Regulation (EU) 2020/1503 of the European Parliament and of the Council of 7 October 2020 on European crowdfunding service providers for business, and amending Regulation (EU) 2017/1129 and Directive (EU) 2019/1937 (Text with EEA relevance)

REGULATION (EU) 2020/1503 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

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(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 114 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 Committee[(1)],

Acting in accordance with the ordinary legislative procedure[(2)],

Whereas:

(1) Crowdfunding is increasingly an established form of alternative finance for start-ups and small and medium-sized enterprises (SMEs), typically relying on small investments. Crowdfunding represents an increasingly important type of intermediation where a crowdfunding service provider, without taking on own risk, operates a digital platform open to the public in order to match or facilitate the matching of prospective investors or lenders with businesses that seek funding. Such funding could take the form of loans or the acquisition of transferable securities or of other admitted instruments for crowdfunding purposes. It is therefore appropriate to include within the scope of this Regulation both lending-based crowdfunding and investment-based crowdfunding, since those types of crowdfunding can be structured as comparable funding alternatives.

(2) The provision of crowdfunding services generally involves three types of actors: the project owner that proposes the project to be funded, investors who fund the proposed project, and an intermediating organisation in the form of a crowdfunding service provider that brings together project owners and investors through an online platform.

(3) Crowdfunding can contribute to providing access to finance for SMEs and completing the Capital Markets Union (CMU). Lack of access to finance for SMEs constitutes a problem even in those Member States where access to bank finance has remained stable

Changes to legislation: *There are currently no known outstanding effects for the Regulation (EU) 2020/1503 of the European Parliament and of the Council. (See end of Document for details)*

throughout the financial crisis. Crowdfunding has emerged and become an established practice of funding business activities of natural and legal persons. Such funding takes place through online platforms; the business activities are typically funded by a large number of people or organisations; and the businesses, including business start-ups, raise relatively small amounts of money.

(4) In addition to providing an alternative source of financing, including venture capital, crowdfunding can offer other benefits to businesses. It can validate a business idea, give entrepreneurs access to a large number of people providing insights and information, and be a marketing tool.

(5) Several Member States have already introduced domestic bespoke regimes on crowdfunding. Those regimes are tailored to the characteristics and needs of local markets and investors. As a result, the existing national rules diverge across the Union as regards the conditions of operation of crowdfunding platforms, the scope of permitted activities and the authorisation requirements.

(6) The differences between the existing national rules are such that they obstruct the cross-border provision of crowdfunding services and thus have a direct effect on the functioning of the internal market in such services. In particular, the fact that the legal framework is fragmented along national borders creates substantial legal costs for retail investors who often face difficulties in determining the rules applicable to cross-border crowdfunding services. Therefore, such investors are often discouraged from investing cross-border by means of crowdfunding platforms. For the same reasons, crowdfunding service providers operating such platforms are discouraged from offering their services in Member States other than the one in which they are established. As a result, crowdfunding services have remained hitherto largely national, to the detriment of a Union-wide crowdfunding market, thus depriving businesses of access to crowdfunding services, especially in cases where those businesses operate in smaller national markets.

(7) In order to foster cross-border crowdfunding services and to facilitate the exercise of the freedom to provide and receive such services in the internal market, it is necessary to address the existing obstacles to the proper functioning of the internal market in crowdfunding services, and to ensure a high level of investor protection by laying down a regulatory framework at Union level.

(8) By addressing the obstacles to the functioning of the internal market in crowdfunding services, this Regulation aims to foster cross-border funding of businesses. Crowdfunding services in relation to lending to consumers, as defined in point (a) of Article 3 of Directive 2008/48/EC of the European Parliament and of the Council[(3)], should therefore not fall within the scope of this Regulation.

(9) To avoid regulatory arbitrage and to ensure their effective supervision, crowdfunding service providers should be prohibited from taking deposits or other repayable funds from the public, unless they are also authorised as a credit institution in accordance with Article 8 of Directive 2013/36/EU of the European Parliament and of the Council[(4)]. However, Member States should ensure that national law does not require an authorisation as a credit institution or any other individual authorisation, exemption

or dispensation for project owners or investors where they accept funds or grant loans for the purposes of offering or investing in crowdfunding projects.

(10) The provision of crowdfunding services aims to facilitate the funding of a project by raising capital from a large number of people who each contribute relatively small investment amounts through a publicly accessible internet-based information system. Crowdfunding services are thus open to an unrestricted pool of investors who receive investment propositions at the same time and involve the raising of funds predominantly from natural persons, including those that are not high-net worth individuals. This Regulation should apply to crowdfunding services that consist of the joint provision of reception and transmission of client orders and the placement of transferable securities or admitted instruments for crowdfunding purposes without a firm commitment basis on a public platform that provides unrestricted access to investors. The joint provision of those services is the key feature of crowdfunding services compared to certain investment services provided under Directive 2014/65/EU of the European Parliament and of the Council[(5)], even though individually those services match those covered by that Directive.

(11) In relation to lending-based crowdfunding, this Regulation should apply to crowdfunding services that consist of the facilitation of granting of loans, including services such as presenting crowdfunding offers to clients and pricing or assessing the credit risk of crowdfunding projects or project owners. The definition of crowdfunding services should accommodate different business models enabling a loan agreement between one or more investors and one or more project owners to be concluded through a crowdfunding platform. Loans included within the scope of this Regulation should be loans with unconditional obligations to repay an agreed amount of money to the investor, whereby lending-based crowdfunding platforms merely facilitate the conclusion by investors and project owner of loan agreements without the crowdfunding service provider at any moment acting as a creditor of the project owner. The facilitation of granting of loans that falls within the scope of this Regulation is to be distinguished from the activity of a credit institution, which grants credits for its own account and takes deposits or other repayable funds from the public.

(12) In order to deliver their services, crowdfunding service providers operate publicly accessible internet-based information systems, including those systems that require user registration.

(13) For investment-based crowdfunding, transferability is an important safeguard in order for investors to be able to exit their investment since it provides the possibility for them to dispose of their interest on the capital markets. This Regulation therefore covers and permits crowdfunding services related to transferable securities. Shares of certain private limited liability companies incorporated under the national law of Member States are also freely transferable on the capital markets and should therefore not be prevented from being included within the scope of this Regulation.

(14) Certain admitted instruments for crowdfunding purposes are in some Member States subject to national law governing their transferability, such as the requirement for the

transfer to be authenticated by a notary. This Regulation should apply without prejudice to national law governing the transfer of such instruments.

(15) Whilst initial coin offerings have the potential to fund SMEs, innovative start-ups and scale-ups, and can accelerate technology transfer, their characteristics differ considerably from crowdfunding services regulated under this Regulation.

(16) Given the risks associated with crowdfunding investments, it is appropriate, in the interest of the effective protection of investors and of the provision of a mechanism of market discipline, to impose a threshold for a total consideration for crowdfunding offers made by a particular project owner. Accordingly, that threshold should be set at EUR 5 000 000, which is the threshold used by most Member States to exempt offers of securities to the public from the obligation to publish a prospectus in accordance with Regulation (EU) 2017/1129 of the European Parliament and of the Council[(6)].

(17) The overlapping regulatory frameworks established under this Regulation and Regulation (EU) 2017/1129, because of a threshold of EUR 5 000 000, might increase the risk of regulatory arbitrage and have a disruptive effect on access to finance and the development of capital markets in certain Member States. Moreover, to date, only a limited number of Member States have put in place a specific legal framework regulating crowdfunding platforms and services. Taking into account the fact that, in implementing Regulation (EU) 2017/1129, some Member States have set the threshold to exempt offers of securities to the public from the obligation to publish a prospectus at below EUR 5 000 000 and taking into account the special effort that might be sustained by those Member States in terms of adjusting their national law and ensuring the application of the single threshold under this Regulation, this Regulation should provide for a non-renewable temporary derogation in order to enable those Member States to make that significant effort. That temporary derogation should apply for the shortest possible period of time, in order to cause the least possible disturbance to the functioning of the internal market.

(18) In order to maintain a high standard of investor protection, to reduce the risks associated with crowdfunding and to ensure fair treatment of all clients, crowdfunding service providers should have in place a policy designed to ensure that projects on their platforms are selected in a professional, fair and transparent way, and that crowdfunding services are provided in the same manner.

(19) In order to improve the service to their clients, crowdfunding service providers should be able to propose crowdfunding projects to individual investors based on one or more specific parameters or risk indicators, such as the type or sector of business activity or a credit rating, which have been communicated in advance to the crowdfunding service provider by the investor. However, the authorisation obtained under this Regulation should not grant crowdfunding service providers the right to provide individual or collective asset management services. In order to ensure that prospective investors are offered investment opportunities on a neutral basis, crowdfunding service providers should not pay or accept any remuneration, discount or non-monetary benefit for routing investors' orders to a particular offer provided on their platform or on a third-party platform.

(20) Business models using automated processes whereby funds are automatically allocated by the crowdfunding service provider to crowdfunding projects in accordance with parameters and risk indicators predetermined by the investor, so called auto-investing, should be considered individual portfolio management of loans.

(21) The existence of filtering tools on a crowdfunding platform under this Regulation should not be regarded as investment advice under Directive 2014/65/EU as long as those tools provide information to clients in a neutral manner that does not constitute a recommendation. Such tools should include those that display results based on criteria relating to purely objective product features. Objective product features in the context of a crowdfunding platform could be pre-defined project criteria such as the economic sector, the instrument used and the interest rate, or the risk category where sufficient information regarding the calculation method is disclosed. Similarly, key financial figures calculated without any scope for discretion should also be considered to be objective criteria.

(22) This Regulation aims to facilitate direct investment and to avoid creating regulatory arbitrage opportunities for financial intermediaries regulated under other legal acts of the Union, in particular Union legal acts governing asset managers. The use of legal structures, including special purpose vehicles, that interpose between the crowdfunding project and investors should therefore be strictly regulated and permitted only where it is justified by enabling an investor to acquire an interest in, for example, an illiquid or indivisible asset through issuance of transferable securities by a special purpose vehicle.

(23) Ensuring an effective system of governance is essential for the proper management of risk and for preventing any conflict of interest. Crowdfunding service providers should therefore have in place governance arrangements that ensure their effective and prudent management. The natural persons responsible for their management should be of good repute and have sufficient knowledge, skills and experience. Crowdfunding service providers should also establish procedures to receive and handle complaints from clients.

(24) Clients are exposed to potential risks related to the crowdfunding service providers, in particular operational risks. In order to protect clients against such risks, crowdfunding service providers should be subject to prudential requirements.

(25) Crowdfunding service providers should be required to develop business continuity plans addressing the risks associated with failure of a crowdfunding service provider. Such business continuity plans should include provisions for the handling of critical functions, which, depending on the business model of the crowdfunding service provider, could include provisions for the continued servicing of outstanding loans, client notification and handover of asset safekeeping arrangements.

(26) Crowdfunding service providers should operate as neutral intermediaries between clients on their crowdfunding platform. In order to prevent conflicts of interest, certain requirements should be laid down with respect to crowdfunding service providers, their shareholders, managers and employees, and any natural or legal person closely linked to them by way of control. In particular, crowdfunding service providers