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Changes on the horizon: proposed amendments to AML Act suggest new approach to VASPs in Croatia

Maćešić & Partners | Banking & Financial Services - Croatia



ZRINKA
BUZATOVIĆ



IVANA
MANVELO

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Introduction

Except for numerous anti-money laundering (AML) compliance requirements prescribed by the Croatian Act on the Prevention of Money Laundering and Funding of Terrorism (the AML Act), Croatian legislation currently does not specifically regulate virtual assets service providers (VASPs).

However, it seems that this approach is starting to change. An urgent legislative procedure regarding amendments to the AML Act is under way. The amendments are expected to enter into force on 1 January 2023 and have been proposed with the two main goals:

- a fulfilment of the preventive measures prescribed by the action plan for strengthening the effectiveness of the Croatian AML or terrorist financing system, which includes harmonisation with the recommendations set out in the report issued by the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (Moneyval) on the fifth evaluation round in Croatia;⁽¹⁾ and
- the harmonisation of the normative framework to introduce the euro as the official currency in Croatia.

Nevertheless, the most significant change introduced by the final draft of the AML Act amendments relates to the regulation of VASPs, which has already sparked debate.

Current regulation

The AML Act currently recognises and defines only two virtual assets-related services:

- exchange services between virtual currencies and fiat currencies; and
- custodian wallet services.

Under the current approach, a company that intends to provide exchange services between virtual currencies and fiat currencies and custodian wallet services has to enter such activities as its business activities in the company registry of the competent Commercial Court. However, no prior authorisation or licence are needed for registering those services with the court registry.

Once the company is incorporated, it has to notify the Croatian Financial Services Supervisory Agency (Hanfa) – within the deadline set by the AML Act – of its activities in the provision of exchange services between virtual currencies and fiat currencies and custodian wallet services.

The notification to Hanfa shall include the basic information or documents on the company and the authorised person and its deputy.

However, Hanfa may request additional documentation or information not prescribed by the AML Act. Apart from this documentation or information, Hanfa also requests, among other things, a brief description of the company's business model and its AML system.

If Hanfa accepts the company's notification, it then updates its list of entities who notified Hanfa of their activities in the provision of exchange services between virtual currencies and fiat currencies and/or the provision of custodian wallet services. At the moment, there are 16 companies on the list.

In practice, the regulator is much stricter and requires additional documents and procedures not specifically set out by the law, presumably pressured by the outcome of the Moneyval's report on Croatia. The proposed amendments, outlined further below, may be construed as an attempt to set in stone the regulators existing practices.

Proposed amendments

The final draft of the amendments defines and regulates more virtual assets-related services (nine overall), similar to the Markets in Crypto-Assets proposal (MiCA),⁽²⁾ such as:

- custody and administration of virtual assets on behalf of third parties;
- operating a virtual asset trading platform; and
- provision of advice on virtual assets.

The radical change proposed in the final draft is the obligation to register a company that intends to provide virtual assets-related services with Hanfa's VASP registry. Only the companies entered into the VASP registry will be permitted to provide virtual assets-related services. In addition, registration with Hanfa's VASP registry will be a prerequisite for entering virtual assets-related services as the company's business activities in the company registry of the competent Commercial Court.

The final draft of the AML Act amendments prescribes the general requirements for registration with Hanfa's VASP registry, such as:

- the appointment of an authorised person for the prevention of money laundering and terrorist financing and its deputy in accordance with the AML Act; and
- evidence on the "good reputation" of ultimate beneficial owners, shareholders and members of the management board.

More detailed requirements and registration procedures will be prescribed by Hanfa's regulation, which shall be rendered within six months following the date of entry into force of the amendments.

According to the final draft, under certain requirements and following notification to Hanfa, an authorisation obtained in another member state will be valid in Croatia, which is comparable to a "passporting" system, similar to other mechanisms from the EU financial services legislation.

However, the final draft does not provide for a grandfathering provision. All existing and operating VASPs in Croatia will have to comply with the new requirements – namely, they will have to register with the VASP registry within a certain deadline. Otherwise, it will be considered that they carry out virtual assets-related services unauthorised and will have to file an application with the company registry for the deletion of such activities.

Comment

Considering that the legislative procedure is still in progress, it is likely that some modifications to the final draft will be made.

However, one thing is certain: the amendments to the AML Act will soon reform the Croatian approach to virtual assets-related services, while requiring immediate action from VASPs already operating in Croatia.

For further information on this topic please contact Zrinka Buzatović or Ivana Manovelo at Maćešić & Partners by telephone (+385 51 215 010) or email (macesic.zg2@macesic.hr or manovelo@macesic.hr). The Maćešić & Partners website can be accessed at www.macesic.hr.

Endnotes

(1) *Official Gazette* No. 56/22.

(2) MiCA is the European Commission's proposal for a regulation of the European Parliament and of the Council on markets in crypto-assets, amending Directive (EU) 2019/1937.