

COMMISSION IMPLEMENTING REGULATION (EU) 2022/2121**of 13 July 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)**

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 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 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 Council ⁽²⁾.

⁽¹⁾ OJ L 347, 20.10.2020, p. 1.

⁽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).

- (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 Council ⁽³⁾ 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.

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.

⁽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 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 July 2022.

For the Commission
The President
Ursula VON DER LEYEN

ANNEX I

Form for a request for cooperation or exchange of information pursuant to Article 32 of Regulation (EU) 2020/1503

Request for cooperation or exchange of information

Reference number:

Date:

General information

FROM:

<input type="checkbox"/> National competent authority	<input type="checkbox"/> ESMA
Member State: Requesting competent Authority: Address:	Address

(Contact details of the contact point):

Name:

Telephone:

Email:

TO:

Member State (if applicable):

Recipient:

Address:

(Contact details of the contact point):

Name:

Telephone:

Email:

Dear [insert appropriate name],

In accordance with Article 32 of Regulation (EU) 2020/1503, your input is sought in relation to the matter(s) set out in further detail below.

I would be grateful to receive a response to the above request by [insert indicative date for the reply or in case of an urgent request insert deadline for the information to be provided by] or, if that is not possible, for an indication as to when you anticipate being in a position to provide the assistance which is sought.

Type of request

Please tick the appropriate box(es):

- ☐ Investigatory and supervisory powers of competent authorities
- ☐ Cooperation between competent authorities
- ☐ Precautionary measures
- ☐ Other

If other, please specify:

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Reasons for the request

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[insert provision(s) of the sectoral legislation under which the requesting authority is competent to deal with the matter]

The request concerns cooperation or exchange of information on
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[insert description of the subject-matter of the request, the purpose for which the cooperation or exchange of information is sought, facts underlying any investigation which form the basis of the request and an explanation for its helpfulness]

Further to

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[if applicable, please insert the details of the previous request on which the present request is based]

In case of an urgent request and the setting of any deadlines, please provide full explanation of the urgency of the request and an explanation of any deadlines that the requesting authority has asked for the information to be provided by:

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Additional information:

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The information included in this request shall be kept confidential in accordance with Article 35 of Regulation (EU) 2020/1503. Any personal data provided shall be processed by ESMA in accordance with Regulation (EU) 2018/1725 of the European Parliament and of the Council and by the relevant competent authorities in accordance with Regulation (EU) 2016/679 of the European Parliament and of the Council. In particular, both ESMA and the relevant competent authorities shall ensure that all relevant information on the processing of personal data is provided to data subjects in accordance with Section 2 'Information and access to personal data' of CHAPTER III 'Rights of the data subject' of these Regulations.

Yours sincerely,

[signature]

ANNEX II

Form for the acknowledgement of receipt

Acknowledgement of receipt

Reference number:

Date:

<input type="checkbox"/> National competent authority	<input type="checkbox"/> ESMA
Member State: Requesting competent authority: Address:	Address

(Contact details of the contact point)

Name:

Telephone:

Email:

TO:

Member State (if applicable):

Recipient:

Address:

(Contact details of the contact point)

Name:

Telephone:

Email:

Dear *[insert appropriate name]*

Following your request *[insert reference to request]* we hereby acknowledge receipt thereof on *[insert date when the request for cooperation or request for information was received]*.

Estimated date of response:

Any personal data provided shall be processed by ESMA in accordance with Regulation (EU) 2018/1725 of the European Parliament and of the Council and by the relevant competent authorities in accordance with Regulation (EU) 2016/679 of the European Parliament and of the Council. In particular, both ESMA and the relevant competent authorities shall ensure that all relevant information on the processing of personal data is provided to data subjects in accordance with Section 2 'Information and access to personal data' of CHAPTER III 'Rights of the data subject' of these Regulations.

Yours sincerely,

[signature]

ANNEX III

Form to reply to a request for cooperation or exchange of information and for the unsolicited exchange of information

Reply to a request for cooperation or exchange of information

Reference number:

Date:

General information

<input type="checkbox"/> National competent authority	<input type="checkbox"/> ESMA
Member State: Requesting competent authority: Address:	Address

(Contact details of the contact point):

Name:

Telephone:

Email:

TO:

Member State:

Recipient:

Address:

(Contact point details):

Name:

Telephone:

Email:

Dear [insert appropriate name],

We confirm that your request dated [dd.mm.yyyy] with reference [insert request reference number] has been processed by us [not applicable in case of an unsolicited exchange of information].

Information gathered

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[if the information has been gathered, please set out the information here or provide an explanation of how it will be provided].

[in case of unsolicited exchange of information, please set out the information which is provided on an unsolicited basis].

[The information provided is confidential and is disclosed to [insert name of the requesting authority] pursuant to [insert provision of Regulation (EU) 2020/1503] and on the basis that the information shall remain confidential in accordance with Article 35 of Regulation (EU) 2020/1503.] [or] [The information provided is permitted to be disclosed pursuant to Article 35(1) of Regulation (EU) 2020/1503.]

Where relevant, please explain any clarification you may require in relation to the precise information requested:

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Please provide, on your own initiative, any essential information that could further assist the cooperation or exchange of information for the purposes of the request:

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Any personal data provided shall be processed by ESMA in accordance with Regulation (EU) 2018/1725 of the European Parliament and of the Council and by the relevant competent authorities in accordance with Regulation (EU) 2016/679 of the European Parliament and of the Council. In particular, both ESMA and the relevant competent authorities shall ensure that all relevant information on the processing of personal data is provided to data subjects in accordance with Section 2 'Information and access to personal data' of CHAPTER III 'Rights of the data subject' of these Regulations.

Yours sincerely,

[signature]

ANNEX IV

Form for a request for ESMA to coordinate an on-site inspection or investigation with cross-border effect pursuant to Article 32(2) of Regulation (EU) 2020/1503

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

Reference number:

Date:

General information

FROM:

Member State:

Requesting competent authority:

Address:

(Contact details of the contact point):

Name:

Telephone:

Email:

TO:

European Securities and Markets Authority (ESMA)

(Contact details of the contact point):

Name:

Telephone:

Email:

Information on the request for coordination**Reasons for the request**

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[insert provision(s) of the sectoral legislation under which the requesting authority is competent to deal with the matter]

The request concerns the coordination of an on-site inspection or investigation with cross-border effect on

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[insert description of the subject-matter of the request, the purpose for which the coordination of an on-site inspection or investigation with cross-border effect is sought, facts underlying the investigation which form the basis of the request and explanation for its helpfulness]

Further to

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[if applicable, please insert the details of the previous request on which the present request is based]

In case of an urgent request and the setting of any deadlines, please provide full explanation of the urgency of the request and an explanation of any deadlines that the requesting authority has asked for the information to be provided by:

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Additional information:

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The information included in this request shall be kept confidential in accordance with Article 35 of Regulation (EU) 2020/1503. Any personal data provided shall be processed by ESMA in accordance with Regulation (EU) 2018/1725 of the European Parliament and of the Council and by the relevant competent authorities in accordance with Regulation (EU) 2016/679 of the European Parliament and of the Council. In particular, both ESMA and the relevant competent authorities shall ensure that all relevant information on the processing of personal data is provided to data subjects in accordance with Section 2 'Information and access to personal data' of CHAPTER III 'Rights of the data subject' of these Regulations.

Yours sincerely,

[signature]
