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Subject:	COMMISSION DELEGATED REGULATION (EU) .../... of 13.7.2022 supplementing Regulation (EU) 2020/1503 of the European Parliament and of the Council with regard to regulatory technical standards specifying the methodology for calculating default rates of loans offered on a crowdfunding platform

Delegations will find attached document C(2022) 4830 final.

Encl.: C(2022) 4830 final



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COMMISSION DELEGATED REGULATION (EU) .../...

of 13.7.2022

supplementing Regulation (EU) 2020/1503 of the European Parliament and of the Council with regard to regulatory technical standards specifying the methodology for calculating default rates of loans offered on a crowdfunding platform

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

Article 20(3) of Regulation (EU) 2020/1503 on European Crowdfunding Service Providers for business (‘the Regulation’) empowers the Commission to adopt, following the submission of draft regulatory technical standards by the European Securities and Markets Authority (ESMA), and in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010, delegated acts specifying the methodology for calculating the default rates of projects offered on a crowdfunding platform.

Article 20 of the Regulation provides for requirements relating to the disclosure of default rates on a crowdfunding platform. These requirements relate to the methodology for calculation and the presentation of default rates on the website of the crowdfunding service provider.

In accordance with Article 10(1) of Regulation (EU) No 1095/2010 establishing the ESMA, the Commission shall decide within three months of receipt of the draft standards whether to endorse the drafts submitted. The Commission may also endorse the draft standards in part only, or with amendments, where the Union's interests so require, having regard to the specific procedure laid down in those Articles.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

In accordance with the third subparagraph of Article 10(1) of Regulation (EU) No 1095/2010, the ESMA has carried out a public consultation on the draft technical standards submitted to the Commission in accordance with Article 20(3) of the Regulation. A consultation paper was published on the ESMA website on 26 February 2021, and the consultation closed on 28 May 2021. Moreover, the ESMA worked in close cooperation with the EBA, and requested advice from the Securities and Markets Stakeholder Group set up in accordance with Article 37 of Regulation (EU) No 1095/2010. Within the final report on the draft technical standards, the ESMA included an explanation on how the outcome of these consultations has been taken into account in the development of the final draft technical standards submitted to the Commission.

Together with the draft technical standards, and in accordance with the third subparagraph of Article 10(1) of Regulation (EU) No 1095/2010, the ESMA has submitted its analysis of the costs and benefits related to the draft technical standards submitted to the Commission. This analysis is included in the Final Report on the technical draft technical standards available at https://www.esma.europa.eu/sites/default/files/library/esma35-42-1183_final_report_-_ecspr_technical_standards.pdf.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

The draft regulatory technical standards set out the conditions under which loans offered on a crowdfunding platform should be considered in default and the criteria that should be considered as indicators of unlikeliness to pay. The draft regulatory technical standards also specify the methodologies for the calculation of the default rate of loans offered by a crowdfunding platform, the actual default rate of loans by risk category and the expected

default rate of loans by risk category. Moreover, the draft regulatory technical standards set out requirements for the assignment of individual loans to risk categories and data accuracy.

COMMISSION DELEGATED REGULATION (EU) .../...

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supplementing Regulation (EU) 2020/1503 of the European Parliament and of the Council with regard to regulatory technical standards specifying the methodology for calculating default rates of loans offered on a crowdfunding platform

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) 2020/1503 of the European Parliament and of the Council of 7 October 2020 on European crowdfunding service providers for business, and amending Regulation (EU) 2017/1129 and Directive (EU) 2019/1937,¹ and in particular Article 20(3), third subparagraph thereof,

Whereas:

- (1) It is necessary to enable investors to make informed investment decisions. Since one crowdfunding project may offer more than one loan, it is necessary, when specifying the methodology for calculating the default rates of projects offered on a crowdfunding platform, to lay down rules for the calculation of default rates at the level of each individual loan with regard to a particular crowdfunding project offered on a crowdfunding platform. A definition of default at a more granular level, i.e., at the loan level, allows to capture cases where a project owner is unlikely to fulfil its credit obligations related to one loan but not to others. Therefore, to calculating the default rates of projects offered on a crowdfunding platform, crowdfunding service providers should not automatically consider the different loans to the same project as defaulted at the same time. Crowdfunding service providers should assess whether some indications of default are related to the crowdfunding project as a whole, rather than a particular loan. In particular, where a significant part of the loans related to a crowdfunding project is in default, crowdfunding service providers may consider it unlikely that the other loans of that crowdfunding project will be paid in full without recourse to actions, including realising security and treat those loans as defaulted as well.
- (2) It is necessary to avoid regulatory arbitrage and to enable investors to compare the performance of crowdfunding service providers who provide crowdfunding services consisting of the facilitation of granting of loans, and, in particular, the quality of projects offered on crowdfunding platforms. It is therefore appropriate to specify the

¹ OJ L 347, 20.10.2020, p. 1.

elements on the basis of which such crowdfunding service providers should consider a default to have occurred with regard to a loan offered on their crowdfunding platform. Those crowdfunding service providers should therefore have in place effective processes that enable them to obtain the necessary information in order to identify, without undue delay, the occurrence of the default of loans offered on their crowdfunding platform.

- (3) Article 20(1), of Regulation (EU) 2020/1503 requires crowdfunding service providers which provide crowdfunding services consisting of the facilitation of granting of loans to disclose annually the default rates of the crowdfunding projects offered on their crowdfunding platform over at least the preceding 36 months and publish an outcome statement within four months of the end of each financial year indicating the expected and actual default rate of all loans they have facilitated. In order to make sure that investors and potential investors have access to information with similar time horizons for risk and reward metrics in relation to the loans offered on a crowdfunding platform, it is necessary to ensure consistency with Article 180(1), point (a), of Regulation (EU) No 575/2013 of the European Parliament and of the Council², and use one-year default rates as reference for the calculation of default rates. The one-year default rates represent the share of loans going from a non-defaulted status into a defaulted status at least once during a one-year observation period. Hence, the expected default rate should provide an estimate of the proportion of non-defaulted loans that are expected to default in a one-year observation period. Consequently, in order to base the estimation of such expected default rate on the actual default rate, the calculation of the actual default rate should be restricted to loans which are in a non-defaulted status at the beginning of the one-year observation period. To ensure a comparable and fair representation of the default rates, no weighting scheme should be applied to calculate the yearly default rates (loan-based calculation). Hence, the monetary amount of the loans should not be used for the calculation of the default rates to avoid that more predominance is given to some loans in such calculation. In case of bias due to the presence of short-term loans, crowdfunding service providers which provide crowdfunding services consisting of the facilitation of granting of loans should adjust the calculation of the default rate. To ensure a fair representation of the default rates to investors, crowdfunding service providers which provide crowdfunding services consisting of the facilitation of granting of loans should not manipulate or misrepresent the default rates published in accordance with Article 20(2) of Regulation (EU) 2020/1503.
- (4) Inconsistent, inaccurate, incomplete, or outdated data may lead to errors in the calculation of the default rates of crowdfunding projects. Consequently, to ensure reliability and high quality of data, the procedures related to gathering and storing of data should be robust and well documented.
- (5) Crowdfunding service providers' internal method for the calculation of the actual and expected default rates should be based on information about the performance of loans facilitated by those crowdfunding service providers and the risk categories set out in the risk-management framework referred to in Article 19(7), point (d), of Regulation (EU) 2020/1503.

² Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) 648/2012 (OJ L 176, 27.6.2013, p. 1).

- (6) This Regulation is based on the draft regulatory technical standards submitted to the Commission by the European Securities and Markets Authority ('ESMA'), in close cooperation with the European Banking Authority.
- (7) ESMA has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the advice of the Securities and Markets Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council³.
- (8) The European Data Protection Supervisor was consulted in accordance with Article 42(1) of Regulation (EU) 2018/1725 of the European Parliament and of the Council⁴ and delivered an opinion on 1 June 2022,

HAS ADOPTED THIS REGULATION:

Article 1

Default of loans offered on a crowdfunding platform

1. Crowdfunding service providers which provide crowdfunding services consisting of the facilitation of granting of loans shall consider a default to have occurred with regard to a particular loan offered on their crowdfunding platform when either or both of the following events have taken place:
 - (a) the crowdfunding service provider considers that the project owner is unlikely to pay in full, or otherwise fulfil its credit obligations related to the loan concerned, without recourse to actions, such as realising security;
 - (b) the project owner is more than 90 days past due on any material credit obligation related to the loan concerned.
2. For the purposes of paragraph 1, point (a), the following elements shall be considered as indicators of unlikelihood to pay:
 - (a) a distressed restructuring of the credit obligation related to the loan concerned has occurred where this is likely to result in a diminished financial obligation caused by the material forgiveness, or postponement, of principal, interest or, where relevant, fees.
 - (b) the project owner has applied for, or has been placed in, bankruptcy or similar protection, where this would avoid or delay repayment to investors of a credit obligation related to the loan concerned.

³ Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision No 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

⁴ Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

For the purposes of point (a), a distressed restructuring shall be considered to have occurred where concessions have been extended towards a project owner facing or about to face difficulties in meeting its financial commitments.

3. For the purposes of paragraph 1, point (b), where the credit agreement explicitly allows the project owner to change the payment schedule, or to suspend or postpone the payments under certain conditions, and where the project owner acts within the rights granted in that credit agreement, the changed, suspended or postponed payments shall not be considered past due, but the counting of days past due shall be based on the new payment schedule once it is specified. Crowdfunding service providers shall nonetheless analyse the reasons for such changes in the payment schedule, or the suspension or postponement of the payments, and assess the possibility of unlikelihood to pay as referred to in paragraph 1, point (a).
4. Crowdfunding service providers shall disclose the materiality threshold used for the purposes of paragraph 1, point (b).
5. Crowdfunding service providers shall inform investors in case of default of a loan without delay.

Article 2

Methodology for the calculation of the default rate of loans offered on a crowdfunding platform

1. For the purposes of the disclosure referred to in Article 20(1), point (a), of Regulation (EU) 2020/1503, crowdfunding service providers shall calculate the simple average of the observed one-year default rate over the entire historical observation period using non-overlapping 12-month observation windows.
2. For the calculation of the one-year default rate referred to in paragraph 1, crowdfunding service providers shall ensure all of the following:
 - (a) that the denominator consists of the number of non-defaulted loans observed at the beginning of the 12-month observation window;
 - (b) that the numerator includes all loans considered in the denominator that had at least one default event during the 12-month observation window.
3. For the purposes of paragraph 2, loans for which no payment is scheduled in the payment schedule during the 12-month observation period shall be excluded from the data set used to calculate the default rate for that period.
4. For the purposes of paragraph 1 and irrespective of whether a crowdfunding service provider is using external, internal, or pooled data sources, or a combination of the three, the length of the underlying historical observation period used shall be at least 36 months for at least one source. Where the available observation period spans a longer period for any source, that longer period shall be used. A crowdfunding service provider that has been in operation for less than 36 months shall use the period over which it has been in operation.

5. Crowdfunding service providers shall disclose the denominator and numerator used to calculate the one-year default rate in accordance with paragraph 2 for the period determined in accordance with paragraph 4.

Article 3

Methodology for the calculation of the actual default rate of loans by risk category

1. For the publication of actual default rates of all loans in accordance with Article 20(1), point (b)(i), of Regulation (EU) 2020/1503, crowdfunding service providers shall calculate the simple averages of the observed one-year default rate by risk category over the entire historical observation period using non-overlapping 12-month observation windows.
2. For the calculation of the one-year default rate by risk category, crowdfunding service providers shall ensure all of the following:
 - (a) that the denominator consists of the number of non-defaulted loans observed at the beginning of the 12-month observation period within the risk category for which the default rate is calculated;
 - (b) that the numerator includes all loans considered in the denominator that had at least one default event during the 12-month observation period.
3. For the purposes of paragraph 2, loans for which no payment is scheduled in the payment schedule during the 12-month observation period shall be excluded from the data set used to calculate the default rate for that period.
4. For the purposes of paragraph 1, irrespective of whether a crowdfunding service provider is using external, internal, or pooled data sources, or a combination of the three, the length of the underlying historical observation period used shall be at least 36 months for at least one source. Where the available observation period spans a longer period for any source, that longer period shall be used. A crowdfunding service provider that has been in operation for less than 36 months it shall use the period over which it has been in operation.
5. Crowdfunding service providers shall disclose the denominator and numerator used to calculate the actual default rate of all loans by risk category in accordance with paragraph 2 for the period determined accordance with paragraph 4.

Article 4

Methodology for the calculation of the expected default rate of loans by risk category

1. For the publication of expected default rates of all loans in accordance with Article 20(1), point (b)(i), of Regulation (EU) 2020/1503, crowdfunding service providers shall base their estimates of the expected default rates by risk category on the actual default rates of loans by risk category calculated in accordance with Article 3.
2. For the purposes of paragraph 1 and irrespective of whether a crowdfunding service provider is using external, internal, or pooled data sources, or a combination of the three, for its expected default rate estimation, the length of the underlying historical

observation period used shall be at least 36 months for at least one source. Where the available observation period spans a longer period for any source, that longer period shall be used. A crowdfunding service provider that has been in operation for less than 36 months shall use the period over which it has been in operation.

Article 5
Assignment to risk categories

For the purposes of Articles 3 and 4, crowdfunding service providers shall assign the individual loans to the relevant risk category set out in the risk-management framework on the basis of sound and well-defined criteria and taking into account all the relevant factors that may have unfavourable effects on the performance of the loans.

Article 6
Data accuracy

Crowdfunding service providers shall ensure the consistency and appropriateness of data used to calculate the default rates in accordance with this Regulation.

Article 7
Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 13.7.2022

For the Commission
The President
Ursula VON DER LEYEN