

Federal Law Gazette Volume 2021 Part I No. 69, issued at Bonn on 29 September 2021 4465

## Regulation

on enhanced due diligence requirements for the transfer of crypto assets (Crypto Asset Transfer Regulation - KryptoWTransferV)

From 24 September 2021

On the basis of section 15(10) sentence 1 number 1 of the Money Laundering Act of 23 June 2017 (Federal Law Gazette I p. 1822), as amended by Article 1 number 14 letter h of the Act of 12 December 2019 (Federal Law Gazette I p. 2602), the Federal Minister decrees that  
Ministry of Finance:

### § 1

#### Regulatory scope

This Ordinance regulates enhanced due diligence requirements for obligated parties pursuant to Section 2(1)(1) and (2) of the Money Laundering Act who carry out transfers of cryptocurrencies within the meaning of Section 1(29) of the Money Laundering Act.

### § 2

#### Definitions for the purposes of this Regulation

1. **Obligor:** an obligated person pursuant to Section 2(1)(1) and (2) of the Money Laundering Act;
2. **Cryptovalue:** a crypto value as defined in Section 1(29) of the Money Laundering Act;
3. **Private cryptographic key:** an electronic key used to hold, store or transmit crypto values;
4. **Transfer:** A transfer of crypto value or of private cryptographic keys in the course of carrying on banking business within the meaning of the second sentence of section 1(1) of the Banking Act, the provision of financial services within the meaning of the second sentence of section 1(1a) of the Banking Act or investment services within the meaning of sections 2(2) to 4 of the Securities Institutions Act, initiated on behalf of a principal with the aim of providing crypto value to a beneficiary, irrespective of whether the principal and the beneficiary are identical and whether the crypto value service provider of the principal and the beneficiary are identical;
5. **Crypto value service provider:** a company with its registered office in Germany or abroad which carries out banking transactions within the meaning of section 1(1) sentence 2 of the German Banking Act, financial services within the meaning of section 1(1a) sentence 2 of the German Banking Act or securities services within the meaning of section 2(2) to (4) of the German Securities Institutions Act in relation to crypto values in Germany or abroad;
6. **Principal:** the person who places the order for a transfer of crypto assets;

7. **Beneficiary:** the person who is to be provided with cryptovalues as a recipient through the transfer initiated by an originator, but who is not considered to be a beneficiary because he ultimately participates in the transfer by receiving cryptovalues in exchange for the validation of the transfer;
8. **Beneficial Owner:** a beneficial owner as defined in Section 3 of the Money Laundering Act;
9. **Funds Transfer Regulation:** the Regulation (EU) 2015/847 of the European Parliament and of the Council of 20 May 2015 on information accompanying transfers of funds and repealing Regulation (EU) No 1781/2006 (OJ L 141, 5.6.2015, p. 1), as amended by Regulation (EU) 2019/2175 (OJ L 334, 27.12.2019, p. 1).

### **§ 3**

#### **Duty to survey, Storage and transmission of data during transfers between crypto value service providers**

1. For obliged entities making a transfer on behalf of the payer, the rules on obligations of the payment service provider of the payer under Articles 4 and 6 of the Funds Transfer Regulation shall apply mutatis mutandis if only crypto value service providers are involved in the transfer on behalf of the payer and the payee.
2. For obliged entities receiving a transfer on behalf of the payee, the rules on obligations of the payment service provider of the payee under Articles 7, 8 and 9 of the CIT Regulation shall apply mutatis mutandis if only crypto value service providers are involved in the transfer on behalf of the payer and the payee.

### **§ 4**

#### **Duty to Collection and storage of data during transfers, in which not exclusively Crypto value service providers are involved**

1. Obligated persons who make a transfer on behalf of the payer without a crypto value service provider acting on behalf of the beneficiary of that transfer shall identify and assess the risk of misuse for the purposes of money laundering and terrorist financing associated with the transfer and take risk-appropriate measures to manage and mitigate the risks of money laundering and terrorist financing.
2. Obligated persons who receive a transfer on behalf of the beneficiary without a crypto value service provider acting on behalf of the party ordering the transfer shall identify and assess the risk of money laundering and terrorist financing abuse associated with the transfer and take risk-appropriate measures to manage and mitigate the risks of money laundering and terrorist financing.
3. For the purposes of paragraphs 1 and 2, risk-adequate measures are measures which correspond to the identified money laundering and terrorist financing risk of the transfer and which ensure the traceability of the transfer. In particular, a risk-appropriate measure is the collection, storage and verification of the name and address of the beneficiary or

the principal for whom no crypto service provider is acting in the transfer and who is not a contractual partner of the obliged party.

4. Paragraphs 1 to 3 shall apply mutatis mutandis with regard to the beneficial owner if he is not the same as the payer or the beneficiary.

## § 5

### Transitional provisions

1. Obligated persons who, at the time of entry into force of this Ordinance, conduct banking transactions within the meaning of section 1(1) sentence 2 of the German Banking Act, provide financial services within the meaning of section 1(1a) sentence 2 of the German Banking Act or securities services within the meaning of section 2(2) to (4) of the German Securities Institutions Act in relation to crypto securities, and who are unable to comply with the obligations under sections 3 and 4 on a permanent basis or at all for reasons for which they are not responsible, shall notify the competent supervisory authority in accordance with section 50 number 1 of the German Money Laundering Act by 30 November 2021 and provide reasons for this by 31 December 2021. If obliged entities commence such banking transactions, financial services or investment services for the first time after the entry into force of this Ordinance, sentence 1 shall apply subject to the proviso that the notification, including the justification, must be made upon commencement.
2. The justification referred to in paragraph 1 shall include information on the reason for the impediment and on the measures taken to remove the impediment. In addition, the period of time in which the removal of the reason for the impediment is expected to take place shall be indicated, and it shall be specified which other risk-appropriate measures will be taken during the implementation of transfers. The period specified in accordance with the first sentence may not exceed twelve months. A single extension of this period by a further twelve months shall be permissible if a reasoned notice of extension is submitted before the expiry of the first twelve-month period and if the reason for the impediment continues to exist.
3. The competent supervisory authority pursuant to section 50 no. 1 of the Money Laundering Act shall confirm receipt of an initial notification pursuant to subsection (1) and of an extension notification pursuant to subsection (2) sentence 4 and shall examine whether the formal requirements pursuant to subsections (1) and (2) have been met and whether the reasons given for the obstruction are sufficiently plausible. If this is not the case, it shall notify the obliged party thereof within two months of receipt of the statement of reasons or the notice of extension.
4. The notification pursuant to par. 1 and the notice of extension pursuant to par. 2 sentence 4 shall result in the suspension of the obligations pursuant to Articles 3 and 4 for the period specified in the notification and permissible pursuant to par. 2, if and as long as the competent supervisory authority pursuant to Article 50 no. 1 of the Money Laundering Act has not issued a notification pursuant to par. 3 sentence 2.

§ 6  
Evaluation

This Regulation shall be evaluated by the Federal Ministry of Finance by 30 June 2024 on the basis of a report by the competent supervisory authority pursuant to section 50 no. 1 of the Money Laundering Act, unless the new version of Regulation (EU) 2015/847 has entered into force by that date.

§ 7  
Entry into force, expiry

- (1) This Ordinance shall come into force on October 1, 2021.
- (2) This Regulation shall expire upon the entry into force of the recast Regulation (EU) 2015/847. The date of expiry shall be announced by the Federal Ministry of Finance in the Federal Law Gazette.