



FSMA_2023_05 of 20/03/2023

Guide to the prior notification to the FSMA of advertisements for virtual currencies as part of a mass media campaign

Scope:

Advertisements for virtual currencies that will be disseminated among consumers as part of a mass media campaign.

Summary/Objectives:

This Communication describes the procedures for the prior notification to the FSMA of advertisements for virtual currencies to be disseminated as part of a mass media campaign.

Structure:

1. Introduction.....	2
2. Advertisements as part of a mass media campaign.....	3
3. New mass media campaigns and changes to ongoing mass media campaigns after entry into force of the Regulation.....	3
4. Person required to submit notification in the case of a mass media campaign.....	3
5. Content of the notification of advertisements for a mass media campaign.....	4
6. Language of the advertisement being notified	4
7. Address for submission of advertisements for a mass media campaign	5
8. Handling by the FSMA of advertisements for a mass media campaign.....	5
9. Changes to advertisements disseminated in a mass media campaign	5
10. Transitional regime for ongoing mass media campaigns.....	5
11. Standardized and recurring advertisements in a mass media campaign.....	6
12. Sanctions	6

1. Introduction

Article 30*bis* of the Law of 2 August 2002 on the supervision of the financial sector and on financial services (hereafter “the Law of 2 August 2002”), as amended by the Law of 5 July 2022 containing miscellaneous financial provisions, allows the FSMA to draw up regulations that impose restrictive conditions on the distribution or on certain forms of distribution to retail clients of virtual currencies or certain categories of virtual currencies.

The FSMA has imposed such restrictive conditions in its Regulation of 5 January 2023, which links restrictive conditions to the distribution of virtual currencies to consumers (hereafter the “Regulation”). The Regulation has been approved by Royal Decree of 5 January 2023 and has been published in the Belgian Official Gazette of 17 March 2023. It enters into force on 17 May 2023.

Article 5, § 1 of the Regulation provides that:

“Every advertisement that is intended to be disseminated as part of a mass media campaign must be notified to the FSMA at least 10 days before its dissemination, in the form in which it will be disseminated among consumers in Belgium.

The notification must explain how and on what date the advertisement will be disseminated.

The FSMA defines the procedures for said notification. In so doing, it takes into consideration the content of the advertisement as well as whether the documents in question may be standardized and recurrent in nature.”

In this Communication, the procedures for the notification are set out in further detail.

The Regulation lays down rules governing advertisements for virtual currencies. These rules apply both to advertisements that are disseminated to consumers as part of a mass media campaign and to advertisements disseminated outside the context of a mass media campaign. All advertisements for virtual currencies that are disseminated to consumers must abide by the advertising rules. The distinction between a mass media campaign and other forms of advertising than mass media campaigns is relevant only to the application of the obligation of prior notification of advertisements to the FSMA.

A ‘virtual currency’ is a digital representation of a value that is neither issued or guaranteed by a central bank or public authority, nor necessarily linked to a legally issued currency and does not have the legal status of a currency or money, but which is accepted by natural or legal persons as a means of exchange and can be transferred, stored and traded electronically (Article 2, first paragraph, 40/1° of the Law of 2 August 2002). Only those virtual assets that function as a means of exchange or payment are within scope. Assets with only an investment function (such as ‘security tokens’, which for instance, confer rights to a form of participation in an undertaking) or with only a utility function (such as ‘utility tokens’, which confer rights to future products or services) are excluded¹.

¹ Security tokens or utility tokens may be treated as investment instruments within the meaning of the Law of 11 July 2018 on offers to the public of investment instruments and the admission of investment instruments to trading on a regulated market. If a crypto-asset is classified as investment instruments, then in principle there is an obligation to publish a prospectus or information note when offering them to the public. There are

2. Advertisements as part of a mass media campaign

The obligation to notify the FSMA applies only to advertisements that are disseminated as part of a mass media campaign. The FSMA wishes to recall that for advertisements made outside of a mass media campaign, there is no *ex ante* notification requirement; in such cases, the FSMA will supervise compliance with the Regulation on an *ex post* basis.

An advertisement is any communication that is specifically intended to promote the purchase of or subscription to one or more virtual currencies, regardless of the channel by which this is done (Article 2, 1° of the Regulation). A mass media campaign is one in which advertisements are disseminated among at least 25,000 consumers (Article 2, 2°, first paragraph of the Regulation). A consumer is a natural person who is acting for purposes which are outside his or her trade, business, craft or profession (Article I.1, first paragraph, 2° of the Code of Economic Law).

The following types of advertisements are incontrovertibly assumed to be disseminated as part of a mass media campaign (Article 2, 2°, second paragraph of the Regulation):

- advertisements that are visible from the public road or from a publicly available infrastructure;
- advertisements that are disseminated on a publicly accessible website by the site's operator or by another person (e.g. on a forum);
- advertisements disseminated via a social network by a person who has at least 25,000 followers on that social network at the beginning of the dissemination or by a person who pays for their dissemination via a social network.

3. New mass media campaigns and changes to ongoing mass media campaigns after entry into force of the Regulation

The obligation to notify the FSMA applies to advertisements whose dissemination as part of a mass media campaign begins after the entry into force of the Regulation on 17 May 2023.

This obligation also applies to changes to advertisements that are already being disseminated as part of an ongoing mass media campaign (see point 9 below). For mass media campaigns that are running at the time of the entry into force of the Regulation, there is a transitional regime (see point 10 below).

4. Person required to submit notification in the case of a mass media campaign

The obligation to submit a notification rests with the natural person or the legal person that determines the content of the advertising. This may be the person who advertises in his or her own name or for his or her own account, but it may also be a person who advertises virtual currencies on behalf of another person. The obligation to submit a notification therefore rests not with the operator of the medium (e.g. social network) used for the dissemination of the advertisement.

also specific rules governing advertisements, which in the case of an offer to the public must also be approved by the FSMA before they may be disseminated. See in this regard the FSMA Communication of 22 November 2022 on the classification of crypto-assets as securities, investment instruments or financial instruments.

5. Content of the notification of advertisements for a mass media campaign

The notification to the FSMA as referred to in Article 5, § 1 of the Regulation must contain at least the following information:

- a) identity of the person who submits the notification and who makes the advertisement;
- b) contact details of the person who serves as the contact person in dealings with the FSMA and to whom the FSMA can send all communications regarding the dossier by electronic means;
- c) where applicable, the identity of the person on behalf of whom the person named under a) makes the advertisement;
- d) a description of the mass media campaign:
 - if dissemination is planned that is incontrovertibly considered as a mass media campaign (see Article 2, 2°, second paragraph of the Regulation and point 2 above), an explanation of the mode of dissemination and the specific media used;
 - in other cases, an explanation of the advertising campaign and of the elements on the basis of which one decides that the advertisements are being disseminated among at least 25,000 consumers²;
- e) the advertisement itself, in the form and layout in which it will be disseminated among consumers, in a format that is readable in a normal Windows environment and can be archived by the FSMA (e.g. pdf);
- f) the start date of the mass media campaign and its length (specific end date or for an unspecified duration);
- g) where applicable, mention the person who figures in the advertisement or whose image is used in the advertisement and who is remunerated or receives some other advantage in return, together with a copy of any agreement entered into with that person for this purpose;
- h) if the person who submits the notification or requests the application of the regime for notifying a standardized and recurrent advertisement:
 - an explanation of the standardized and recurrent nature;
 - an explanation of the parts of the advertisement that may be periodically changed;
 - information on the data source that will be used for the periodical changes of the relevant parts of the advertisement;
 - a justification why the periodical changes will not imply a change of information that contains an element of judgement.

The FSMA has made available on its website an excel form to be used for submitting the notification. A separate tab for each advertising document should be created in the same excel file.

6. Language of the advertisement being notified

If the advertisement is available in only one of the official languages of Belgium, then the advertisement must be notified to the FSMA in that language. If the advertisement is available in more than one of Belgium's official languages, then the advertisement must be notified to the FSMA in one of those official languages.

² If the same advertisement is disseminated via multiple channels, the number of consumers reached via the various channels are to be added up.

The person who makes the advertisement is responsible for ensuring that it is accurately translated into another language, whether or not one of the official languages, that the person wishes also to use for the advertisement. The FSMA may at any time request the advertisement in another language.

If advertisements are made for consumers in Belgium exclusively in English, then the advertisement must be notified to the FSMA in that language.

7. Address for submission of advertisements for a mass media campaign

The notification must be submitted to the FSMA by email to the address crypto.pub@fsma.be. The person who submits the notification shall, after the notification, receive an identification code from the FSMA. In case of technical problems (e.g. If the file is too large), the person who makes the notification must contact the FSMA at the aforementioned email address.

8. Handling by the FSMA of advertisements for a mass media campaign

The notification must be submitted to the FSMA at least 10 calendar days before the day when it will in fact be disseminated to consumers. The FSMA is not required to respond within 10 days. If no response is received from the FSMA within 10 days, this does not mean that the advertisement to be disseminated in a mass media campaign complies with the Regulation. The FSMA may also take action after the 10-day period.

If the FSMA has any objections to the draft advertisement in light of the Regulation, it will inform the person who submitted the notification to the FSMA and will ask him or her to correct whatever shortcomings it has identified.

9. Changes to advertisements disseminated in a mass media campaign

Any change to an advertisement that has already been disseminated in a mass media campaign must be notified to the FSMA again if, at the time of the change, the mass media campaign is still running. The notification must take place at last 10 days before the dissemination of the updated version.

The person who submits the notification must refer, where applicable, to the original notification and the identification code issued to it, in so far as this information is still up to date. The person must indicate in the notification what parts of the new advertisement were changed from the original notification.

10. Transitional regime for ongoing mass media campaigns

The Regulation provides, in Article 6, § 2, that an advertisement disseminated in a mass media campaign that is already running on the date of entry into force, must be brought into compliance with the Regulation within one month after the entry into force (at the latest on 17 June 2023).

Any changes to a mass media campaign within the period of one month, made in order to bring it into compliance with the Regulation, do not, in accordance with Article 6, § 2 have to be notified in advance to the FSMA.

Any changes to an advertisement that is part of an ongoing mass media campaign after a period of one month must be notified in advance to the FSMA (see point 9 above).

11. Standardized and recurring advertisements in a mass media campaign

The FSMA can agree that the notification of advertisements for use in a mass media campaign take the form of a template.

Later changes to the advertisement may then be disseminated without needing a new prior notification to the FSMA, on condition that the changes only concern the updating of factual information for which the same data source is used, and on condition that the original notification to the FSMA indicates that the change cannot alter any data that contain an element of judgment.

In other cases, such as to correct any omissions of certain information, or changes to the layout, a new notification is required 10 days before dissemination.

Webpages about virtual currencies and lists of virtual currencies, which are regularly updated, may be used for this purpose. This requires always the prior consent of the FSMA.

12. Sanctions

If the FSMA identifies an infringement of the provisions of the Regulation, it may, as provided for in Article 36 of the Law of 2 August 2002, order the person responsible for the advertisement to remedy the situation or to publish a correction. If the person fails to comply and has been given a chance to respond, the FSMA may itself publish a warning or correction or impose a penalty. In urgent cases, the FSMA may itself publish a warning without having first issued an order, provided the person has had a chance to be heard.

If the FSMA identifies an infringement of the Regulation, it may, in accordance with Article 36, § 2 of the Law of 2 August 2002, impose an administrative fine on the perpetrator.

Annex: [FSMA_2023_05-01 / Notification form](#)