Crypto-asset service providers

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Title V lists ten crypto-asset services: custody and administration on behalf of clients, operation of a trading platform, exchange of crypto-assets for funds, exchange for other crypto-assets, execution of orders, placing, reception and transmission of orders, advice, portfolio management and transfer services. Anyone providing one of them within the Union must be either an authorised CASP under Art. 63 or a financial entity notified under Art. 60. The second group covers credit institutions, investment firms, e-money institutions and fund managers, each of which may provide the services corresponding to its existing licence.[1]

The authorisation conditions resemble those of MiFID II in form. A CASP must have a registered office in a Member State where it carries out at least part of its services, its place of effective management in the Union and at least one resident director. It must meet prudential requirements of EUR 50,000, 125,000 or 150,000 depending on the class of services, or one quarter of the previous year's fixed overheads if higher, and must hold the amount in own funds or an insurance policy. It needs governance arrangements, fit-and-proper management, a complaints procedure, conflicts policy, outsourcing controls, business continuity and segregation of clients' crypto-assets and funds. Specific rules apply to custodians (a custody policy, a register of positions, liability for loss), trading platforms (operating

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rules, no proprietary trading on own platform, pre- and post-trade transparency) and exchange services (publication of firm prices or a pricing method).[2] An authorised CASP passports throughout the Union by notification under Art. 65.

For the Swiss or Singapore group the point is Art. 59. The CASP must be a Union legal person with effective management in the Union. A Swiss AG or a Singapore Pte Ltd cannot obtain authorisation. Nor can a Union shell whose decisions are taken in Zug or Singapore, because ESMA has made clear that it expects substance in the Union and will not accept "letter-box" entities that route execution, custody or decision-making to non-Union group companies.[3] The Union subsidiary therefore needs its own management body, its own compliance and risk functions, its own control of client assets and a credible local presence.

Notes

1. Regulation (EU) 2023/1114, Art. 3(1)(16) and Art. 59(1). Art. 59 requires an authorised CASP to have its registered office in a Member State where it carries out at least part of its services, its place of effective management in the Union and at least one director resident in the Union. ↩
2. Regulation (EU) 2023/1114, Arts. 62 to 82 and Annex IV (prudential requirements: class 1 EUR 50,000, class 2 EUR 125,000, class 3 EUR 150,000). ↩
3. ESMA, Opinion on global crypto firms seeking MiCA authorisation while routing a significant part of their activities to non-Union group entities, 31 January 2025 (ESMA75-453128700-1283). ESMA also published a supervisory briefing on authorisation in 2024. ↩

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