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COVER NOTE

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	13 July 2022
To:	General Secretariat of the Council
No. Cion doc.:	C(2022) 4845 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 specifying requirements and arrangements for the application for authorisation as a crowdfunding service provider

Delegations will find attached document C(2022) 4845 final.

Encl.: C(2022) 4845 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 requirements and arrangements for the application for authorisation as a crowdfunding service provider

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

Article 12(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 arrangements for the application referred to in paragraph 1 of Article 12, including the standard forms, templates and procedures for the application for authorisation.

Article 12 of the Regulation concerns with the authorisation to provide crowdfunding services under the Regulation. Article 12(1) of the Regulation requires that a legal person who intends to provide crowdfunding services should apply to the competent authority of the Member State where it is established for authorisation as a 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 draft standards 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 that Article.

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 12(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 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 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 technical standards lay down rules on the designation of a contact point by competent authorities for receiving the applications for authorisation, rules on the submission of the application for authorisation based on the standard form and rules on the acknowledgement of receipt sent to the prospective crowdfunding service provider. The draft technical standards also clarify the impact on the time limit following the request by the competent authority to provide missing information, as well as rules regarding the notification of any changes to the information provided in the application for authorisation.

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 requirements and arrangements for the application for authorisation as a crowdfunding service provider

(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 12(16), fourth subparagraph, thereof,

Whereas:

- (1) To ensure a uniform mechanism by which competent authorities effectively exercise their powers in respect of applications for authorisation of prospective crowdfunding service providers, it is appropriate to set out common standard forms, templates, and procedures for such applications.
- (2) To facilitate communication between a prospective crowdfunding service provider and the competent authority, the competent authority should designate a contact point specifically for the purpose of the application process and should make the relevant contact details public on its website.
- (3) To enable the competent authority to thoroughly assess whether the application is complete, where the competent authority requires the prospective crowdfunding service provider to provide missing information, the time limit for the assessment of the completeness of the application referred to in Article 12(4) of Regulation (EU) 2020/1503 should be suspended from the date such information is requested until the date it is received by the competent authority.
- (4) To allow the competent authority to assess whether changes to the information provided in the application for authorisation may affect the procedure of authorisation, it is appropriate to require prospective crowdfunding service providers to communicate such changes without undue delay. Furthermore, it is necessary to establish that the time limits for the assessment of the information laid down in Article 12(8) of Regulation (EU) 2020/1503 apply from the date on which the amended information is provided by the applicant to the competent authority.
- (5) This Regulation is based on the draft regulatory technical standards submitted to the Commission by the European Securities and Markets Authority.

¹ OJ L 347, 20.10.2020, p. 1.

- (6) The 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.
- (7) 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

Designation of a contact point

Competent authorities shall designate a contact point for receiving the applications for authorisation as a crowdfunding service provider pursuant to Article 12 of Regulation (EU) 2020/1503. Competent authorities shall keep the contact details of the designated contact point up-to-date and shall make those contact details public on their websites.

Article 2

Standard form

Prospective crowdfunding service providers shall submit their application for authorisation using the standard form set out in the Annex.

Article 3

Acknowledgement of receipt

Within 10 working days from the receipt of the application and notwithstanding the time limit set out in Article 12(4) of Regulation (EU) 2020/1503 for the assessment of whether the application is complete in accordance with that Article, the competent authority shall send electronically, on paper, or in both forms, an acknowledgement of receipt to the prospective crowdfunding service provider. That acknowledgement of receipt shall include the contact details of the persons who will handle the application for authorisation.

Article 4

Time limit suspension in case of missing information

Where the competent authority requires the prospective crowdfunding service provider to provide missing information in accordance with Article 12(4) of Regulation (EU) 2020/1503, the time limit for the assessment of whether the application is complete in accordance with that Article shall be suspended from the date such information is requested until the date it is received.

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 5
Notification of changes

1. The prospective crowdfunding service provider shall notify the competent authority of any changes to the information provided in the application for authorisation without undue delay. The prospective crowdfunding provider shall provide the updated information by using the standard form set out in the Annex.
2. Where prospective crowdfunding service provider provides updated information, the time limit laid down in Article 12(8) of Regulation (EU) 2020/1503 shall start to run from the date on which that updated information is received by the competent authority.

Article 6
Entry into force and application

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