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'I' ITEM NOTE

From: General Secretariat of the Council

To: Permanent Representatives Committee (Part 2)

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
- Confirmation of the final compromise text with a view to agreement

Proposal for a Directive of the European Parliament and of the Council
amending Directive 2014/65/EU on markets in financial instruments
(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 53(1) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Central Bank¹,

Having regard to the opinion of the European Economic and Social Committee²,

Acting in accordance with the ordinary legislative procedure,

Whereas:

(1) Crowdfunding is a financial technology solution that provides SMEs, and, in particular, start-ups and scale-ups, with alternative access to finance, in order to promote innovative entrepreneurship in the Union, thereby strengthening the Capital Markets Union . That in turn contributes to a more diversified financial system that is less dependent on bank financing, therefore 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.

(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.

¹ OJ C [...], [...], p. [...].

² OJ C [...], [...], p. [...].

(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 Council³, 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.

(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.

HAVE ADOPTED THIS DIRECTIVE:

³ 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).

Article 1

In Article 2(1) of Directive 2014/65/EU, the following point (p) is added:

"(p) crowdfunding service providers as defined in Article 3(1)(c) of Regulation (EU) XXX/XXX of the European Parliament and of the Council⁴ "

Article 2

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.

Members States shall apply those measures from [Publications Office: date of entry into application of the Crowdfunding Regulation].

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.

Article 3

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

Article 4

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament

The President

For the Council

The President

⁴ Regulation (EU) XXX/XXX of the European Parliament and of the Council on European crowdfunding service providers (OJ L [...], [...], p. [...]).”