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COVER NOTE

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
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To:	General Secretariat of the Council
No. Cion doc.:	C(2022) 4844 final
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 for the key investment information sheet

Delegations will find attached document C(2022) 4844 final.

Encl.: C(2022) 4844 final



Brussels, 13.7.2022
C(2022) 4844 final

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 for the key investment
information sheet**

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

Article 23(16) 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 requirements and model for presenting the information that shall be set forth in the Key Investment Information Sheet (KIIS), including the presentation of certain risks, financial ratios and costs and charges information.

The KIIS sets forth the information needed to make an informed investment decision. Article 23 of the Regulation sets out requirements relating to the provision of information through a KIIS and the relevant obligations of the crowdfunding service provider and the project owner with regard to the KIIS.

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 23(16) 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 requested advice of 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 establish the requirements on the presentation of the KIIS using the model set out within the act, the format and language requirements of the KIIS model, and the requirement for an identifier of crowdfunding offers. The draft regulatory technical standards also include requirements for the KIIS model, which include the choice of terms, the use of hyperlinks, the identification of the main risk types associated with a

crowdfunding offer and the provision of financial ratios, statements and information in the KIIS model.

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 for the key investment information sheet

(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) 2019/1937¹, and in particular Article 23(16), fourth subparagraph, thereof,

Whereas:

- (1) To ensure the comparability among key investment information sheets of different crowdfunding offers and facilitate the drafting of key investment information sheets by project owners, a common model for the presentation of the information concerned should be set out. That model should ensure that project owners follow a similar presentation pattern in form and substance, whilst allowing for the required flexibility that considers the specificities of each crowdfunding offer, considering their nature, scale and complexity.
- (2) To ensure the interoperability of data and to enable cross-referencing information included in the key investment information sheet with other information, in particular the information reported in accordance with Commission Implementing Regulation (EU) XX/XX [C(2022) 4837], each key investment information sheet should contain a unique identifier of the crowdfunding offer to which it relates.
- (3) To give project owners the possibility to provide prospective investors further relevant information, it should be possible to include hyperlinks, which should follow common model. However, those hyperlinks should not impair the comprehensiveness of the key investment information sheet as a stand-alone document. Therefore, the use of hyperlinks should not exempt project owners from the obligation to include the relevant information in the key investment information sheet in a clear and comprehensive manner.

¹ OJ L 347, 20.10.2020, p. 1.

- (4) In order to enable prospective investors to make informed investment decisions, the key investment information sheet should contain a specific and non-generic description of all relevant risks related to the crowdfunding project, the crowdfunding offer and the project owner.
- (5) To allow the comparability and clarity of financial information contained in the key investment information sheet and thus enhance transparency for prospective investors, financial statements and information should be presented in accordance with commonly recognised standards and principles.
- (6) To allow for transparent information on the commissions, fees and other transaction costs incurred by the investor throughout the life of the crowdfunding project, the key investment information sheet should present a breakdown of direct and indirect costs, which specifies entry costs, exit costs, costs incurred during the project and incidental costs.
- (7) This Regulation is based on the draft regulatory technical standards submitted to the Commission by the European Securities and Markets Authority.
- (8) European Securities and Markets Authority 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 Council².
- (9) 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 Council³ and delivered an opinion on 1 June 2022,

HAS ADOPTED THIS REGULATION:

Article 1

Key investment information sheet model

1. When providing the information in the key investment information sheet referred to in Article 23 of Regulation (EU) 2020/1503, crowdfunding service providers shall use the model laid down in the Annex to this Regulation.
2. The information referred to in paragraph 1 shall be made available as soon as the relevant crowdfunding offer is published by the crowdfunding service provider.

² 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 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

³ 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).

Article 2

Format and language requirements of the key investment information sheet model

1. The information referred to in Article 1 shall be presented in a way that is easy to read and shall be expressed in a way that facilitates the understanding of the information, including by prospective non-sophisticated investors, and taking into consideration the possible comprehension difficulties arising from the nature, scale and complexity of the crowdfunding offer.
2. The language used in the key investment information sheet shall be clear and succinct and technical terms shall be avoided where everyday words can be used instead.

Article 3

Identifier of the crowdfunding offer

1. The key investment information sheet shall include a standardised, permanent and unique identifier of the relevant crowdfunding offer.
2. The identifier referred to in paragraph 1 shall be the result of the concatenation of the following elements in the following order:
 - (a) the ISO 17442 legal entity identifier (LEI) code of the crowdfunding service provider;
 - (b) a code composed of eight numerical characters, which shall be generated internally by the crowdfunding service provider and which shall be unique to each crowdfunding offer published by the crowdfunding service provider.
3. The identifier formed in accordance with paragraph 2 shall not be altered upon the modification of the key investment information sheet resulting from any of the following:
 - (a) the translation of the key investment information sheet into different languages pursuant to Article 23(4) and (13) of Regulation (EU) 2020/1503;
 - (b) updates to the key investment information sheet pursuant to Article 23(8) and (12) of Regulation (EU) 2020/1503;
 - (c) other non-material alteration of the information included in the key investment information sheet.

Article 4

Choice of terms in the key investment information sheet model

Where the key investment information sheet model laid down in the Annex enables a choice of terms or expressions, such choice shall be made as follows:

- (a) the expressions ‘target capital’ or ‘capital raising’ shall be used for crowdfunding offers relating to equity transferable securities or admitted instruments for crowdfunding purposes;
- (b) the expressions ‘target funds’ or ‘funds borrowing’ shall be used for crowdfunding offers relating to loans, non-equity transferable securities or hybrid instruments;
- (c) the terms ‘transferable securities’ or ‘admitted instruments for crowdfunding purposes’ shall be used in accordance with the type of instruments offered.

Article 5

Use of hyperlinks in the key investment information sheet model

1. The key investment information sheet may contain hyperlinks as set out in the model laid down in the Annex.
2. The hyperlinks shall be complementary to the information given and shall not replace that information, except as otherwise provided in the model.
3. The hyperlinks shall be consistent with the information provided elsewhere in the key investment information sheet and the external resources referenced in the hyperlinks shall be freely and easily accessible.

Article 6

Types of main risks associated with a crowdfunding offer

1. The types of main risks which are associated with a crowdfunding offer shall be disclosed in the key investment information sheet relating to that offer in accordance with the instructions set out in Part C of the Annex. Where relevant, other risks shall also be disclosed.
2. The description of the risks associated with a crowdfunding offer shall be of relevance to that specific offer and shall be prepared solely for the benefit of prospective investors and shall not give general statements on investment risks or limit the liability of the project owner or any persons acting on their behalf.

Article 7

Financial ratios, statements and information in the key investment information sheet model

The financial statements and information referred to in the key investment information sheet model laid down in the Annex shall be presented in accordance with International Financial Reporting Standard (IFRS) or local Generally Accepted Accounting Principles (GAAP), as applicable.

Article 8

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