

Analysis: French Sanctions Regime for Digital Asset Service Providers and Token Issuers

Various sanctions may apply against DASPs and token issuers that operate in France in contravention of applicable rules.

France was a pioneer in establishing a legal framework for the regulation of digital assets and related services following the enactment of the Loi Pacte in May 2019. In particular, the regulated status of Digital Asset Service Provider (DASP) was introduced into French law as the cornerstone of the local digital asset regulatory framework.

This framework is now bound to evolve following the recent agreement of the European Union trilogue negotiators on the Markets in Crypto-assets (MiCA) Regulation and the Transfer of Funds Regulation (TFR), which aim to create a harmonized regulatory regime for cryptocurrency service providers in all EU Member States.

This Client Alert provides an overview of the sanctions that can be imposed on DASPs and token issuers for breaches under the current French regulatory framework.

Definitions

What is a DASP?

An entity is a DASP (*prestataire de services sur actifs numériques*) if it provides at least one of the services on digital assets set out in [Article L. 54-10-2 of the French Monetary and Financial Code \(CMF\)](#). These include (but are not limited to) the custody of digital assets, the service of purchase or sale of digital assets against fiat currency, the exchange of digital assets against other digital assets, or the operation of a trading platform for digital assets. DASPs need to be registered with (and, in certain cases, can be licensed by) the French market regulatory authority (the *Autorité des Marchés Financiers*, or AMF).

What is a token issuer?

The concept of token issuer (*émetteur de jetons*) is not defined under French law. However, a token (*jeton*) is, according to [Article L. 552-2 of CMF](#), any intangible asset representing, in digital form, one or more rights that can be issued, registered, stored, or transferred by means of distributed ledger technology enabling to identify, directly or indirectly, the owner of the asset.

Mandatory registration of DASPs with the AMF

Pursuant to [Article L. 54-10-1 to 4 of the CME](#), DASPs are required to register with the AMF.

This obligation applies both to DASPs established in France and to DASPs established abroad but which provide services in France under the conditions specified by [Article 721-1-1 of the AMF General Regulation](#) and [AMF Position DOC 2020-07 as updated on 31 May 2022](#).

In particular, a DASP is considered as providing services in France when at least one of the following criteria is met:

- the service provider has commercial premises or a place dedicated to the commercialization of digital asset service in France;
- the service provider has installed one or more automatic machines offering digital asset services in France;
- the service provider addresses a promotional communication, regardless of the medium, to customers residing or established in France;
- the service provider organizes the distribution of its products and services through one or several distribution system(s) to customers residing or established in France;
- the service provider has a postal address or phone number in France; or
- the service provider has a “.fr” extension as the name domain for its website.

This list is not limitative, and the AMF may consider that a DASP provides regulated services in France based on any other relevant nexus. As of August 23, 2022, 46 DASPs were registered in France with the AMF.

Consequences of failure to comply with mandatory registration for a DASP

Failure to comply with mandatory registration rules with the AMF can lead to criminal sanctions and/or administrative sanctions.

Punitive measures: Criminal sanctions for illegal activity

Criminal sanctions are summarized in the following table:

Violation	Maximum sanctions	Legal basis
Non-compliance with AMF registration	2 years imprisonment For individuals: €30,000 fine For corporations: €150,000 fine	Article L. 572-23 al. 2 CME

Violation	Maximum sanctions	Legal basis
Failure to report any changes that could jeopardize compliance with registration requirements to the AMF or providing inaccurate information to the AMF	1 year imprisonment For individuals: €15,000 fine For corporations: €75,000 fine	Article L. 572-23 al. 1 CMF
Failure to cooperate with the AMF (e.g., failure to respond to requests for information, providing inaccurate information, etc.)	1 year imprisonment For individuals: €15,000 fine For corporations: €75,000 fine	Article L. 572-24 CMF Article L. 571-14 CMF

The above sanctions can only be rendered by criminal courts, and not by supervisory authorities like the AMF or the Prudential Control Authority (*Autorité de Contrôle Prudentiel et de Résolution (ACPR)*). However, if the AMF and/or the ACPR become aware that a DASP fails to comply with mandatory registration requirements, they must send an alert (*signalement*) to the Prosecutor. The Prosecutor will then have the possibility to initiate criminal proceedings against the DASP.

Corrective measures: Administrative regulation of illegal activity

Pursuant to [Article L. 621-13-5, I, 4° of the CMF](#), the AMF may issue a formal notice (*mise en demeure*) to unregistered DASPs providing regulated services in France. The DASP will then be given eight days to present its observations. Simultaneously, the AMF may send to Internet Service Providers (ISPs) a copy of this formal notice and order them to block the website of the DASP in question. The ISPs will also be invited to present their observations to the AMF within eight days. In the event that these measures are not complied with by the end of the required period, the AMF can refer the matter to the President of the Paris First Instance Tribunal (*tribunal judiciaire de Paris*) to have the relevant website(s) closed down.

Conditions for the activities of DASPs

Optional License

In addition to a mandatory registration, DASPs may also apply to the AMF for a license (*agrément*) pursuant to [Article L. 54-10-5 of the CMF](#). Although this license is optional, it allows DASPs to provide a broader set of services on digital assets.

Indeed, only licensed DASPs are allowed to:

- Engage in direct marketing (*démarchage*) of banking or financial services ([Article L. 341-3 of the CMF](#)); direct marketing is defined as: (i) an unsolicited contact (ii) with an individual or a legal entity (iii) for the purpose of advertising digital asset services ([Article L. 341-1 of the CMF](#)).

- Broadcast direct or indirect electronic advertising to promote the digital asset services (*quasi-démarchage en ligne*) for which they are licensed ([Article L. 226-16-1 of the French consumer code](#)).
- Enter into any patronage (*mécénat*) or sponsorship initiatives (*parrainage*) with the purpose of advertising directly or indirectly a service on digital assets ([Article L. 222-16-2 of the French consumer code](#)).

Sanctions in relation with the AMF optional license

Criminal sanctions can be summarized in the following table:

Violation	Maximum sanctions	Legal basis
False information regarding the AMF license (e.g., referring to the license without having it, providing inaccurate or misleading information, using a name or advertising falsely suggesting the existence of a license)	6 months imprisonment For individuals: €7,500 fine For corporations: €37,500 fine	Article L. 572-26 CMF
Engaging in direct marketing (<i>démarchage</i>) by a non-licensed DASP	5 years imprisonment For individuals: €375,000 fine For corporations: €1,875,000 fine	Article L. 341-3 of the CMF Article L. 353-2 of the CMF Article 313-1 of the French criminal code
Diffusing direct or indirect electronic advertising (<i>quasi-démarchage en ligne</i>) by a non-licensed DASP	€100,000 fine	Article L. 226-16-1 of the French consumer code
Entering into a sponsorship (<i>mécénat</i>) and/or a patronage (<i>parrainage</i>) operation by a non-licensed DASP	€100,000 fine	Article 222-16-2 of the French consumer code

Overview of regulations and penalties for token issuers

Token issuers are not bound by any mandatory registration obligation. However, a token issuer that is organized as a legal person in France may apply for an initial coin offering (ICO) to benefit from an optional visa granted by the AMF pursuant to [Article L. 552-4 of the CMF](#).

Violation	Maximum sanctions	Legal basis
False information regarding the AMF visa (e.g., referring to the license without having it, providing inaccurate or misleading information, using a name or advertising falsely suggesting the existence of a license)	6 months imprisonment For individuals: €7,500 fine For corporations: €37,500 fine	Article L. 572-27 CMF

For ICOs that have not been approved by the AMF, the token issuers will face sanctions that are identical to the sanctions faced by non-licensed DASPs with respect to direct marketing (*démarchage*), diffusing direct or indirect electronic advertising (*quasi-démarchage en ligne*), sponsorship (*mécénat*), and patronage (*parrainage*).

Finally, if the AMF realizes that an ICO no longer complies with the contents of the previously approved information document or does not provide the specified guarantees, it may withdraw its approval and add the ICO to the black list if the ICO continues its activity after the withdrawal of the approval.

Fight against money laundering and terrorism financing

Anti-money laundering and anti-terrorist financing regulations are enforced by the ACPR, which intervenes both at the stage of the registration of a DASP (to give its approval for registration) and subsequently as a supervising authority for registered DASPs, under [Article L. 561-36-1 of the CMF](#). As such, the ACPR can formally notify non-compliant entities, take provisional measures, and pronounce sanctions.

Moreover, all DASPs remain subject to criminal law and are forbidden to commit any money laundering or similar crime. In this regard, [Article 321-1-1 of the French criminal code](#) provides for a presumption of money laundering when material, juridical, or financial conditions of an operation on assets cannot have any purpose but to hide the origin or the beneficiary of the assets. In June 2019, a report by the Financial Action Task Force highlighted the increase in fraudulent activities driven via digital –asset-related services.¹

Conclusion

The French regulatory framework contemplates various levels of sanctions against DASPs conducting regulated activities in France and token issuers offering tokens to the public in contravention of applicable rules relating to publicity and marketing. At this stage, however, the lack of a published decision makes it difficult to assess the scope of enforcement actions taken by the French regulators.

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Endnotes

¹ [GAFI Analysis Report dated June 2019](#)