

French regulatory framework for markets in digital assets

Paris, June 30, 2020

This article is an introduction to the regulatory framework for digital assets as implemented in France as of the date of publication. It will be updated regularly according to the last evolutions of this framework. The content below is provided for your information only and is not to be considered as legal advice. Please direct all comments to: contact@adan.eu.

I. What Are “Digital Assets” Under French Legislation?

Promulgated on 22 May 2019, **French legislation for markets in digital assets** (the “**PACTE law**”) establishes an innovative regulatory framework for some crypto-assets industry actors and their supervision by French financial regulators, the Financial Markets Authority (*Autorité des marchés financiers* - AMF) and Prudential Supervision and Resolution Authority (*Autorité de contrôle prudentiel et de résolution* - ACPR).

In the scope are **token issuers** (see Section II.) and **digital assets service providers (DASP)**, so-called *Prestataire de service sur actifs numériques* or PSAN in French¹ (see Section III.)

Digital assets in the sense of French law encompass two types of assets: *tokens*, defined by French law, and *virtual currencies*, defined in the European regulations on Anti-Money Laundering and Combating the Financing of Terrorism (AMLD5).

Digital assets are defined² as:

“1° The tokens mentioned in article L. 552-2, excluding those fulfilling the characteristics of the financial instruments mentioned in article L. 211-1 and the “bons de caisse” mentioned in article L. 223 -1;

2° A digital representation of value that is not issued or guaranteed by a central bank or a public authority, is not necessarily attached to a legally established currency and does not possess a legal status of currency or money, but is accepted by natural or legal persons as a means of exchange and which can be transferred, stored and traded electronically”.

Tokens are defined³ as *“any intangible asset representing, in digital form, one or more rights that can be issued, registered, stored or transferred by means of a shared electronic recording device making it possible to identify, directly or indirectly, the owner of said asset”.*

¹ It has to be noted that the French definition of “DAPS” differs slightly from the FATF definition of Virtual Assets Service Provider (see Section III for more details)

² Art. L. 54-10-1 of the French Monetary and Financial Code

³ Article L. 552-2 of the French Monetary and Financial Code

Therefore digital assets explicitly exclude security tokens.

Within the scope of the French “PACTE” regime not (yet) regulated by the EU (Non-financial) “digital assets”		Within the scope of the EU financial regulations
“Tokens” <i>Utility tokens</i> Voting tokens, access tokens, resource tokens, etc.	“Virtual currencies” <i>Crypto-currencies</i> <i>Native tokens</i> Bitcoin, ether, etc.	<i>Have all the features of financial instruments.</i> <i>Security tokens</i> Bond-i issued by the World Bank, Société Générale’s OFH issuance, etc.

It has to be noted that this definition is very close to the definition of “crypto-assets” as set forth in the upcoming EU MiCA regulation.

II. Regulatory Framework for Token Issuers

The first brick of the French legislation for markets in digital assets is the optional visa for token issuers. This “ICO visa” is granted by the French Financial Markets Authority (AMF).

Aside from the visa regime, the AMF has also launched in 2017 its **UNICORN (Universal Node to ICO’s Research & Network) program** to support blockchain project wishing to raise funds using an ICO and to conduct research on these operations in order to develop their expertise and better understand the impact of token offerings on the economy and their implication on the protection of both token issuers and holders.

What is an optional visa?

Optional means that **token issuers can - but are not required to - apply for this visa with the AMF. With or without this visa**, token issuers will be **authorized** to sell their tokens to the French public.



Approval of an initial coin offering

Pursuant to Article L. 552-5 of the Monetary and Financial Code and the General Regulation of the Autorité des Marchés Financiers ("AMF"), in particular Article 712-9, the AMF has approved this document under the number [•] dated DD/MM/YY and valid until DD/MM/YY. This document has been drawn up by the issuer and entails the liability of its signatories.

The approval has been granted in accordance with the provisions of Article 712-1 of the AMF General Regulation after verification by the AMF that the information document is complete and comprehensible.

The approval does not imply that the AMF has approved the appropriateness of the issuer's project or authenticated the financial, accounting and technical information presented. Moreover, the AMF has not carried out any verification of the smart contracts linked to the offering and has not verified whether these smart contracts are adequate in relation to the content of the information document..

How is the credibility of the visa guaranteed?

Even if this is an optional visa, the AMF has some prevention-based method of abuse. First, they can withdraw a visa - temporarily or definitively - if the issuer no longer complies with the underlying requirements. Second, the AMF holds both a "[white list](#)" of ICOs who obtained the AMF approval and a "[blacklist](#)" of ICOs that have had their approval withdrawn or have published misleading information about the issue of the approval. Lastly, the AMF can "name and shame" any issuer who communicates unfair, unclear or misleading information to the public regarding the ICO visa issuance or its implications.

Are all token issuers eligible to the visa?

The visa is open to token issuers that meet all the following conditions:

- their tokens meet the French legal definition;
- they are established or registered in France as a legal person;
- they sell their tokens to 150+ potential subscribers acting on their own behalf; and
- they apply for the visa before the issuance.

What are the underlying requirements that token issuers must comply with?

The French Financial Markets Authority (AMF) can issue a visa for an offering when the token issuer complies with some underlying requirements, mainly relating to the content of the white paper and promotional marketing materials, the monitoring and safeguarding of the assets (both legal money and digital assets) collected all along with the ICO and anti-money laundering and counter-financing of terrorism.

Information covered by the white paper are:

Presentation of the issuer(s)
Presentation of the project

(Non-technical) features of the ICO
Technical features of the ICO

Rights associated with tokens	AML-CFT arrangements
Risk factors	Applicable law and competent jurisdiction
Custody and return of assets collected	Certificate of conformity for the content of the white paper

The visa is related to an offer, not an issuer: if an issuer wants to launch several ICOs stamped by the AMF, he will need one visa per offer.

If it is optional, why would I apply for the visa?

This visa is optional, meaning that token issuers are not prohibited to launch their ICO to the French public if they do not ask for the visa or do not obtain it. However, the visa provides some benefits.

The most relevant one is the **unrestricted access to banking services**: token issuers that have been granted a visa cannot be refused access to deposit and payment account services by credit institutions. When such a refusal happens, or if no answer is received after 2 months, credit institutions must provide the AMF and the ACPR (the French banking supervisor) with the justifications for this refusal. The ACPR can then offer actors the possibility to ask the French Central Bank for appointing one credit institution, that will be required to provide the services.

Another advantage is that the visa can be perceived as a **comparative competitive advantage**. Indeed, the visa may become one element in the decision-making of potential token buyers.

Finally, ICOs that have been approved by the AMF are granted the authorisation to be **marketed directly to the French public**.

However, it should be noted that the visa only guarantees that the token issuer complies with the requirements of the AMF. **The authority does not examine the appropriateness of the project, nor authenticate information, nor verify the smart contract.** Moreover, when the AMF issues a visa, the white paper must inform potential token buyers of the risks arising from such operations through a “general warning notice”.

General warning notice

"Investment in an initial coin offering as defined in Article L. 552-3 of the Monetary and Financial Code entails risks of a partial or complete loss of the investment. No guarantee is given regarding the liquidity of the tokens acquired in the offering, the existence of a secondary market for said tokens, the value of the tokens acquired in the offering and the exchange value of said tokens in legal currency. Tokens do not constitute financial instruments within the meaning of Article L. 211-1 of the Monetary and Financial Code and confer no other right than those described in the information document. In addition, the regulatory framework applicable to the offering and to the tokens as well as the tax regime applicable to the holding of tokens are not defined to date in certain jurisdictions.

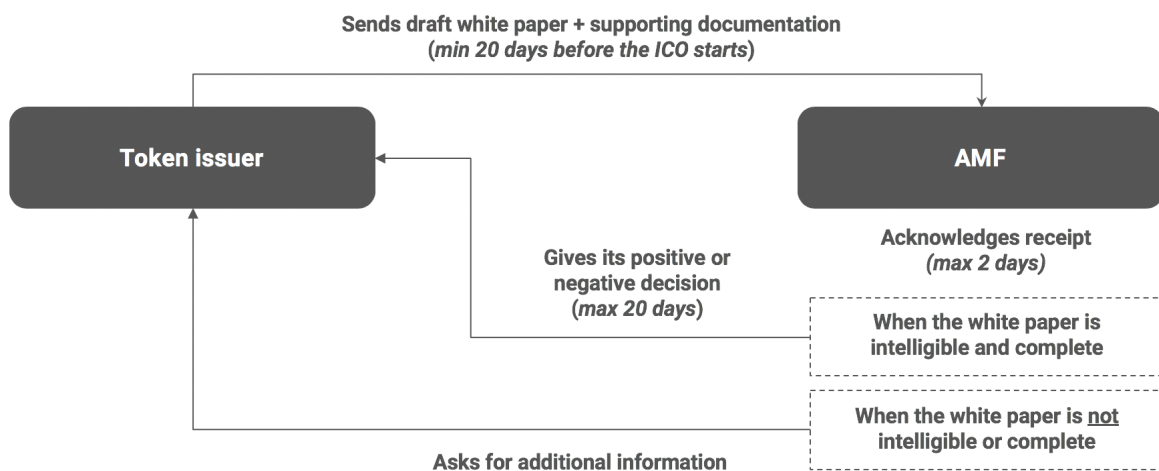
The approval issued by the AMF concerns only the offering covered by this information document. As from the end of the offering, the AMF will not monitor the issuer or its project. Any communications subsequent to the offering and relating thereto will not be reviewed by the AMF."

The subscriber is invited to read section 4 "risk factors" of the information document."

What is the procedure to get the ICO visa?

The token issuer applies for the ICO visa by filing a request with all the necessary elements.

The AMF has a 20-days delay to answer after receiving a complete file. If no answer is provided in the delay, the visa is granted.



What are the post-visa requirements that token issuers must respect?

Once the AMF grants its visa, the white paper is published online by both the issuer - within 2 days - and the AMF that updates the "white list" of ICOs published [on its website](#). The white paper is valid for 6 months following the visa grant and during the whole duration of the ICO.

After issuing tokens, issuers must provide their underwriters with additional information:

- Assets collected from the ICO 2 days maximum after the end of the ICO: total assets collected, number of tokens issued, token allocation between categories of owners, total assets collected and already used / sold (when appropriate).

- Annual information to clients on the use of assets collected.
- (If any) Secondary market options.

III. The regulatory framework for digital assets service providers

The second brick of the French legislation for markets in digital assets is the regulation of **digital asset service providers** to regulate the secondary market and peripheral services for subscribers of digital assets.

To this end, the law establishes a list of **nine “services on digital assets”**. They are widely inspired by investment services subject to European financial regulations and mirror closely activities and operations that virtual asset service providers (VASPs) conduct under the definition given by the Financial Action Task Force (FATF) in their Recommendations⁴.

Article L. 54-10-2 of the French Monetary and Financial Code defines “digital asset services” as:

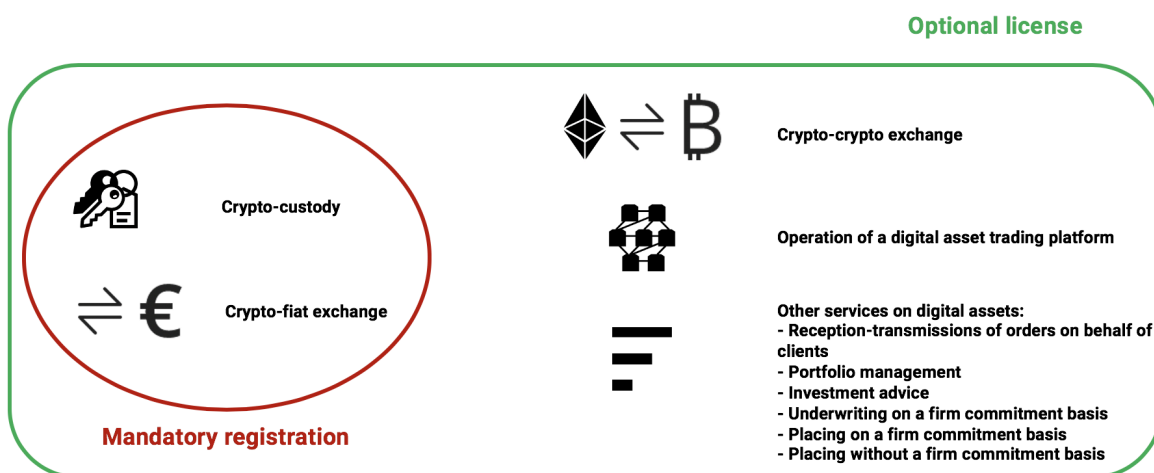
- 1° Custody of digital assets (“crypto-custody”)
- 2° Buying or selling digital assets against legal money (“crypto-fiat service provider”)
- 3° Exchange of digital assets with other digital assets (“crypto-crypto service provider”)
- 4° Operation of a digital asset trading venue
- 5° Other services on digital assets such as:
 - RTO on behalf of clients
 - Portfolio management
 - Investment advice
 - Underwriting on a firm commitment basis
 - Placing on a firm commitment basis
 - Placing without a firm commitment basis.

The regulation of digital assets service providers (so-called DASPs, or PSAN in French) is based on two regimes:

- The **mandatory registration** of providers of services 1° and 2° (crypto-custodians and crypto-fiat service providers) ;
- The **optional license** of any digital asset service provider that requests it and meets underlying requirements.

So if all DASPs can - but are not forced to - ask the AMF for the optional license, **crypto-custodians and crypto-fiat service providers must register with the Authority.**

⁴ “Virtual asset service provider means any natural or legal person who is not covered elsewhere under the Recommendations, and as a business conducts one or more of the following activities or operations for or on behalf of another natural or legal person: i. exchange between virtual assets and fiat currencies; ii. exchange between one or more forms of virtual assets; iii. transfer of virtual assets; iv. safekeeping and/or administration of virtual assets or instruments enabling control over virtual assets; and v. participation in and provision of financial services related to an issuer’s offer and/or sale of a virtual asset.”



⚠ Crypto-crypto service providers and operators of digital assets trading platforms will also fall in the mandatory registration regime by 2021

III.1 The mandatory registration for DASPs

Do DASPs have an obligation to register with the AMF?

When not registered, crypto-custodians and crypto-fiat service providers are prohibited from providing their activities (see sanctions below).

Those DASPs must be registered prior to providing their services.

Crypto-custodians and crypto-fiat service providers that started their activity before 24 May 2019 have to register with the AMF **no later than 18 December 2020**.

⚠ Crypto-crypto service providers and digital assets trading venues must register before June 10, 2021.

Must DASPs located outside of France register with the AMF?

All the DASPs in the scope of the French DASP regime that carry on their activity on the French territory must be registered with the AMF.

This includes two scenarios:

- when they are established in France;
- when they provide services to clients who are resident or established in France.

The AMF has set a list of criteria to determine which company could fall under the latter situation in a [Q&A document](#) (see 3.2), among them: postal address or telephone numbers in France, a .fr domain name, business or marketing premises in France, promotional communication sent to clients who are resident or established in France, etc.

DASPs that must register with the AMF are not subject to an obligation of establishment in France: they can be established in another country that belongs to the European Union or in the European Economic Area (EEA), as long as they follow the registration procedure with the AMF.

What are the underlying requirements that registered DASPs must comply with?

Registered DASPs must comply with the following provisions:

- Honorability and competence of managers
- Honorability, competence and sound and careful management by individuals that have a supervisory power
- Application of Anti-Money Laundering and Combating the Financing of Terrorism (AML-CFT) measures.

Among AML-CFT regulatory requirements, the issuer must define and put in place a system to ensure compliance with KYC obligations regarding their clients; a system to assess and monitor ML-FT risks, and comply with assets freeze requirements (when appropriate).

Does the registration provide DASPs with specific rights?

The promising benefit to be registered with the AMF - giving the strong requirements to meet, in particular AMLD5 - was **the unrestricted access to banking services**. Like token issuers whose ICO gets a visa, DASPs registered with the AMF should not be refused access by credit institutions to deposit and payment account services.

***But in practice ?** For now, credit institutions still show reluctance to engage into business relationships with players involved in digital assets activities, even if a DASP is registered with the AMF. Adan is committed to find a solution to this situation and is able to help.*

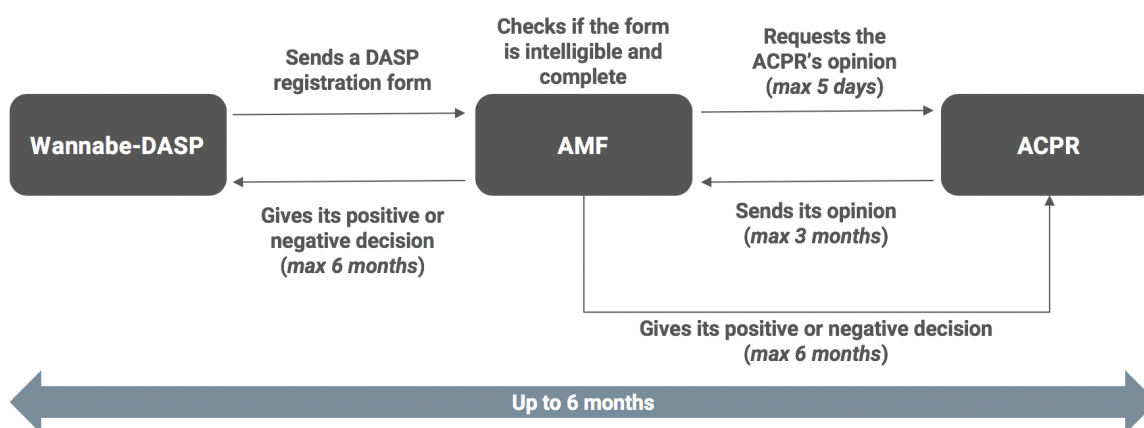
When they refuse or do not answer to the actor's request after a 2 months delay, credit institutions must provide the AMF and the ACPR with the reasons for this refusal. The ACPR can offer actors the possibility to ask the French Central Bank for appointing one credit institution to provide required services.

What is the procedure to be registered?

There are two distinct procedures for registration.

For crypto-custodians and crypto-fiat service providers, the AMF will check that the prospective DASP complies with all requirements, first AMLD5. The AMF will collect the assent of the French banking supervisor (ACPR).

By 6 month after the prospective DASP send its complete application to the AMF, silence is deemed to signal acceptance.



Once registered, crypto-custodians and crypto-fiat service providers are added to the [DASP white list](#) held by the AMF.

For crypto-crypto service providers and digital assets trading facilities, there's no pre-approval process by the AMF. The registration process only involves the filing of a complete file to the AMF. Once registered, those service providers are added to the [DASP white list](#) held by the AMF.

What happens if a DASP does not register?

If the activity of a DASP falls into the scope of the mandatory registration and the company does not comply, if incorrect or incomplete information was submitted, or if the company fails to implement the KYC/AML measures described in the file, the sanctions are set forth as follows:

Infringement	Penalty	Fine
Not declaring to the AMF changes in business conduct that would have an impact on the registration or communication of incomplete informations	1 year of imprisonment	€15,000
Not registering with the AMF or pretending to be registered when it's not the case	2 years of imprisonment	€30,000
Non-cooperation or unwilling cooperation with the AMF in the conduct of their oversight mission	1 year of imprisonment	€15,000
Infringement of registration obligations	reprimand or warning, possibly with penalty	up to €5,000,000
Infringement of AML-KYC policies	reprimand or warning, possibly with penalty	up to €5,000,000

+ where there's a direct and personal responsibility of the directors and/or executive in charge of the implementation of KYC/AML policies in the non-conformity.	Prohibition from exercising an executive position for the director (up to 10 years) and / or Prohibition from exercising management functions for the executive in charge of implementing the AML-KYC (up to 5 years)	up to €5,000,000
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III.2 The optional license of DASPs

What does "optional license" mean?

DASPs can - but are not required to - get the DASP license. Even without the license, DASPs are not prohibited from providing their services (except for crypto-custodians and crypto-fiat service providers, see §III.1 above).

Are all DASPs eligible for the license?

Yes: the scope of DASPs that are eligible to the AMF's license is broader than all other PACTE's regulatory mechanisms.

To be able to ask for the license, actors must:

- **exercise one of the activities described in §III above.**
- **be established as a company (subsidiary or branch) in France.**

What are the conditions required to apply?

To get the license, DASPs must comply with a **common package or rules for all service providers**, but also to some **specific rules depending on services that they offer**.

The common rules are the following:

- **General information**, notably: name, address, contact point, list of services that will be provided with and without a license, identity of shareholders and (natural or legal) persons who can exercise a significant influence over the management of that company, incorporation document;
- **Financial information**, notably: the current financial position of the applicant, forecast data, financial statements for existing companies;
- **Having a professional liability insurance or respect specific capital requirements**;
- **Safety and internal control system**;
- **Resilient and secure IT system**;
- **Conflicts of interest management system**;
- **Fair, clear and not misleading information provided to clients** (including concerning risks related to crypto-assets);
- **Publication of their pricing policy**;
- **Efficient claim management policy**.

Then, depending on the service they provide, DASPs that apply for the license must meet specific conditions:

digital asset service	Specific requirements
Crypto-custody	<p>Customer convention depicting the custodian's missions and duties</p> <p>Custody policy</p> <p>Obligation to return digital assets or means of accessing digital assets (when the crypto-custodian is held responsible)</p> <p>digital assets segregation (between the custodian's assets and its clients' assets)</p> <p>(Means of accessing) digital assets' utilisation according to the clients' consent only</p> <p>Record-keeping of digital assets holdings and movements</p> <p>Facilitation of the exercise of associated rights and recording of creation/modification of such rights</p> <p>Notary function (ensuring that the quantity of digital assets held on behalf of users is equal to the quantity of digital assets recorded in the position registers)</p> <p>Periodic information to clients</p>
Crypto-fiat and crypto-crypto service providers	<p>Non-discriminatory commercial policy</p> <p>Publication of firm prices or the pricing method for digital assets</p> <p>Post-trade transparency (quotes and volumes)</p> <p>Execution of orders at the quoted prices at the time of reception of the order</p> <p>Best execution</p>
crypto-asset trading venue	<p>Honorability and competence of persons that perform effective management</p> <p>Honorability and competence + sound and careful management by natural persons that have a supervisory power</p> <p>Operating rules depicting notably: terms of access and obligations for users, list of digital assets (or classes) traded on the venue, execution policy, trading conditions, conditions when dealing on own account, custody policy (if relevant), etc.</p> <p>Restrictions to dealing on own account</p> <p>Continuous and real-time publication of price (order book)</p>
RTO and portfolio management	<p>Honorability and competence of persons that perform effective management</p> <p>Honorability and competence + sound and careful management by natural persons that have a supervisory power</p> <p>Business plan for each service and appropriate means to be put in place</p> <p>Best execution, adequate execution policy and monitoring</p> <p>Prohibition of inducements received to route an order to one service provider</p> <p>Trade to trade information (only when required by clients for portfolio management)</p>

Portfolio management	<p>Collection of information from clients to assess suitability and appropriateness tests</p> <p>Required professional training and experience</p> <p>Pedagogy/education to customers about digital assets and related services provided</p> <p>Periodic information to clients</p>
Investment advice	<p>Honorability and competence of persons that perform effective management</p> <p>Honorability and competence + sound and careful management by natural persons that have a supervisory power</p> <p>Business plan for each service and appropriate means to be put in place</p> <p>Collection of information from clients to assess suitability and appropriateness tests</p> <p>Required professional training and experience</p> <p>Pedagogy/education to customers about digital assets and related services provided</p>
Underwriting and placing	<p>Honorability and competence of persons that perform effective management</p> <p>Honorability and competence + sound and careful management by natural persons that have a supervisory power</p> <p>Business plan for each service and appropriate means to be put in place</p> <p>Information to digital assets issuers before establishing any business relationships, notably: transaction fees, schedule, targeted clients, conflict of interests management arrangements</p> <p>Management of conflicts of interests resulting from providing both underwriting and placing and between clients</p> <p>digital assets allocation policy</p> <p>Consent obtained from issuers regarding the allocation policy</p>

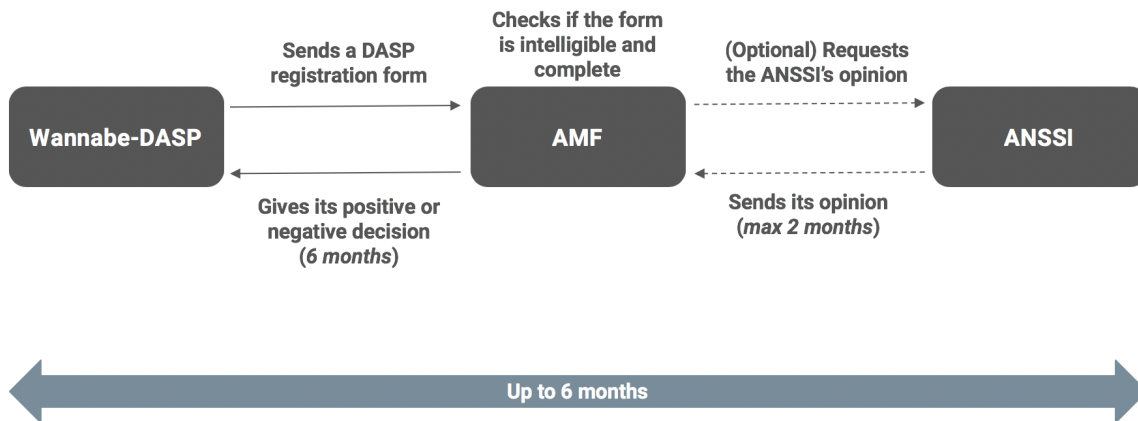
If it is purely optional, why apply to the license?

DASPs that got the AMF license benefit from **the unrestricted access to banking services** and are authorized to **market their services directly to the general public**.

Moreover, the license can constitute a **guarantee of credibility and a business positioning for actors**.

What is the procedure to get the DASP license?

The AMF will check that the prospective DASP complies with all underlying requirements. If they need it, they can consult the National Cybersecurity Agency of France (ANSSI). By 6 month after the prospective DASP sends its complete application to the AMF, silence is deemed acceptance.



Once they are granted the license, DASPs are added to the [DASP whitelist](#) held by the AMF.

Are there sanctions associated with this optional regime?

Yes. If you are granted a license with the AMF, you must operate in the way described in the file that you have submitted to the regulator.

Failure to do so will result in harsh sanctions (up to 5 years of imprisonment and €375,000 fine, or harsher sanctions where the KYC/AML dispositions are not respected).