

**Crypto-Asset Service
Providers
CySEC's June directive**

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Introduction

In late June, the Cyprus Securities Exchange Commission (the “CySEC”) issued its new directiveⁱ on the prevention and suppression of money laundering activities, which specifically focuses on crypto-asset service providers (the “CASPs”) and their duty to register with the CySEC. According to the directive, the CySEC will maintain a public register which will record, *inter alia*, the name and legal form of such CASPs, the services they will be allowed to offer and their individual internet domains. To be able to register as a CASP, any applicants will have to meet certain criteria, including submitting to the CySEC a number of documents and necessary information. An applicant will also need to ensure that individuals holding a managing position are honest and competent, have appropriate policies and procedures to minimize risk of theft or loss of its clients’ cryptoassets, as well as meet the capital adequacy requirements provided by the directive, which will differ depending on the CASP concerned. Even after the CASP is registered, there will be a continuing duty to inform the CySEC and acquire its approval in relation to matters that qualify as substantial changes, including any changes to the CASP’s list of beneficiaries or its managing board.

A part of a greater whole

Importantly, the CySEC’s new directive must be evaluated in the context of Cyprus’ and the EU’s greater policies and efforts to regulate the cryptocurrencies space. The introduction of the directive follows (i) the CySEC’s work undertaken in the area of crypto-assets, which includes, *inter alia*, the CySEC’s efforts through the Innovation Hub launched in late 2018ⁱⁱ and (ii) the transposition of the 4th and 5th AML Directivesⁱⁱⁱ into Cyprus law, through the amendment of the Prevention and Suppression of Money Laundering

and Terrorist Financing Law L188(I)/2007 (the “AML Law”), which had already provided for the registration requirement for CASPs^{iv}. Nonetheless, the newly introduced directive is particularly useful as it does not only set out the procedure and requirements that a CASP must adhere to, but also lays down significant groundwork and provides much-needed guidance for the development of the cryptocurrencies sector in Cyprus. Indeed, as Demetra Kalogerou (the chairwoman of the CySEC) has noted^v, “the incorporation of [the] crypto-asset business under the scope of the EU AML legislation”, as well as “the introduction of the Virtual Assets Service Providers under the scope of the amended 5th AML Law in Cyprus”, constitutes a significant first step towards this direction.

Definition of CASPs

Concurrently, the category of CASPs is notably broad and covers a wide range of actors and activities. It includes cryptocurrency exchanges, the providers of financial services that relate to the distribution, offering or sale of crypto-assets, the actual offering or sale of crypto-assets, as well as entities engaging in custodianship and the safekeeping of crypto-assets or cryptographic keys. Crucially, any entities which provide services or engage in activities that fall within paragraphs (a)-(h) of section 2A AML Law, cannot qualify as CASPs. In this respect, credit and financial institutions are excluded from the scope of CASPs. Indeed, such institutions are already subject to a detailed and extensive regulatory framework including: the Provision and Use of Payment Services and Access to Payment Systems Law 31(I)/2018 as amended, the Electronic Money Law 81(I)/2012 as amended, the Business of Credit Institutions Laws 66(I)/1997 as amended and the Cyprus Investment Services and Activities and Regulated Markets Law 87(I)/2017 as amended. As such, subjecting them to the new requirements

applied in the case of CASPs could create double reporting requirements, unwarranted costs and hinder innovation.

Nonetheless, the exact extent to which CASPs will be regulated independently of such institutions remains to be seen, as the legal status and laws on crypto-assets in general, and in relation to their classification in different categories in particular, continues to evolve. Under the current approach, also adopted in the draft proposal for a Regulation on Markets in Crypto-assets (MiCA), crypto-assets are treated differently from financial instruments or electronic money, which suggests the evolution of independent, divergent frameworks. Equally, in the context of cryptocurrencies in particular, the European Banking Authority has stressed the need to have a pan-European regulatory and supervisory approach, in order to facilitate the scaling of these activities cross-border and the

combatting of associated risks, especially to consumers^{vi}.

Conclusion

Overall, a comprehensive and detailed legal framework governing crypto-assets can only be developed piecemeal, as regulators and supervisory authorities move to recognize the benefits and potential risks involved. Until then, the guidance that is provided by national competent authorities such as the CySEC will be particularly useful in guiding market actors. Concurrently, as the Covid-19 pandemic continues to fuel digitalization and investors' demand for crypto-assets increases^{vii}, the size and value of the crypto-assets market, as well as the need for future guidance will continue to grow. As such, both lawyers and market actors ought to closely monitor how the market develops.

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ⁱ <https://www.cysec.gov.cy/CMSPages/GetFile.aspx?guid=903756f3-f963-47b5-a9e2-9e493a9829e2> last accessed 02/07/21 (only available in Greek).

ⁱⁱ <https://www.stockwatch.com.cy/el/blog/4889349-cysec-currently-contemplating-launch-regulatory-sandbox> last accessed 02/07/21 last accessed 02/07/21.

ⁱⁱⁱ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32015L0849> and <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32018L0843> respectively, last accessed 02/07/21.

^{iv} Article 61E Prevention and Suppression of Money Laundering Law (2007 (188(I)/2007).

^v <https://www.financemagnates.com/executives/interview/interview-cysecs-demetra-kalogerou-on-crypto-eu-future-policy-and-more/> last accessed 02/07/21.

^{vi} <https://www.eba.europa.eu/eba-reports-on-crypto-assets> last accessed 02/07/21.

^{vii} https://www.esma.europa.eu/sites/default/files/library/esma50-165-1524_trv_1_2021.pdf last accessed 02/07/21.