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FSMA orders Binance to cease immediately all offers of virtual currency services in Belgium

Press release 23/06/2023



The FSMA has noted that Binance is offering and providing exchange services in Belgium between virtual currencies and legal currencies, as well as custody wallet services, from countries that are not members of the European Economic Area. The FSMA has therefore ordered Binance to cease, with immediate effect, offering or providing any and all such services in Belgium.

Persons or firms governed by the law of a country that is not a member of the European Economic Area are prohibited from offering or providing, within Belgium, by way of a

professional activity – even if supplementary or ancillary – exchange services between virtual currencies and legal currencies or custody wallet services.

Failure to comply with this prohibition is subject to criminal sanctions pursuant to Article 136 of the Belgian Law on the prevention of money laundering and terrorist financing.

The FSMA takes the view that by offering such services in Belgium from countries that are not members of the European Economic Area, Binance is in violation of that prohibition. By way of its decision dated 23 June 2023, the FSMA has therefore decided to order Binance to cease, with immediate effect, offering or providing any exchange services in Belgium between virtual currencies and legal currencies, as well as custody wallet services.

Binance does not dispute that it offers such services in Belgium. On the basis of the general terms and conditions that apply to Belgian clients of the Binance.com platform, these services appear to be provided by *Binance Operators* that are not otherwise identified in the said contractual terms and conditions. There are apparently 27 such companies involved in the operational and/or technical aspects of the provision of these services, of which 19 appear to be based outside the European Economic Area.

Despite several requests for information made to Binance, the latter has not been able to demonstrate to the requisite legal standard that the legal entities that carry out the services of the above-mentioned type in Belgium are in fact based in the European Economic Area and are authorized, based on their domestic law, to provide such services in Belgium. By entities that carry out the services of the above-mentioned type, we mean entities that effectively perform (with their own funds) exchange operations between virtual currencies and legal currencies and entities that act as legal depositaries for digital assets/keys of Belgian clients.

As a result, it must be concluded that, in spite of the opportunities offered to Binance on several occasions, the latter has failed to demonstrate, with due documentation and proof, that the exchange services between virtual currencies and legal currencies and the custody wallet services that it offers and provides within Belgium are carried out by means of a legal entity governed by the law of another member state of the European Economic Area that is duly authorized by its home member state to carry out these activities, including within Belgium.

In addition to the order to cease their activities in Belgium immediately, the FSMA has demanded that Binance take immediate measures, after contacting their clients and taking into account any instructions the latter may give, to return to the Belgian clients in question all cryptographic keys and/or all virtual currencies that Binance holds for their account, or to transfer these to entities governed by the law of an EEA member state and duly authorized by their domestic law to carry out such activities, including within Belgium; in the latter case, Binance is to take every precaution that may be useful to guarantee the security of such transfers.

The Crown Prosecutor of Brussels has been informed of the acts that are liable to constitute a criminal offence.

The FSMA is acting in this matter pursuant to its mandate to protect consumers from illegal activities conducted within Belgium.

The FSMA wishes to recall that the activity of provider of exchange services between virtual currencies and legal currencies and of custody wallet services (VASP) remains an unregulated activity, except as concerns combating money laundering and terrorist financing (AML/TF). With regard to those aspects, the Belgian parliament has transposed the 5th Anti-Money Laundering Directive, which introduced new obligations on the virtual currencies sector as regards combating against money laundering. This situation is therefore comparable to that in effect in the other European Union member states.

The EU's MiCA Regulation (published in the Official Journal of the European Union on 9 June 2023) will introduce more general rules, and in particular prudential rules, governing activities relating to crypto-assets. These rules, with direct effect in Belgian law, will enter into force in January 2025.

In the absence of specific regulations at this time, it is the common law that applies, and where applicable, the relevant provisions of the Belgian Criminal Code.

In the meantime, the warnings against the risks associated with the use of virtual currencies that have been published by national (including the FSMA) and European supervisors remain in effect.

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