

## NEW ITALIAN REGISTER OF CRYPTO-OPERATORS LAUNCHED - RESTRICTIONS ON OPERATIONS FROM ABROAD

*Published in the Gazzetta Ufficiale of 17 February 2022, the Ministerial Decree of 13 January 2022 (the "Decree") established the register of providers of services related to the use of virtual currency and providers of digital wallet services. Once the time limits set out in Decree have expired, only entities entered in the register will be allowed to provide such services in Italy; in order to be registered, such entities must have their registered office and operational headquarters (or, in the case of EU entities, a permanent establishment) in Italy.*

### ESTABLISHMENT OF THE REGISTER AND REGISTRATION OBLIGATION

Under the Decree, the register of cryptocurrency operators will be established as a special section of the register of currency exchanges held by the OAM (the organisation of agents and credit brokers). Once established, providers of services related to the use of virtual currency and providers of digital wallet services will be obliged to apply to the OAM for entry in the register in order to be able to operate in Italy; without such registration, operations will be considered unlawful.

Entry in the register is subject to satisfaction of the following requirements:

- Italian citizenship or citizenship of an EU Member State (or non-EU Member State under certain conditions);
- for persons other than natural persons: registered office and administrative headquarters or, for EU persons, permanent establishment in Italy.

### DEADLINES AND PROCEDURES FOR THE REGISTRATION

The OAM must set up the special section of the register within 90 days of the entry into force of the Decree. The OAM has announced its intention to make the special section operational by 18 March 2022 (thus significantly earlier than the deadline imposed by the Decree).

Providers of services relating to virtual currency and digital wallet services operating in Italy on the date of creation of the register must apply for registration (if they meet the requirements) within 60 days of that date. New entrants must obtain registration before starting operations in Italy.

#### Obligation to register: to whom does it apply?

Under the Decree, the obligation to register applies to the following categories of crypto-operators:

- *providers of services relating to the use of virtual currency:* any natural person or entity other than a natural person who provides third parties, on a professional basis, including online, with services relating to the use, exchange, storage of virtual currency and their conversion from or into legal tender or digital representations of value, including those convertible into other virtual currencies as well as issuing, offering, transferring and clearing services and any other service relating to the acquisition, trading or intermediation in the exchange of such currencies;
- *digital wallet service providers:* any natural person or entity other than a natural person who provides third parties, on a professional basis, including online, with services safeguarding private cryptographic keys on behalf of their clients, for the purpose of holding, storing and transferring virtual currencies.

The application for registration must be submitted by means of a notice to the OAM through its online-portal. The notice must contain the information indicated in the Decree, including a description of the activities carried on in Italy.

The OAM, having verified that the notice and the attached documentation are compliant and complete, will within two weeks of the receipt of the notice order or deny the registration in the special section of the register. The OAM may suspend the investigation for a maximum period of ten days if the notice is considered complete or it is necessary to supplement the documentation submitted in the application.

## **RESTRICTIONS ON OPERATION FROM ABROAD**

An examination of the provisions of the Decree reveals a particularly critical element for foreign operators, who could see their right to carry on their activities in Italy compromised. One of the requirements for entry in the register is having the registered office or administrative headquarters (or, for EU entities, a permanent establishment) in Italy. This requirement is likely to represent a significant obstacle to operations in Italy by operators in the sector who, to date, operate on an exclusively cross-border basis (i.e. without any physical presence in Italy).

In this regard, an important issue to be resolved – as it not explicitly addressed by the Decree - concerns the notion of operations in Italy; in other words, it is necessary to pose the question in which cases the activity carried on by a foreign operator must be deemed carried on in Italy, and therefore subject to prior entry in the register.

In this regard, the Decree merely specifies that the obligation to register applies to those who intend to carry on their activity "*also on-line, in the territory of the Republic of Italy*". It is not clear, however, whether any activity carried on in this way is subject to the rules of the Decree. In our view, it would be fair to apply here, by way of analogy, the same considerations that, in other areas of regulation, allow for the exclusion from the scope of application of the Italian legislation of those activities which, although conducted through the Internet, are not deliberately aimed at Italian customers.

Having said that, the position of persons who, to date, intentionally target their activities at the Italian market on an exclusively cross-border basis requires further study. It is conceivable that these persons must have a physical presence on Italian territory in order to continue to operate in Italy even after the creation of the register; it is to be noted, among other things, that the timeframe for action seems particularly tight, if it is true, as announced by the OAM, that the new register will become operational by 18 March 2022 (as from which, therefore, the 60 days for registration would begin to run).

## CONTACTS



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