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COMMISSION IMPLEMENTING REGULATION (EU) .../...

of 13.7.2022

laying down implementing technical standards for the application of Regulation (EU) 2020/1503 of the European Parliament and of the Council with regard to standard forms, templates and procedures for the cooperation and exchange of information between competent authorities and ESMA in relation to European crowdfunding service providers for business

(Text with EEA relevance)

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THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) 2020/1503 of the European Parliament and of the Council on European crowdfunding service providers for business and amending Regulation (EU) 2017/1129 and Directive (EU) 2019/1937¹, and in particular Article 32(4), third subparagraph, thereof,

Whereas:

- (1) To ensure that competent authorities and the European Securities and Markets Authority (ESMA) are able to cooperate and exchange information in an efficient and timely manner for the purposes of Regulation (EU) 2020/1503, it is appropriate to set out standard forms, templates and procedures to be used by competent authorities and ESMA for such cooperation and exchange of information, including for the submission of relevant requests, acknowledgement of receipt of, and replies to such requests, as well as for the unsolicited transmission of information.
- (2) In order to facilitate communication, competent authorities and ESMA should designate a contact point to deal with the the cooperation and exchange of information referred to in Article 32(1) of Regulation (EU) 2020/1503.
- (3) To ensure that the competent authorities process requests for cooperation or information efficiently and expeditiously each request should clearly set out the reasons for such request. The procedures for cooperation and exchange of information should facilitate, the interaction between the competent authorities and ESMA throughout the process.
- (4) As competent authorities can request ESMA to coordinate an on-site inspection or investigation with cross-border effect, it is appropriate to set out a standard form to be used by competent authorities when making such requests.
- (5) This Regulation is based on the draft implementing technical standards submitted to the Commission by ESMA.
- (6) The requirements of this Regulation concern competent authorities and ESMA and not market participants. Therefore, ESMA considered highly disproportionate, in relation

¹ OJ L 347, 20.10.2020, p. 1.

to the scope and impact of the draft implementing standards in this Regulation, to conduct public consultations on these standards or and to analyse the potential costs and benefits.

- (7) ESMA has requested the advice of the Securities and Markets Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council².
- (8) The European Data Protection Supervisor was consulted in accordance with Article 42(1) of Regulation (EU) 2018/1725 of the European Parliament and of the Council³ and delivered an opinion on 1 June 2022,

HAS ADOPTED THIS REGULATION:

Article 1
Contact points

1. Competent authorities and ESMA shall each designate contact points for the purposes of the communication of requests for cooperation and exchange of information made pursuant to Article 32 of Regulation (EU) 2020/1503.
2. Competent authorities shall notify ESMA of the details of their contact points referred to in paragraph 1 and keep ESMA informed of any changes to those details.
3. ESMA shall maintain and keep up-to-date a list of all contact points designated in accordance with paragraph 1.

Article 2
Request for cooperation or exchange of information

1. When ESMA or a competent authority makes a request for cooperation and exchange of information pursuant to Article 32 of Regulation (EU) 2020/1503 the requesting competent authority and ESMA shall use the standard form set out in Annex I to this Regulation. The requesting party shall address the request to the contact point of the requested competent authority or ESMA, as appropriate.
2. When making a request for information, the requesting competent authority or ESMA shall specify the details of the relevant information sought and identify, where appropriate, issues relating to the confidentiality of the information sought.
3. In urgent cases, the requesting competent authority or ESMA may make the request for cooperation or exchange of information verbally, provided that subsequent confirmation of the request is made in writing within a reasonable timeframe, unless the requested competent authority or ESMA agrees otherwise.

² Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

³ Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

Article 3
Acknowledgement of receipt of requests

1. Within 10 working days of receipt of a request made pursuant to Article 2, the requested competent authority or ESMA, as appropriate, shall send an acknowledgement of receipt to the requesting competent authority or ESMA, as appropriate, using the form set out in Annex II, and, where possible, indicate an estimated date of response.
2. Where a requested competent authority or ESMA, as appropriate, has any doubt in relation to the content of cooperation or information requested pursuant to Article 32(1) of Regulation (EU) 2020/1503, for the purpose of Regulation (EU) No 1095/2010 and in accordance with Regulation (EU) No 1095/2010, it shall request further clarifications as soon as possible using any appropriate means, whether oral or written. The authority to which such request is addressed shall provide a prompt response.

Article 4
Reply to requests

1. When responding to a request made pursuant to Article 2, the requested competent authority or ESMA, as appropriate, shall:
 - (a) use the standard form set out in Annex III;
 - (b) take all reasonable steps within its powers to provide the requested cooperation or information;
 - (c) act without undue delay, taking into account the complexity of the request and any need to involve third parties.
2. In urgent cases, the requested competent authority or ESMA, as appropriate, may reply to a request for cooperation or exchange of information orally, provided that the response is subsequently given in writing within a reasonable timeframe using the form set out in Annex III, unless the requesting competent authority or ESMA, as appropriate, agrees otherwise.

Article 5
Means of communication

1. Without prejudice to Article 2(3) and Article 4(2), standard forms shall be transmitted in writing.
2. In determining the most appropriate means of communication, due account shall be taken of confidentiality considerations, the time necessary for correspondence, the volume of material to be communicated, and the ease of access to the information by the requesting competent authority or ESMA, as appropriate.
3. Any means of communication shall ensure the completeness, integrity and confidentiality of the information subject matter of the exchange are maintained during the transmission.

Article 6

Procedures for processing a request for cooperation or exchange of information

1. The requested authority shall notify the requesting competent authority or ESMA, as appropriate, where it becomes aware of circumstances that may lead to a delay of more than five working days beyond the estimated date of response specified in accordance with Article 3(1).
2. Where the request has been qualified as urgent by the requesting competent authority or ESMA, as appropriate, the requested competent authority or ESMA, as appropriate, shall agree on the frequency with which it will update the requesting party on any progress made regarding the processing of the request and about the estimated date of response.
3. Competent authorities and ESMA shall cooperate to resolve any difficulties that may arise in processing a request.
4. Competent authorities and ESMA shall provide, where appropriate, feedback to each other on the usefulness of assistance received, the outcome of the case in relation to which the assistance was sought and any problems encountered in providing such assistance.

Article 7

Request to ESMA for coordination of an on-site inspection or investigation with cross-border effect

1. When requesting ESMA to coordinate an on-site inspection or investigation with cross-border effect in accordance with Article 32(2) of Regulation (EU) 2020/1503 competent authorities shall use the standard form set out in Annex IV to this Regulation.
2. Competent authorities shall without delay provide ESMA with all information necessary to carry out its duties.
3. Where ESMA is requested under Article 32(2) of Regulation (EU) 2020/1503 to coordinate an on-site inspection or an investigation with cross-border effect, ESMA may establish a temporary group on an *ad hoc* basis to include the competent authorities of the Member States affected by that inspection or investigation.

Article 8

Unsolicited transmission of information

1. Where a competent authority or ESMA has information that it believes would assist ESMA or a competent authority respectively, in carrying out their duties under Regulation (EU) 2020/1503, it shall transmit that information using the standard form set out in Annex III to this Regulation.
2. By way of derogation from paragraph 1, if the competent authority or ESMA sending the information believes that the information should be sent urgently, it may initially communicate the information verbally. In such case, subsequent transmission of information shall be made using the standard form set out in Annex III, unless the competent authority or ESMA receiving the information agrees otherwise.

Article 9
Entry into force

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

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 13.7.2022

For the Commission
The President
Ursula VON DER LEYEN