



Council of the
European Union

Brussels, 22 July 2020
(OR. en)

Interinstitutional File:
2018/0047 (COD)

6799/1/20
REV 1

EF 38
ECOFIN 187
CODEC 181
PARLNAT 50

LEGISLATIVE ACTS AND OTHER INSTRUMENTS

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
- Adopted by the Council on 20 July 2020

DIRECTIVE (EU) .../...
OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of ...

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,

After consulting the European Central Bank,

Having regard to the opinion of the European Economic and Social Committee¹,

Acting in accordance with the ordinary legislative procedure²,

¹ OJ C 367, 10.10.2018, p. 65.

² Position of the European Parliament of 27 March 2019 (not yet published in the Official Journal) and position of the Council at first reading of 20 July 2020 (not yet published in the Official Journal). Position of the European Parliament of ... (not yet published in the Official Journal).

Whereas:

- (1) Crowdfunding is a financial technology solution that provides small and medium-sized enterprises (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 finance, 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) Regulation (EU) .../... of the European Parliament and of the Council¹⁺ lays down uniform, proportionate and directly applicable requirements for the provision of crowdfunding services, for the organisation, authorisation and supervision of crowdfunding service providers, for the operation of crowdfunding platforms as well as for transparency and marketing communications in relation to the provision of crowdfunding services in the Union.

¹ Regulation (EU) .../... of the European Parliament and of the Council of ... on European crowdfunding service providers for business, and amending Regulation (EU) 2017/1129 and Directive (EU) 2019/1937 (OJ L ..., ..., p. ...).

⁺ OJ: Please insert in the text the number of the Regulation contained in document ST 6800/20 (2018/0048(COD)) and insert the number, date, title and OJ reference of that Regulation in the footnote.

- (3) To provide legal certainty as to the persons and activities falling within the scope of Regulation (EU) .../...⁺ and of Directive 2014/65/EU of the European Parliament and of the Council¹, respectively, and in order to avoid a situation where the same activity is subject to multiple authorisations within the Union, legal persons authorised as crowdfunding service providers under Regulation (EU) .../...⁺ should be excluded from the scope of Directive 2014/65/EU.
- (4) As the amendment provided for in this Directive is directly linked to Regulation (EU) .../...⁺, the date from which Member States are to apply the national measures transposing this Directive should be deferred in order to coincide with the date of application set out in that Regulation,

HAVE ADOPTED THIS DIRECTIVE:

⁺ OJ: Please insert in the text the number of the Regulation contained in document ST 6800/20 (2018/0048(COD)).

¹ 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 is added:

- ‘(p) crowdfunding service providers as defined in point (e) of Article 2(1) of Regulation (EU) .../... of the European Parliament and of the Council*+.

* Regulation (EU) .../... of the European Parliament and of the Council of ... on European crowdfunding service providers for business and amending Regulation (EU) 2017/1129 and Directive (EU) 2019/1937 (OJ L ...).’

Article 2

1. Member States shall adopt and publish, by ... [6 months after the date of entry into force of the Regulation contained in document ST 6800/20 (2018/0048(COD))], the laws, regulations and administrative provisions necessary to comply with Article 1 of this Directive.

They shall apply those measures from ... [12 months after the date of entry into force of the Regulation contained in document ST 6800/20 (2018/0048(COD))].

2. Member States shall communicate to the Commission and to the European Securities and Markets Authority (ESMA) the text of the main provisions of national law which they adopt in the field covered by this Directive.

+ OJ: Please insert in the text the number of the Regulation contained in document ST 6800/20 (2018/0048(COD)) and insert the number, date and OJ reference of that Regulation in the footnote.

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 ...,

For the European Parliament

The President

For the Council

The President
