



HM Treasury, 1 Horse Guards Road, London, SW1A 2HQ

European Union Committee
c/o Lord Boswell of Aynho
House of Lords
London
SW1A 0AA

27th August 2019

Dear Tim,

7049/18: Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on European Crowdfunding Service Providers (ECSP) for Business

7048/18: Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directive 2014/65/EU on markets in financial instruments

Thank you for your letter dated 24 July 2019. I understand the Committee's concerns regarding the uncertainty around the content of the file, and will write to you again once the text is closer to final agreement. I would, however, like to address some of the questions that you raise in your letter.

As you note, the Council's position differs significantly from the position of the European Parliament. In my previous letter I provided some examples of the main differences between the Council and European Parliament's position; however, I thought it would be useful to begin by providing some further detail.

The most significant difference is the scope and application of the file. The European Parliament's agreed position is one of an opt-in Regulation, but one that applies to all crowdfunding business models where business finance is facilitated, should those firms choose to opt in. It does not include the significant provisions around investor protection and governance that the Council text includes.

On the other hand, as previously noted the Council's position is now in effect a minimum-harmonising Regulation, meaning that it would apply to all Member States automatically. However it does not apply to all crowdfunding service providers facilitating business finance. The regulation would apply only to investment-based crowdfunding platforms and more simple peer-to-peer (P2P) lending platforms (pricing and conduit models, as described in our previous

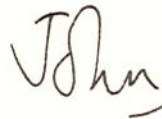
letter). This means that 'discretionary' platforms (those where a platform manages a portfolio of loans on behalf of an investor in order to meet a target rate of return) are currently out of scope of the file. You ask in your letter whether I am content that significant differentiation has been achieved between the differences in these business models. I am content that this approach would ensure that there are sufficient provisions to ensure consumer protection under the business models captured. The proposed review clause to consider the inclusion of discretionary models in two years' time would also provide the option for the Regulation to evolve with this diverse sector, while the Financial Conduct Authority (FCA) would continue regulating these more complicated types of models under the UK's existing national framework in the meantime.

You asked whether there are other significant areas of difference between the Council and European Parliament text. As I previously noted, there are a significant number of important provisions that ensure consumer protection under the Council text, which are not included in the version agreed by Parliament. Firstly, the text has introduced a 'reflection period' where investors are able to reconsider an opportunity within 7 days of expressing an interest. This right of withdrawal will allow an investor to take further time before committing to an investment. Furthermore, the inclusion of an investment limit for non-sophisticated investors in line with the FCA's existing rules would ensure that UK investors continue to have the same protections as they do currently. The Council text also places additional responsibilities on platforms with regards to capital buffers and governance structures, which would ensure that the platform meets prudential requirements and help further build investor and borrower trust in the sector.

You asked whether the Government intends to implement the legislation even if not required to do so during a possible transition period, and if the text moves towards the position of the European Parliament. This will depend on the final text agreed, and whether implementation of the legislation would enhance the competitiveness of the UK's crowdfunding and P2P lending sectors, while ensuring that consumer investors are adequately protected – as you note, the UK accounts for c.80% of the European crowdfunding and P2P lending market. You asked about the inclusion of an equivalence regime (which is not included in the Council text, but is in the European Parliament's position). This will no doubt be discussed as the final text is agreed. When I next write to you, I will provide a further update on this point.

I am copying this letter to Sir William Cash MP, Chair of the House of Commons European Scrutiny Committee; Philip Aylett, Clerk of the House of Commons European Scrutiny Committee; Arnold Ridout, Legal Advisor of the House of Commons European Scrutiny Committee; Christopher Johnson, Clerk to the Lords Committee; Les Saunders, Department for Exiting the EU and to Barbara Armstrong and Aidan Irwin-Singer, HM Treasury.

with very best regards

A handwritten signature in black ink, appearing to read 'John', with a horizontal line under the 'n'.

JOHN GLEN

