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NOTE

From:	General Secretariat of the Council
To:	Delegations
No. Cion doc.:	COM(2018) 99 final
Subject:	Proposal for a Directive of the European Parliament and of the Council amending Directive 2014/65/EU on markets in financial instruments - Three-column table comparing the institutions' positions

PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
amending Directive 2014/65/EU on markets in financial instruments
2018/0047(COD)

Green

Identical text

Nr.	Ref.	COMMISSION	COUNCIL	PARLIAMENT
1.		Proposal for a	Proposal for a	Proposal for a
2.		DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL	DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL	DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
3.		amending Directive 2014/65/EU on markets in financial instruments	amending Directive 2014/65/EU on markets in financial instruments	amending Directive 2014/65/EU on markets in financial instruments
4.		(Text with EEA relevance)	(Text with EEA relevance)	(Text with EEA relevance)
5.		THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,	THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,	THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,
6.	Cit. 1	Having regard to the Treaty on the Functioning of the European Union, and in particular Article 53(1) thereof,	Having regard to the Treaty on the Functioning of the European Union, and in particular Article 53(1) thereof,	Having regard to the Treaty on the Functioning of the European Union, and in particular Article 53(1) thereof,

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7.	Cit. 2	Having regard to the proposal from the European Commission,	Having regard to the proposal from the European Commission,	Having regard to the proposal from the European Commission,
8.	Cit. 3	After transmission of the draft legislative act to the national parliaments,	After transmission of the draft legislative act to the national parliaments,	After transmission of the draft legislative act to the national parliaments,
9.	Cit. 4	Having regard to the opinion of the European Central Bank ¹ ,	Having regard to the opinion of the European Central Bank ² ,	Having regard to the opinion of the European Central Bank ³ ,
10.	Cit. 5	Having regard to the opinion of the European Economic and Social Committee ⁴ ,	Having regard to the opinion of the European Economic and Social Committee ⁵ ,	Having regard to the opinion of the European Economic and Social Committee ⁶ ,
11.	Cit. 6	Acting in accordance with the ordinary legislative procedure,	Acting in accordance with the ordinary legislative procedure,	Acting in accordance with the ordinary legislative procedure,
12.		Whereas:	Whereas:	Whereas:
13.	Rec. 1	(1) Crowdfunding provides alternative access to finance for businesses, thereby contributing to the objectives of the Capital Markets Union (CMU).	(1) Crowdfunding provides alternative access to finance for businesses, thereby contributing to the objectives of the Capital Markets Union (CMU).	(1) Crowdfunding <i>is a financial technology solution that</i> provides <i>SMEs, and, in particular, start-ups and scale-ups, with</i> alternative access to finance, <i>in order to promote innovative entrepreneurship in the Union</i> , thereby <i>strengthening</i> the Capital Markets Union . <i>That in turn contributes to a more diversified financial system that is less dependent on bank financing, therefore</i>

1 OJ C [...], [...], p. [...].

2 OJ C [...], [...], p. [...].

3 OJ C [...], [...], p. [...].

4 OJ C [...], [...], p. [...].

5 OJ C [...], [...], p. [...].

6 OJ C [...], [...], p. [...].

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				<i>limiting systemic and concentration risks. Other benefits of promoting innovative entrepreneurship through crowdfunding are the unlocking of frozen capital for investment in new and innovative projects, the acceleration of efficient allocation of resources and a diversification of assets.</i>
14.	Rec. 2	(2) Under Regulation (EU) XXX/XXX of the European Parliament and of the Council ⁷ legal persons can choose to apply to the European Securities and Markets Authority for an authorisation as crowdfunding service providers.	(2) Under Regulation (EU) XXX/XXX of the European Parliament and of the Council⁸ legal persons can choose to apply to the European Securities and Markets Authority for an authorisation as crowdfunding service providers.	(2) Under Regulation (EU) XXX/XXX of the European Parliament and of the Council ⁹ legal persons can choose to apply to the national competent authority for an authorisation as crowdfunding service providers.
15.	Rec. 3	(3) Regulation (EU) XXX/XXXX [Regulation on European crowdfunding service providers] provides for uniform, proportionate and directly applicable requirements for authorisation and supervision of crowdfunding service providers and centralises supervision of those crowdfunding service providers by the European Securities and Markets Authority.	(3) Regulation (EU) XXX/XXXX [Regulation on European crowdfunding service providers] provides for uniform, proportionate and directly applicable lays down requirements for authorisation the operation, organisation and supervision of crowdfunding services services providers and centralises supervision on the transparency and marketing communications in relation to the provision of these crowdfunding service providers by services in services in the European Securities and Markets Authority Union .	(3) Regulation (EU) XXX/XXXX [Regulation on European crowdfunding service providers] provides for uniform, proportionate and directly applicable requirements for authorisation and supervision of crowdfunding service providers █ .

⁷ Regulation (EU) XXX/XXX of the European Parliament and of the Council on European crowdfunding service providers (OJ L [...], [...], p. [...]).

~~⁸ Regulation (EU) XXX/XXX of the European Parliament and of the Council on European crowdfunding service providers (OJ L [...], [...], p. [...]).~~

⁹ Regulation (EU) XXX/XXX of the European Parliament and of the Council on European crowdfunding service providers (OJ L [...], [...], p. [...]).

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16.	Rec. 4	(4) To provide legal certainty as to the scope of persons and activities falling within the respective scope of Regulation (EU) XXX/XXXX and of Directive 2014/65/EU of the European Parliament and of the Council ¹⁰ , and in order to avoid that the same activity is subject to different authorisations within the Union, legal persons authorised as crowdfunding service providers under Regulation (EU) XXX/XXXX [Regulation on European crowdfunding service providers] should be excluded from the scope of Directive 2014/65/EU.	(4) To provide legal certainty as to the scope of persons and activities falling within the respective scope of Regulation (EU) XXX/XXXX and of Directive 2014/65/EU of the European Parliament and of the Council ¹¹ , and in order to avoid that the same activity is subject to different authorisations within the Union, legal persons authorised as crowdfunding service providers under Regulation (EU) XXX/XXXX [Regulation on European crowdfunding service providers] should be excluded from the scope of Directive 2014/65/EU.	(4) To provide legal certainty as to the scope of persons and activities falling within the respective scope of Regulation (EU) XXX/XXXX and of Directive 2014/65/EU of the European Parliament and of the Council ¹² , and in order to avoid that the same activity is subject to different authorisations within the Union, legal persons authorised as crowdfunding service providers under Regulation (EU) XXX/XXXX [Regulation on European crowdfunding service providers] should be excluded from the scope of Directive 2014/65/EU.
17.	Rec. 5	(5) As the amendment provided for in this Directive is directly linked to Regulation (EU) XXX/XXXX [Regulation on crowdfunding services in the European Union], the date from which Member States are to apply the national measures transposing that amendment should be deferred in order to coincide with the date of application laid down in that Regulation,	(5) As the amendment provided for in this Directive is directly linked to Regulation (EU) XXX/XXXX [Regulation on crowdfunding services in the European Union], the date from which Member States are to apply the national measures transposing that amendment should be deferred in order to coincide with the date of application laid down in that Regulation,	(5) As the amendment provided for in this Directive is directly linked to Regulation (EU) XXX/XXXX [Regulation on crowdfunding services in the European Union], the date from which Member States are to apply the national measures transposing that amendment should be deferred in order to coincide with the date of application laid down in that Regulation.
18.	Rec. 5a(new)			<i>(5a) Virtual currencies are used by retail investors as substitutes for other assets. Unlike other financial instruments, virtual</i>

¹⁰ Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).

¹¹ Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).

¹² Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).

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				<i>currencies are largely unregulated at present. As a consequence, markets for virtual currencies lack transparency, can be prone to market abuse and suffer from a lack of basic investor protection. The Commission should keep virtual currencies under review and propose clear guidance setting out the conditions under which virtual currencies could be classified as financial instruments and, if necessary, add virtual currencies to the list of financial instruments, as a new category. If the Commission concludes that it is appropriate to regulate virtual currencies, it should submit to the European Parliament and to the Council a proposal on the same.</i>
19.		HAVE ADOPTED THIS DIRECTIVE:	HAVE ADOPTED THIS DIRECTIVE:	HAVE ADOPTED THIS DIRECTIVE:
20.		<i>Article 1</i>	<i>Article 1</i>	<i>Article 1</i>
21.	Art. 1 - para 1 - intro	In Article 2(1) of Directive 2014/65/EU, the following point (p) is added:	In Article 2(1) of Directive 2014/65/EU, the following point (p) is added:	In Article 2(1) of Directive 2014/65/EU, the following point (p) is added:
22.	Art. 1 - para 1 Art. 2 - para 1 -	“(p) crowdfunding service providers as defined in Article 3(1)(c) of Regulation (EU) XXX/XXX of the European Parliament and of the Council ¹³ .”	“(p) crowdfunding service providers as defined in Article 3(1)(c) of Regulation (EU) XXX/XXX of the European Parliament and of the Council ¹⁴ ; * insofar as they provide crowdfunding services as defined in	“(p) crowdfunding service providers as defined in Article 3(1)(c) of Regulation (EU) XXX/XXX of the European Parliament and of the Council ¹⁵ and legal persons providing crowdfunding services in accordance with

¹³ Regulation (EU) XXX/XXX of the European Parliament and of the Council on European crowdfunding service providers (OJ L [...], [...], p. [...]).”.

¹⁴ Regulation (EU) XXX/XXX of the European Parliament and of the Council on European crowdfunding service providers (OJ L [...], [...], p. [...]).”.

¹⁵ Regulation (EU) XXX/XXX of the European Parliament and of the Council on European crowdfunding service providers (OJ L [...], [...], p. [...]).”.

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	point p		<u>Article 3(1)(a)(ii) of that Regulation.</u>	<i>national law, as long as they are below the threshold of Article 2(d) of Regulation (EU) XXX/XXX of the European Parliament and of the Council¹⁶.</i>
23.		<i>Article 2</i>	<i>Article 2</i>	<i>Article 2</i>
24.	Art. 2 - para 1 - subpara 1	1. Member States shall adopt and publish, by [Publications Office: 6 months from entry into force of the Crowdfunding Regulation], the laws, regulations and administrative provisions necessary to comply with this Directive.	1. Member States shall adopt and publish, by [Publications Office: 6 months from entry into force of the Crowdfunding Regulation], the laws, regulations and administrative provisions necessary to comply with this Directive.	1. Member States shall adopt and publish, by [Publications Office: 6 months from entry into force of the Crowdfunding Regulation], the laws, regulations and administrative provisions necessary to comply with this Directive.
25.	Art. 2 - para 1 - subpara 2	Members States shall apply those measures from [Publications Office: date of entry into application of the Crowdfunding Regulation].	Members States shall apply those measures from [Publications Office: date of entry into application of the Crowdfunding Regulation].	Members States shall apply those measures from [Publications Office: date of entry into application of the Crowdfunding Regulation].
26.	Art. 2 - para 2	2. Member States shall communicate to the Commission and to ESMA the text of the main provisions of national law which they adopt in the field covered by this Directive.	2. Member States shall communicate to the Commission and to ESMA the text of the main provisions of national law which they adopt in the field covered by this Directive.	2. Member States shall communicate to the Commission and to ESMA the text of the main provisions of national law which they adopt in the field covered by this Directive.
27.		<i>Article 3</i>	<i>Article 3</i>	<i>Article 3</i>
28.	Art. 3 - para 1	This Directive shall enter into force on the twentieth day following that of its publication in the <i>Official Journal of the European Union</i> .	This Directive shall enter into force on the twentieth day following that of its publication in the <i>Official Journal of the European Union</i> .	This Directive shall enter into force on the twentieth day following that of its publication in the <i>Official Journal of the European Union</i> .
29.		<i>Article 4</i>	<i>Article 4</i>	<i>Article 4</i>
30.	Art. 4 -	This Directive is addressed to the Member States.	This Directive is addressed to the Member States.	This Directive is addressed to the Member States.

¹⁶ Regulation (EU) XXX/XXX of the European Parliament and of the Council on European crowdfunding service providers (OJ L [...], [...], p. [...]).”

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	para 1			
31.		Done at Brussels,	Done at Brussels,	Done at Brussels,
32.		For the European Parliament	For the European Parliament	For the European Parliament
33.		The President	The President	The President
34.		For the Council	For the Council	For the Council
35.		The President	The President	The President