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DRAFT STATEMENT OF THE COUNCIL'S REASONS

Subject: Position of the Council at first reading with a view to the adoption of a
DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
amending Directive 2014/65/EU on markets in financial instruments
- Draft Statement of the Council's reasons

I. INTRODUCTION

On 8 March 2018, the Commission adopted a package of measures to deepen the Capital Markets Union, together with the Communication "Completing Capital Markets Union by 2019 - time to accelerate delivery". This package included the following two Ordinary Legislative Procedure proposals:

- Proposal for a Regulation of the European Parliament and of the Council on European Crowdfunding Service Providers (ESCP) for Business; and
- Proposal for a Directive of the European Parliament and of the Council amending Directive 2014/65/EU on markets in financial instruments.

The European Parliament adopted its first-reading positions at its plenary session on 27 March 2019.

On the side of the Council, the Working Party on Financial Services examined the two proposals in a number of meetings under various Presidencies. The Permanent Representatives Committee issued a mandate to negotiate an agreement with the Parliament on these proposals on 26 June 2019.

An agreement on compromise texts for the Regulation and the Directive was reached with the European Parliament on 18 December 2019, subject to technical revision and legal-linguistic review.

On 7 May 2020 and following the completion of the technical revision, the European Parliament's Committee on Economic and Monetary Affairs approved the compromise texts. On 12 May 2020, the Chair of that Committee then signed a letter to the Council Presidency stating that, should the Council adopt the technically revised compromise texts (including any necessary legal-linguistic changes) as its first-reading positions, she would recommend to the Parliament's plenary session that the Parliament should in its second reading approve the Council's positions without further amendment. The effect of this would be that the two proposed acts would then be deemed to have been adopted in the wording which corresponds to the positions of the Council.

On 20 May 2020, the Permanent Representatives Committee reached a political agreement on the technically revised compromise texts.

Taking into account the above agreement and after legal-linguistic revision, the Council adopted its position at first reading on 20 July 2020, in accordance with the ordinary legislative procedure laid down in Article 294 of the Treaty on the Functioning of the European Union (TFEU).

II. OBJECTIVE

Crowdfunding is a financial technology solution that provides small and medium-sized enterprises, particularly 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, consequently 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.

The objective of the Regulation and the Directive is to address the fragmentation of the legal framework applicable to crowdfunding services in order to ensure the proper functioning of the internal market in such services while enhancing investor protection as well as market efficiency and contributing to establishing the Capital Markets Union.

III. ANALYSIS OF THE COUNCIL'S POSITION AT FIRST READING

The Directive removes crowdfunding service providers as defined in the Regulation from the scope of application of 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.¹

IV. CONCLUSION

The Council's first-reading positions for the Regulation and Directive reflect the compromise reached in negotiations between the Council and the European Parliament.

The Council believes that its first-reading positions constitute a balanced package which will, once adopted, fulfil the objective of promoting the proper functioning of the internal market in crowdfunding services, enhancing investor protection as well as market efficiency, and contributing to establishing the Capital Markets Union.

¹ OJ L 173, 12.6.2014, p. 349.