



Brussels, 13.7.2022
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COMMISSION DELEGATED REGULATION (EU) .../...

of 13.7.2022

supplementing Regulation (EU) 2020/1503 of the European Parliament and of the Council with regard to regulatory technical standards specifying the requirements, standard formats and procedures for complaint handling

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

Article 7(5) of Regulation (EU) 2020/1503 on European Crowdfunding Service Providers for business ('the Regulation') empowers the Commission to adopt, following the submission of draft regulatory technical standards by the European Securities and Markets Authority (ESMA), and in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010, delegated acts specifying the requirements, standard formats and procedures for complaints handling by crowdfunding service providers.

Article 7 of the Regulation provides for complaints handling requirements for crowdfunding service providers. These requirements relate to complaint handling procedures, the format for filing complaints and investigations of and responses to complaints by crowdfunding service providers.

In accordance with Article 10(1) of Regulation (EU) No 1095/2010 establishing the ESMA, the Commission shall decide within three months of receipt of the draft standards whether to endorse the drafts submitted. The Commission may also endorse the draft standards in part only, or with amendments, where the Union's interests so require, having regard to the specific procedure laid down in those Articles.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

In accordance with the third subparagraph of Article 10(1) of Regulation (EU) No 1095/2010, the ESMA has carried out a public consultation on the draft technical standards submitted to the Commission in accordance with Article 7(5) of the Regulation. A consultation paper was published on the ESMA's website on 26 February 2021, and the consultation closed on 28 May 2021. Moreover, the ESMA requested advice of the Securities and Markets Stakeholder Group set up in accordance with Article 37 of Regulation (EU) No 1095/2010. Within the final report on the draft technical standards, the ESMA included an explanation on how the outcome of these consultations has been taken into account in the development of the final draft technical standards submitted to the Commission.

Together with the draft technical standards, and in accordance with the third subparagraph of Article 10(1) of Regulation (EU) No 1095/2010, the ESMA has submitted its analysis of the costs and benefits related to the draft technical standards submitted to the Commission. This analysis is included in the Final Report on the technical draft technical standards available at https://www.esma.europa.eu/sites/default/files/library/esma35-42-1183_final_report_-_ecspr_technical_standards.pdf.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

The draft technical standards specify what complaints handling procedures crowdfunding service providers should put in place and what the appropriate format and language treatment should be.

The draft technical standards set out requirements for crowdfunding service provider as regards acknowledgement of receipt, as well as specify procedures to verify the admissibility of the complaint and steps to take once a complaint has been considered admissible.

Finally, the draft technical standards stipulate what information a decision on a complaint should contain and lay down standards for the communication with a complainant.

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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 of 7 October 2020 on European crowdfunding service providers for business, and amending Regulation (EU) 2017/1129 and Directive (EU) 2019/1937,¹ and in particular Article 7(5), third subparagraph, thereof,

Whereas:

- (1) In the interests of investor protection as well as to promote an effective system of internal governance, crowdfunding service providers should provide on their website to their clients with easy access to a clear, understandable and up-to-date description of their complaints handling procedure.
- (2) In order to avoid diverging complaints handling procedures among crowdfunding service providers across the Union, clients should be able to file their complaints using harmonised standard formats.
- (3) In order to provide for an adequate level of protection of investors, it is appropriate to require crowdfunding service providers to ensure that complainants are allowed to file complaints in, at least, the language used by the crowdfunding service providers to promote their services or crowdfunding offers in the Union.
- (4) To ensure a prompt and timely handling of complaints, crowdfunding service providers should acknowledge receipt of any complaint and inform the complainant within 10 working days of the receipt of the complaint about whether that complaint is admissible. Upon acknowledgment of receipt of the complaint, the complainant should receive the contact details of the person or department for any queries related to the complaint, as well as an indicative timeframe within which a decision on the complaint can be expected. Where a complaint is deemed inadmissible, the crowdfunding service provider should inform the complainant of its decision and provide the complainant with the reasons for that inadmissibility.
- (5) To ensure a prompt, timely and fair investigation of complaints, crowdfunding service providers should, upon receipt of a complaint, assess whether that complaint is clear, complete and contains all relevant evidence and information necessary for handling it. Where appropriate, additional information should be requested promptly. Crowdfunding services providers should gather and investigate all relevant evidence

¹ OJ L 347, 20.10.2020, p.1.

and information regarding the complaint. Complainants should be kept duly informed about the complaints handling process.

- (6) To ensure a fair and effective handling of complaints, it is necessary that decisions on complaints address all points raised by the complainant in its complaint. Moreover, complaints presenting similar circumstances should result in consistent decisions, unless the crowdfunding service provider is able to provide an objective justification for any possible deviation from a previously taken decision.
- (7) To ensure a prompt handling of complaints, decisions on complaints should be communicated to the complainant as soon as possible and within the timeframe determined in the complaints handling procedure. In exceptional circumstances where the crowdfunding service provider is not able to meet that timeframe, the complainant should be informed of the reasons for the delay and of the date by which a decision will be delivered.
- (8) Where the decision on a complaint does not address positively all of complainant's request, it is appropriate that the decision contains a thorough reasoning and information on available remedies.
- (9) In order to ensure efficient interactions, crowdfunding service providers should communicate with complainants in clear and understandable language. Communications of crowdfunding service providers should be made in writing by electronic means or, upon the complainant's request, in paper form.
- (10) This Regulation is based on the draft regulatory technical standards submitted to the Commission by the European Securities and Markets Authority (ESMA).
- (11) ESMA has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and 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.
- (12) 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

Complaint handling procedures

1. For the purposes of this Regulation, 'complaint' means a statement of dissatisfaction addressed to a crowdfunding service provider by one of its clients relating to the provision of crowdfunding services.

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).

2. The procedures for complaints handling as referred to in Article 7(1) of Regulation (EU) 2020/1503 shall provide the clients of crowdfunding service providers with clear and accurate information and shall contain at least all of the following:
 - (a) the conditions for the admissibility of complaints;
 - (b) information that complaints are filed and handled free of charge;
 - (c) a detailed description of how to file complaints, including:
 - (1) information that complaints must be filed using the standard template set out in the Annex;
 - (2) the type of information and evidence to be provided by the complainant;
 - (3) the identity and contact details of the person to whom or the department to which complaints must be addressed;
 - (4) the electronic platform, system or address to which complaints must be submitted;
 - (5) the language or languages in which a complainant is allowed to file a complaint pursuant to Article 2(2);
 - (d) the process for complaints handling, as specified in Articles 3 to 5;
 - (e) the timeframe within which a decision on the complaint is notified to the complainant.
3. Crowdfunding service providers shall be able to amend the procedures for complaints handling, where appropriate. They shall publish an up-to-date description of such procedures on their website, as well as the standard template set out in the Annex, and ensure that both the description and that template are easily accessible on their website.
4. The description of the complaint handling procedures and the standard template set out in the Annex shall be published in each of the languages of the key investment information sheet referred to in Articles 23 and 24 of Regulation (EU) 2020/1503 or the marketing communications referred to in Article 27(1) of that Regulation.

Article 2

Standard format and language

1. Crowdfunding service providers shall ensure that clients are able to submit complaints by electronic means, using the standard template set out in the Annex.
2. Crowdfunding service providers shall ensure that clients are able to file complaints in any of the languages referred to in Article 1(4).

Article 3

Acknowledgment of receipt and verification of admissibility

1. Crowdfunding service providers shall acknowledge receipt of a complaint and inform the complainant about whether the complaint is admissible within 10 working days of its receipt. Where a complaint does not fulfil the conditions of admissibility referred to in Article 1(2), point (a), crowdfunding service providers shall provide the complainant with a clear explanation of the reasons for rejecting the complaint as inadmissible.

2. The acknowledgment of receipt of a complaint shall contain the following:
 - (a) the identity and contact details, including e-mail address and telephone number, of the person to whom, or the department to which, complainants can address any query related to their complaint;
 - (b) a reference to the timeframe referred to in Article 1(2), point (e).

Article 4

Investigation of complaints

1. Upon receipt of an admissible complaint, crowdfunding service providers shall, without undue delay, assess whether the complaint is clear and complete. In particular, they shall assess whether the complaint contains all relevant information and evidence. Where a crowdfunding service provider concludes that a complaint is unclear or incomplete, it shall promptly request any additional information or evidence necessary for the proper handling of the complaint.
2. Crowdfunding service providers shall seek to gather and examine all relevant information and evidence regarding a complaint.
3. Crowdfunding service providers shall keep the complainant duly informed about any additional steps taken to handle the complaint and reply to reasonable information requests made by the complainant without any undue delay.

Article 5

Decisions

1. In its decision on a complaint, the crowdfunding service provider shall address all points raised in the complaint and shall state the reasons for the outcome of the investigation. That decision shall be consistent with any previous decision taken by the crowdfunding service provider in respect of similar complaints, unless the crowdfunding service provider is able to justify why a different conclusion is drawn.
2. Crowdfunding service providers shall communicate their decision on a complaint to the complainant as soon as possible and within the timeframe referred to in Article 1(2), point (e).
3. Where, in exceptional situations, the decision on a complaint cannot be provided within the timeframe referred to in of Article 1(2), point (e), crowdfunding service providers shall inform the complainant about the reasons for that delay and specify the date of the decision.
4. Where the decision does not satisfy the complainant's demand or only partially satisfies it, the decision shall thoroughly set out the reasoning and contain information on available remedies.

Article 6

Communication with complainants

1. When handling complaints, crowdfunding service providers shall communicate with complainants in a clear and plain language that is easy to understand.
2. Any communication made by the crowdfunding service provider under Articles 3 to 5 that is addressed to a complainant shall be made in the language in which the complainant filed its complaint, provided that the language used by the complainant

is one of the languages referred to in Article 1(4). The communication shall be made in writing by electronic means or, upon the complainant's request, in paper form.

Article 7
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