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Additional Information

Level 1 Regulation
Regulation 2020/1503 - European crowdfunding service providers for business

Topic
Client categorisation

Additional Legal Reference
Article 48(1)

Subject Matter
Transitional period

Question
According to Article 48(1) ECSPR, "crowdfunding service providers may continue in accordance with the applicable national law to provide crowdfunding services that are

included within the scope of this Regulation until 10 November 2022 or until they are granted an authorisation referred to in Article 12, whichever is sooner" (emphasis added).
We would appreciate clarification on the meaning of "in accordance with the applicable national law" generally, and specifically whether the transitional period will apply in the following cases:
(i) no national law specifically governing crowdfunding activities exists. However, national law provides that crowdfunding services can be performed by investment firms authorised under Directive 2014/65/EU of the European Parliament and of the Council
(ii) no national law specifically governing crowdfunding activities exist s. However, national law provides that crowdfunding activity requires neither authorisation nor a licence.

ESMA Answer

10-11-2021

Original language

Answer by the European Commission (Published as Q&A 2.1)

Article 48(1) of Regulation (EU) 1503/2021 ('ECSPR') provides for a transitional period applicable to existing crowdfunding service providers that are operating under the applicable national law. Recital 76 clarifies that the transitional period is appropriate to allow 'persons providing such crowdfunding services in accordance with national law' 'to have sufficient time to apply for an authorisation thereunder'. As a result, the transitional period should be intended as applicable to all entities providing crowdfunding services in the scope of the ECSPR under 'national law', whereby 'national law' can be either a specific crowdfunding regime or other applicable legislation or simply the private law applicable to crowdfunding transactions in that specific Member State.

It is also important to note that the transitional period would apply to crowdfunding service providers for existing crowdfunding service provision before the date of application (10 November 2021). Crowdfunding services under the scope of this Regulation that are newly provided on and after that date shall be subject to the ECSPR requirements and related

authorisation process.

The answers provided by the European Commission are provided pursuant to Article 16b(5) of Regulation 2010/1095 to clarify provisions already contained in the applicable legislation. They do not extend in any way the rights and obligations deriving from such legislation nor do they introduce any additional requirements for the concerned operators and competent authorities. The answers are merely intended to assist natural or legal persons, including competent authorities and Union institutions and bodies in clarifying the application or implementation of the relevant legal provisions. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law. The views expressed in the internal Commission Decision cannot prejudge the position that the European Commission might take before the Union and national courts.