EUROPEAN CROWDFUNDING NETWORK

Proposed Regulation on European Crowdfunding Service Providers (ESCP) for Business

Position Paper of the European Crowdfunding Network

Trialogue Stage

2 October 2019

As the proposed European Crowdfunding Service Providers (ECSP) for Business Regulation (the "Regulation") enters trialogue stage, the European Crowdfunding Network welcomes this opportunity to provide our views on the key provisions of the three versions of the Regulation and our recommendations on the approach that should be taken by the final version (the "Common Approach").

In this paper, we refer to the version of the Regulation initially proposed by the European Commission on 8 March 2018 as the "Commission Version"; the version adopted by the Economic and Monetary Affairs Committee of the European Parliament on 5 November 2018, and subsequently adopted by the European Parliament in plenary on 27 March 2019, as the "Parliament Version"; and the version adopted at COREPER on 26 June 2019 as the "Council Version".

1. Executive Summary

The European Crowdfunding Network wholeheartedly welcomes the Regulation. We believe it has the potential to make pan-European crowdfunding a reality, and that doing so will be of huge benefit to European startups and SMEs and to European investors. However, the efficacy and success of the Regulation will depend heavily on certain choices made in trialogue, in particular:

- **Threshold** should be set at €8 million in line with the Parliament Version; limitations on amounts raised from investors in particular Member States under the Council Version would be workable, but a prohibition on marketing offerings over €5 million in those member states would not.
- **Definition of crowdfunding services**, and the resulting distinction between the project-based KIIS and the platform-based KIIS, should follow the Parliament Version.
- Provisions on **exercise of discretion** should follow the Commission and Parliament Versions.
- Rules on **conflicts of interest with respect to CSPs** should follow the Parliament Version.
- Rules on **conflicts of interest with respect to CSP-connected persons** should follow the Council Version.
- **Investor classification rules** should follow the Council Version, subject to a modification establishing that sophisticated investors only need to meet one, not two, of the applicable criteria.
- Approach to **withdrawal period** should follow the Commission or Parliament Version.
- **KIIS language requirement** should follow the Commission or Parliament Version.
- **KIIS notification requirement** should follow the Commission or Parliament Version.
- **Bulletin board** provisions should follow the Parliament Version.
- **Restrictions on marketing communications** should follow the Council Version.
- **Marketing communications language requirement** should follow the Commission or Parliament Version.

This position paper explains each of these points in detail, as well as providing our views on a number of other provisions.

2. Background

The European Crowdfunding Network represents over 40 crowdfunding platforms ("CSPs") based across the European Union. Together we have led the development of the crowdfunding market in Europe over the past decade, and through that process we have learned first-hand a substantial amount about how crowdfunding works and should work, where the key risks lie and how to mitigate them, how to provide robust investor protection and maintain effective compliance processes, and what regulatory approaches help or hinder the attainment of crowdfunding's objectives.

We wholeheartedly welcome the Regulation and believe it has the potential to make pan-European crowdfunding a reality. To date, the divergence in laws between Member States has made crowdfunding a largely national affair. This means that the vast potential for cross-border capital flows has not been tapped, leading to substantially less funding and fewer investment opportunities across the EU than would be available under a unified regime.

At the same time, certain provisions in each of the three versions of the Regulation would significantly undermine—and, in some cases, entirely defeat—its stated purposes. In this position paper, we describe and explain our main concerns and recommendations. In doing so, we are guided primarily by our experiences around three areas of practice:

- **Project Owners**: the practices and structures that have encouraged and helped startups and SMEs to (1) view crowdfunding as an effective and desirable source of financing; (2) succeed in raising the funds they are seeking; and (3) thrive and grow as businesses after their funding is completed. It is not trivial for a business to raise funding from the crowd, and then to benefit from the support of their investors, without being overly burdened by the challenges of administering a wide and disparate financing base. We have learned a tremendous amount about what it takes to get a business onto a platform and funded, and how to optimise for its success.

- **Investors**: the approaches that have proven effective in achieving the key balance between investor protection and investor autonomy. It is essential that investors receive the information, and are subject to the screening, necessary to ensure that (1) they understand the characteristics and risks of what they are investing in; (2) their investments are structured properly; and (3) they do not invest more capital than they can afford to lose. But it is also essential, and a key part of the attraction of crowdfunding for many, that investors be treated as responsible adults who, having received the information and been subject to the screening provided by the CSP, are capable of making their own investment decisions. As an industry we have worked hard to strike this balance, and we believe we have been highly effective in doing so.

- **CSPs**: the importance of scalability to the sustainable operation of a crowdfunding platform. In order to build and maintain the legal, financial and technological infrastructure required to operate a crowdfunding platform in a highly professional and compliant manner— including, among other things, maintaining the highest standards of transparency and risk management, implementing comprehensive business continuity plans and back-up service arrangements, and operating appropriate senior manager qualification regimes—CSPs must incur a meaningful level of capital expenditure and ongoing costs. Most platforms can only be profitable, and therefore operate sustainably in the long term, if they are able to achieve a sufficient level of scale. Measures that limit their ability to do so undermine the health and viability of the crowdfunding market.

We hope our views and recommendations will be seen in light of the above and are helpful in formulating a Common Approach.

3. Key Issues

We see 12 key issues on which the choice between the proposed approaches will be critical to fostering a vibrant pan-European crowdfunding environment and, therefore, the success of the Regulation.

Issue	ECN Position
1. Maximum offering size Commission Version: €1 million (Art. 2(2)(d)). Parliament Version: €8 million (Art. 2(2)(d)). Council Version: €8 million (Art. 1(2)(d)), subject to Member States' right to: • Limit the amount that its residents invest to that MS's prospectus threshold (Art. 1(2a)); and, • If the MS employs the restriction above, prohibit any offer over €5 million from raising any capital from its residents (Art. 1(2a1)).	We support the **Parliament Version**. Based on our experience, €8 million is a sensible level at which to set the limit. Given the financing needs of startups and SMEs, and the development of the crowdfunding market, a limit below €8 million is likely to exclude many of the types of businesses that the Regulation is intended to cover. We have expressed on a number of occasions our concern that the €1 million threshold proposed by the Commission Version would have rendered the new regime of little practical use. We would also be comfortable with the Council Version if the carveout in Art. 1(2a1) were removed. Providing Member States with the right to limit the amount that its investors invest, so as to align with that MS's prospectus threshold (Art. 1(2a)), is a reasonable compromise. And given the fact that CSPs need to identify the residency of their investors as part of their KYC processes, it would be straightforward to implement. However, prohibiting offers of more than €5 million in certain Member States (Art. 1(2a1)) would encourage many SMEs to seek less funding than they need (because raising above €5 million will reduce the pool of investors to which they have access). It also seems entirely unnecessary and inconsistent with the spirit of the prospectus threshold.

Issue	ECN Position
2. Definition of crowdfunding service Commission Version: Facilitation of granting of loans (Art. 3(1)(a)(i)); placing without firm commitment transferable securities and reception and transmission of client orders for transferable securities (Art. 3(1)(a)(ii)). Parliament Version: Direct crowdfunding service, comprising matching of specific investor and specific project owner (Art. 3(1)(a)(i)); or intermediated crowdfunding service, comprising determining and packaging of offers (Art. 3(1)(a)(ii)), including placing transferable securities or loans without firm commitment, offering investment advice on transferable securities or loans and reception and transmission of client orders for transferable securities or loans (Art. 4a). Council Version: Facilitation of granting of loans (Art. 3(1)(a)(i)); placing without firm commitment transferable securities and admitted instruments for crowdfunding purposes without firm commitment and reception and transmission of investor orders for transferable securities and admitted instruments for crowdfunding purposes (Art. 3(1)(a)(ii)).	We support the **Parliament Version, subject to the modification** that "admitted instruments for crowdfunding purposes" (which the Council Version introduced as a further set of instruments included in addition to transferable securities) is a critical one and should in all events be maintained in the final version of this definition. The critical point in the Parliament Version is the distinction between, and inclusion of both, direct and intermediated crowdfunding services. We would note a letter of 6 September 2019 on this subject, which was signed by a number of loan-based crowdfunding platforms, and which recommends (1) that intermediated crowdfunding models be included in the Regulation (as contemplated by the Parliament Version), or (2) if that is not possible, that they be expressly excluded for the time being so that it is clear that they are left to national law. We fully support this set of recommendations. To the extent that intermediated crowdfunding is included in the scope of the Regulation, there are implications for other provisions, such as the need for a platform-based KIIS in lieu of a project-based KIIS, in connection with these services. We do not comment here on all of these provisions, but we would emphasise that we support the concept of a platform-based KIIS and the other relevant modifications necessary to ensure that intermediated crowdfunding can be conducted practically under the Regulation.

Issue	ECN Position
3. Exercise of discretion Commission Version: CSPs may exercise discretion on behalf of their clients with respect to the parameters of the clients' orders (Art. 4(4)). Parliament Version: CSPs may exercise discretion on behalf of their clients with respect to the parameters of the clients' orders (Art. 4(4)). Council Version: CSPs may propose to individual investors specific crowdfunding projects corresponding to one or more specific parameters chosen by the investor, but the investor must expressly take the investment decision (Art. 4(4)).	We support the **Commission and Parliament Versions**. This provision relates in part to the issue of intermediated crowdfunding as discussed under "Definition of crowdfunding services" above. A requirement that investors take the investment decision on each individual project would make intermediated crowdfunding infeasible. So to the extent that intermediated crowdfunding is included in the scope of the Regulation, the requirement set out in the Council Version that the investor must "expressly take the invest decision" needs to be removed; and if intermediated crowdfunding is excluded from the scope of the Regulation, then this provision should be modified to ensure that it does not prohibit the conduct of intermediated crowdfunding under national law (as the Council Version may currently be seen to do). The other issue with respect to this provision is around the technicalities of execution. Even when investors select their own investments based on the core terms provided, there are always a number of detailed legal and mechanical matters that the CSP handles as part of the execution process. This is an important part of CSPs' work, and the language in the Commission and Parliament Versions affords CSPs the discretion to manage these issues, whereas the Council version does not explicitly do so.

Issue	ECN Position
4. Conflicts of interest – CSPs Commission Version: CSPs shall not have any financial participation in a crowdfunding offer on their platforms (Art. 7(1)). Parliament Version: CSPs may have financial participation in a crowdfunding offer on their platforms provided that they use clear and transparent selection procedures and make information on the participation clearly available to clients (Art. 7(1)); CSPs may invest up to 2% of the capital in any given project (Art. 7a(2)); CSPs may charge carry (Art. 7a(3)). Council Version: CSPs shall not have any financial participation in a crowdfunding offer on their platforms (Art. 7(1)).	We support the **Parliament Version**. It is very important that CSPs be able to align their interests with those of their investors by investing in projects and/or charging carry as part of their fee model. This both (1) ensures that the CSP has an incentive to see investments produce desired returns for investors and (2) allows the CSP to charge investors (and project owners) less on an upfront basis by correlating fees to investor success. And provided that this financial participation occurs on a fully disclosed and transparent basis with clear selection procedures, we are confident that there is no risk or detriment to the investors or projects involved.
5. Conflicts of interest – CSP-connected persons Commission Version: CSPs shall not accept as clients any managers, employees or 20%+ shareholders (Art. 7(2)). Parliament Version: CSPs shall not accept as clients any managers or 20%+ shareholders (Art. 7(2)) and shall ensure that employees cannot hold direct or indirect influence over projects in which they have financial participation (Art. 7(3)). Council Version: CSPs shall not accept as project owners any managers, employees or 20%+ shareholders; CSPs may accept as investors any managers, employees or 20%+ shareholders, provided that their investments are disclosed and on the same terms as other investors (Art. 7(2)).	We support the **Council Version**. As with financial participation by the CSP itself, allowing participation by managers, employees and large shareholders only serves to align the interests of those involved with the CSP with the interests of investors. And provided that the participation is fully disclosed and made on a *pari passu* basis, it does not create any risk or detriment to other investors or to the project. At the same time, we think it is sensible that CSP-connected persons not act as project owners. Unlike in the case of investing, there is potential for conflicts and unfair advantage if these persons were able to be project owners.

Issue	ECN Position
6. Investor classification Commission Version: None Parliament Version: None Council Version: Distinction between sophisticated and non-sophisticated investors: • Sophisticated investors are (1) legal entities that meet two of the following: (a) EUR 100k own funds; (b) EUR 2m net turnover; (c) EUR 1m balance sheet; and (2) natural persons that meet two of the following: (a) income of EUR 60k or investment portfolio of EUR 100k; (b) has worked in financial sector, or as an executive in a sophisticated legal person, for at least a year; (c) has carried out 10 significant capital markets transactions per quarter over past four quarters (Annex II(I)). • CSP must take reasonable steps to ensure that the investor qualifies as sophisticated before classifying as such, but CSP shall approve the request unless it has reasonable doubt that the information provided is correct (Annex II(II)).	We support the **Council Version, subject to a modification** establishing that sophisticated investors only need to meet one, not two, of the criteria set out in Annex II. While we have reservations about the need for investor classification at all—given that the other protections set out in the Regulation are, we feel, sufficient for non-sophisticated and sophisticated investors alike—we understand that this is an important issue for some Member States, and we think the approach taken by the Council Version is a reasonable compromise. This is true in particular given the provision establishing that CSPs shall approve a request to be treated as a sophisticated investor unless they have reasonable doubt that the information is correct (a contemplated alternative version, which would have required CSPs to obtain proof the investor's qualifications, would have been so burdensome—both on CSPs and on investors—as to render the entire process unworkable, and so we are encouraged that this is not the approach adopted by Council). However, we view the requirement that investors meet two of the three criteria set out in the Annex as overly restrictive. From our experience, an investor (whether legal entity or natural person) who meets any one of the three criteria can reasonably be classified as sophisticated. Requiring satisfaction of two criteria will have a perverse effect in a number of cases: for example, an ultra-high-net-worth individual who has built and sold a business may have substantial assets but minimal income and may not have worked in financial services; under the current test, she would not be classified as sophisticated—which is clearly problematic. Requiring satisfaction of a single criterion will much more closely fit with conventionally accepted notions of sophistication for these purposes.

Issue	ECN Position
7. Withdrawal period Commission Version: None Parliament Version: None Council Version: CSPs must provide non-sophisticated investors with a seven-day withdrawal period (Art. 15b(1)).	We support the **Commission and Parliament Versions**. While we understand the Council's intention in introducing this concept, withdrawal rights create two major problems in an investment context (as distinct from a commercial one). First, they effectively give investors a free "put", i.e., an opportunity to hand back their investment if they learn something new in the period after making it. This is inconsistent with the nature of the investment transaction and with the principle accepted throughout the investment world that once an investment is made, it is final. Second, withdrawal rights create delays, which are particularly problematic in the lending context where speed of funding is one of the major value-adds that CSPs can provide to SMEs relative to traditional financial institutions. At the same time, we do not believe withdrawal rights add much in the way of investor protection. Given the suite of other protections in place (including, in certain cases, the revocation right under the Distance Selling Directive), investors who use crowdfunding platforms will have received a significant level of information, and will have been able to review that information with no time pressure, before making their investment decision. This is a very different context than "doorstep selling" or similar environments in which a consumer may make a decision under pressure or with limited information, and only have the chance to properly consider it after the decision has been made.

Issue	ECN Position
8. KIIS—language Commission Version: KIIS must be in one of the official languages of the Member State concerned or in a language customary in the sphere of international finance; investors may request CSPs to arrange translation into language of investor's choice (Arts. 16(1) and 16(7)) Parliament Version: KIIS must be in one of the official languages of the Member State concerned or in English; investors may request CSPs to arrange translation into language of investor's choice (Arts. 16(1) and 16(7)) Council Version: KIIS must be in one of the official or accepted languages of the Member State concerned (Art. 16(1)); where the CSP promotes an offer in another Member State, KIIS must also be in one of the official or accepted languages of that Member State (Art. 16(1a))	We support either the **Commission Version or the Parliament Version**. The requirement in the Council Version that a CSP translate the KIIS into an official or accepted language of every Member State in which the offering is promoted would be highly burdensome and entirely impractical. The time and cost involved in creating multiple translations means that CSPs are unlikely to be able to translate the KIIS into more than two or three of the most widely-used languages, thereby severely curtailing cross-border crowdfunding activity. The impact of this would be felt especially in smaller Member States, where both investors and project owners would effectively be cut out from the European crowdfunding ecosystem. Such an outcome would fundamentally undermine the purpose of the Regulation.

Issue	ECN Position
9. KIIS—notification requirements Commission Version: NCAs may not require notification or approval of a KIIS (Art. 16(8). Parliament Version: NCAs may not require notification or approval of a KIIS (Art. 16(8). Council Version: NCA of home Member State may require that the CSP provide ex ante notification (but not approval) of KIIS at least seven working days before making it available to investors	We support the **Commission and Parliament Versions**. The notification requirement allowed for by the Council Version creates a set of unnecessary delays with no real benefit. While notification is less problematic than a mooted approval requirement—which would entirely undermine the purpose of the Regulation given the time and costs associated with it—the delays that even a notification requirement causes will create significant burdens for both CSPs and project owners. As in the case of withdrawal rights, this is particularly an issue for lending-based platforms, where speed of funding is essential. Meanwhile, the inherent public availability of each KIIS means that NCAs will have ample opportunity to conduct any review they wish to do once the offering has commenced.

Issue	ECN Position
10. Bulletin boards Commission Version: CSPs may operate bulletin boards for investments originally crowdfunded on their platforms, so long as (1) they are not trading systems and (2) buying/selling activity is at the client's discretion and responsibility (Art. 17(1)); reference price may be provided, but it must be substantiated and non-binding (Art. 17(2)). Parliament Version: CSPs may operate bulletin boards for investments originally crowdfunded on their platforms, so long as (1) they are not trading systems and (2) buying/selling activity is at the client's discretion and responsibility (Art. 17(1)); reference price may be provided and may either be binding or non-binding, but the CSP must justify the basis on which the reference price was calculated (Art. 17(2)). Council Version: CSPs may operate bulletin boards for investments originally crowdfunded on their platforms, so long as they do not bring together buying and selling interest via the CSP's internal operating procedures in way that results in a contract, and there not consist of an internal matching system which executes client orders on a multilateral basis Art. 17(1)); reference price may be provided, but it must be substantiated and non-binding (Art. 17(2)).	We support the **Parliament Version**. It is essential that CSPs have the choice as to whether to make reference prices binding or non-binding. Small companies are often keen to ensure that their valuation does not swing wildly, and if a highly motivated seller chose to sell investments for significantly less than they were worth—or indeed a surge of buyers led the price to go significantly above what the company thinks it should be—that can cause significant problems for the company in future fundraising rounds. There is, therefore, value to be had in facilitating certain trades only at a fixed price, and while use of fixed prices should by no means be mandatory, prohibiting it does not seem sensible either. We are also concerned about the language in the Council Version around bringing together buying and selling interest "in a way that results in a contract." We agree that a CSP's bulletin board should not include internal matching systems which execute client orders on a multilateral basis (and we believe this is adequately provided for in the Parliament Version). However, it is important that, once a buyer and seller have found each other and agreed to a trade through the bulletin board, the CSP be able to execute that trade. In many cases investment will be held through SPVs which require the CSP to manage execution of the transaction, and even where that is not the case, the size of the transactions will often be sufficiently small that it is not practical for buyer and seller to execute contracts privately offline.

Issue	ECN Position
11. Marketing communications—restrictions Commission Version: No marketing communication can market individual live or pending projects (Art. 19(2)). Parliament Version: Prior to the closure of raising funds for a project, no marketing communication may disproportionately target individual live or pending projects (Art. 19(2)). Council Version: Marketing communications must be fair, clear and not misleading and shall be consistent with KIIS; no restriction on marketing live campaigns (Art. 19(2)).	We support the **Council Version**. The prohibition on marketing live offerings, as set forth in the Commission Version, is overly restrictive, inconsistent with how crowdfunding campaigns work in practice, and likely to reduce substantial the number of startups and SMEs who would succeed in raising capital through crowdfunding. The Parliament Version is an improvement but creates tremendous uncertainty for CSPs in determining what constitutes "disproportionate". The Council Version, however, takes a sensible approach that recognises the value of marketing live offerings and focuses on ensuring that the communications are fair, clear and not misleading. The Council Version therefore contains the only version of this provision that we believe is workable.
12. Marketing communications—language Commission Version: Marketing communications must be in one of the official languages of the Member State concerned or in a language customary in the sphere of international finance (Art. 19(3)). Parliament Version: Marketing communications must be in one of the official languages of the Member State concerned or in English (Art. 19(3)). Council Version: Marketing communications must be in one of the official or accepted languages of the Member State in which the CSP promotes the offer (Art. 19(3)).	We support the **Commission Version or the Parliament Version**. As discussed above in connection with the KIIS, a requirement to translate marketing communications into an official or accepted language of each Member State in which the offer is promoted would be heavily burdensome and would, in practice, restrict offering to only those Member States that accept one of most widely-spoken languages in Europe. This would prevent a true pan-European ecosystem from emerging and would, in particular, exclude project owners and investors in many smaller Member States.

4. Other Issues

In addition to the key issues outlined above, we thought it would be helpful to share briefly our views on the main other substantive provisions of the three versions of the Regulation. We have not included here a full explanation for each, but we would happy to provide additional detail on any of these points if helpful.

Issue	Recommendation
Establishment in a Member State Commission Version: No requirement. Parliament Version: CSP must be established in an MS (Arts. 2(1) and 4(1). Council Version: CSP must be established in an MS (Art. 4(1)).	**Parliament or Council Version**
Exclusion of MiFID firms from regime Commission Version: MiFID firms excluded (Art. 2(2)(b)). Parliament Version: MiFID firms excluded (Art. 2(2)(b)). Council Version: No exclusion.	**Council Version**
National licence requirements Commission Version: No reference. Parliament Version: National licence requirements shall not prevent project owners from using crowdfunding services under this regime (Art. 2(2a)). Council Version: No national licence requirements in connection with lending-based crowdfunding (Art. 1(3)).	**Parliament Version**; second choice would be Council Version

Issue	Recommendation
Definition of crowdfunding platform Commission Version: Electronic information system operated or managed by a CSP (Art. 3(1)(b)). Parliament Version: Electronic system operated or managed by a CSP (Art. 3(1)(b)). Council Version: Publicly-accessible internet-based electronic information system operated or managed by a CSP (Art. 3(1)(b)).	**Commission Version or Parliament Version**. The addition of "publicly accessible" in the Council version may have unintended consequences by excluding from the scope of the Regulation those platforms whose funding base also includes institutional investors.
SPV definition Commission Version: Entities whose sole purpose is to carry out a securitisation within the meaning of ECB rules (Art. 3(1)(l)). Parliament Version: Entities created solely for, and whose sole purpose is, to carry on a securitisation within the meaning of ECB rules (Art. 3(1)(l)). Council Version: Entities whose sole purpose is to carry out a securitisation within the meaning of ECB rules (Art. 3(1)(l)).	**Commission Version or Council Version**
SPV restrictions Commission Version: CSPs may only transfer one asset to an SPV, and the decision to take exposure to that asset (via acquiring shares in the SPV) shall lie exclusively with investors (Art. 4(5)). Parliament Version: Except with in connection with services to eligible counterparties, CSPs may only transfer one asset to an SPV, and the decision to take exposure to that asset (via acquiring shares in the SPV) shall lie exclusively with investors (Art. 4(5)). Council Version: Only one illiquid or individual asset can be offered through an SPV, and the decision to take exposure to that asset shall lie exclusive with investors (Art. 4(5)).	**Parliament Version**

Issue	Recommendation
Customer due diligence / know your client requirements Commission Version: No reference. Parliament Version: No reference. Council Version: CSPs must apply customer due diligence measures, including identifying the residency of the investor (Art. 4(6)).	**Council Version**
Prudential requirements and credit risk standards Commission Version: CSPs shall establish adequate policies and procedures to ensure effective and prudent management (Art. 5). Parliament Version: CSPs shall establish adequate policies and procedures to ensure effective and prudent management, including risk and financial modelling where the CSP packages offers (Art. 5). Council Version: CSPs shall establish adequate policies and procedures to ensure effective and prudent management (Art. 5(1)); where the CSP determines the price of an offer, it must undertake a reasonable assessment of the credit risk of the project and ensure that the price is fair and appropriate (Art. 5(2a)).	**Commission Version or Parliament Version**
Due diligence requirements Commission Version: No reference. Parliament Version: CSPs must carry out specified minimum due diligence in respect of project owners, including with respect to criminal records, high-risk and non-cooperative third countries, and tax transparency (Art. 5a). Council Version: No reference.	**Commission Version or Council Version**. Due diligence is a very important part of any CSP's work, but the specific requirements set out in the Parliament Version are not practical.

Issue	Recommendation
Client asset safekeeping Commission Version: CSPs who provide asset safekeeping services must do so in accordance with national law (Art. 9(1)). Parliament Version: CSPs who provide asset safekeeping services must do so in accordance with national law (Art. 9(1)). Council Version: CSPs who provide asset safekeeping services must do so in accordance with national law (Art. 9(1)); transferable securities and admitted instruments for crowdfunding services shall be held in custody by the CSP or a third party, either of whom must be authorised under MiFID II or CRD (Art. 9(1a)).	**Commission Version or Parliament Version**
Client funds and payment services Commission Version: CSPs may only hold client funds and provide payment services if authorised under the Payment Services Directive (Art. 9(2)). Parliament Version: CSPs may only hold client funds and provide payment services if authorised under, or an agent of a provider authorised under, the Payment Services Directive (Arts. 9(2) and 9(4)). Council Version: CSPs may provide payment services itself or through a third-party provider so long as the CSP or provider is authorised under the Payment Services Directive (Art. 9(2)); if the CSP doesn't provide payment services itself or through a third party, it must put in place arrangements to ensure project owners only accept payments through a payment services provider authorised under the Payment Services Directive (Art. 9(4)).	**Parliament Version**

Issue	Recommendation
Prudential capital and insurance requirements Commission Version: No reference. Parliament Version: CSP must demonstrate to NCA as part of application process that it holds sufficient capital against financial consequences of its professional liability (Art. 10(2)(ma)). Council Version: CSPs must maintain the higher or €25,000 and ¼ of previous year's fixed overheads, which can be satisfied with own funds, insurance or a combination (Art. 9a).	**Council Version**
Information to clients Commission Version: All information to be clear, comprehensible, complete and correct (Art. 14(1)). Parliament Version: All information to be fair, clear and not misleading and provided in a concise, accurate and easily accessible manner (Art. 14). Council Version: All information to be clear, comprehensible, complete and correct (Art. 14(1).	**Parliament Version**
Default rate disclosure Commission Version: No reference. Parliament Version: CSPs must disclose the default t rates of projects on their platform over at least the preceding 24 months (Art. 14a). Council Version: CSPs that facilitate the granting of loans shall disclose default rates covering a minimum of a five-year period (Art. 14(4)).	**Council Version**

Issue	Recommendation
Entry knowledge test—requirement Commission Version: CSPs must assess all investors with respect to basic knowledge and understanding of risks related to investing (Arts. 15(1), 15(2), 15(3)). Parliament Version: CSPs must assess all investors with respect to experience, investment objectives and financial situation, as well as understanding of risks related to investing (Art. 15(1)). Council Version: CSPs must assess non-sophisticated investors with respect to basic knowledge and understanding of risks related to investing (Arts. 15(1) and 15(2)).	**Council Version**
Entry knowledge test—consequences of failure Commission Version: CSPs must warn investors who fail or refuse to complete test but may still allow them to invest (Art. 15(4)). Parliament Version: Where the CSP determines that an investors has insufficient understanding or the offer is not suitable for that investor, the CSP must warn the investor but may still allow them to invest (Art. 15(4)). Council Version: CSPs must warn non-sophisticated investors who fail or refuse to complete test but may still allow them to invest (Art. 15(4)).	**Council Version**
Simulation of loss Commission Version: CSPs must offer investors the ability to simulate their ability to bear loss (10% of net worth) (Art. 15(5)). Parliament Version: CSPs must offer investors the ability to simulate their ability to bear loss (10% of net worth) (Art. 15(5)). Council Version: CSPs must offer non-sophisticated investors the ability to simulate their ability to bear loss (10% of net worth) (Art. 15(5)).	**Council Version**

Issue	Recommendation
Investment limits Commission Version: None. Parliament Version: None. Council Version: Member States may limit the amount non-sophisticated investors can invest into a project, subject to a minimum limit of EUR 1,000 (Art. 15a(1)).	**Commission Version or Parliament Version**; if Council Version is adopted, minimum limit should be raised to EUR 5,000.
KIIS—accuracy standard Commission Version: Clear, comprehensible, complete and correct (Art. 16(3)). Parliament Version: Fair, clear and not misleading (Art. 16(3)). Council Version: Clear, comprehensible, complete and correct (Art. 16(3)).	**Parliament Version**
KIIS—updates Commission Version: CSPs shall keep the KIIS updated throughout the offer (Art. 16(4)), and where there is a material omission, it must make the project owner amend it or, if that's not possible, the CSP must cancel the offer (Art. 16(6)). Parliament Version: CSPs shall keep the KIIS updated throughout the offer (Art. 16(4)), and where there is an omission that could have a material impact on expected return, it must make the project owner amend it (or, for intermediated crowdfunding, amend it themselves) or, if that's not possible, the CSP must cancel the offer (Art. 16(6)). Council Version: CSPs shall keep the KIIS updated throughout the offer, and investors shall be immediately informed about any material change (Art. 16(4)); in the case of a material inaccuracy, the CSP shall suspend the offer until the KIIS has been updated, and investors shall be allowed to withdraw (Art. 16(6)).	**Parliament Version**

5. Conclusion

We reiterate that we welcome the Regulation and are enthusiastic about the positive impact it will have on European startups and SMEs and on European investors. A harmonised regime will at last make it possible for CSPs to provide their services on a fully cross-border basis within Europe, and with this will come an increase the volumes, quality and professionalism of crowdfunding across the continent.

However, the 12 key issues we have discussed in this paper are critical ones, and unless the appropriate approaches to these issues are selected for the Common Approach, the Regulation will not serve its intended purposes. We are also hopeful that our recommendations with respect to the various other provisions we have identified will be considered in formulating the Common Approach.

We are available at any time to discuss the contents of this paper or any related matters.

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Yours faithfully

European Crowdfunding Network

A full list of our members can be seen here.