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INFORMATION NOTE

From: General Secretariat of the Council
To: Permanent Representatives Committee/Council

Subject: Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directive 2014/65/EU on markets in financial instruments
- Outcome of the European Parliament's first reading,
(Strasbourg, 25 to 28 March 2019)

I. INTRODUCTION

The rapporteur, Caroline NAGTEGAAL (ALDE, NL), presented a report on the proposal for a Directive on behalf of the Committee on Economic and Monetary Affairs. The report contained one amendment (amendment 1) to the proposal.

II. VOTE

When it voted on 27 March 2019, the plenary adopted in a single vote the amendment (amendment 1) to the proposal for a Directive.

The Commission's proposal as thus amended constitutes the Parliament's first-reading position which is contained in its legislative resolution as set out in the Annex hereto^[1].

^[1] The version of the Parliament's position in the legislative resolution has been marked up to indicate the changes made by the amendments to the Commission's proposal. Additions to the Commission's text are highlighted in ***bold and italics***. The symbol "■" indicates deleted text.

Markets in financial instruments: crowdfunding service providers *I**

European Parliament legislative resolution of 27 March 2019 on the proposal for a directive of the European Parliament and of the Council amending Directive 2014/65/EU on markets in financial instruments (COM(2018)0099 – C8-0102/2018 – 2018/0047(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2018)0099),
 - having regard to Article 294(2) and Article 53(1) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C8-0102/2018),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to the opinion of the European Economic and Social Committee of 11 July 2018¹,
 - having regard to Rule 59 of its Rules of Procedure,
 - having regard to the report of the Committee on Economic and Monetary Affairs (A8-0362/2018),
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

¹ OJ C 367, 10.10.2018, p. 65.

Amendment 1

AMENDMENTS BY THE EUROPEAN PARLIAMENT*

to the Commission proposal

2018/0047 (COD)

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 Bank²,

Having regard to the opinion of the European Economic and Social Committee³,

Acting in accordance with the ordinary legislative procedure,

* Amendments: new or amended text is highlighted in bold italics; deletions are indicated by the symbol **■**.

² OJ C [...], [...], p. [...].

³ OJ C [...], [...], p. [...].

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.*
- (2) Under Regulation (EU) XXX/XXX of the European Parliament and of the Council⁴ legal persons can choose to apply to the *national competent authority* for an authorisation as crowdfunding service providers.
- (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 providers⁵ .
- (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 Council⁵, 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.

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

⁵ 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).

(5a) Virtual currencies are used by retail investors as substitutes for other assets. Unlike other financial instruments, virtual 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.

HAVE ADOPTED THIS DIRECTIVE:

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 Council **and legal persons providing crowdfunding services in accordance with 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 Council*.**”*

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

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