever, with a view to encouraging an existing or potential client to purchase, subscribe to, enter into, accept, sign up for or open the product or currency in question*'. These include, by way of example, having a virtual currency promoted by an influencer on social media, a trading platform that presents virtual currencies on its website in order to encourage consumers to buy them etc.

/ **virtual currencies** are defined in Article 2, 40°/1 of the Law of 2 August 2002 as 'digital representations of a value that is not issued or guaranteed by a central bank or public authority, is not necessarily linked to a legally issued currency and does not have the legal status of a currency or money, but which is accepted by natural or legal persons as a means of exchange and can be transferred, stored or traded electronically.'

Only those virtual assets that 'function as a means of exchange' or of 'payment' are therefore covered. Assets with only an investment function (such as 'security tokens', which confer rights to an interest in a company) or a utility function (such as 'utility tokens', which confer rights to future products or services) are excluded.



The Regulation does not apply to the distribution of virtual currencies that constitute investment instruments within the meaning of Article 3 of the Law of 11 July 2018 on offers to the public of investment instruments and the admission of investment instruments to trading on regulated markets. Therefore, virtual currencies that confer on their holder financial debts that are incorporated into an 'instrument' (because they are exchangeable or fungible, for example) that may be exercised vis-à-vis an issuer and/or another person (such as a guarantor) constitute investment instruments and therefore do not come under this Regulation. In order to determine whether a virtual currency constitutes an investment instrument, the FSMA has published a Communication that can serve as a guide to classifying such assets¹.

/ **In Belgium:** the Regulation applies to the distribution of virtual currencies within Belgian territory. This is a factual question and is assessed on a case-by-case basis based on evidence such as:

- reference to contact persons in Belgium;
- the absence of a disclaimer indicating that the distribution is not addressed to the Belgian public;
- the language(s) used;
- the possibility for consumers in Belgium to register online;
- the use of a website with a domain name that ends in '.be';
- the presence of a place of business or service centre in Belgium, or the use of an intermediary or influencer active in Belgium;
- the use of an image of a person who is well known to the Belgian public, such as athletes, artists or other celebrities.

The presence of one of the above-mentioned factors does not automatically mean that this is a case of distribution within Belgian territory. However, distribution in Belgium is always involved if an advertisement is disseminated via the Belgian media or via a physical advertising medium (such as a billboard) within Belgian territory.

¹ See [Communication FSMA_2022_25](#) of 22/11/2022 "Classification of crypto-assets as securities, investment instruments or financial instruments".

2. CONTENT RULES FOR ADVERTISEMENTS

The Regulation specifies that the information contained in advertisements may not be **misleading** or **inaccurate**. Specifically, the **advertisements must meet the following conditions**:

1. All advertisements must be **clearly recognizable** as such;
2. Advertisements must be **consistent with the warnings** referred to in Article 4, §1, 1° and 2° of the Regulation (see below) and may not conceal, downplay or obscure these warnings;
3. The advertisements **must not emphasize the potential benefits** of the virtual currency without also giving a fair, prominent and balanced indication of the **risks, limitations or conditions applicable** to the virtual currency concerned;
4. Advertisements **must not emphasize characteristics or make comparisons** that have little or no relevance to understanding the nature and risks of the virtual currency in question. By way of example, one may not make a link between the performance of a professional athlete (or other activities that seem remarkable to an ordinary consumer) and investment in the virtual currencies concerned;
5. Advertisements **may not contain any statement** regarding the future **value** or **future returns** of the virtual currency concerned;
6. The information must be presented in **non-technical language** and in a way that is **comprehensible** by the consumer. Advertisements must therefore be drawn up in clear and comprehensible language, **avoiding technical terminology**.



3. MANDATORY STATEMENT TO BE INCLUDED IN ADVERTISEMENTS

Given the very distinctive nature of investment in virtual currency, the FSMA considers that each advertisement disseminated among consumers when distributing these virtual currencies should contain a standardized warning. This type of approach allows for specific categories of people, like minors, to be targeted. These statements are intended to highlight the associated risks in a very explicit and comprehensive manner:

1. All advertising must contain the following message: **'Virtual currencies, real risks. The only guarantee in crypto is risk.'**
2. Advertisements must also contain **a warning about the risks**, intended to draw attention to the various risks run by consumers who invest in virtual currencies:

Warning

- the value of your virtual currencies can rise or fall sharply, and your initial investment may be lost completely;
- virtual currencies are not covered by the guarantee funds that cover bank deposits;
- there is no legal mechanism on the virtual currencies market to prevent market manipulation or insider dealing;
- virtual currencies depend entirely on a specific computer technology and infrastructure, which in some cases may be very recent and not yet adequately tested;
- if you lose the identification code or password giving access to the virtual wallet where the virtual currency is stored, the currency held therein will be irretrievably lost;
- the acceptance of virtual currencies as a means of payment is currently quite limited, and in most countries there is no legal obligation to accept them;
- for more information about the risks associated with an investment in virtual currencies, we advise you to read the Wikifin page **'What is a cryptocurrency?'** (available in [French](#) - [Dutch](#) only).

3. If a person is mentioned in an advertisement or if his image is used in an advertisement, and if that person is remunerated for that service, the advertisement must mention that the person is receiving a remuneration for disseminating the advertisement.

These mandatory statements must be clearly **visible and comprehensible**, and must be **presented at the beginning of the advertisement in the same format as the rest of the advertisement**. They must be **included word for word, without any alteration**. These mandatory statements must - where applicable² via a link to the risk warning - be included in all advertisements, even if it is very limited in size or duration (e.g. a banner or short video) or that are ephemeral in nature.

4. NOTIFICATION OF MASS MEDIA CAMPAIGNS

The Regulation requires that advertisements intended for use in a **mass media campaign** be notified to the FSMA in advance. Such advertisements should be notified to the FSMA at least 10 days before their dissemination.

² A link or a QR code is only authorized for the detailed warning under point 2., if the detailed warning cannot be mentioned in the advertisement.

A mass media campaign is defined by the following criteria in the Regulation:

Basic criterion	Dissemination to at least 25,000 consumers.
Those advertisements that fulfil the following criteria are unquestionably regarded as mass media campaigns:	<ul style="list-style-type: none"> / they are visible from the public road, / they are posted on a public website or on a public infrastructure, / they are disseminated via a social network by a person who has at least 25,000 followers on that network at the beginning of the dissemination, / they are disseminated via a social network by a person who pays that network for their dissemination (regardless of the number of followers that person has).

The procedures for notifying mass media campaigns are set out in [Communication FSMA 2023_05](#).

The FSMA wishes to emphasize that there is no mechanism for prior approval: the dissemination of the advertisement therefore does not require a decision on approval by the FSMA. The FSMA may, but is not obliged to, make observations in the period of 10 days between notification and dissemination. The FSMA may also make observations after the dissemination. The absence of a response by the FSMA within the ten-day period between the notification and the start of the dissemination cannot be considered equivalent to approval.

5. WHO IS REQUIRED TO NOTIFY MASS MEDIA CAMPAIGNS?

The obligation to notify the FSMA rests with the person who determines the content of the advertisement. In other words, it does not rest with the press outlet or media by which an advertisement may be disseminated.

6. SUPERVISION BY THE FSMA

The FSMA wishes to remind readers that the persons who disseminate advertisements (regardless of whether this advertisement has been notified to the FSMA) must store the following information for at least one year after the beginning of their dissemination:

- a copy of the advertisements, in the form in which they were disseminated;
- a list of media via which the advertisements were disseminated;
- a copy of the agreements entered into for purposes of disseminating the advertisements.



The FSMA also wishes to stress that even if an advertisement has not been disseminated as part of a mass media campaign (and therefore does not have to be notified to the FSMA in advance), its contents must meet the requirements of the Regulation. The FSMA may at any time decide to verify ex post any advertisements that have already been disseminated, in order to check that they meet the applicable legal requirements.

It is worth emphasizing in this regard that any action taken by the FSMA applies exclusively to the advertisement and not to the quality of the investment being offered. Moreover, no mention may be made of the FSMA's actions in respect of the advertisement.

7. ENTRY INTO FORCE

The Regulation will enter into force on 17 May 2023.

Advertisements that were disseminated before the entry into force of the Regulation, and whose dissemination has not yet stopped, are subject to a **transitional regime**. These advertisements **must be brought in line with the Regulation within the month** of its entry into force (until 17 June 2023 included).

The transitional regime may also apply to the websites of cryptocurrency platforms that targeted Belgian consumers at the time of the entry into force of the Regulation.



MORE INFORMATION

The [Regulation of the FSMA of 05/01/2023](#) placing restrictive conditions on the distribution of virtual currencies to consumers in Belgium is available on the website of the FSMA.

The FSMA has published a [Communication](#) detailing the procedures for prior notification of advertisements for virtual currencies as part of a mass media campaign. Please consult that document for more details concerning the applicable procedures.

The FSMA has also published [FAQs](#) on its website that summarize the main questions that may arise in this regard.

The documents that are subject to mandatory prior notification to the FSMA may be sent to the email address crypto.pub@fsma.be.