

# Consultation Paper

**Draft technical standards under the ECSP Regulation**



## Responding to this paper

ESMA invites comments on all matters in this paper and in particular on the specific questions summarised in Annex I. Comments are most helpful if they:

1. respond to the question stated;
2. indicate the specific question to which the comment relates;
3. contain a clear rationale; and
4. describe any alternatives ESMA should consider.

ESMA will consider all comments received by **Friday 28<sup>th</sup> May 2021**.

Responses to this consultation paper can be sent using the response form available on ESMA's website ([www.esma.europa.eu](http://www.esma.europa.eu) → 'Your input – Open consultations' → 'Consultation on draft technical standards under the ECSP Regulation').

## Publication of responses

All contributions received will be published following the close of the consultation, unless you request otherwise. Please clearly and prominently indicate in your submission any part you do not wish to be publicly disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. A confidential response may be requested from us in accordance with ESMA's rules on access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by ESMA's Board of Appeal and the European Ombudsman.

## Data protection

Information on data protection can be found at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading [Legal Notice](#).

## Who should read this paper?

This document is primarily of interest to crowdfunding service providers within the meaning of point (e) of Article 2(1) of the ECSP Regulation, competent authorities and other entities that are subject to the ECSP Regulation but it is also important for trade associations and industry bodies, sophisticated and non-sophisticated investors, consumer associations, as well as any market participant engaged in the provision of crowdfunding services.

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## Acronyms and definitions used

CA	National competent authority or authorities designated by a Member State in accordance with Article 29 of the ECSPR
CSP	Crowdfunding Service Provider as defined in point (e) of Article 2(a) of the ECSPR
EBA	European Banking Authority
ECSPR	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
ESMA	European Securities and Markets Authorities
ITS	Implementing Technical Standards
PRIIPS	Regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products
RTS	Regulatory Technical Standards

# **1. Executive Summary**

## **Reasons for publication**

Regulation (EU) 2020/1503 (ECSPR) was published in the Official Journal of the European Union on 20 October 2020. The ECSPR requires ESMA to submit draft regulatory technical standards (RTS) and implementing technical standards (ITS) on a variety of topics.

According to Article 10 of Regulation (EU) No 1095/2010, ESMA must conduct a public consultation before submitting draft RTS to the European Commission. This Consultation Paper therefore seeks stakeholders' views on ESMA's proposals for such RTS and ITS. The input from stakeholders will help ESMA finalise the draft RTS and ITS before submitting them to the European Commission.

## **Contents**

This Consultation Paper presents a draft version of some of the Technical Standards that ESMA is due to submit to the European Commission according to the ECSPR.

Section 2 sets out opening considerations, a short introduction to the ECSPR and some background in relation to each of the proposals of technical standards organised in 9 sub-sections. Each sub-section is dedicated to the specific technical standards and contains one or several specific questions.

Section 3 consists in 11 Annexes. Annex I contains a list of all the questions raised in this Consultation Paper. Annex II contains the costs/benefit analyses undertaken in relation to the draft technical standards presented in this Consultation Paper. Annex III to XI contain the draft technical standards.

## **Next Steps**

Responses to this Consultation Paper will help ESMA in finalising these draft RTSs and ITSs to be submitted to the European Commission for endorsement.

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## 2. Background

1. On 8 March 2018, the European Commission adopted a legislative proposal on European Crowdfunding Service Providers for Business.<sup>1</sup>
2. The ECSPR was published in the Official Journal on 20 October 2020 and entered into force on 9 November 2020.
3. The ECSPR requires ESMA to develop 8 draft RTSs, including 2 in close cooperation with the EBA, and 4 draft ITSs. The majority of these technical standards shall be submitted by ESMA to the European Commission by 10 November 2021. The remaining 4 technical standards mandates (2 RTSs and 2 ITSs) must be delivered to the Commission by 10 May 2022. In addition to these 12 mandates to ESMA, the new regulation gives a mandate to EBA to develop 2 additional RTS (both in cooperation with ESMA).
4. ESMA is now consulting stakeholders on the proposals on 7 draft RTSs and 2 ITSs set out below developed by ESMA, when applicable in cooperation with the EBA, pursuant to its mandates under the ECSPR.

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<sup>1</sup> Available at: [https://ec.europa.eu/info/publications/180308-proposal-crowdfunding\\_en](https://ec.europa.eu/info/publications/180308-proposal-crowdfunding_en)

## 2.1. Complaints handling

### Background/Mandate

#### **Article 7(5) of ECSPR**

*ESMA shall develop draft regulatory technical standards to specify the requirements, standard formats and procedures for complaint handling.*

*ESMA shall submit those draft regulatory standards to the Commission by 10 November 2021.*

5. Article 7 of the ECSPR provides for complaints handling requirements for CSPs. These requirements relate to complaint handling procedures, the format for filing complaints and CSPs' investigations of and responses to complaints.
6. Article 7(5) of the ECSPR requires ESMA to develop draft RTSs to specify the requirements, standard formats and procedures for complaints handling by CSPs.

### Analysis

7. Common standards, formats and procedures for complaints handling across Member States ensure a common understanding and enforcement among Member States' CAs of the complaints handling requirements set out in Article 7 of the ECSPR.
8. In developing these standards, ESMA has taken into account the Joint-Guidelines for complaints-handling for the securities (ESMA) and banking (EBA) sectors<sup>2</sup>.

### Procedures

9. Article 7(1) of the ECSPR provides that CSPs shall have in place effective and transparent procedures for the prompt, fair and consistent handling of complaints received from clients and shall publish descriptions of those procedures.
10. ESMA considers that complaints handling procedures should be set out in writing and include clear and accurate information. The draft RTS also aim to harmonise the content of the complaints handling procedures by specifying a set of minimum information to be

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<sup>2</sup> Joint Committee of the European Supervisory Authorities, Guidelines on complaints-handling for the securities and banking sectors (04/10/2018, JC 2018 35).

included therein and by proposing that the procedures should be published on the CSPs' websites and be made available in the official language(s) of the Member State(s) in which the CSP offers crowdfunding services.

#### *Submission of complaints and standard formats*

11. In accordance with the mandate in Article 7(5) of the ECSPR, ESMA considers that any complaint made pursuant to Article 7 should be lodged using a standard template developed by ESMA. This will allow clients to lodge a complaint more easily and will contribute towards ensuring convergence and equal treatment of complainants within the European Union.
12. The standard form should be made available in the relevant official language(s) of the Member State(s) where the CSP offers crowdfunding services and complainants should be allowed to file complaints in one of the official languages of the Member States in which the CSP provides crowdfunding services. Complainants should also be allowed to file a complaint in another language, provided that such language is either a language customary in the sphere of international finance or a language accepted by the Member State where the CSP is authorised.

#### *Handling of complaints*

13. In order to ensure the prompt, fair and consistent handling of complaints, ESMA considers that CSPs should acknowledge receipt of any complaint within 10 working days, specifying whether the complaint is admissible and the timeframe in which the complainant can expect to receive a response.
14. ESMA is of the view that, to ensure that complaints are investigated timely and fairly, CSPs should assess, without undue delay, whether the complaint is clear and complete. In investigating a complaint, CSPs should gather and investigate all relevant evidence and information regarding a complaint and if needed request additional information.
15. With respect to decisions on complaints, ESMA considers they should address all points raised in the complaint submitted by the complainant and explain reasons for the CSP's position. Moreover, it is important that decisions on similar complaints remain consistent and that any deviation could be duly justified. In case a decision does not, or only partially, uphold the complaint, the CSP's position should be thoroughly motivated and should include information regarding the possibility to refer the complaint, inter alia, to a CA or to take civil action.



16. CSPs should communicate a decision on the complaint as soon as possible and within the indicative timeframe communicated to the client. Where this is exceptionally not possible, the complainant should be clearly informed about the causes of the delay and the CSP should specify the deadline by which the complainant will receive a final reply.
17. Clear and smooth communication with the complainant is key to ensure a proper and transparent handling of complaints. ESMA therefore believes that the complainant should be kept duly informed about the handling of his/her/its complaint and receive a prompt reply to reasonable information requests.
18. ESMA further believes that it is necessary to specify the language in which communications that are addressed personally to the complainant should be made as well as their format. In this regard, it is appropriate that the CSP communicates with the complainant in the language in which the complainant has filed his/her/its complaint, which should thus be the language of the procedure referred to in Article 2(2) of the draft RTS. Communications should be made in writing by electronic means. However, complainants should retain the right to request communicating in paper form instead.

## **Proposal**

19. ESMA's proposal for the draft RTS on complaints handling referred to in Article 7(5) of the ECSPR is set out in Annex III.

## **Questions**

**Q1: Do you consider that the requirements should be made more granular, notably to set a fixed deadline for CSP to handle a complaint and reply to complainants, in order to ensure a better and more harmonised investor protection?**

## 2.2. Conflicts of interest

### Background/Mandate

#### **Article 8(7) of ECSPR**

*ESMA shall develop draft regulatory technical standards to specify:*

- (a) the requirements for the maintenance or operation of internal rules referred to in paragraph 3;
- (b) the steps referred to in paragraph 4;
- (c) the arrangements for the disclosure referred to in paragraphs 5 and 6.

*When developing those draft regulatory technical standards, ESMA shall take into account the nature, scale and complexity of the crowdfunding services provided by the crowdfunding service provider.*

*ESMA shall submit those draft regulatory technical standards to the Commission by 10 November 2021.*

- 20. As for any other kind of financial activity or service, different types of conflicts of interest may arise in the provision of crowdfunding services. To that end, Article 8 of the ECSPR sets out a conflicts of interest regime for CSPs.
- 21. Pursuant to Article 8(1) of the ECSPR, CSPs shall not have any participation in any crowdfunding offer on their crowdfunding platforms.
- 22. The first subparagraph of Article 8(2) provides that CSPs shall not accept as project owners in relation to the crowdfunding services offered on their crowdfunding platform any of the following: (i) their shareholders holding 20%, or more, of share capital or voting rights; (ii) their managers or employees; (iii) any natural or legal person linked to those shareholders, managers or employees by control as defined in point (35)(b) of Article 4(1) of Directive 2014/65/EU<sup>3</sup>. However, Article 8(2), second subparagraph, allows these persons to act as investors in the projects offered on their crowdfunding platform, as long as the CSPs fully disclose the conflicts of interest on their website, and ensure that investments by such persons are made under the same conditions as the investments of

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<sup>3</sup> Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU.

other investors and that those persons do not enjoy any preferential treatment or privileged access to information.

23. Article 8(3) requires CSPs to maintain and operate effective internal rules to prevent conflicts of interest and according to Article 8(4), CSPs must take all appropriate steps to prevent, identify, manage and disclose conflicts of interest between the CSPs themselves, their shareholders, their managers or employees or any natural or legal person linked to them by control, and their clients, or between one client and another client.
24. Paragraphs 5 and 6 of Article 8 specify requirements in relation to disclosure of conflicts of interests.
25. Under Article 8(7), ESMA shall submit draft RTSs to the Commission to specify:
  - a) the requirements for the maintenance and operation of internal rules referred to in Article 8(3);
  - b) the steps to prevent, identify, manage and disclose conflicts of interest referred to in Article 8(4); and
  - c) the arrangements for the disclosure of conflicts of interest referred to in Article 8 (5) and (6).

## **Analysis**

### *Identification of conflicts of interest*

26. The identification by CSPs of situations giving rise to conflicts of interest is key for the prevention of conflicts of interest. In order to apply the provisions of Article 8(2) of the ECSPR, ESMA deems it appropriate to provide a list of minimum criteria to be taken into account by CSPs when identifying types of conflicts of interest that may arise in the provision of crowdfunding services and certain activities involving the persons listed in Article 8(4) which may be harmful to a client. The types of criteria suggested in the draft RTS are aligned with the provisions included in similar EU legislative frameworks. This non-exhaustive list will help ensure that CSPs have appropriate guidance to identify conflicts of interest.

### *Disclosure of conflicts of interest*

27. The disclosure of conflicts of interest has the purpose to further strengthen the content and quality of information provided to clients to enable them to make an informed decision about the crowdfunding service in the context of which the conflict of interest has arisen, and to decide whether or not to proceed with it. This objective should nevertheless be

balanced against the need to suggest requirements that take into account the nature, scale and complexity of the crowdfunding services.

28. Consequently, ESMA suggests that the information referred to in Article 8(5) of the ECSPR should be published on the CSP's website in a place that is easily accessible by clients. ESMA also suggests clarifying that the disclosure requirement set out in point (a) of Article 8(6) shall not apply in cases where no conflict of interest has been identified by the CSP.
29. Bearing in mind the requirements set out in Article 8(5) of the ECSPR, ESMA deems it necessary to emphasise that CSPs should not over-rely on disclosure of conflicts of interest without proper consideration of the measures aiming at managing such conflicts.

### **Proposal**

30. ESMA proposal for the draft RTS referred to in Article 8(7) of the ECSPR is set out in Annex IV.

### **Questions**

**Q2: Do you agree that the list set out in Article 1(5) of the draft RTS sets out a sufficiently harmonised minimal level of requirements for the internal rules to prevent conflicts of interest?**

**Q3: Do you agree that the requirements set out in Article 4 of the draft RTS provide for arrangements that balance adequately the need to protect investors with the objective to limit unnecessary burden for CSP?**

## 2.3. Business continuity plan

### Background/Mandate

#### **Article 12(16) of ECSPR**

*ESMA shall develop draft regulatory technical standards to specify further:*

*[...]*

*(b) the measures and procedures for the business continuity plan referred to in point (j) of paragraph 2.*

*When developing those draft regulatory technical standards, ESMA shall take into account the nature, scale and complexity of the crowdfunding services provided by the crowdfunding service provider.*

*ESMA shall submit those draft regulatory technical standards to the Commission by 10 November 2021.*

#### **Article 12(2) of ESCPR**

*The application referred to in paragraph 1 shall contain all of the following:*

*[...]*

*(j) a description of the prospective crowdfunding service provider's business continuity plan which, taking into account the nature, scale and complexity of the crowdfunding services that the prospective crowdfunding service provider intends to provide, establishes measures and procedures that ensure, in the event of failure of the prospective crowdfunding service provider, the continuity of the provision of critical services related to existing investments and sound administration of agreements between the prospective crowdfunding service provider and its clients;*

*[...]*

31. Article 12 of the ESCPR concerns the authorisation to provide crowdfunding services under the ECSPR. According to Article 12(2)(j), the application for authorisation shall contain a description of the prospective CSP's business continuity plan which, taking into account the nature, scale and complexity of the crowdfunding services that the CSP intends to provide, establishes measures and procedures that ensure, in the event of failure of the prospective CSP, the continuity of the provision of critical services related to existing investments and sound administration of agreements between the prospective CSP and its clients.

32. Point (b) of the first sub-paragraph of Article 12(16) of the ECSPR requires ESMA to develop draft RTS to specify further the measures and procedures for the business continuity plan referred to point (j) of Article 12(2).

### **Analysis**

33. ESMA believes that it is appropriate to set out common measures and procedures for the business continuity plan referred to in point (j) of Article 12(2) of the ECSPR. This will ensure a common understanding and enforcement of the business continuity plan requirements set out in Article 12(2)(j) and will also help achieve a high level of investor protection.

#### *Business continuity plan*

34. CSPs should develop a detailed business continuity plan aimed at addressing the risks associated with their failure or a significant business interruption or incident.
35. To ensure consistency and a meaningful level of harmonisation, ESMA believes it is appropriate to require that the business continuity plan include, at least, the three categories of measures/and or procedure suggested in Article 2(2) of the draft RTS.

#### *Continuity of the provision of critical services*

36. ESMA considers that the business continuity plan shall aim at ensuring that critical services, including those that are outsourced, continue to be performed despite the failure of the CSP or the third party to which critical services are outsourced or the occurrence of a significant business interruption or incident. ESMA further deems it important to provide a definition of critical services and failure and to further specify a list of measures and/or procedures that should be included in the business continuity plan.

#### *Sound administration of agreements and critical business data*

37. ESMA considers that the measures and procedures aimed at ensuring the sound administration of agreements and critical business data should provide steps for the storage, in paper and digital form and in a safe place, of agreements between the CSP and its clients, including results from the entry knowledge test referred to in Article 21 of the ECSPR and other critical business data. They should also include relevant back-up of information that are of critical importance for the sound administration of agreements.

*Procedures regarding significant business interruptions or incidents*

38. The business continuity plan shall not only cover situations where the CSP is facing failure but also exceptional circumstances causing significant business interruptions or incidents.

**Proposal**

39. ESMA's proposal for the draft RTS referred to in point (b) of the first sub-paragraph of Article 12(16) of the ECSPR is set out in Annex V.

**Questions**

**Q4: Do you agree with the details of the business continuity plan suggested in the draft RTS?**

## 2.4. Application for authorisation

### Background/Mandate

#### **Article 12(16) of ECSPR**

*ESMA shall develop draft regulatory technical standards to specify further:*

*(a) the requirements and arrangements for the application referred to in paragraph 1, including the standard forms, templates and procedures for the application for authorisation;*

*[...]*

*When developing those draft regulatory technical standards, ESMA shall take into account the nature, scale and complexity of the crowdfunding services provided by the crowdfunding service provider.*

*ESMA shall submit those draft regulatory technical standards to the Commission by 10 November 2021.*

#### **Article 12(1) of ECSPR**

*A legal person who intends to provide crowdfunding services shall apply to the competent authority of the Member State where it is established for authorisation as a crowdfunding service provider.*

### Analysis

40. Article 12(1) of the ECSPR establishes that a legal person who intends to provide crowdfunding services shall apply to the CA of the Member State where it is established for authorisation as a CSP.
41. The information to be provided to CAs at the point of authorisation are listed under paragraph 2 of Article 12 of the ECSPR, according to which the application referred to in paragraph 1 shall contain all of the following:
  - (a) the name (including the legal name and any other trading name to be used) of the prospective CSP, the internet address of the website operated by that provider, and its physical address;
  - (b) the legal form of the prospective CSP;



- (c) the articles of association of the prospective CSP;
- (d) a programme of operations setting out the types of crowdfunding services that the prospective CSP intends to provide and the crowdfunding platform that it intends to operate, including where and how crowdfunding offers are to be marketed;
- (e) a description of the prospective CSP's governance arrangements and internal control mechanisms to ensure compliance with this Regulation, including risk-management and accounting procedures;
- (f) a description of the prospective CSP's systems, resources and procedures for the control and safeguarding of the data processing systems;
- (g) a description of the prospective CSP's operational risks;
- (h) a description of the prospective CSP's prudential safeguards in accordance with Article 11;
- (i) proof that the prospective CSP meets the prudential safeguards in accordance with Article 11;
- (j) a description of the prospective CSP's business continuity plan which, taking into account the nature, scale and complexity of the crowdfunding services that the prospective CSP intends to provide, establishes measures and procedures that ensure, in the event of failure of the prospective CSP, the continuity of the provision of critical services related to existing investments and sound administration of agreements between the prospective CSP and its clients;
- (k) the identity of the natural persons responsible for the management of the prospective CSP;
- (l) proof that the natural persons referred to in point (k) are of good repute and possess sufficient knowledge, skills and experience to manage the prospective CSP;
- (m) a description of the prospective CSP's internal rules to prevent persons referred to in the first subparagraph of Article 8(2) from engaging, as project owners, in crowdfunding services offered by the prospective CSP;
- (n) a description of the prospective CSP's outsourcing arrangements;
- (o) a description of the prospective CSP's procedures to handle complaints from clients;

- (p) a confirmation of whether the prospective CSP intends to provide payment services itself or through a third party, under Directive (EU) 2015/2366, or through an arrangement in accordance with Article 10(5) of the ECSPR;
  - (q) a description of the prospective CSP's procedures to verify the completeness, correctness and clarity of the information contained in the key investment information sheet; and
  - (r) a description of the prospective CSP's procedures in relation to investment limits for non-sophisticated investors referred to in Article 21(7) of the ECSPR.
42. In accordance with its mandate in Article 12(16)(a) of the ECSPR, ESMA must develop draft RTSs to specify further the requirements and the arrangements for the application as CSP, including the standard forms, templates and procedures for the application for authorisation.

#### *Procedure*

43. It is appropriate to set out common standard forms, templates and procedures to ensure the common understanding and application among Member States' CAs of the authorisation process of prospective crowdfunding providers.
44. Articles 1 to 5 of the draft RTS set out the procedure for (i) the submission of the application to the CA; (ii) the request of additional information and (iii) the notification of changes.

#### *Information to be provided to competent authorities under Article 12 of the ECSPR*

45. In accordance with the mandate given to ESMA under Article 12(16)(a) of the ECSPR, ESMA has to further specify the requirements listed under Article 12(2) of the ECSPR for the application for authorisation as a CSP.
46. Article 2 of the draft RTS establishes that an applicant seeking authorisation as a CSP in accordance with Article 12 of the ECSPR shall submit to the CA its application by filling in the template set out in the Annex of the draft RTS.
47. In order for CAs to fulfil their obligations and be able to analyse the files received by legal persons who intend to provide crowdfunding services, the Annex to the draft RTS further specifies the information listed in Article 12(2) of the ECSPR that has to be provided by applicants for purposes of being authorised as a CSP.

## **Proposal**

48. ESMA's proposal for the draft RTS on the requirements and arrangements for the application referred to in point (a) of the first sub-paragraph of Article 12(16) of the ECSPR is set out in Annex VI.

## **Questions**

**Q5: Do you have any comment on the authorisation procedure proposed in the draft RTS?**

**Q6: Do you agree with the list of information set out in draft RTS to be provided to the Competent Authority of the Member State where the applicant is established? If not, what other information should ESMA further specify?**

## 2.5. Information to client on default rate of projects

### Background/Mandate

#### Article 20(3) of ECSPR

*ESMA shall, in close cooperation with EBA, develop draft regulatory technical standards to specify the methodology for calculating the default rates referred to in paragraph 1 of the projects offered on a crowdfunding platform.*

*ESMA shall submit those draft regulatory technical standards to the Commission by 10 November 2021.*

#### Article 20(1) of ECSPR

*Crowdfunding service providers which provide crowdfunding services consisting of the facilitation of granting of loans shall:*

*(a) disclose annually the default rates of the crowdfunding projects offered on their crowdfunding platform over at least the preceding 36 months; and*

*(b) publish an outcome statement within four months of the end of each financial year indicating, as applicable:*

*(i) the expected and actual default rate of all loans the crowdfunding service provider has facilitated, by risk category and by reference to the risk categories set out in the risk-management framework;*

*(ii) a summary of the assumptions used in determining expected default rates;*

*[...]*

### Analysis

49. In order to allow investors to have a clear understanding of the loan-based crowdfunding platforms' achievements, the ECSPR requires CSPs which provide crowdfunding services consisting of the facilitation of granting of loans to make available to all their clients certain relevant information, such as default rates of loans.

50. In particular, Article 20(1) of the ECSPR establishes that CSPs shall:

- a) disclose annually the default rates of the crowdfunding projects that have been offered on their crowdfunding platform over at least the preceding 36 months; and
  - b) publish an outcome statement within four months of the end of each financial year indicating, as applicable:
    - i) the expected and actual default rate of all loans the CSP has facilitated, by risk category and by reference to the risk categories set out in the risk-management framework; [...].
51. The publication of the default rates aims at providing investors with an understanding of the performance, risk and return of the loans offered on a crowdfunding platform. Such disclosure aims also at allowing investors to compare the loans offered on crowdfunding platforms and take reasoned investment decisions.
52. ESMA believes that the standardisation of the calculation of default rates will enable the comparison of performance and quality of CSPs and of the loans offered on crowdfunding platforms.
53. In a similar way, in order to allow investors to compare the information disclosed by CSPs, a harmonised definition of default should be provided.
54. The draft RTS:
- a) Provides the methodology for the calculation of the default rates of the crowdfunding loans that have been offered on their crowdfunding platform over at least the preceding 36 months (Article 20(1) of the ECSPR). This calculation concerns the portfolio of the loans offered on the platform over the observation period. Since in principle one project may offer more than one loan, the definition of default and the methodology for the calculation of the default rate at portfolio level focus on the loans in order to avoid mis-leading information to investors.
  - b) Clarifies that where a CSP has been in operation for less than the preceding 36 months, it shall use the period over which it has been in operation in the denominator and numerator.
  - c) States that relevant CSPs shall assign the individual loans to the relevant risk category on the basis of sound and well-defined criteria and taking into account all the relevant factors that may have unfavourable effects on the performance of the loans. The information concerning the performance of the loans facilitated by a CSP and the reference to the risk categories set out in the risk-management framework are the basis of CSPs' internal method for the calculation of the actual and expected

default rates. The minimum content and governance of the risk-management framework will be specified by the regulatory technical standards that the Commission will have to adopt in accordance with Article 19(7) of ECSPR on the basis of the draft that EBA, in close cooperation with ESMA, shall submit to the Commission by 10 May 2022. Until this regulatory technical standard is in place, CSPs shall define themselves the factors to be considered in the creation of risk categories for the purpose of the calculation of the default rates in accordance with Article 20(1)(b) of the ECSPR.

- d) Provides the methodology for the calculation of the actual and expected default rates of the loans facilitated by the CSP by risk category. These default rates will have to be indicated in the outcome statement that CSPs have to publish within four months of the end of each financial year.

## **Proposal**

- 55. ESMA's proposal for the draft RTS on the methodology for calculating the default rates referred to in paragraph 1 of Article 20 of the ECSPR of the projects offered on a crowdfunding platform referred to in Article 20(3) of the ECSPR is set out in Annex VII.

## **Questions**

**Q7: Do you think that the methodologies provided in the draft RTS are sufficiently clear?**

## 2.6. Entry knowledge test and simulation of the ability to bear losses

### Background/Mandate

#### **Article 21(8) of ECSPR**

*ESMA shall, in close cooperation with EBA, develop draft regulatory technical standards to specify the arrangements necessary to:*

- (a) carry out the assessment referred to in paragraph 1;*
- (b) carry out the simulation referred to in paragraph 5;*
- (c) provide the information referred to in paragraphs 2 and 4.*

*When developing those draft regulatory technical standards, ESMA shall take into account the nature, scale and complexity of the crowdfunding services provided by the crowdfunding service provider.*

- 56. Article 21 of the ECSPR provides that CSPs shall, before giving prospective non-sophisticated investors full access to invest on their crowdfunding platform, assess whether and which crowdfunding services offered are appropriate for the prospective non-sophisticated investors.
- 57. For the purposes of this assessment, CSPs shall request information about the prospective non-sophisticated investor's experience, investment objectives, financial situation and basic understanding of risks involved in investing in general and in investing in the types of investments offered on the crowdfunding platform (Article 21(2)). CSPs are also expected to require prospective non-sophisticated investors to simulate their ability to bear loss, calculated as 10 % of their net worth (Article 21(5)).
- 58. Article 21(8) requires ESMA to develop draft RTSs to specify the arrangements necessary to (a) carry out the assessment referred to in Article 21(1), (b) carry out the simulation referred to in Article 21(5) and (c) provide the information referred to in Article 21(2) and (4).

## Analysis

### *Assessment of appropriateness of crowdfunding services*

59. Article 21(1) and Article 21(2) require CSPs to perform a two-pronged appropriate assessment consisting in (i) assessing whether a non-sophisticated investor has the necessary experience and knowledge required in order to understand the risks involved in investing in general, and (ii) assessing whether that prospective non-sophisticated investor has the necessary experience and knowledge in order to understand the risks involved in the types of investments offered on the crowdfunding platform. This derives clearly from the ECSPR and is further specified in Article 3(2) of the draft RTS.
60. With respect to the information to be requested pursuant to Article 21(2) of the ECSPR, ESMA is of the view that the information collected shall cover three areas, as listed in Article 4(1) of the draft RTS. In addition, ESMA considers it relevant to specify that this information shall be requested to the extent appropriate to the nature, scale and type of the crowdfunding service to be provided and the type of investments envisaged.

### *Risk warning issued pursuant to Article 21(4) of the ECSPR*

61. ESMA considers that the risk warning to be displayed pursuant to Article 21(4) shall be written in an easily understandable / “consumer-friendly” language. ESMA also considers that it is beneficial to harmonise the text of this warning in the RTS (and of the one to be issued pursuant to 21(7)).

### *Simulation of ability to bear losses – Online calculation tool*

62. ESMA is of the view that, to the benefit of non-sophisticated investors, it is relevant to require CSPs to make available an online calculation tool on their website. This simple tool would not require non-sophisticated investors to perform any tasks other than inputting the information required by Article 21(5) of the ECSPR. However, CSPs should remain able to also offer to their non-sophisticated clients the possibility to simulate their ability to bear losses without using this online calculation tool.

### *Calculation of the net worth of a non-sophisticated investor*

63. The net worth of the prospective investor shall be calculated by subtracting potential liabilities from the assets of the non-sophisticated investors. In this context, it is clear that point (c) of Article 21(5) of the ECSPR refers to liabilities which should be deducted from the total asset of non-sophisticated investors. ESMA is of the view that it is relevant to determine the total assets of the prospective investors by adding the assets referred to in



point (b) of Article 21(5) and the income referred to in point (a) of Article 21(5) received over a period of one year.

## **Proposal**

64. ESMA's proposal for the draft RTS referred to in Article 21(8) of the ECSPR is set out in Annex VIII.

## **Questions**

**Q8: Do you agree with the list of information set out in Article 4(1) of the draft RTS?**

**Q9: Do you agree that requiring CSPs to make available to prospective non-sophisticated investors an online calculation tool will improve investor protection by simplifying the process of simulation of the ability to bear losses?**

**Q10: Do you agree with the suggested method to calculate the non-sophisticated investor's net worth?**

## 2.7. Key investment information sheet

### Background/Mandate

#### **Article 23(16) of ECSPR**

*ESMA shall develop draft regulatory technical standards to specify the following:*

- (a) the requirements for and content of the model for presenting the information referred to in paragraph 6 and Annex I;
- (b) the types of main risks that are associated with the crowdfunding offer and therefore must be disclosed in accordance with Part C of Annex I;
- (c) the use of certain financial ratios to enhance the clarity of key financial information, including for presenting the information referred to in point (e) of Part A of Annex I;
- (d) the commissions and fees and transaction costs covered by point (a) of Part H of Annex I, including a detailed breakdown of direct and indirect costs to be borne by the investor.

*When developing those draft regulatory technical standards, ESMA shall take into account the nature, scale and complexity of the crowdfunding services provided by the crowdfunding service provider.*

*ESMA shall submit those draft regulatory technical standards to the Commission by 10 May 2022.*

*[...]*

- 65. Article 23(1) of the ECSPR requires CSPs to provide prospective investors with a key investment information sheet which contains all the information referred to in the same Article 23. The purpose of the key investment information sheet is to enable prospective investors to make an informed investment decision (Recital 50 of the ECSPR).
- 66. More precisely, Article 23(2) of the ECSPR stipulates that CSPs have to provide prospective investors with a key investment information sheet drawn up by the project owner for each crowdfunding offer. This key investment information sheet must be drafted in at least one of the official languages of the Member State whose CAs granted the authorisation to the CSP (in accordance with Article 12 of the ECSPR), or in another language accepted by those CAs.

67. Moreover, Articles 23(3) to (5) establish the conditions and requirements for the provision of key investment information sheets in different languages. Those obligations include that where a CSP promotes a crowdfunding offer through marketing communication in another Member State, the key investment information sheet must be made available in at least one of that Member State's official languages or in a language accepted by that Member State CAs (Article 23(3) of the ECSPR).
68. Article 23(6) sets out the information that the key investment information sheet must contain and which encompasses, inter alia, the following elements:
  - a) a standardised risk warning for investors;
  - b) a disclaimer stating, inter alia, that the crowdfunding offer has been neither verified nor approved by CAs or ESMA and;
  - c) information, among others, on:
    - (i) the project owner(s) and the crowdfunding project;
    - (ii) the main risk factors related to the crowdfunding project and the project owner;
    - (iii) investor rights and;
    - (iv) fees and legal redress (Annex I of the ECSPR).
69. Article 23(7) lays out the obligations for the format of the key investment information which include the following core provisions:
  - a) The key investment information sheet must be fair, clear and not misleading and must not contain any footnotes, other than those with references, including quotations where appropriate, to the applicable law.
  - b) The key investment information sheet must be presented on a stand-alone, durable medium that is clearly distinguishable from marketing communications and consist of a maximum of six sides of A4-sized paper format if printed.
70. Article 23(8) to (12) of the ECSPR sets out the obligations related to the information given in a key investment information sheet. Those requirements encompass, inter alia, that:
  - a) The CSP must request the project owner to notify it of any change of information in order to keep the key investment information sheet updated at all times and for the duration of the crowdfunding offer. CSPs must also immediately inform investors

(who, among others, have made an offer to invest), about any material change to the information in the respective key investment information sheet (Article 23(8)).

- b) Member States are required to ensure the responsibility of at least the project owner (or its administrative, management or supervisory bodies) for the information given in a key investment information sheet. Those responsible for the key investment information sheet must be clearly identified in the respective document (Article 23(9)).
  - c) Member States are obliged to ensure that their laws, regulations and administrative provisions on civil liability apply to natural and legal persons responsible for the information given in a key investment information sheet (including any translation thereof), at least in certain situations. This includes the situation where the information given in the key investment information sheet is misleading or inaccurate (Article 23(10)).
  - d) CSPs must have in place and apply adequate procedures to verify the completeness, correctness and clarity of the information contained in the key investment information sheet (Article 23(11)).
  - e) When a CSP identifies an omission, mistake or inaccuracy in the key investment information sheet that could have a material impact on the expected return of the investment that provider must signal this shortcoming to the respective project owner. Additionally, this Article sets out a several actions which a CSP or a project owner must take to address the deficiency in the key investment information sheet. Those actions encompass, among others, that the project owner is obliged to promptly complete or correct the respective information (Article 23(12)).
71. Moreover, Article 23(13) of the ECSPR stipulates that prospective investors may request a CSP to arrange for a translation of the key investment information sheet into a language of the investor's choice. The translation must faithfully and accurately reflect the content of the original key investment information sheet. However, where the CSP does not provide the requested translation of the sheet, the CSP is required to clearly advise the prospective investor to refrain from making the investment.
72. CAs of the Member State where the authorisation was granted to the CSP may require an ex ante notification of a key investment information sheet at least seven working days before making it available to prospective investors. Nevertheless, key investment information sheets are not required to be subject to ex ante approval by the CAs (Article 23(14) of the ECSPR).

73. Article 23(15) of the ECSPR lays out that where prospective investors are provided with a key investment information sheet, the CSPs and the project owners have satisfied the obligation to draw up a key information document in accordance with PRIIPS. This provision also applies *mutatis mutandis* to natural or legal persons advising on, or marketing, a crowdfunding offer.

## Analysis

### *Approach of the development of the information requirements for the key investment information sheet*

74. ESMA's mandate of Article 23(16) of the ECSPR lays out a rather detailed list of information to be included in the key investment information sheet (encompassing, among others, risk factors and fees and a standardised investor warning). Thus, the leeway given to ESMA to determine the information elements of the key investment information sheet was relatively small. Accordingly, the main task to be derived for ESMA from this mandate, was to produce a template for the key investment information sheet setting out the required information and giving instructions on how to clearly present this information to investors.
75. When elaborating the draft RTS, ESMA also drew on some elements of other regulatory frameworks to promote the consistency of terminology and requirements in EU financial service regulation. Accordingly, ESMA aimed to align the disclosure of costs and charges of the key investment information sheet with the respective section of the PRIIPS key information document, to the extent appropriate. Note in this context that as part of this alignment of the costs and charges sections of the ECSPR key investment information sheet with the PRIIPs key information document, the currently proposed content on this disclosure included in the draft RTS 7 (Annex IX) may still be subject to changes to reflect developments resulting from PRIIPs-related Level 2 work.
76. Simultaneously, ESMA aimed at producing a key investment information sheet template that strikes the right balance between (i) the requirements set forth by the ECSPR, (ii) consistency with established disclosure requirements and (iii) paying consideration to the start-ups and small and medium-sized enterprises (SMEs) environment in which crowdfunding seems to be increasingly used as funding instrument.
77. Moreover, ESMA acknowledges that despite its observed growth, crowdfunding is still rather a niche instrument, often used by start-ups and SMEs to raise rather limited

amounts of funding.<sup>4</sup> Consequently, requiring to draft a complex investment information document (such as a prospectus required under the Prospectus Regulation) would prove highly difficult for owners of crowdfunding projects. Simultaneously, investors may not expect an information document of the extent of, for instance, a prospectus, for crowdfunding offers.

78. Against this backdrop, ESMA highlights that from a policy perspective, the key investment information sheet should clearly disclose to investors the most material information relating to the crowdfunding offer. At the same time, the information requirements of the key investment information sheet should adequately reflect the nature, risks and complexity of crowdfunding project offers. Accordingly, the obligations relating to the template of the key investment information sheet need to be less extensive than the requirements for documents provided under Prospectus Regulation.<sup>5</sup> Consequently, ESMA aimed for a less stringent approach (than a prospectus) with regards to the obligations on the content and form of the key investment information sheet, when the ECSPR provisions allow for it.

*Fostering investor protection through the key investment information sheet*

79. Prospective investors need information on the key features of financial products to be able to make informed investment decisions. Without appropriate disclosure of information related to the crowdfunding offer, an investor could, for example, face higher risks and costs resulting from its chosen crowdfunding project, than what could have been expected, based on the improperly disclosed information on risks and costs.
80. In order to address this issue, Article 23(1) of the ECSPR stipulates that CSPs are required to provide investors a key investment information sheet for each crowdfunding offer. This is to enable those investors to make an informed decision.
81. In line with its mandate, ESMA has developed in the draft RTS 7 a key investment information sheet model which aims to ensure investor protection, while accounting for the nature, scale and complexity of crowdfunding offers.

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<sup>4</sup> The growth of the European crowdfunding markets, in general, is inter alia reflected by the average (of the year-on-year) growth rate of amounts raised. An analysis shows that this rate amounted to about 85 percent yearly, between 2011 and 2017. More particularly, between 2010 and 2017, about 11.8 billion Euros were raised through debt-based crowdfunding (ie, peer-to-peer loans) in the EU. In contrast, the lending of financial institutions to non-financial corporations in the Euro Area amounted to about 646 billion Euros, only in 2017 (see <https://www.bruegel.org/2019/03/how-to-make-crowdfunding-work-in-europe/>, pp. 2 and 6). Additionally, the scope of the ECSPR limits the amount of which can be raised through crowdfunding offers of up of 5 million Euros over a 12 month period (Article 1(2)(c) of the ECSPR).

<sup>5</sup> The key investment information sheet may best be compared to the “box” or “summary” of a securities prospectus.

82. Accordingly, ESMA considers that crowdfunding project owners are obliged to provide the following core elements in the key investment information sheet for each crowdfunding offer:
- a) a concise overview table to allow investors to inform themselves about key features of the crowdfunding offer at one glance (inter alia, project owner, project name and the target amount which the offer aims to raise);
  - b) provisions to specify the Level 1 requirements of the ECSPR, aiming to provide investors with meaningful information about, inter alia:
    - (i) the project owner and the crowdfunding project (inter alia relating to the contact information of the project owner; the project owner's key annual financial figures for the last three years (if available) and the description of the crowdfunding project);
    - (ii) the main risks of the crowdfunding project (including risks related to the project owner and to the economic sector of the project and the risk of platform failure);
    - (iii) interest rate, applicable yield and maturity;
    - (iv) investor rights, including the right to address a complaint; and
    - (v) fees and costs (including the disclosure of all direct and indirect costs incurred by the investor).

*Assisting the cross-border provision for crowdfunding services through the key investment information sheet*

83. Currently in the EU, crowdfunding seems primarily to be used to raise funds locally. Likewise, the cross-border provision of crowdfunding services in the EU seems still to be rather limited<sup>6</sup>. This low level of cross-border crowdfunding activity may restrict businesses' access to capital markets, especially for companies operating in smaller member states.
84. In order to contribute to foster EU cross-border crowdfunding activity, ESMA incorporated the information requirements of the draft RTS 7 into a template. ESMA considers that

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<sup>6</sup> Revealed, for example, by the following developments: The major EU crowdfunding platforms have constantly increased their total cross-border funding volume: from 28.1 million Euros in 2015 to 73.2 million Euros in 2017. Nevertheless, in the EU the financial resources raised through cross-border projects reached only 1.2 percent of the total amounts raised via crowdfunding in 2017 (see, <https://www.bruegel.org/2019/03/how-to-make-crowdfunding-work-in-europe/>, p. 4).

based on this template, project owners should follow a similar presentation pattern in form and substance. Additionally, ESMA believes that such an application would facilitate investors' comparisons of the key investment information sheets of crowdfunding offers from different member states. Thereby, the key investment information sheet can improve investors' access to relevant information for cross-border crowdfunding investments.

## **Proposal**

85. The ESMA proposal for the draft RTS referred to in Article 23(16) of the ECSPR is set out in Annex IX.

## **Questions**

**Q11: Do you agree with the extent of the provisions that ESMA proposes to specify the ECSPR's requirements for the KIIS model? Please also state the reasons for your answer.**

**Q12: How could the KIIS be alternatively structured to foster its provision by project owners, while ensuring investor protection? Please provide specific examples, if possible.**

**Q13: Based on your experience with investor information documents required under your national regulatory framework on crowdfunding: Have you seen good practices of information disclosure which could help investors to better understand risks, benefits and other key features related to crowdfunding offers under the ECSPR? Please provide specific examples, if possible.**

**Q14: What, if any, additional costs and/or benefits do you envisage arising from the proposed approach taken for the KIIS? Please quantify and provide details.**



## 2.8. Reporting by crowdfunding service providers (CSPs) to CAs and CAs to ESMA

### Background/Mandate

#### **Article 16(3) of the ECSPR**

*ESMA shall develop draft implementing technical standards to establish data standards and formats, templates and procedures for the information to be reported in accordance with this Article.*

*ESMA shall submit those draft implementing standards to the Commission by 10 November 2021.*

86. Article 16(1) of the ECSPR requires CSPs to provide CAs with the list of projects funded through its platform, including information on the project owner, amount raised, the instrument issued and aggregated information on investors and invested amount broken down by fiscal residency of investors and their type. This information shall be reported on an annual basis.
87. Subsequently, according to Article 16(2), CAs shall provide this information to ESMA, in anonymised format, for the purpose of developing and publishing aggregated annual statistics.

### Analysis

#### *Data standards and formats, templates and procedures for reporting to competent authorities*

88. In order to fulfil the requirements of Article 16(1) of the ECSPR, ESMA proposes that CSPs should submit the requested information in accordance with the template specified in Annex 1 of the draft ITS 1. When developing the reporting template, ESMA intended to ensure alignment, to the extent possible, with other reporting frameworks.
89. ESMA considers that information on all crowdfunding offers should be reported. In case the offer has not raised any funds, the amounts "0" should be reported in the respective fields of the template. Having comprehensive information on all projects would enhance the CAs' capability to supervise the respective entities, including the provision of crowdfunding services as foreseen in Article 17 of the ECSPR, their overall activity and their relative efficacy when raising funds. This information will be also relevant for CAs and

ESMA to monitor the market developments, in particular in the context of the annual statistics foreseen in Article 16(2).

90. In particular, the codes proposed for the identification of CSPs and the project owners include the well-established and widely used Legal Entity Identifier (LEI) and, in case the project owner is a natural person, the set of identification codes for natural persons set out in Article 6 of Commission Delegated Regulation (EU) 2017/590, given that a common international identifier of a natural person has not been established.
91. It is proposed that, in addition to the total amount raised, the information on the invested amounts should be provided broken down by the country of fiscal residency of the investor and per investor type (sophisticated, non-sophisticated). In order to allow CAs and ESMA to capture the total amounts invested in the projects, it is envisaged that the amounts invested by the project owner will be also reported.
92. ESMA considers that the inclusion of the sector of the project would allow monitoring risks to the investors through aggregated indicators. Given that the sector of the project is already reported in the KIIS (see section 3) using the NACE code at Section level, it will be reported to CAs using the same code, which would facilitate the provision of this data.
93. ESMA also believes that information provided to CAs should include the unique identifier of the crowdfunding offer, as specified in Article 4 of RTS 7. This identifier would allow CAs to relate information reported under Article 16 with the KIIS.
94. Finally, Annex 1 of ITS 1 proposes formats and standards for each of the reportable fields. These formats and standards follow, where relevant, international data standards and practices established in other regulatory reporting frameworks.
95. When implementing the recent important data reporting frameworks, ESMA has typically required the reporting entities to submit data in a machine-readable form, in most cases using XML messages developed in accordance with ISO 20022 methodology.
96. The need to submit data in a machine-readable form is typically justified by high frequency of data submission (e.g. daily or weekly), high data volumes (e.g. up to millions of records) and high complexity of data (e.g. large number of data points and complex interdependencies within the data set). The use of a machine-readable reporting format, e.g. XML, implies that the reporting entities have to develop specific IT reporting solutions in order to be able to prepare and submit the reports, which may result in non-negligible implementation costs. Nevertheless, the automation of frequent and voluminous data submission process allows for operational savings and is efficient in long term.

97. Data required under Article 16 of the ECSPR does not fulfil any of the above-mentioned characteristics. Indeed, it will be reported with annual frequency and the reports will include small number of data points. Given that context, requiring all crowdfunding providers to develop specific solutions supporting automated messaging, e.g. in ISO 20022 standard, would result in a significant implementation burden and would not provide for sufficient benefits to justify this cost.
98. Therefore, ESMA proposes that data reported under this article shall be submitted in a common electronic format, but without referring to any specific machine-readable format. This would allow ESMA and CAs to put in place reporting solutions involving manual preparation of data, in spreadsheet formats or CSV, so that the submission could be prepared using commonly available software and would reduce the IT implementation cost.
99. ESMA proposes that CSPs should provide CAs with the information for a given calendar year no later than by the end of February of the following year. ESMA considers 2-months period to prepare and submit the reports as adequate, given the relatively low scope and complexity of information to be reported.

*Provision of data by competent authorities to ESMA*

100. Article 16(2) of the ECSPR requires CAs to provide to ESMA the information provided by CSPs in anonymised format. According to Eurostat, anonymization “is an irreversible process that removes the ability to identify the data subjects. For publication and storage of anonymized data issues of consent do not apply.” Furthermore, Eurostat describes possible tools to ensure data anonymisation, like data hashing techniques (one-way hashing).
101. Data hashing is an operation which maps data to codes, so called hashes. Hashing algorithms allow to convert a meaningful string, e.g. an identifier, into a string which appears unrelated with the original value. One of the features of hashing functions is that they are practically infeasible to invert, i.e. it is almost impossible to determine the original string based on hash, and such functions can be used for anonymisation of data. Furthermore, hashing functions are deterministic, i.e. if the same function is applied to the same string, it always produces the same result (hash).
102. Given that the purpose of data collection by ESMA is to publish aggregated annual statistics relating to the crowdfunding market in the Union on its website, the information on the identification of project owners, which will be provided to national CAs, is not required by ESMA and shall be anonymised. Using a hashing algorithm, due to its irreversibility, would ensure that ESMA could not determine the identifier of the project

owner from its hash. At the same time, the deterministic nature of a hash function would allow to always obtain the same hash value for the same project owner, which would enable ESMA to perform different types of aggregates and analysis, including on multiple offerings by the same project owner.

103. Numerous anonymisation methods exist and the choice of a specific method or algorithm is often related to the technologies used to store or transmit data. ESMA intends to provide CAs with further technical details of the anonymisation method to be used for data submission at the later stage, during the implementation of the reporting system.
104. Except for the identification of the project owner, which should be anonymised, provisions of Article 16 foresee that competent authorities would provide other data elements to ESMA unchanged. Data would be provided, in accordance with Article 16(2), within one month after the receipt, i.e. no later than by end of March each year.

## **Proposal**

105. ESMA's proposal for the draft ITS referred to in Article 16(3) of the ECSPR is set out in Annex X.

## **Questions**

**Q15: Do you agree with the proposals with respect to standards, formats, templates and procedures for the provision of data by crowdfunding service providers to competent authorities?**

**Q16: Do you consider that the format for the submission of the information to competent authorities should be further specified in the final draft ITS? Which technical format (e.g. CSV, others) should be considered by ESMA?**

**Q17: Do you envisage any impacts of the proposals with respect to provision of data by competent authorities to ESMA, and in particular on the anonymisation methods that should be used when transmitting information by competent authorities to ESMA? Which specific anonymisation methods would be appropriate to fulfil the reporting requirements?**

## 2.9. Notification to ESMA of national provisions concerning marketing requirements

### Background/Mandate

#### **Article 28(5) of ECSPR**

*ESMA shall develop draft implementing technical standards to determine standard forms, templates and procedures for the notifications under this Article.*

*ESMA shall submit those draft implementing standards to the Commission by 10 November 2021.*

106. Article 28 of the ECSPR relates to national laws, regulations and administrative provisions that specifically govern marketing communications of CSPs. Paragraph 2 of Article 28 requires CAs to notify ESMA of these national provisions and provide summaries thereof in a language customary in the sphere of international finance. Pursuant to paragraph 3 of Article 28, CAs shall notify ESMA of any change in the information provided under paragraph 2 and provide an updated summary.
107. Article 28(5) requires ESMA to develop a draft ITS to determine standard forms, templates and procedures for the notifications under Article 28.

### Analysis

108. ESMA believes it is appropriate to set out common standards for the notifications under Article 28. This will ensure that the notifications are made uniformly by CA and will enable ESMA to meet its publication duty referred to Article 28(6).

#### *Procedures*

109. ESMA considers that the procedures should specify the timeframe and the manner in which CAs should proceed to the notifications under Article 28(2) and (3), in particular by using harmonised standard forms and templates.

#### *Templates*

110. ESMA is of the view that, in order to distinguish between the types of notifications being made and to facilitate their processing, it is appropriate to set out two different templates for the notifications under Article 28. For notifications under paragraph 2, ESMA proposes

that CAs should use the template set out in Annex 1 of the ITS. For notifications made pursuant to paragraph 3, ESMA considers that CAs should use the template set out in Annex 2 of the ITS.

111. Furthermore, to ease the processing of these notifications and facilitate ESMA in meeting its publication duty under Article 28(6), ESMA believes it is necessary to require CAs to complete the standards forms and templates for the notifications in a language customary in the sphere of international finance.

## **Proposal**

112. ESMA's proposal for the draft ITS referred to in Article 28(5) of the ECSPR is set out in Annex XI.

**Q18: Do you agree with the information on the national laws, regulations and administrative provisions applicable to marketing communications of CSPs that is being requested from CAs in the two templates? If not, which items should be added or deleted and for which reasons? Please provide a detailed answer.**

## **2. Annexes**

## **Annex I                      Summary of questions**

**Q1: Do you consider that the requirements should be made more granular, notably to set a fixed deadline for CSP to handle a complaint and reply to complainants, in order to ensure a better and more harmonised investor protection?**

**Q2: Do you agree that the list set out in Article 1(5) of the draft RTS sets out a sufficiently harmonised minimal level of requirements for the internal rules to prevent conflicts of interest?**

**Q3: Do you agree that the requirements set out in Article 4 of the draft RTS provide for arrangements that balance adequately the need to protect investors with the objective to limit unnecessary burden for CSP?**

**Q4: Do you agree with the details of the business continuity plan suggested in the draft RTS?**

**Q5: Do you have any comment on the authorisation procedure proposed in the draft RTS?**

**Q6: Do you agree with the list of information set out in draft RTS to be provided to the Competent Authority of the Member State where the applicant is established? If not, what other information should ESMA further specify?**

**Q7: Do you think that the methodologies provided in the draft RTS are sufficiently clear?**

**Q8: Do you agree with the list of information set out in Article 4(1) of the draft RTS?**

**Q9: Do you agree that requiring CSPs to make available to prospective non-sophisticated investors an online calculation tool will improve investor protection by simplifying the process of simulation of the ability to bear losses?**

**Q10: Do you agree with the suggested method to calculate the non-sophisticated investor's net worth?**

**Q11: Do you agree with the extent of the provisions that ESMA proposes to specify the ECSPR's requirements for the KIIS model? Please also state the reasons for your answer.**

**Q12: How could the KIIS be alternatively structured to foster its provision by project owners, while ensuring investor protection? Please provide specific examples, if possible.**



**Q13: Based on your experience with investor information documents required under your national regulatory framework on crowdfunding: Have you seen good practices of information disclosure which could help investors to better understand risks, benefits and other key features related to crowdfunding offers under the ECSPR? Please provide specific examples, if possible.**

**Q14: What, if any, additional costs and/or benefits do you envisage arising from the proposed approach taken for the KIIS? Please quantify and provide details.**

**Q15: Do you agree with the proposals with respect to standards, formats, templates and procedures for the provision of data by crowdfunding service providers to competent authorities?**

**Q16: Do you consider that the format for the submission of the information to competent authorities should be further specified in the final draft ITS? Which technical format (e.g. CSV, others) should be considered by ESMA?**

**Q17: Do you envisage any impacts of the proposals with respect to provision of data by competent authorities to ESMA, and in particular on the anonymisation methods that should be used when transmitting information by competent authorities to ESMA? Which specific anonymisation methods would be appropriate to fulfil the reporting requirements?**

**Q18: Do you agree with the information on the national laws, regulations and administrative provisions applicable to marketing communications of CSPs that is being requested from CAs in the two templates? If not, which items should be added or deleted and for which reasons? Please provide a detailed answer.**

**Q19: Do you agree with the cost benefit analysis as it has been described in Annex II?**

**Q20: Are there any additional comments that you would like to raise and/or information that you would like to provide?**

## **Annex II**

### **Cost-benefit analysis**

#### **1) Regulatory technical standard according to Article 7(5) of the ECSPR**

##### *The impact of the draft Article 7(5) RTS*

1. Article 7 of the ECSPR imposes complaints handling requirements on CSPs. These relate to complaint handling procedures, the format for filing complaints and CSPs' investigations of and responses to complaints. Article 7(5) requires ESMA to develop a draft RTS to specify the requirements, standard formats and procedures for complaints handling.
2. ESMA's objective in drafting the RTS is to promote investor protection and a shared culture of complaints handling by CSPs by ensuring that clients are enabled to express in a uniform way across the Union their dissatisfaction with crowdfunding services provided by CSPs.

##### *Benefits*

3. Having harmonised complaint handling requirements regarding CSPs' complaint handling procedures, the format for filing complaints and CSPs' investigations of and responses to complaints will provide clients of CSPs across the Union with common and understandable information on the complaint handling process and a uniform way for clients to submit complaints to CSPs will help ensure that complaints are treated in a fair, independent and harmonised way by CSPs.
4. Moreover, setting out common rules for complaints handling may lead to increased efficiency, effectiveness and independence of the complaints handling process.
5. Overall, having standardised complaints handling requirements as set out in the draft RTS will enhance investor protection and promote a shared culture of complaints handling by CSPs across the Union.

##### *Costs*

6. The main costs that CSPs are likely to incur stem from (i) the initial one-off costs related to the development of complaint handling procedures and (ii) the ongoing costs of ensuring compliance with the various requirements related to the receipt, investigation and response to complaints from clients. However, ESMA expects that the bulk of these costs will derive directly from the Level 1 requirements contained in Article 7 of the ECSPR with more limited additional costs stemming from the implementation of the draft RTS.

##### *Conclusions*

7. Considering what has been illustrated above, ESMA believes that the overall costs associated with the implementation of the complaint handling requirements set out in the draft RTS are fully justified by the objectives described above.

## **2) Regulatory technical standard according to Article 8(7) of the ECSPR**

### *The impact of the draft Article 8(7) RTS*

8. Article 8 of the ECSPR sets out requirements for CSPs in the field of the conflicts of interest. ESMA's mandate according to Article 8(7) of the ECSPR does not cover all requirements set out in Article 8.
9. When drafting the draft RTS pursuant to Article 8(7), ESMA has focused its attention on offering a regime that balances the need to ensure that the operations of CSP are not impaired by conflicts of interest while ensuring that the burden for CSP is proportionate to the investor protection benefit.

### *Benefits*

10. Having further specified the requirements applicable to the maintenance and operation of internal rules to prevent conflicts of interest will ensure a harmonised approach of CSPs across the Union and guarantee a high level of protection for investors.
11. The requirements set out in the draft RTS regarding the mitigation measures to be implemented and the disclosure of conflicts of interest will provide CSPs with additional clarity on the requirements set out in Article 8 of the ECSPR and will help them design their internal procedure and provide them with guidance as to how to manage their disclosure obligations.

### *Costs*

12. The main costs for CSPs will consist in the one-off cost of designing and implementing their internal rules to prevent conflicts of interest. Additional recurring costs will derive from the compliance with such internal rules and their periodic review. However, ESMA expects that the majority of these costs will derive directly from the Level 1 requirements contained in Article 8.

### *Conclusions*

13. ESMA is of the view that the overall costs associated with the implementation of the requirements set out in the draft RTS are fully proportionate and justified by the objectives described above.

## **3) Regulatory technical standard according to Article 12(16) of the ECSPR**

### *The impact of the draft Article 12(16) RTS*

14. Article 12(2)(j) of the ECSPR requires that the application for authorisation to provide crowdfunding services shall contain a description of the prospective CSP's business continuity plan. ESMA's mandate in point (b) of the first subparagraph of Article 12(16) requires ESMA to develop draft RTS to specify further the measures and procedures for the business continuity plan referred to point (j) of Article 12(2).

15. When drafting this draft RTS, ESMA has focused on:

- (i) providing a sufficient level of harmonised protection for investors by ensuring that critical services related to investments and the sound administration of agreements continue to be provided in the event of failure of the CSP or a third party to which critical services have been outsourced or a significant business interruption or incident;
- (ii) ensuring that CSPs are sufficiently prepared and able to mitigate the detrimental consequences if the events described above arise; and
- (iii) promoting a common approach by CSPs across the Union with regard to the content of their business continuity plans.

16. Further, in drafting the draft RTS, ESMA has aimed at ensuring that the business continuity plans elaborated by prospective CSPs are adapted to their business models and in particular the nature, scale and complexity of the crowdfunding services they intend to provide.

#### *Benefits*

17. Further specifying the measures and procedures for the business continuity plan referred to in Article 12(2)(j) will provide harmonised standards for the business continuity plans of prospective CSPs across the Union. In particular, the common requirements set out in the draft RTS aim to ensure (i) the continuity of critical services related to existing investments, (ii) the sound administration of agreements between CSPs and their clients and the sound administration of critical business data, and (iii) the mitigation of detrimental consequences of a significant business interruption or incident.

18. Having standardised requirements will also contribute to protect investors who will benefit from the safeguards contained in the business continuity plan in case the CSP faces an adverse event. Moreover, the common rules may also promote investor confidence.

#### *Costs*

19. The main costs that CSPs are likely to incur derive from (i) the initial one-off costs related to the elaboration of the business continuity plan in accordance with the requirements set out in the draft RTS and (ii) ongoing costs stemming from the implementation of certain requirements in the draft RTS.

20. ESMA expects that the majority of these costs will derive directly from the Level 1 requirements contained in Article 12(2)(j) and considers that the costs stemming directly from the draft RTS should not be very significant.

#### *Conclusions*

21. Considering what has been illustrated above, ESMA believes that the overall costs associated with the implementation of the business continuity plan requirements set out in the draft RTS are fully justified by the objectives described above.

#### **4) Regulatory technical standard according to Article 12(16) of the ECSPR**

##### *The impact of the draft Article 12(16) RTS*

22. The information that prospective CSPs have to provide to CAs for the purpose of the authorisation to provide crowdfunding services are established under the Article 12(2) of the ECSPR. In accordance with the mandate given to ESMA by Article 12(16) of the ECSPR, the draft RTS further specifies the requirements required by the same Article for the application as CSP. In line with the mandate, the draft RTS also specifies the arrangements, the template and the procedures for the application for authorisation.
23. In light of the above, the analysis of the impacts of the draft RTS on authorisation should focus on the benefits and costs stemming from the specific provisions of the RTS which are not included in the Level 1.

##### *Benefits*

24. One of the objectives of the ECSPR is to create a smooth and functioning cross-border crowdfunding service market. This requires a sufficient scale and public confidence in those services (Recital 30 of the ECSPR). The Regulation lays down uniform, proportionate and directly applicable requirements for the authorisation of CSPs which should therefore facilitate cross-border provision of those services, reduce operational risks, and ensure a high degree of transparency and investor protection.
25. Taking into account the ECSPR's objectives, the draft RTS 4 intends to harmonise the process for the authorisation of CSPs by providing common rules for the communications between prospective CSPs and CAs and by establishing a common standard form for the submission of the applications to CAs in which the information to be provided are detailed mirroring the list established under Article 12(2) of the ECSPR.
26. ESMA believes that the provisions of the draft RTS 4 will provide certainty, clarity and predictability to firms with regard to the authorisation process and to supervisory decision on the authorisation process.
27. The standardised list of information which is provided in the Annex to the draft RTS will also benefit CAs by facilitating a guidance in the authorisation process and will likely reduce inquiries by applicants and simplify internal processes.
28. Enhanced and harmonised requirements for the good reputation assessment of major shareholders and persons in charge of the management of the CSP will benefit the clients of the CSP and, ultimately serve investor protection and market integrity.
29. As empowered by Article 12(6) of the ECSPR, ESMA has specified the standard forms, templates and procedures for the notification or provision of information to the CAs by entities applying for an authorisation as CSP. ESMA believes that common standard forms, templates and procedures further contribute to the common understanding and enforcement among Member States' CAs of the authorisation process. For CAs, it is likely that a clearer legal framework with specified templates and procedures will clarify the authorisation process, reducing the volume of enquiries by applicants and simplifying internal processes. For applicants, the standardisation of forms and procedures will provide

additional clarity and predictability in the authorisation process and contribute to ensuring a level playing field amongst applicants, whatever the CA they are applying to for authorisation.

#### *Costs*

30. CAs of those Member States where a national legislation on crowdfunding is already in place will have to amend their internal application process to reflect the standardised list of information. While this may lead to staff training costs to process the additional or different information that will be provided, no significant additional costs linked to the draft RTS are expected in this case.
31. CAs of those Member States where a national legislation on crowdfunding does not exist will have to set up an internal application process, identify an adequate number of staff to deal with applications for CSPs and organise the relevant staff training. However, ESMA expects that the bulk of these costs will derive directly from the Level 1 requirements contained in the ECSPR with more limited additional costs stemming from the implementation of the draft RTS
32. Similarly, prospective CSPs will have to prepare their applications in order to comply with the requirements set out in the ECSPR (Article 12(8) of ECSPR) while specific additional costs linked to the compliance with the templates for the application provided in the Annex to the draft RTS 4 are relatively limited.

#### *Conclusions*

33. In light of what has been illustrated above, ESMA believes that the overall (compliance) costs associated with the implementation of the draft RTS on the authorisation as a CSP are reasonable and fully justified by the provisions of the ECSPR and its objectives and will be largely compensated by the benefits for prospective CSPs that will have access to a EU-wide harmonised regime and procedures.

### **5) Regulatory technical standard according to Article 20(3) of the ECSPR**

#### *The impact of the draft Article 20(3) RTS*

34. The main purpose of the requirements on the disclosure of default rates set out in Article 20 of the ECSPR concerns the need to reduce the information asymmetries between investors and CSPs and to allow investors to purchase the investment options that are consistent with their needs and objectives.
35. This disclosure aims therefore at facilitating investors' understanding of the risks involved when they act as lenders<sup>1</sup> (both directly and indirectly through investing in a portfolio of loans) on a crowdfunding platform. In particular, these requirements deal with the possible

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<sup>1</sup> For the risk drivers in the lending-based crowdfunding business, see: EBA, *Opinion of the European Banking Authority on lending-based crowdfunding* (EBA/Op/2015/03), page 12 *et seq.* Available [here](#).

behaviour of investors that may decide to invest in loans offered by a crowdfunding platform on the basis of the returns offered by those loans without giving due consideration to the associated risks and to the level of defaults of the loans offered on that platform.

36. In order to strengthen the benefits of such disclosure for investors, the ECSPR opts for its harmonisation across the Union and mandates ESMA, in close cooperation with the EBA, to specify the calculation of the default rates that CSPs have to disclose in accordance with Article 20 of the ECSPR.
37. In accordance with the mandate given to ESMA by Article 20(3) of the ECSPR, the draft RTS further specifies the requirements for the calculation of the default rates by CSPs that facilitate the granting of loans through crowdfunding platforms.
38. In light of the above, the analysis of the impacts of the draft RTS 5 should focus on the benefits and costs stemming from the specific provisions of the RTS which are not included in the level 1.

#### *Benefits*

39. The disclosure of default rates will reduce information asymmetries and the associated risk of investors not understanding the nature and type of risk involved in the investment they make.
40. The harmonised methodologies proposed in the draft RTS 5 for the calculation of the default rates that CSPs will have to disclose will standardise the preparatory internal governance arrangements for CSPs and the meaning of the information disclosed by CSPs across the Union. This will further allow investors to compare crowdfunding platforms and to develop a cross-border loan-based crowdfunding market in line with the purpose of the Capital Markets Union project. The harmonisation of the rules for the credit risk assessment and for the calculation of the default rates will also simplify the relationships between project owners and CSPs and reduce the misalignment of incentives between CSPs, project owners and investors.
41. Enabling investors to make informed investment decisions will reduce potential consumer detriment (allowing them to be better remunerated for the risks they take). This should improve the trust in the crowdfunding environment and drive a more effective development of the market.



## Costs

42. The main costs for CSPs stem from the compliance with the disclosure requirements established under Article 20 of ECSPR (and, more in general, with the risk-management framework in accordance with Article 19 of ECSPR which is not part of this Consultation Paper<sup>2</sup>).
43. Costs for CSPs will be mainly represented by the setting up of arrangements that will allow the compliance with the methodology for the calculation of the default rates as specified in the draft RTS. Staff training might also need to be put in place.

## Conclusions

44. ESMA believes that the overall costs associated with the implementation of the draft RTS on the methodology for the calculation of default rates are fully justified by the provisions of the ECSPR and its objectives and will be largely compensated by the benefits of the harmonisation of such calculation. The methodology specified in the draft RTS will equip CSPs across the EU with a common toolbox for calculating the default rates of the loans offered on their platforms. In this way the draft RTS is expected to create a level playing field, contribute to the convergence of CSPs' practices and enhance comparability of default rates by investors allowing them to make more rational investment decisions. Overall, the draft RTS is expected to promote the effective development of a pan-EU crowdfunding market.

## 6) Regulatory technical standard according to Article 21(8) of the ECSPR

### *The impact of the draft Article 21(8) RTS*

45. Article 21 of the ECSPR provides that CSPs shall, before giving prospective non-sophisticated investors full access to invest on their crowdfunding platform, assess whether and which crowdfunding services offered are appropriate for the prospective non-sophisticated investors. CSPs are also expected to require prospective non-sophisticated investors to simulate their ability to bear loss, calculated as 10 % of their net worth (Article 21(5) of the ECSPR).
46. Article 21(8) requires ESMA to develop draft RTSs to specify the arrangements necessary to (a) carry out the assessment referred to in Article 21(1), (b) carry out the simulation referred to in Article 21(5) and (c) provide the information referred to in Article 21(2) and (4).
47. While drafting this RTS, ESMA focused on achieving a high level of protection for non-sophisticated investors by trying to ensure that when accessing CSPs' services, they are

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<sup>2</sup> Article 19(7)(d) of the ECSPR mandates EBA, in close cooperation with ESMA, to develop draft RTS to specify the minimum contents and governance of the policies and procedures required under Article 19 and of the risk-management framework referred to in point (f) of Article 4(4) of the ECSPR. This draft RTS will be part of a CP that will be published by EBA.



aware of and understand the risks associated with investments in crowdfunding projects, receive appropriate risk warnings and avoid overexposure.

48. To this end, ESMA has aimed to develop a solid and clear harmonised framework which will ensure that the requirements found in Article 21 are applied in a meaningful way by CSPs, thus making the protections of investors provided in the Level 1 text more concrete.

### *Benefits*

#### Entry knowledge test

49. The draft RTS introduces common requirements for the entry knowledge test and specifies the way in which CSPs should carry it out. Such standardised measures will bring harmonisation of the entry knowledge test across the Union and will improve investor protection by ensuring that non-sophisticated investors can only fully access crowdfunding platforms to invest in crowdfunding projects when it is deemed by CSPs that, on the basis of relevant and reliable information provided by non-sophisticated investors, the crowdfunding services are in fact appropriate for them in consideration of the information listed in points (a) and (b) of Article 21(2) of the ECSPR provided by non-sophisticated investors.

#### Simulation of non-sophisticated investor's ability to bear loss – Online calculation tool

50. Providing harmonised requirements for the online calculation tool will be beneficial to non-sophisticated investors as this will ensure that the tool is accessible and easy to use for non-sophisticated investors who will simply need to input the information set out in points (a) to (c) of Article 21(5) of the ECSPR. A high level of investor protection is further ensured through requiring that the results of the simulation be displayed in a manner which is clear and readable for non-sophisticated investors.

#### Risk warning issued pursuant to Article 21(4) of the ECSPR

51. Having a common risk warning (set out in Annex I of the draft RTS) and related requirements will lead to increased investor protection since the risks will be explained and displayed to non-sophisticated investor in a clear and easily understandable manner. Moreover, a harmonised risk warning will avoid divergent approaches being taken by CSPs across Member States.

#### Calculation of the net worth for non-sophisticated investors

52. A clear and standardised calculation of the net worth of a non-sophisticated investor and harmonised requirements related the type of assets, liabilities and revenues that should be taken into consideration for the calculation of the ability to bear loss will lead to a common and high level of protection of investors.

## *Costs*

### *For CSPs*

53. CSPs will incur both one-off and ongoing costs in relation to the set up and maintenance of the entry knowledge test and the related requests for information from non-sophisticated investors. Moreover, CSPs will bear some one-off costs related to setting up the simulation of the non-sophisticated investor's ability to bear loss (i.e. the online calculation tool), the issuance of the risk warnings and the calculation of the net worth of non-sophisticated investors.
54. The bulk of these costs derive from the Level 1 requirements rather than the RTS and are therefore deemed necessary and unavoidable.

### *Conclusions*

55. Considering what has been illustrated above, ESMA believes that the overall costs associated with the implementation of the draft RTS are proportionate to the benefits and fully justified by the objectives described above.

## **7) Regulatory technical standard according to Article 23(16) of the ECSPR**

### *The impact of the draft Article 23(16) RTS*

56. Pursuant to Article 23 of the ECSPR, CSPs shall provide prospective investors with a Key Investment Information Sheet (KIIS). The Key Investment Information Sheet shall set forth the information needed to make an informed investment decision. Article 23 and Annex 1 of the ECSPR further elaborate on what information shall be included in the Key Investment Information Sheet.
57. Article 23(16) of the ECSPR mandates ESMA to further elaborate by way of a RTS the requirements and model for presenting the information that shall be set forth in the KIIS, including the presentation of certain risks, financial ratios and costs and charges information.
58. The draft RTS contains a general, explanatory part and a KIIS model further demonstrating what information shall be disclosed and the way it should be presented.

### *Benefits*

59. The KIIS will help investors to make an informed investment decision. It will also standardise the content and the presentation of information relating to the project owner, the crowdfunding project and the terms and conditions of the offer, thereby allowing for comparability.
60. The KIIS strives to disclose all material information while attempting to strike the right balance between investor information and protection needs and the entrepreneurial and venture capital nature of crowdfunding.

## Costs

For prospective crowdfunding providers

61. Pursuant to Article 23(2) of the ECSPR, the KIIS shall be drafted by the project owner. The costs associated with the KIIS are therefore primarily born by project owners who may, however, and for all practical purposes will work together on the KIIS with CSPs. The relevant information will have to be gathered and presented as required by the RTS, including the KIIS template.
62. This will result in costs for the project owner. The information, however, should be readily available. Moreover, completing the KIIS model following its instructions should be feasible for any project owner and CSP without help of external experts such as lawyers or accountants. The KIIS and its requirements should therefore not unduly burden project owners and in any event not outweigh the benefits to investors.

## Conclusions

63. The KIIS itself and the respective model set forth in RTS 7 are therefore proportionate.

## **8) Implementing technical standard according to Article 16(3) of the ECSPR**

### *The impact of the draft Article 16(3) ITS*

64. Article 16 of the ECSPR establishes the obligation of CSPs to annually report on the funded projects to their CA. This information shall be transmitted, after anonymisation of project owners(s) identity, to ESMA to allow for the publication of annual statistics on the crowdfunding market. As mandated in 16(3), ESMA shall develop draft technical standards to establish data standards and formats, templates and procedures for the information to be reported.
65. Therefore, ESMA's objectives in drafting the ITS are to ensure that (i) the national CAs have regular information to monitor its own markets, (ii) that the information is consistent within the EU to both provide the foreseen statistics described in the article and allow national CAs to benchmark the national activity and (iii) by virtue of using common data standards and information available to the CSPs the costs of reporting are maintain relatively low and the data quality is high.

## Benefits

66. The main benefits linked to the draft ITS are:

- i) harmonised annual reports on all crowdfunding projects intermediated by CSPs, allowing CAs to monitor individual activities as well as monitor the market as a whole;
- ii) overall information on investors funding the projects, including its sophistication and residency and how this interlinks with the invested amounts;

- iii) the previous is combined with information on the associated risks including the type of financial instrument and the sector of the project; and
- iv) the information to be reported to ESMA allows to monitor the market efficiency and contribution to establishing the CMU by the CSPs through the publication of annual statistics, including cross-border activity by project owners meanwhile their identity is protected.

### *Costs*

#### *For prospective CSPs*

67. It can be expected that CSPs will incur costs when putting in place the necessary arrangements to report annually the requested information under Article 16. To reduce them, the drafted template is based on the information that should be already available to the CSPs through their foreseen obligations in the ECSPR, the draft technical standard on the KIIS as well as the ordinary client and project management. In addition, the technical reporting solution based on tabular formats reduces the one-off costs for CSPs for setting the reporting regime.

#### *For CAs*

- One-off costs: Costs to set the harmonised templates including the inclusion of format and consistency validation costs and the translation to national official languages. Given the relative simplicity of the reporting regime, the costs are not expected to be significant.
- On-going costs: Intake of the information provided annually, data quality analysis and data storage. At this stage, additional costs are not expected to be significant.
- Data transmission to ESMA: The templates have been designed to be as similar, taking aside anonymization, to reduce one-off and on-going costs by NCAs.

68. ESMA will also incur some additional costs, both of a one-off and ongoing nature, including storing the data reported by NCAs, the validation of the received data regarding data quality and the preparation of the annual statistics.

### *Conclusions*

69. Considering what has been illustrated above, ESMA believes that the overall costs associated with the implementation of this reporting regime, including the transmission of data from NCAs to ESMA, are fully justified by the objectives described above.

## **9) Implementing technical standard according to Article 28(5) of the ECSPR**

### *The impact of the draft Article 28(5) ITS*

70. Article 28(2) requires CAs to notify ESMA of national provisions on marketing requirements and to provide summaries thereof. Article 28(3) requires CAs to notify any change made in the information notified under Article 28(2). As mandated in Article 28(5), ESMA shall develop draft implementing technical standards to determine standard forms, templates and procedures for the notifications under Article 28.
71. The notifications set out in paragraphs 2 and 3 of Article 28 will facilitate ESMA in carrying out its duty under Article 28(6) which is to publish and maintain on its website the summary referred to in paragraph 2 and the hyperlinks to the websites of CAs referred to in paragraph 1 containing the notified national provisions on marketing requirements.
72. As the ECSPR is a new regime, procedures and templates for notifications referred to in Article 28(2) and (3) do not currently exist.
73. ESMA's objectives in drafting the draft Article 28(5) ITS are to ensure that the procedures and templates for the Article 28(2) and (3) notifications provide certainty, clarity, predictability and uniformity as to the form and content of the notifications. In particular, this will enable ESMA to carry out its duties and responsibilities under Article 28.

### *Benefits*

74. Standardised templates for the notifications under Article 28(2) and (3) will help ESMA in processing the notifications received and will ensure that ESMA obtains the information necessary from CAs to fulfil its tasks under Article 28.
75. Moreover, having common templates will benefit CAs as the form and content of the notifications are determined from the outset. This will reduce the need for enquiries by CAs and simplify internal processes.
76. Finally, having two templates will ensure a clear distinction between the notifications under Article 28(2) and Article 28(3) and will help ESMA in processing the notifications and information provided.

### *Costs*

#### *For CAs:*

77. One-off costs for CAs include implementation costs and some staff costs to respond to the harmonised templates requirements.
78. CAs will incur on-going costs related to updating the information provided and data storage costs. At this stage, additional costs are not expected to be significant.

#### *For ESMA:*

79. ESMA will also incur costs, both of one-off and ongoing nature, to implement draft Article 28(5) ITS. Those costs will cover, for instance, (i) putting in place a necessary contact point

for the reception of notifications and (ii) setting up an IT system to pool the information received.

80. However, ESMA considers that such costs directly ensue from the new responsibilities and powers given to ESMA by the ECSPR. The information required under the draft Article 28(5) ITS are, in ESMA's view, the minimum information requirements necessary for ESMA to be able to fulfil its new responsibilities and exercise its new powers under Article 28 of the ECSPR.

### *Conclusions*

81. In light of what has been illustrated above, ESMA believes that the overall (compliance) costs associated with the implementation of the draft Article 28(5) ITS are fully justified by the objectives described above and will be largely compensated by the benefits of having a harmonised regime for notifications of national provisions on marketing requirements.
82. ESMA is also of the view that the costs that it will incur due to the implementation of the draft Article 28 ITS are necessary and ensue directly from its new responsibilities and powers under Article 28 the ECSPR and are, thus, unavoidable.

**Q19: Do you agree with the cost benefit analysis as it has been described in Annex II?**

## **Annex III                      Draft RTS pursuant to Article 7(5) of the ECSPR**

### **COMMISSION DELEGATED REGULATION (EU) .../...**

**of XXX**

**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)

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<sup>1</sup>, and in particular the third subparagraph of Article 7(5) thereof,

Whereas:

- (1) Clients should be able to access a clear description of the complaints handling procedure of crowdfunding service providers on their website. This information should be easily accessible and understandable.
- (2) To ensure harmonised complaints handling procedures among crowdfunding service providers across the Union, clients should file their complaints using a harmonised template form.
- (3) Clients of crowdfunding service providers should be allowed to submit complaints in one of the official languages of the Member States where the crowdfunding service provider provides crowdfunding services. In cases where the client has agreed to communicate

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<sup>1</sup> OJ L 347, 20.10.2020, p.1.

with the crowdfunding service provider in another language, it should be allowed to file the complaint in this language provided that this language is either a language customary in the sphere of international finance or a language accepted by the Member State where the crowdfunding service provider is authorised.

- (4) To ensure a prompt and timely handling of complaints, crowdfunding service providers should, inter alia, be required to acknowledge receipt of any complaint and confirm whether the complaint is admissible within 10 working days of its receipt. Where a complaint is deemed inadmissible, the complainant should be provided with the reasons for this position. Upon acknowledgment of receipt of the complaint, the complainant should receive contact details of the person or department to whom queries linked to the complaint may be addressed, as well as an indicative timeframe within which a decision on the complaint may be expected.
- (5) A prompt, timely and fair investigation of complaints would also require that, upon receipt of a complaint, crowdfunding service providers assess without undue delay whether it is clear, complete and includes all relevant evidence and information to handle it. Where appropriate, additional information should be promptly requested. To the same end, crowdfunding services providers should seek to gather and investigate all relevant evidence and information regarding the complaint. Complainants should be kept duly informed about the process and their requests for information should be promptly replied to.
- (6) To ensure a fair handling of complaints, it is necessary that decisions on complaints address all points raised by the complainant. Moreover, complaints presenting similar circumstances should give rise to decisions that are consistent with each other, unless the crowdfunding service provider is able to provide justification for any possible deviation.
- (7) The prompt handling of complaints requires that decisions on complaints are communicated to the complainant as soon as possible and within the timeframe defined in the complaints handling procedure put in place by crowdfunding service providers. In the exceptional circumstances where the crowdfunding service provider foresees that meeting such timeframe may not be possible, the causes of the delay should be communicated to the complainant together with the deadline by which the final reply will be received.
- (8) Where final decisions do not fully satisfy the complainant's request, it is appropriate that the decision includes a thorough explanation of the crowdfunding services provider's position on the complaint and that the complainant receives information about the remaining options.
- (9) When handling complaints, 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 Council<sup>2</sup>,

HAS ADOPTED THIS REGULATION:

### *Article 1*

#### *Complaint handling procedures*

1. Crowdfunding service providers shall have in place complaint handling procedures which provide clear and accurate information about the complaint handling process.
2. The procedures referred to in paragraph 1 shall be set out in a written document containing at least 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 complaints shall be filed, including:
    - (i) information that complaints must be filed using the standard template set out in the Annex;
    - (ii) the type of information and evidence to be provided by the complainant;
    - (iii) the identity and contact details of the person or department to whom complaints shall be addressed;
    - (iv) the electronic platform or system or postal address to which complaints shall be submitted;
    - (v) the language in which a complaint may be filed pursuant to Article 2(2) of this Regulation.
  - (d) the process that will be followed when handling complaints, as specified in Articles 4, 5 and 6 of this Regulation;

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<sup>2</sup> 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).

- (e) the language of the procedure in accordance with Article 2(2) and Article 6(2) of this Regulation;
  - (f) the timeframe within which a decision on the complaint will be notified to the complainant.
3. Crowdfunding service providers shall amend the procedures referred to in paragraph 1 when relevant.
  4. Crowdfunding service providers shall publish a clear, accurate and up-to-date description of their complaint handling procedures as well as the standard template set out in the Annex in an easily accessible manner on their website.
  5. The description of the complaint handling procedures and the standard template set out in the Annex to this Regulation shall be published in the relevant official language(s) of the Member State(s) where the crowdfunding service providers offer crowdfunding services.

## *Article 2*

### *Standard format for complaints*

1. Crowdfunding service providers shall allow clients to submit complaints by electronic means, using the standard template set out in the Annex to this Regulation.
2. Complainants shall be allowed to file their complaints by filling the standard template in the Annex in one of the official languages of the Member State where the crowdfunding service provider provides crowdfunding services. In cases where a client has agreed in writing to receive communications with the crowdfunding service provider in another language, such client may submit its complaint in that language provided that such language is either a language customary in the sphere of international finance or a language accepted by the Member State where the crowdfunding service provider is authorised.

## *Article 3*

### *Acknowledgment of receipt and verification of admissibility*

1. Crowdfunding service providers shall acknowledge receipt of any complaint and confirm whether the complaint is admissible within 10 working days of its receipt. In case a complaint is considered as inadmissible, crowdfunding service providers shall provide the complainant with a clear explanation of the reasons for such decision.
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 or department to whom or to which complainants may address any query related to their complaint;
  - (b) a reference to the timeframe referred to in point (f) of Article 1(2) of this Regulation.

## *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 includes all relevant evidence and information.
2. Crowdfunding service providers shall seek to gather and investigate all relevant evidence and information regarding a complaint. Where a crowdfunding service provider concludes that a complaint is unclear or incomplete, it shall promptly request any additional information necessary for the proper handling of the complaint.
3. Crowdfunding service providers shall keep the complainant duly informed about the further handling of the complaint and reply to reasonable information request made in this regards by the complainant without any undue delay.

## *Article 5*

### *Response to complaints*

1. A decision on a client's complaint shall address all points raised in the complaint and state the reasons for the crowdfunding service provider's position. The final decision shall be consistent with any previous decision taken by the crowdfunding service provider in respect of a similar complaint, unless the crowdfunding service provider is able to justify why a different approach is followed.
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 point (f) of Article 1(2) of this Regulation.
3. Where, in exceptional situations, the decision on a complaint cannot be provided within the timeframe referred to in point (f) of Article 1(2) of this Regulation, crowdfunding service providers shall clearly inform the complainant about the causes of the delay and specify the deadline by which the complainant is expected to receive the decision.
4. In case the final decision does not, or only partially, uphold the complaint, it shall include a thorough explanation of the crowdfunding services provider's position on the complaint and shall inform the complainant about, inter alia, the possibility to file a complaint to, inter alia, a competent authority in accordance with Article 38 of Regulation (EU) 2020/1503 or to take civil actions. In such case, the decision shall also specify how further information about such mechanism or authority and the conditions for using it can be accessed.

## *Article 6*

### *Communication with complainants*

1. When handling complaints, crowdfunding service providers shall communicate with complainants in a clear, plain language that is easy to understand.
2. Any communication made by the crowdfunding service provider under Articles 4 to 6 that is addressed to a complainant shall be made in the language in which the complainant filed its complaint according to Article 2(2). It shall be made in writing by electronic means or, upon the complainant's request, in paper form.

## *Article 7*

### *Entry into force and application*

This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

It shall apply from [...].

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

*For the Commission*  
*The President*

## ANNEX

### *Standard format for the submission of complaints*

#### **SUBMISSION OF A COMPLAINT** (to be sent by the client to the crowdfunding service provider)

##### **1.a Personal data of the complainant:**

LAST NAME/ LEGAL ENTITY NAME	FIRST NAME	REGISTRATION NUMBER AND LEI (IF AVAILABLE)

ADDRESS: STREET, NUMBER, FLOOR (for firms registered office)	POSTCODE	CITY	COUNTRY

TELEPHONE	EMAIL

**1.b Contact details (if different from 1.a):**

LAST NAME/ LEGAL ENTITY NAME	FIRST NAME

ADDRESS: STREET, NUMBER, FLOOR (for firms registered office)	POSTCODE	CITY	COUNTRY

TELEPHONE	EMAIL

**2.a Personal data of the legal representative (if applicable) (a power of attorney or other official document including the appointment of the representative):**

LAST NAME	FIRST NAME/ LEGAL ENTITY NAME	REGISTRATION NUMBER AND LEI (IF AVAILABLE)

ADDRESS: STREET, NUMBER, FLOOR (for firms registered office)	POSTCODE	CITY	COUNTRY

TELEPHONE		EMAIL	

**2.b Contact details (if different from 2.a):**

LAST NAME/ LEGAL ENTITY NAME	FIRST NAME

ADDRESS: STREET, NUMBER, FLOOR (for firms registered office)	POSTCODE	CITY	COUNTRY

TELEPHONE	EMAIL



### **3. Information about the complaint**

**3.a Full reference of the investment and/or agreement to which the complaint relates (i.e. investment reference number, name of the project owner/company and/or crowdfunding project, other references of the relevant transactions...)**

**3.b Summary of what the complaint is about (please clearly specify the subject matter of the complaint)**

**Please provide documentation supporting the facts mentioned.**

**3.c Date of the facts that have generated the complaint**

**3.d Damage, loss or detriment caused (where relevant)**

**3.e Other comments or relevant information (where relevant)**

In (place) \_\_\_\_\_ on (date) \_\_\_\_\_

*SIGNATURE*

**COMPLAINANT / LEGAL  
REPRESENTATIVE**

Documentation provided (please check the appropriate box):

Power of attorney or other relevant document

.....

Copy of the contractual documents of the investments to which the complaint relates.....

Others documents supporting the complaint:

.....

.....

.....

.....



## **Annex IV                      Draft RTS pursuant to Article 8(7) of the ECSPR**

### **COMMISSION DELEGATED REGULATION (EU) .../...**

**of XXX**

### **supplementing Regulation (EU) 2020/1503 of the European Parliament and of the Council with regard to regulatory technical standards specifying conflicts of interest requirements for European crowdfunding service providers**

(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<sup>1</sup>, and in particular the fourth subparagraph of Article 8(7) thereof,

Whereas:

- (1) In order to promote a common approach to the application of Article 8 of Regulation (EU) 2020/1503, some of the requirements on conflicts of interests should be clarified.
- (2) This Regulation specifies the requirements set out in Article 8(3) of Regulation (EU) 2020/1503 for the maintenance or operation of effective internal rules to prevent conflicts of interest, the steps to prevent, identify, manage and disclose conflicts of interest referred to in Article 8(4) of Regulation (EU) 2020/1503, and the arrangements for the disclosure of conflicts of interests referred to in Article 8(5) and (6) of Regulation (EU) 2020/1503.
- (3) Conflicts of interest may arise out of or in relation to the provision of crowdfunding services by crowdfunding service providers. It is therefore necessary that crowdfunding service providers establish, implement and maintain effective internal rules set out in writing and aiming at preventing those conflicts. In order to ensure that these rules reach their assigned goal over time, internal rules for preventing conflict of interest should be

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<sup>1</sup> OJ L 347, 20.10.2020, p.1.

reviewed periodically, at least on an annual basis, and appropriate measures should be taken to address any deficiency.

- (4) Internal rules for preventing conflicts of interest should be appropriate to the nature, scale and complexity of the crowdfunding service provider's business. They should take into account, where relevant, any circumstance related to the crowdfunding service provider's belonging to a group.
- (5) In designing internal rules for preventing conflicts of interest, crowdfunding service providers should focus on the prevention, identification and management of conflicts of interest.
- (6) Steps that crowdfunding service providers are required to take in accordance with Article 8(4) of Regulation (EU) 2020/1503 should aim at ensuring with reasonable confidence that risks of damage to client interests will be prevented, and where this is not possible, appropriately mitigated.
- (7) Crowdfunding service providers are required to disclose to their clients the general nature and sources of conflicts of interest as well as the steps taken to mitigate them. The disclosure to clients shall be made on the crowdfunding service provider's website. The disclosure should also be made on a durable medium, unless no conflict of interest has been identified. Where relevant, the information disclosed should also be updated. The disclosure should be appropriate to the nature of the clients to whom/which it is addressed, in particular taking into account their qualification as sophisticated or non-sophisticated (prospective) investors. It should include a description of the conflicts of interests and the related risks for the clients, as well as of the steps taken to mitigate those risks. The description should be sufficiently detailed in order to ensure that clients are properly informed before taking their decision as regards the provision of the relevant crowdfunding service(s).
- (8) This Regulation is based on the draft regulatory technical standards submitted to the Commission by the European Securities and Markets Authority.
- (9) The European Securities and Markets Authority 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 opinion 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<sup>2</sup>.
- (10) This Delegated Regulation supplements the provisions of Article 8 of Regulation (EU) 2020/1503 of the European Parliament and of the Council on European crowdfunding service providers for business and amending Regulation (EU) 2017/1129 and Directive (EU) 2019/1937,

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<sup>2</sup> Regulation (EU) No 1095/2010 of the European Parliament and of the Council 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.).

HAS ADOPTED THIS REGULATION:

*Article 1*

*Maintenance and operation of internal rules to prevent conflicts of interest*

1. Crowdfunding service providers shall establish, implement and maintain effective internal rules on conflicts of interest set out in writing and appropriate to the size and organisation of the crowdfunding service provider and the nature, scale and complexity of its business.
2. Where the crowdfunding service provider is a member of a group, the internal rules shall also take into account any circumstances, of which the crowdfunding service provider is or should be aware, which may give rise to a conflict of interest arising as a result of the structure and business activities of other members of the group.
3. The internal rules on conflicts of interest established in accordance with paragraph 1 shall as a minimum require the crowdfunding service provider to:
  - (a) identify the situations foreseen in subparagraph 1 of Article 8(2) of Regulation (EU) 2020/1503;
  - (b) identify, with reference to the specific crowdfunding services carried out by or on behalf of the crowdfunding service provider, the other circumstances which constitute or may constitute a conflict of interest entailing a risk of damage to the interests of one or more clients mentioned in Article 8(4) of Regulation (EU) 2020/1503;
  - (c) specify procedures to be followed and measures to be adopted in order to comply, where relevant, with the requirements mentioned in subparagraph 2 of Article 8(2), of Regulation (EU) 2020/1503 and pursuant to point (b) above.

When establishing and assessing their conflicts of interest internal rules, crowdfunding service providers shall set out appropriate steps to prevent, manage and mitigate conflicts of interest and shall avoid over-relying on the disclosure requirements set out in Article 8(5) of Regulation (EU) 2020/1503 without taking appropriate steps to mitigate them.
4. The rules implemented to meet the requirements referred to in point (b) of paragraph 3 shall be designed to ensure that relevant persons engaged in different business activities involving a conflict of interest of the kind specified in point (b) of paragraph 3 carry on those activities at a level of independence appropriate to the size and activities of the crowdfunding service provider and, where applicable, of the group to which it belongs, and to the risk of damage to the interests of clients.
5. The rules implemented to meet the requirements referred to in point (c) of paragraph 3 shall, at least, include:
  - (a) effective procedures to prevent or control the exchange of information between relevant persons engaged in activities involving a risk of a conflict of interest where the exchange of that information may harm the interests of one or more clients;

- (b) separate supervision of relevant persons whose principal functions involve carrying out activities on behalf of, or providing services to, clients whose interests may conflict, or who otherwise represent different interests that may conflict, including those of the crowdfunding service provider;
  - (c) removal of any direct link between the remuneration of relevant persons principally engaged in one activity and the remuneration of, or revenues generated by, different relevant persons principally engaged in another activity, where a conflict of interest may arise in relation to those activities;
  - (d) measures to prevent or limit any person from exercising inappropriate influence over the way in which a relevant person carries out crowdfunding services, and
  - (e) measures to prevent or control the simultaneous or sequential involvement of a relevant person in separate crowdfunding services where such involvement may impair the proper management of conflicts of interest.
6. Crowdfunding service providers shall assess and periodically review the internal rules referred to in Article 8(3) of Regulation (EU) 2020/1503 and shall take all appropriate measures to address any deficiencies identified. Such review shall be performed at least on an annual basis.

## *Article 2*

### *Steps to prevent, identify and manage conflicts of interest*

1. Steps that crowdfunding service providers are required to take in accordance with Article 8(4) of Regulation (EU) 2020/1503 shall aim at ensuring with reasonable confidence that risks of damage to client interests will be prevented, and where this is not possible, appropriately mitigated.
2. For the purposes of identifying the types of conflict of interest that arise in the course of providing crowdfunding services and whose existence may damage the interests of a client, besides those mentioned in subparagraph 1 of Article 8(2) of Regulation (EU) 2020/1503, crowdfunding service providers shall take into account, by way of minimum criteria, whether the crowdfunding service provider, its shareholders, managers or employees or any natural or legal person directly or indirectly linked by control to the crowdfunding service provider or any of the preceding, is in any of the following situations, whether as a result of providing crowdfunding services or otherwise:
  - (a) the crowdfunding service provider, its shareholders, managers or employees is likely to make a financial gain, or avoid a financial loss, at the expense of the client;
  - (b) the crowdfunding service provider, its shareholders, managers or employees or that person has an interest in the outcome of a service provided to the client which is distinct from the client's interest in that outcome;

- (c) the crowdfunding service provider, its shareholders, managers or employees or that person has a financial or other incentive to favour the interest of another client or group of clients over the interests of the client.

### *Article 3*

#### *Disclosures regarding the general nature and source of conflicts of interest and mitigation steps*

1. The information referred to in Article 8(5) of Regulation (EU) 2020/1503 shall be published on the crowdfunding service provider's website on a place that is easily accessible and can be easily found by clients. In order to comply with Article 19(1) of Regulation (EU) 2020/1503, crowdfunding service providers shall ensure that the information published remains up to date.
2. The information referred to in Article 8(5) of Regulation (EU) 2020/1503 shall also be disclosed to clients on a durable medium, unless no conflict of interest has been identified in accordance with Article 8(4) of Regulation (EU) 2020/1503 and, where relevant, updated.
3. The disclosure referred to in paragraphs 1 and 2 shall be made in due time so as to enable clients to take an informed decision about the service in the context of which the conflict of interest arises.
4. The disclosure referred to in Article 8(5) of Regulation (EU) 2020/1503 shall include a specific and clear description of the conflicts of interest that arise in the provision of crowdfunding services, taking into account the nature of the clients to whom the disclosure is being made, in particular their qualification as sophisticated or non-sophisticated prospective investors.
5. The description shall explain the risks to the client that arise as a result of the conflicts of interest and the steps undertaken to mitigate these risks, in sufficient detail to enable that client to take an informed decision with respect to the crowdfunding service in the context of which the conflicts of interest arise.

### *Article 4*

#### *Entry into force and application*

This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

It shall apply from [...].

This Regulation shall be binding in its entirety and directly applicable in all Member States.





Done at Brussels,

*For the Commission*  
*The President*

## **Annex V                      Draft RTS pursuant to Article 12(16) of the ECSPR**

### **COMMISSION DELEGATED REGULATION (EU) .../...**

**of XXX**

### **supplementing Regulation (EU) 2020/1503 of the European Parliament and of the Council with regard to regulatory technical standards specifying the measures and procedures for a business continuity plan**

(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<sup>1</sup>, and in particular the fourth subparagraph of Article 12(16) thereof,

Whereas:

- (1) In order to ensure that the requirements in relation to the business continuity plan referred to in Article 12(2)(j) of Regulation (EU) No 2020/1503 are duly harmonised within the Union, it is important to further specify the content of such plan.
- (2) In order to properly address the risks associated with the failure of a crowdfunding service provider, it is relevant to require that the business continuity plan shall aim at ensuring that critical services, including those that are outsourced, continue to be performed despite the failure of the crowdfunding service provider, or the third party to which critical services are outsourced, or the occurrence of a significant business interruption or incident
- (3) In order to address other significant risks that have the potential to critically disrupt the continued performance of critical services of the crowdfunding service provider, the business continuity plan shall also cover the occurrence of a significant business interruption or incident.

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<sup>1</sup> OJ L 347, 20.10.2020, p.1.

- (4) To ensure that the business continuity plan is effective, it is relevant to require that it is adapted to the business model of the crowdfunding service provider and to provide for a minimal list of items that should be developed in the business continuity plan.
- (5) This Regulation is based on the draft regulatory technical standards submitted to the Commission by the European Securities and Markets Authority (ESMA).
- (6) 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 Council<sup>2</sup>,

HAS ADOPTED THIS REGULATION:

### *Article 1*

#### *Definition*

For the purpose of this Regulation, the following definitions shall apply:

- (a) ‘critical services’ means operational and business services whose defect or failure in their performance would materially impair the continuing compliance of a crowdfunding service provider with the conditions and obligations of its authorisation or its other obligations under Regulation (EU) 2020/1503, or its financial performance, or the soundness or the continuity of its crowdfunding services and activities, notably vis-à-vis its clients.
- (b) ‘failure’ means any insolvency or pre-insolvency proceeding applicable under relevant national law.

### *Article 2*

#### *Minimum content of the business continuity plan*

1. Crowdfunding service providers shall develop a detailed business continuity plan addressing the risks associated with their failure or a significant business interruption or incident.
2. The business continuity plan shall include, inter alia:
  - (a) measures and procedures aiming at ensuring the continuity of the provision of critical services related to existing investments;
  - (b) measures and procedures aiming at ensuring the sound administration of agreements between the crowdfunding service provider and its clients and the sound administration of critical business data;

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<sup>2</sup> 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).

- (c) procedures to be followed to mitigate the detrimental consequences of a significant business interruption or incident.

### *Article 3*

#### *Measures to ensure continuity of the provision of critical services*

1. The business continuity plan shall aim at ensuring that critical services, including those that are outsourced, continue to be performed despite the failure of the crowdfunding service provider, or the third party to which critical services are outsourced, or the occurrence of a significant business interruption or incident.
2. The relevant measures shall be adapted to the business model of the crowdfunding service provider and shall include arrangements aiming at ensuring the continuity of critical services through the transfer or, as relevant, outsourcing of some or all of such critical services to a third-party entity.
3. The business continuity plan shall include provisions for:
  - (a) client notification and clients' access to information relating to their investments;
  - (b) where applicable, the continued servicing of outstanding loans;
  - (c) where applicable, the continuation of payment services as referred to in Article 10 of Regulation (EU) 2020/1503, including the arrangement referred to in paragraph 5 of such Article;
  - (d) where applicable, the handover of asset safekeeping arrangements as referred to in Article 10 of Regulation (EU) 2020/1503.

### *Article 4*

#### *Sound administration of agreements*

1. The business continuity plan shall, taking into account the nature, scale and complexity of the crowdfunding service provider as well as its business model, detail steps aiming at the sound administration of agreements between the crowdfunding service provider and its clients. Such steps shall include:
  - (a) the storage in a safe place of agreements between the crowdfunding service provider and its clients, results from the entry knowledge test referred to in Article 21 of Regulation (EU) 2020/1503 and other critical business data available in paper and digital form;
  - (b) relevant back-up of information that is of critical importance for the sound administration of agreements.
2. Information and agreements enabling to trace payments made by investors and project owners shall be considered as critical business data for the purposes of the previous paragraph.

## *Article 5*

### *Procedures for the business continuity plan*

1. The procedures referred to in point (c) of Article 2(2) shall aim at ensuring that crowdfunding service providers continue to function efficiently and meet their regulatory duties in the event of a failure or a significant business interruption or incident.
2. The procedures for the business continuity plan shall be adapted to the business model of the crowdfunding service provider and shall at least include:
  - (a) compilation of a list of contact details of the persons or department in charge in case of failure of the crowdfunding service provider,
  - (b) description of potential significant business interruptions or incidents,
  - (c) provisions regarding access by staff of crowdfunding service providers to the workspace and company network,
  - (d) provisions regarding access to client information and, where relevant, client assets,
  - (e) identification of operational and financial risks and measures to reduce their occurrence,
  - (f) identification of critical business systems and contingency measures to ensure their continuity,
  - (g) identification of critical business relationships (including outsourced functions), and
  - (h) procedures aiming at ensuring the continuity of communication between the crowdfunding service provider, its clients, business partners, employees and competent authorities.

## *Article 6*

### *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.

It shall apply from [...].

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

*For the Commission*  
*The President*

## **Annex VI                      Draft RTS pursuant to Article 12(16) of the ECSPR**

### **COMMISSION DELEGATED REGULATION (EU) .../...**

**of XXX**

**supplementing Regulation (EU) No 2020/1503 of the European Parliament and of the Council with regard to regulatory technical standards specifying requirements and arrangements for the application for authorisation as a crowdfunding service provider**

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 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<sup>1</sup>, and in particular the fourth subparagraph of Article 12(16) thereof,

Whereas:

- (1) It is appropriate to set out common standard forms, templates and procedures to ensure a uniform mechanism by which Member States' competent authorities effectively exercise their powers in respect of the authorisation of crowdfunding service providers for the provision of crowdfunding services.
- (2) To facilitate communication between an applicant seeking authorisation as a crowdfunding service provider in accordance with Chapter III of Regulation (EU) 2020/1503 and the competent authority, competent authorities should designate a contact point specifically for the purpose of the application process and should publish the information on the contact point on their website.
- (3) In order to allow competent authorities to assess whether changes to the information provided in the application for authorisation may affect the procedure for granting an

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<sup>1</sup> OJ L 347, 20.10.2020, p.1.

authorisation as crowdfunding service provider it is appropriate to require applicants to communicate such changes without undue delay.

- (4) In accordance with Article 12(8) of Regulation (EU) 2020/1503, competent authorities should assess whether the prospective crowdfunding service provider complies with the requirements set out in Regulation (EU) 2020/1503 and in this Regulation for the purpose of a fully reasoned decision granting or refusing to grant authorisation as a crowdfunding service provider. That assessment should take into account the nature, scale and complexity of the crowdfunding services that the prospective crowdfunding service provider intends to provide. The competent authority may refuse authorisation if there are objective and demonstrable grounds for believing that the management body of the prospective crowdfunding service provider could pose a threat to its effective, sound and prudent management and business continuity, and to the adequate consideration of the interest of its clients and the integrity of the market.
- (5) Regulation (EU) 2016/679 of the European Parliament and of the Council<sup>2</sup> applies to the processing of personal data by the Member States in the application of this Regulation.
- (6) This Regulation is based on the draft regulatory technical standards submitted to the Commission by the European Securities and Markets Authority (ESMA).
- (7) 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 opinion of the Securities and Markets Stakeholder Group established in accordance with Article 37 of Regulation (EU) 1095/2010 of the European Parliament and of the Council<sup>3</sup>,

HAS ADOPTED THIS REGULATION:

## *Article 1*

### *Designation of a contact point*

Competent authorities shall designate a contact point for receiving the applications for authorisation as a crowdfunding service provider in accordance to Article 12 of Regulation (EU) No 2020/1503. The contact details of the designated contact point shall be made public and regularly updated on the competent authorities' websites.

## *Article 2*

### *Submission of the application for authorisation*

An applicant seeking authorisation as a crowdfunding service provider in accordance with Article 12 of Regulation (EU) 2020/1503 shall submit to the competent authority in the Member

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<sup>2</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), (OJ L 119, 4.5.2016, p. 1–88).

<sup>3</sup> 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).

State the applicant has its registered office and its head office including its key activities, its application by filling in the template set out in the Annex.

### *Article 3*

#### *Acknowledgement of receipt*

Within 10 working days from the receipt of the application and notwithstanding the delay specified in Article 12(4) of Regulation (EU) 2020/1503, the competent authority shall send electronically, on paper or both an acknowledgement of receipt to the applicant, which shall include the contact details of the person(s) who will handle the application for authorisation.

### *Article 4*

#### *Request for additional information*

Where the competent authority requires the applicant to provide missing information in accordance with Article 12(4) of Regulation (EU) 2020/1503, the deadline for the completeness assessment provided in the same provision shall be suspended from the date of request for information until the date of receipt of such information.

### *Article 5*

#### *Notification of changes*

1. The applicant shall notify the competent authority of any changes to the information provided in the application for authorisation without undue delay.
2. Where the applicant notifies the competent authority of any changes to the conditions for authorisation, the deadline for completion of the assessment of the application shall be suspended from the date of receipt of the notification of the change until the date of receipt of the relevant documentation by the competent authority.
3. If the changes notified according to paragraph 1 are material, the application shall be treated as a new application for the purpose of paragraph 8 of Article 12 of Regulation (EU) 2020/1503. The applicant shall provide the updated information in the format set out the Annex.

### *Article 6*

#### *Entry into force and application*

This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

It shall apply from [...].

This Regulation shall be binding in its entirety and directly applicable in all Member States.





Done at Brussels,

*For the Commission*  
*The President*

## ANNEX I

### APPLICATION FOR AUTHORISATION AS CROWDFUNDING SERVICE PROVIDER

#### Information to be provided to the competent authority

CONTENT OF THE APPLICATION				
<i>Prospective crowdfunding service providers shall set out the relevant information or make reference to the relevant annexes to the application containing the information on the following</i>				
Field		Sub-field		Description
1	Prospective crowdfunding provider	1	Full legal name	Full legal name of the applicant
		2	Trading name(s)	Trading name(s) to be used to provide the crowdfunding services
		3	Internet address	Internet address of the website operated by the applicant
		4	Physical address	Registered address of the applicant

Field		Sub-field		Description
		5	National ID/Registration number (where available)	National identifier of the prospective crowdfunding service provider or evidence of the registration with the national register of companies
		6	LEI (where available)	Legal entity identifier of the prospective crowdfunding service provider
2	Name and contact details of the person in charge of the application	1	Full name	Full first name(s) and surname(s) of the contact person
		2	Contact person function	Function and/or title of the contact person within the prospective crowdfunding service provider or proof that the external person (e.g. consultant, law firm) has the power to file the application
3	Legal form	n/a	Legal form of incorporation under national legislation	
4	Articles of association	n/a	Articles of association and, where available, deed of incorporation	

Field		Sub-field		Description
5	Programme of operations setting out the types of crowdfunding services that the applicant intends to provide and the crowdfunding platform that it intends to operate, including where and how crowdfunding offers are to be marketed	1	Information on the types of crowdfunding services	<p>The applicant shall indicate:</p> <p>(a) The crowdfunding services that the applicant intends to provide (cross as appropriate):</p> <p><input type="checkbox"/> Facilitation of granting of loans, which includes the provision of relevant information such as default rates of loans</p> <p><input type="checkbox"/> Placing without a firm commitment basis of transferable securities and admitted instruments for crowdfunding purposes and the reception and transmission of orders in relation to those transferable securities and admitted instruments</p> <p>(b) (Where the applicant intends to provide, or is authorised to provide, facilitation of granting of loans) Whether the applicant intends to provide individual portfolio management of loans including a description of the internal arrangements for</p>

Field		Sub-field		Description
				<p>the provision of such activity and a description of the contractual arrangements that the applicant will establish with project owners and with investors (with particular reference to the mandates that investors will give to the applicant)</p> <p>(c) Other services or activities that the prospective crowdfunding service provider intends to provide (cross as appropriate):</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Asset safekeeping</li> <li><input type="checkbox"/> Payment services</li> <li><input type="checkbox"/> Use of special purpose vehicles for the provision of crowdfunding services</li> <li><input type="checkbox"/> Application of credit scores to crowdfunding projects</li> <li><input type="checkbox"/> Suggestion of the price and / or the interest rate of crowdfunding offers</li> <li><input type="checkbox"/> Operating a bulletin board</li> </ul>

Field		Sub-field		Description
				<input type="checkbox"/> Establishing and operating contingency funds  (d) The types of offers that the prospective crowdfunding service provider plans to present (such as loan-based projects, equity-based projects, the type of sector or business activity, the instruments to be used)  (e) The selection procedure setting out the details of the methods adopted to select the offers to be presented on the crowdfunding platform, including the nature and the extent of the due diligence undertaken in respect of project owners  (f) The arrangements to make public the offers on the crowdfunding platform and how the interests of investors for a crowdfunding project will be communicated to the relevant project owner  (g) Any other services/activities currently (or intended to be) provided by the applicant not covered by Regulation (EU) No 2020/1503 that may be provided according to Union or national law including

Field		Sub-field		Description
				references to and a copy of the relevant authorisations (where applicable)
		2	Information on the crowdfunding platform	<p>Description of:</p> <ul style="list-style-type: none"> <li>(a) the arrangements to make the information to clients on the crowdfunding service provider that the applicant shall provide on the website of its crowdfunding platform in accordance Article 19 of Regulation (EU) 2020/1503, including relevant IT arrangements</li> <li>(b) the arrangements to make the crowdfunding platform an internet-based information system, publicly accessible and without discriminatory access</li> <li>(c) the procedures and arrangements for the prompt, fair and expeditious provision of the crowdfunding services, including the description of the procedures for the transmission of the orders collected from investors to the entities that receive and execute the orders or, where relevant, a description of how these procedures and</li> </ul>

Field		Sub-field		Description
				<p>arrangements allow for the execution of otherwise comparable client orders in accordance with the time of their reception by the crowdfunding service provider, and the description of the systems for processing the orders received from the investors</p> <p>(d) mechanisms that the crowdfunding service provider plans to implement to facilitate the information flows between the project owner and the investors, or between the investors, if applicable</p>
		3	Marketing strategy	<p>Description of the marketing strategy that the prospective crowdfunding service provider plans to use in the Union, including languages of the marketing communications; identification of the Member States where advertisements will be most visible in media and expected frequency</p>



Field		Sub-field		Description
6	Description of the governance arrangements and internal control mechanism to ensure compliance with Regulation (EU) 2020/1503, including risk-management and accounting procedures	1	Governance arrangements	<p>Description of:</p> <ul style="list-style-type: none"> <li>(a) The internal structure of the applicant (organisational chart, etc.) with indication of the distribution of the tasks and powers and the relevant reporting lines, the control arrangements implemented and any other useful information to illustrate the applicant's operational features, policies and procedures to ensure effective and prudent management</li> <li>(b) The staff-recruitment plan, if any, for the next three years and the relative state of implementation, or indication of the personnel in office to be used for carrying out the services</li> </ul>

Field		Sub-field		Description
		2	Internal control mechanisms	Description of the internal control mechanism (such as compliance function and risk management function, where established) put in place by the applicant, in order to monitor and to ensure compliance of its procedures to the Regulation (EU) No 2020/1503, including information on reporting to the management body

Field		Sub-field		Description
		3	Risk management	<p>A mapping of the risks identified by the applicant and a description of risk management policies and procedures to identify, manage and monitor risks related to applicant's activities, processes and systems, including:</p> <ul style="list-style-type: none"> <li>(a) description of the internal processes and methodologies referred to in Article 6 (2) of Regulation (EU) 2020/1503 (where applicable)</li> <li>(b) description of the policy of the contingency fund referred to in Article 6 (5)(b) of Regulation (EU) 2020/1503 (where applicable)</li> </ul>
		4	Accounting procedure	Description of the accounting procedure by which the applicant will record and report its financial information

Field		Sub-field		Description
7	Description of systems, resources and procedures for the control and safeguarding of the data processing system	n/a	Safeguarding of data processing system	<p>Description of:</p> <ul style="list-style-type: none"> <li>(a) The internal arrangements adopted to ensure the proper handling of the personal data and information received from investors, including the use of clouds</li> <li>(b) the policy for fraud prevention and privacy/data protection</li> <li>(c) the locations, methods and policies for documentation archiving, including the use of clouds</li> </ul>
8	Description of operational risks	1	Risks related to the IT infrastructure and procedures	<p>Description of the identified sources of operational risks and description of procedures, systems and controls adopted by the applicant to manage those operational risks (system reliability, security, integrity, privacy, etc.), including:</p> <ul style="list-style-type: none"> <li>(a) procedures to avoid operational interruptions</li> <li>(b) back-up devices in place</li> <li>(c) measures on safeguards against hackers' attacks</li> </ul>

Field		Sub-field		Description
		2	Risk related to the determination of the offer	Description of the technical tools and human resources dedicated to the offer determination, in particular the determination of the pricing in accordance with Article 4(4)(d) of the Regulation (EU) 2020/1503
		3	Risks related to the asset safekeeping services and to the payment services (where applicable)	Where the applicant intends to provide asset safekeeping services and payment services, description of the identified sources of operational risks and description of procedures, systems and controls adopted by the applicant to manage those risks related to those services, including when those services are provided by a third party
		4	Risks relating to outsourcing of operational functions	Where the applicant intends to rely on a third party for the performance of operational functions, description of the identified sources of operational risks and description of procedures, systems and controls adopted by the applicant to manage those operational risks

Field		Sub-field		Description
		5	Any other operational risk(s) (where applicable)	Description of any other identified source(s) of operational risks and description of procedures, systems and controls adopted by the applicant to manage those operational risks
9	Description of the applicant's prudential safeguards in accordance with Article 11 of Regulation (EU) 2020/1503	1	Prudential safeguards	The amount of the prudential safeguards that the applicant has in place at the time of the application for authorisation and the description of the assumptions used for its determination
		2	Own funds (where applicable)	The amount of the prudential safeguards covered by own funds referred to in Article 11(2)(a) of Regulation (EU) No 2020/1503
		3	Insurance policy (where applicable)	The amount of the applicant's prudential safeguards covered by an insurance policy as referred to in Article 11(2)(b) of Regulation (EU) 2020/1503

Field		Sub-field		Description
		4	Forecast calculations and plans	<p>(a) Forecast calculation of the applicant's prudential safeguards for the first three business years</p> <p>(b) Forecast accounting plans for the first three business years, including</p> <ul style="list-style-type: none"> <li>(i) forecast balance sheets</li> <li>(ii) forecast profit and loss accounts or income statements</li> </ul> <p>(c) Planning assumptions for the above forecast as well as explanations of the figures</p>
		5	Prudential safeguards planning	Description of the applicant's prudential safeguards planning and monitoring procedures
10	Proof that the applicant meets the prudential safeguards in accordance with Article 11 of Regulation (EU) 2020/1503	1	Own funds	<p>(a) Documentation of how the applicant has calculated the amount in a way that is compliant with Article 11 of Regulation (EU) No 2020/1503</p> <p>(b) For existing undertakings, an audited account statement or public register certifying the amount of own funds of the applicant</p>

Field		Sub-field		Description
				(c) For undertakings in the process of being incorporated, a bank statement issued by a bank certifying that the funds are deposited in the applicant's bank account
		2	Insurance policy	<p>(a) Copy of the subscribed insurance policy incorporating all the elements necessary to comply with Article 11(6) and (7) of Regulation (EU) 2020/1503, where available, or</p> <p>(b) Copy of the preliminary insurance agreement incorporating all the elements necessary to comply with Article 11(6) and (7) of Regulation (EU) No 2020/1503 signed by an undertaking authorised to provide insurance in accordance with Union law or national law</p>



Field		Sub-field		Description
11	Description of the business continuity plan	n/a	Business continuity plan	Description of the measures and procedures to ensure, in the event of failure of the prospective crowdfunding service provider, the continuity of the provision of critical services related to existing investments and sound administration of agreements between the prospective crowdfunding service provider and its clients, including, where applicable, provisions for the continued servicing of outstanding loans, client notification and handover of asset safekeeping arrangements
12	Proof of good repute of shareholders who/which directly or indirectly hold 20% or more of the share capital or voting rights	Sub-fields 1-10 shall be repeated and completed for each of the shareholders who directly or indirectly hold 20% or more of the share capital or voting rights		
		Where the shareholder holding 20% or more of the share capital or voting rights is not a natural person, sub-fields 8 and 9 shall be completed for the legal entity and repeated and completed for each member of the management body and other persons effectively directing the business		
		1	Ownership structure chart	Ownership structure chart of the applicant showing the position of shareholders who directly or indirectly hold 20% or more of the share capital or voting rights

Field		Sub-field		Description
		2	Name	(a) The full first name(s) and surname(s) in case of natural persons (b) The legal name and legal form, in case of legal persons
		3	Date and place of birth (where applicable)	Date and place of birth of shareholders who are natural persons
		4	Domicile or registered address	(a) The domicile, in case of natural persons (b) The registered address, in case of legal persons
		5	Additional information in case of legal persons	Where the shareholder holding 20% or more of the share capital or voting rights is a legal person a complete list of members of the management body and of persons who effectively direct its business, their name, date and place of birth, domicile, their national identification number where available
		6	Amount of the holding	Amount of the shares capital or voting rights held by the person in absolute value and in percentage terms. In case of indirect shareholder, the amount shall refer to the intermediate holder.

Field		Sub-field		Description
		7	Information in case of indirect holding	Name and contact details of the person through which the share capital or voting rights are held
		8	Proof of good repute	(a) Official certificate or other equivalent document in accordance with national law proving the absence of criminal records and/or administrative and/or civil sanctions and information on criminal investigations opened against them, in respect of infringements of national rules in the fields of commercial law, insolvency law, financial services law, anti-money laundering law, fraud law or professional liability obligations. In the event of the existence of civil and/or administrative sanctions a detailed description thereof shall be provided. For ongoing investigations or proceedings, the information may be provided through a declaration of honour

Field		Sub-field		Description
				<p>(b) Information on refusal of registration, authorisation, membership or licence to carry out trade, business or a profession; or the withdrawal, revocation or termination of such a registration, authorisation, membership or licence; or expulsion by a regulatory or government body or a professional body or association</p> <p>(c) Information on dismissal for employment, or a position of trust, fiduciary relationship, or similar situation, and description of the reasons for such dismissal</p>
		9	Pre-existing (and ongoing) assessment	Information on whether an assessment of the good reputation of the shareholder has already been (or is being) conducted by another competent authority or any other authority under other financial legislation, including the name of that authority and, where applicable, the date and outcome of its assessment

Field		Sub-field		Description
		10	Information on the group structure (where applicable)	<p>The information on whether the applicant is:</p> <ul style="list-style-type: none"> <li>(a) a subsidiary of a crowdfunding service provider authorised in another Member State</li> <li>(b) a subsidiary of the parent undertaking of a crowdfunding service provider that is authorised in another Member State</li> <li>(c) controlled by the same natural or legal persons who control a crowdfunding service provider authorised in another Member State</li> </ul>
13	Identity of the natural persons responsible for the management of the applicant and proof that the natural persons responsible for the management of the applicant are of good repute and possess sufficient knowledge, skills and experience to manage the prospective crowdfunding provider	<p>Sub-fields 1-11 shall be repeated and completed for each natural person who is member of the management or supervisory bodies of the applicant, and for each natural person who effectively directs the business</p> <p>Sub-fields 9-10 shall be repeated and completed for each natural person who is responsible of internal control functions (where appointed)</p>		
		1	Full name	Full first name(s) and surname(s) of the relevant natural person
		2	Date and place of birth	

Field		Sub-field		Description
		3	Domicile	
		4	Postal address	Postal address, if different from the address of domicile
		5	Telephone number	
		6	Email address	
		7	Position	Position within the management body or the organisation of the applicant at which the natural person is/will be appointed
		8	Proof of good repute	(a) Official certificate or other equivalent document in accordance with national law proving the absence of criminal records and/or administrative and/or civil sanctions and information on criminal investigations

Field		Sub-field		Description
				<p>opened against them, in respect of infringements of national rules in the fields of commercial law, insolvency law, financial services law, anti-money laundering law, fraud law or professional liability obligations. In the event of the existence of civil and/or administrative sanctions a detailed description thereof shall be provided. For ongoing investigations or proceedings, the information may be provided through a declaration of honour</p> <p>(b) Information on refusal of registration, authorisation, membership or licence to carry out trade, business or a profession; or the withdrawal, revocation or termination of such a registration, authorisation, membership or licence; or expulsion by a regulatory or government body or a professional body or association</p> <p>(c) Information on dismissal for employment, or a position of trust, fiduciary relationship,</p>

Field		Sub-field		Description
				<p>or similar situation, and description of the reasons for such dismissal</p> <p>(d) Any other information deemed relevant by the competent authority for the assessment of the good repute.</p>
		9	Curriculum Vitae	<p>Curriculum vitae stating</p> <p>(a) relevant education (including the name(s) and type(s) of educational institution(s), type and date of diploma(s)) and professional training (including the topic of the training, type(s) of educational institution(s) and date by which training was completed)</p> <p>(c) relevant professional experience (in and outside the financial sector), including the names of all organisations for which the person has worked, and nature and duration of the functions performed (start and end dates) and the reason of for departure (new function within the company/group, voluntary departure, forced departure or expiry of the mandate)</p>



Field		Sub-field		Description
				<p>(d) For positions held in the previous 10 years, when describing those activities, details shall be included on all powers held and the areas of operations under control</p> <p>The curriculum vitae may also include details (name, address, telephone number, email) of any reference person(s) who may be contacted by the competent authority (this field is not mandatory)</p>
		10	Time to be committed to the performance of the duties	<p>Information on the minimum time that will be devoted to the performance of the person's functions within the prospective crowdfunding service provider (annual and monthly indications), including information on:</p> <ul style="list-style-type: none"> <li>(a) the number of directorships in financial and non-financial companies held by that member at the same time;</li> <li>(b) the directorships in organisations which do not pursue predominantly commercial objectives held by that member at the same time;</li> <li>(c) other external professional activities, and any other functions and relevant activities, both within and outside the financial sector</li> </ul>

Field		Sub-field		Description
		11	Pre-existing (or ongoing) assessment of the reputation and experience	The information on whether an assessment of the good repute and of the knowledge and experience of the natural person has already been (or is being) conducted by another competent authority or any other authority under other financial legislation including the date of the assessment, the identity of that authority and, where applicable, the date and the outcome of this assessment
		12	Self-assessment of the collective knowledge, skills and experience	Details of the result of the assessment on the collective possession of sufficient knowledge, skills and experience to manage the prospective crowdfunding provider by the natural persons involved in the management of the prospective crowdfunding service provider, performed by the applicant itself
14	Description of the internal rules to prevent persons referred to in the first subparagraph of Article 8(2) from engaging, as project owners, in crowdfunding services offered by the prospective crowdfunding service provider	n/a	Internal procedures on conflicts of interest of project owners	Description of the internal rules that the applicant has set up to identify and manage conflicts of interest, including internal rules to prevent persons referred to Article 8(2) of Regulation (EU) No 2020/1503 from acting as project owners in relation to the crowdfunding services offered on the crowdfunding platform of the prospective crowdfunding service provider

Field		Sub-field		Description
15	Description of outsourcing arrangements	n/a	Information on outsourcing arrangements	<p>Description of:</p> <ul style="list-style-type: none"> <li>(a) the operational functions that the applicant plans to outsource, including cloud outsourcing</li> <li>(b) the third parties to whom the operational functions will be outsourced (where available), including the indication of their location and a summary of the outsourcing arrangements in case the third party is located in a third country (where available)</li> <li>(c) the internal arrangements and resources allocated to the control of the outsourced functions</li> <li>(d) the service level agreements in place with outsourced service providers.</li> </ul>
16	Description of procedures to handle complaints from clients	n/a	Information on complaint handling	<p>Description of the procedures to handle complaints from clients adopted by the prospective crowdfunding service provider, including the timeframe within which a decision on the complaint will be notified to potential complainants, as provided in article 1(2)(f) of Commission Delegated Regulation (EU) [o]/[o], according to Commission Delegated Regulation (EU) [o]/[o]</p>

Field		Sub-field		Description
17	Confirmation of whether the applicant intends to provide payment services itself or through a third party, under Directive (EU) 2015/2366, or through an arrangement in accordance with Article 10(5) of Regulation (EU) 2020/1503	n/a	Information on payment services	<p>1. The applicant shall inform the competent authority whether the payment services will be provided (cross as appropriate):</p> <p><input type="checkbox"/> the applicant itself. If so, the applicant shall provide information on the relevant authorisation as payment service provider in accordance with Directive 2015/2366;</p> <p><input type="checkbox"/> an authorised third party. If so, the applicant shall indicate the name of the third party and the applicant shall submit a copy of the preliminary agreement with the third party</p>

Field		Sub-field		Description
				<p><input type="checkbox"/> Through arrangement in accordance with Article 10(5) of Regulation (EU) No 2020/1503. If so, the applicant shall provide a description of such arrangements.</p> <p>2. The applicant shall include a description of the procedures and systems established by which the funds from the investors will be sent to the project owner and by which the investors will receive the remuneration of the capital invested.</p>

Field		Sub-field		Description
18	Procedures to verify the completeness, correctness and clarity of the information contained in the key investment information sheet	n/a	Procedures on the key investment information sheet	The applicant shall provide a description of the procedures adopted to verify the completeness, correctness and clarity of the information contained in the key investment information sheet
19	Procedures in relation to investment limits for non-sophisticated investors referred to in Article 21(7) of Regulation (EU) 2020/1503	n/a	Procedures on investment limits for non-sophisticated investors	1. The applicant shall provide a description of the procedures adopted in order:  a) to carry out the assessment whether and which crowdfunding services offered are appropriate, including details on

Field		Sub-field		Description
				<p>information requested to non-sophisticated investors about their experience, investment objectives, financial situation and basic understanding of risks involved in investing in general and in investing in the types of investments offered on the crowdfunding platform, referred to in Article 21, paragraphs 1 and 2</p> <p>b) to carry out the simulation required to prospective non-sophisticated investors of their ability to bear loss, referred to in Article 21, paragraph 5</p> <p>c) to provide the information referred to in Article 21, paragraph 42.</p> <p>2. The applicant shall provide a description of the procedures adopted by the applicant on investment limits for non-sophisticated investors, including the description of the content of the specific risk warning and the arrangements to acquire from the investor the explicit consent</p>

## **Annex VII                      Draft RTS pursuant to Article 20(3) of the ECSPR**

### **COMMISSION DELEGATED REGULATION (EU) .../...**

**of XXX**

**supplementing Regulation (EU) 2020/1503 of the European Parliament and of the Council with regard to regulatory technical standards specifying the methodology for calculating the default rates referred to in Article 20(1) thereof**

(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<sup>1</sup>, and in particular the third paragraph of Article 20(3) thereof,

Whereas:

- (1) Regulation (EU) 2020/1503 sets out a harmonised framework for the provision of crowdfunding services across the Union.
- (2) Article 20(3) of Regulation (EU) 2020/1503 delegates to the Commission the power to supplement that Regulation by adopting regulatory technical standards to specify the methodology for calculating the default rates referred into paragraph 1 of Article 20 of the same Regulation of the projects offered on a crowdfunding platform.
- (3) The standardisation of the calculation of default rates will facilitate the comparison of the performance of crowdfunding service providers and of loans offered on crowdfunding platforms. For the purpose of a standardised calculation of the default rates it is appropriate to include within this Regulation a definition of default.
- (4) Crowdfunding service providers who provide crowdfunding services consisting of the facilitation of granting loans shall have in place systems and procedures to calculate the actual and expected default rate of the loans offered on their crowdfunding platforms in

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<sup>1</sup> OJ L 347, 20.10.2020, p.1.



accordance with the methodologies set out in this Regulation. In these cases, sufficient in-house understanding needs to be ensured. The disclosure of the expected and actual default rate of loans by risk category is of particular importance when crowdfunding service providers suggest or determine the price of the offers or apply credit scores or provide individual portfolio management of loans.

- (5) The information concerning the performance of the loans facilitated by a crowdfunding service provider and the reference to the risk categories set out in the risk-management framework are the basis of crowdfunding service providers' internal method for the calculation of the actual and expected default rates. Crowdfunding service providers should have in place effective processes that enable them to obtain the relevant information in order to identify the occurrence of the default of loans offered on their crowdfunding platform without undue delay, including the identification of a materiality threshold, and to assign the loans offered on their platform to the relevant risk category. The minimum content and governance of the risk-management framework will be specified by the regulatory technical standards that the Commission will have to adopt in accordance with Article 19(7) of Regulation (EU) 2020/1503 on the basis of the draft that the European Supervisory Authority (European Banking Authority) established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council<sup>2</sup> (EBA), in close cooperation with the European Supervisory Authority (European Securities and Markets Authority) established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council<sup>3</sup> (ESMA) ESMA, shall submit to the Commission by 10 May 2022. Until those regulatory technical standards are in place, crowdfunding service providers should establish and maintain clear and effective policies and procedures for the identification of defaults and the definition of the risk categories for the purpose of the calculation of the default rates in accordance with Article 20(1) of Regulation (EU) 2020/1503.
- (6) Crowdfunding service providers should not manipulate or misrepresent the default rates calculated in accordance with this Regulation and disclosed in accordance with Article 20(1) of Regulation (EU) No 2020/1503. In particular, for the purpose of the yearly default rates (loan based), no weighting scheme should be applied. Hence, the monetary amount should not be used to give more predominance to some loans in the default rate calculation.
- (7) Inconsistent, inaccurate, incomplete or outdated data may lead to errors in the risk estimation and in the calculation of the default rates for the purposes of Article 20 of Regulation (EU) 2020/1503. Consequently, in order to ensure reliability and high quality of data, the procedures related to gathering and storing of data have to be robust and well documented. This Regulation is based on the draft regulatory technical standards developed by ESMA in close cooperation with the EBA and submitted to the Commission.

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<sup>2</sup> Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p. 12).

<sup>3</sup> 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) ESMA has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, but also analysed the potential related costs and benefits and requested the opinion 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,

HAS ADOPTED THIS REGULATION:

#### *Article 1*

##### *Default of loans offered on a crowdfunding platform*

1. A crowdfunding service provider which provides crowdfunding services consisting in the facilitation of granting loans shall consider a default to have occurred with regard to a particular loan offered on its crowdfunding platform when either or both of the following have taken place:
  - (a) the crowdfunding service provider considers that the project owner is unlikely to pay or otherwise fulfil its credit obligations in full, without enforcing any relevant security interest or taking other steps with analogous effect;
  - (b) the project owner is more than 90 days past due on any material credit obligation.
2. For the purpose of point (a) of paragraph 1, at least the following elements shall be considered as indicators of unlikelihood to pay:
  - (a) the investor's consent to a distressed restructuring of the credit obligation where this is likely to result in a diminished financial obligation caused by the material forgiveness, or postponement, of principal, interest or, where relevant, fees;
  - (b) the project owner's application for, or placement in, bankruptcy or similar protection where this would avoid or delay repayment of a credit obligation to the investors.
3. Crowdfunding service providers shall disclose the criteria used to identify the materiality threshold for the purpose of point (b) of paragraph 1.
4. Crowdfunding service providers shall have effective processes that allow them to obtain the relevant information in order to identify the occurrence of default of loans offered on their crowdfunding platform without undue delay.
5. Crowdfunding service providers shall inform investors without delay in case of default of a loan.

#### *Article 2*

##### *Methodology for the calculation of the default rate of the loans offered on a crowdfunding platform*

1. For the purpose of the calculation of the default rate of the loans offered on their crowdfunding platform in accordance with point (a) of Article 20(1) of Regulation (EU)

2020/1503, crowdfunding service providers shall calculate the simple average of the observed one-year default rate over at least the whole historical observation period using non-overlapping 12-month observation windows.

2. For the purpose of paragraph 1, in order to calculate the one-year default rate, crowdfunding service providers shall ensure both of the following:
  - (a) the denominator consists of the number of non-defaulted loans observed at the beginning of the 12-month observation window;
  - (b) the numerator includes all loans considered in the denominator that had at least one default event during the 12-month observation window.
3. For the purpose of paragraph 1 and irrespective of whether a crowdfunding service provider is using external, internal, or pooled data sources, or a combination of the three, the length of the underlying historical observation period used shall be at least 36 months for at least one source. If the available observation period spans a longer period for any source, and this data is relevant, this longer period shall be used. Where a crowdfunding service provider has been in operation for less than 36 months, it shall use the period over which it has been in operation.
4. Crowdfunding service providers shall disclose the denominator and numerator used to calculate the one-year default rate in accordance with points (a) and (b) of paragraph 2. In case of bias due to the relevant presence of short-term loans, crowdfunding service providers shall take appropriate adjustments in the calculation of the default rate for the purpose of paragraph 2.

### *Article 3*

#### *Methodology for the calculation of the actual default rate of loans by risk category*

1. For the purpose of the calculation of the actual default rate of all loans assigned to each risk category set out in the risk-management framework in accordance with point (b)(i) of Article 20(1) of Regulation (EU) 2020/1503, crowdfunding service providers shall calculate the averages of the observed one-year default rate by risk category over at least the whole historical observation period using non-overlapping 12-month observation windows.
2. For the purpose of paragraph 1, in order to calculate the one-year default rate by risk category, crowdfunding service providers shall ensure both of the following:
  - (a) the denominator consists of the number of non-defaulted loans observed at the beginning of the 12-month observation period within the risk category for which the default rate is calculated;
  - (b) the numerator includes all loans considered in the denominator that had at least one default event during the 12-month observation period.
3. For the purpose of paragraph 1, irrespective of whether a crowdfunding service provider is using external, internal, or pooled data sources, or a combination of the three, the length of

the underlying historical observation period used shall be at least 36 months for at least one source. If the available observation period spans a longer period for any source, and this data is relevant, this longer period shall be used. Where a crowdfunding service provider has been in operation for less than 36 months, it shall use the period over which it has been in operation.

4. Crowdfunding service providers shall disclose the denominator and numerator used to calculate the actual default rate of all loans by risk category in accordance with points (a) and (b) of paragraph 2. In case of bias due to the relevant presence of short-term loans, crowdfunding service providers shall take appropriate adjustment in the calculation of the default rate for the purpose of paragraph 1.

#### *Article 4*

##### *Methodology for the calculation of the expected default rate of loans by risk category*

1. For the purpose of the calculation of the expected default rates of all loans assigned to each risk category set out in the risk -management framework in accordance with point (b)(i) of Article 20(1) of Regulation (EU) 2020/1503, crowdfunding service providers shall base their estimates of the expected default rates by risk category from the actual default rates of loans by risk category calculated in accordance with Article 3.
2. For the purpose of paragraph 1 and irrespective of whether a crowdfunding service provider is using external, internal, or pooled data sources, or a combination of the three, for its expected default rate estimation, the length of the underlying historical observation period used shall be at least 36 months for at least one source. If the available observation period spans a longer period for any source, and this data is relevant, this longer period shall be used. Where a crowdfunding service provider has been in operation for less than 36 months, it shall use the period over which it has been in operation.

#### *Article 5*

##### *Reference to the risk categories*

For the purpose of Articles 3 and 4, crowdfunding service providers shall assign the individual loans to the relevant risk category set out in the risk-management framework on the basis of sound and well-defined criteria and taking into account all the relevant factors that may have unfavourable effects on the performance of the loans.

#### *Article 6*

##### *Data accuracy*

1. Crowdfunding service providers shall ensure the consistency and appropriateness of data used to calculate the default rates in accordance with this Regulation. For this purpose, the procedures related to gathering and storing of data shall be robust and well documented.

2. Crowdfunding service providers shall ensure that the expected default rates estimated in accordance with Article 4 are fair and appropriate in line with the risk-management framework.

#### *Article 7*

##### *Entry into force and application*

This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

It shall apply from [...].

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

*For the Commission*  
*The President*

## **Annex VIII      Draft RTS pursuant to Article 21(8) of the ECSPR**

### **COMMISSION DELEGATED REGULATION (EU) .../...**

**of XXX**

**supplementing Regulation (EU) 2020/1503 of the European Parliament and of the Council with regard to regulatory technical standards specifying the entry knowledge test and the simulation of the ability to bear loss for non-sophisticated investors**

(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<sup>1</sup>, and in particular the fourth subparagraph of Article 21(8) thereof,

Whereas:

- (1) In order to establish a solid and harmonised framework ensuring that crowdfunding service providers run the entry knowledge test in a meaningful way, it is relevant to request from non-sophisticated investors information regarding their experience and basic understanding of risks that should include information about the types of services and financial investments with which the non-sophisticated investor is familiar as well as information about the non-sophisticated investor's investment experience.
- (2) In order to ensure that crowdfunding service providers ascertain that prospective non-sophisticated investors understand the level of risk associated with crowdfunding investments, it is relevant to require crowdfunding service providers to take reasonable steps to ensure that the information collected from non-sophisticated investors is reliable and reflects accurately their knowledge, skills, experience and financial situation, investment objectives and basic understanding of risks involved.

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<sup>1</sup> OJ L 347, 20.10.2020, p.1.

- (3) To avoid crowdfunding service providers taking divergent approaches, it is relevant to harmonise the text of the risk warnings to be provided in relation to Article 21 of Regulation (EU) 2020/1503 as well as the way these warning should be displayed to investors.
- (4) In order to promote investor protection and ensure that the simulation of the ability to bear loss is performed adequately by non-sophisticated investors, it is relevant to require crowdfunding service providers to make available an online calculation tool aiming at helping non-sophisticated investors to assess their ability to bear loss. Crowdfunding service provider should however be able to also offer to their non-sophisticated clients the possibility to simulate their ability to bear loss without using this online calculation tool.
- (5) In order to set a clear and harmonised framework, it is relevant to set out how the net worth of non-sophisticated investors should be calculated and to specify the type of assets, of liabilities and the type of revenues that should be taken into consideration for the purpose of the calculation of the ability to bear loss.
- (6) This Regulation is based on the draft regulatory technical standards submitted to the Commission by the European Securities and Markets Authority.
- (7) The European Securities and Markets Authority 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 opinion 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<sup>2</sup>,

HAS ADOPTED THIS REGULATION:

## **CHAPTER 1**

### **General provisions**

#### *Article 1*

##### *Reliability of information collected*

1. Crowdfunding service providers shall take reasonable steps to ensure that the information collected from non-sophisticated investors pursuant to Article 21(2) and (3) of Regulation (EU) 2020/1503 is reliable and reflects accurately their knowledge, skills, experience and financial situation, investment objectives and basic understanding of the risks involved.
2. For the purposes of paragraph 1, crowdfunding service providers shall, at least, take the all following steps:

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<sup>2</sup> Regulation (EU) No 1095/2010 of the European Parliament and of the Council 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.).

- (a) raising the attention of non-sophisticated investors on the importance of providing accurate and up-to-date information;
- (b) ensuring that the means used to collect information are fit-for-purpose and appropriately designed for use by non-sophisticated investors;
- (c) ensuring that questions used in the process are likely to be understood by non-sophisticated investors and granular enough to collect information reflecting adequately and accurately the situation of non-sophisticated investors;
- (d) taking reasonable steps to verify that the information provided by the non-sophisticated investor is consistent and accurate.

## *Article 2*

### *General provisions on the risk warnings referred to Article 21(4) and 21(7) of Regulation (EU) 2020/1503*

1. Crowdfunding service providers shall issue the risks warnings referred to in Article 21(4) and point (a) of Article 21(7) of Regulation (EU) 2020/1503 to prospective non-sophisticated investors in a prominent way.
2. When issuing the risk warnings referred to in Article 21(4) and point (a) of Article 21(7) of Regulation (EU) 2020/1503, crowdfunding service providers shall refrain from encouraging the prospective non-sophisticated investor to proceed with the investment.
3. Crowdfunding service providers shall collect an acknowledgement from prospective non-sophisticated investors that they have received and understood the warnings issued pursuant to Article 21(4) and point (a) of Article 21(7) of Regulation (EU) 2020/1503.

## **CHAPTER 2**

### **Arrangements necessary to carry out the assessment referred to in Article 21(1) of Regulation (EU) 2020/1503**

## *Article 3*

### *Assessment of appropriateness of crowdfunding services*

1. Crowdfunding service providers shall, prior to giving access to their crowdfunding platforms, assess the knowledge, skills and experience of prospective non-sophisticated investors in order to understand whether and which crowdfunding services offered are appropriate for them.
2. For the purpose of the assessment of the knowledge, skills and experience of prospective non-sophisticated investors, crowdfunding service providers shall:



- (a) assess whether a non-sophisticated investor has the necessary experience and knowledge required in order to understand the risks involved in investing in general, and
- (b) assess whether that prospective non-sophisticated investor has the necessary experience and knowledge in order to understand the risks involved in the types of investments offered on the crowdfunding platform.

For the purpose of point (b), the crowdfunding service provider shall assess the prospective non-sophisticated investor's understanding of what constitutes a crowdfunding service and the risks involved in it.

#### *Article 4*

##### *Information to be requested pursuant to Article 21(2) of Regulation (EU) 2020/1503*

1. The information that crowdfunding service providers shall request from prospective non-sophisticated investors regarding their experience and basic understanding of risks in investing shall include at least the following, to the extent appropriate to the nature, scale and complexity of the crowdfunding service to be provided and the type of investment envisaged:
  - (a) the types of services, financial investments and, in particular, transferable securities, admitted instruments for crowdfunding purposes or loans, with which the non-sophisticated investor is familiar;
  - (b) the nature, volume and frequency of the non-sophisticated investor's past transactions in transferable securities, admitted instruments for crowdfunding purposes or loans, including in early or expansion stage businesses, and the period over which they have been carried out; and
  - (c) the level of education, skills and profession or relevant former profession of the non-sophisticated investor, including any professional experience in relation to crowdfunding investments.
2. The information that crowdfunding service providers shall request from non-sophisticated investors regarding their investment objectives shall include, where relevant in relation to the type of service provided, information on their expected holding period of investments, their risk profile and preferences regarding the sustainability of investments and the purposes of their investment.
3. Crowdfunding service providers shall assess the financial situation of non-sophisticated investors on the basis, inter alia, of the information listed in points (a), (b) and (c) of Article 21(5) of Regulation (EU) 2020/1503 and taking into consideration the results of the simulation referred to in Article 21(5).

## *Article 5*

### *Risk warning issued pursuant to Article 21(4) of Regulation (EU) 2020/1503*

1. The risk warning issued by crowdfunding service providers pursuant to Article 21(4) of Regulation (EU) 2020/1503 shall conform to Annex I of this Regulation and shall be displayed in a prominent window to the prospective non-sophisticated investor on the crowdfunding service providers' website.
2. The prominent window displaying the risk warning referred to in paragraph 1 shall remain on screen until the prospective non-sophisticated investor acknowledges that they have received and understood the warning issued by the crowdfunding service provider by explicitly accepting the text set out in Annex II of this Regulation.

## **CHAPTER 3**

### **Simulation of non-sophisticated investors' ability to bear loss**

## *Article 6*

### *Online calculation tool*

1. Crowdfunding service providers shall make available on their website a tool enabling non-sophisticated investors to simulate their ability to bear loss.
2. The tool shall compute the ability to bear loss of non-sophisticated investors based on the information listed in points (a), (b) and (c) of Article 21(5) of Regulation (EU) 2020/1503 provided by the non-sophisticated investor.
3. The tool shall be easy to use and shall not require non-sophisticated investors to perform any tasks other than inputting the information set out in points (a) to (c) of Article 21(5) of Regulation (EU) 2020/1503.
4. The tool shall display the results of the simulation in a manner which is clear and readable for the non-sophisticated investor.
5. Crowdfunding service providers may, in addition to the requirement set out in paragraph 1, offer non-sophisticated investors the possibility to calculate their net worth without using the tool referred to in paragraph 1. In such case, the crowdfunding service providers shall provide non-sophisticated investors with appropriate information to calculate their net worth in accordance with Article 21(5) of Regulation (EU) 2020/1503.

## *Article 7*

### *Calculation of the net worth of a non-sophisticated investor*

For the purpose of the simulation referred to in Article 21(5) of Regulation (EU) 2020/1503, the net worth shall be calculated as follows:

Net worth = (net annual income) + (total of liquid assets) - (annual financial commitments)

## *Article 8*

### *Net annual income*

1. For the purpose of the calculation referred to in Article 7, the ‘net annual income’ shall mean the total annual income perceived by the non-sophisticated investor after deduction of associated costs and charges, social contributions and taxes.
2. The total annual income referred to in paragraph 1 shall result from the sum of any labour income, any interests on bank deposits or other debt instruments, any dividend payments or any real estate income, whereby:
  - (a) ‘labour income’ shall include wages, unemployment benefits and pension payments received by the non-sophisticated investor but shall exclude exceptional payments;
  - (b) ‘interests on bank deposits or other debt instruments’ shall include payments received by the non-sophisticated investor during the preceding calendar year but shall exclude those which are exceptional by nature;
  - (c) ‘dividend payments’ shall include payments received by the prospective non-sophisticated investor by virtue of holding shares or units of a collective investment scheme or other equity instruments issued by a company, but shall exclude any capital gain realised by selling all or part of such holding;
  - (d) ‘real estate income’ shall include any payment received in relation to the renting of real estate properties but shall exclude any capital gain realised by selling all or part of such real estate properties.
3. The net annual income used for the purpose of the simulation referred to in Article 21(5) of Regulation (EU) 2020/1503 shall be the one of the calendar year preceding the one in which the simulation is performed.

## *Article 9*

### *Liquid Assets*

1. For the purpose of the calculation referred to in Article 7 of this Regulation, the total liquid assets shall result from the sum of the total cash held by a non-sophisticated investor on saving accounts and current accounts as well as the value of assets that can be easily and swiftly converted into cash, including but not limited to:
  - (a) saving products that can be turned into cash within a maximum of 30 calendar days;

- (b) financial instruments negotiated on a regulated market within the meaning of Article 4(1)(21) of Directive 2014/65/EU of the European Parliament and of the Council<sup>3</sup>;
  - (c) shares and units of collective investment schemes offering redemption rights at least on a weekly basis.
2. The following shall not be considered as liquid assets:
- (a) real estate properties;
  - (b) amounts paid to a pension scheme for occupational retirement purposes;
  - (c) company shares which are not freely redeemable or transferable, including previous crowdfunding investments.
3. Liquid assets shall be valued as of 31 December of the calendar year preceding the one in which the simulation is performed.

### *Article 10*

#### *Annual financial commitments*

1. For the purpose of the calculation referred to in Article 7 of this Regulation, annual financial commitments shall include all the tabled expenditures for which a non-sophisticated investor has undertaken a commitment in relation to a given calendar year, including but not limited to:
- (a) alimony and child support payments;
  - (b) rent and mortgage payments;
  - (c) repayments of loans;
  - (d) payments of insurance premiums;
  - (e) utilities expenses payments, including those made to cover electricity, heating and water expenses
  - (f) service subscription payments;
  - (g) Income tax and property taxes paid.
2. Annual financial commitments shall be valued as of 31 December of the calendar year preceding the one in which the simulation is performed.

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<sup>3</sup> Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU, OJ L 173, 12.6.2014, p. 349.

### *Article 11*

#### *Risk warning issued pursuant to point (a) of Article 21(7) of Regulation (EU) 2020/1503*

1. The risk warning issued by crowdfunding service providers pursuant to point (a) of Article 21(7) of Regulation (EU) 2020/1503 shall be displayed to the prospective non-sophisticated investor in a prominent manner on the crowdfunding service providers' website.
2. The text of the risks warning to be issued pursuant to point (a) of Article 21(7) of Regulation (EU) 2020/1503 is set out in Annex III of this Regulation.

### *Article 12*

#### *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*.

It shall apply from [...].

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

*For the Commission*  
*The President*

## **ANNEX I**

### **Risk warning to be issued pursuant to Article 21(4) of Regulation (EU) 2020/1503**

*An investment in a crowdfunding project includes the risk of losing the entirety of the money invested.*

*Based on the information you provided, it seems that our services may be inappropriate for you. This means that your experience, investment objectives, financial situation or understanding of risks may be inappropriate or insufficient to use our services.*

*If you wish to continue, you need to expressly acknowledge that you have received and understood this risk warning.*

## **ANNEX II**

### **Acknowledgment of risk warning pursuant to Article 21(4) of Regulation (EU) 2020/1503**

*I hereby expressly acknowledge that I have received and understood the risk warning issued by [Insert name of crowdfunding service provider] indicating that the services offered on its crowdfunding platform may be inappropriate for me and that I am aware of the risk of losing the entirety of the money that I may decide to invest. I nonetheless hereby request to be allowed to invest in projects offered on this crowdfunding platform.*

### **ANNEX III**

#### **Risk warning to be issued pursuant to point (a) of Article 21(7) of Regulation (EU) 2020/1503**

*An investment in a crowdfunding project involves the risk of losing the entirety of the money invested.*

*If you wish to continue, please acknowledge that you have received and understood this risk warning and that you still would like to proceed with this investment.*



## **Annex IX                      Draft RTS pursuant to Article 23(16) of the ECSPR**

### **COMMISSION DELEGATED REGULATION (EU) .../...**

**of XXX**

### **supplementing Regulation (EU) 2020/1503 of the European Parliament and of the Council with regard to regulatory technical standards for the key investment information sheet**

(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<sup>1</sup>, and in particular the fourth subparagraph of Article 23(16) thereof,

Whereas:

- (1) In order to ensure the comparability among key investment information sheets of different crowdfunding offers and facilitate the drafting of key investment information sheet by project owners, it is necessary to give project owners a mode for the presentation of the relevant information. This approach should ensure that project owners follow a similar presentation pattern in form and substance, whilst allowing for the required flexibility that considers the specificities of each offer.
- (2) In order to harmonise the requirements related to the key investment information sheet, the Annex of this Regulation provides a model template applicable to all types of crowdfunding offers other than the individual portfolio management of loans permitted under Regulation (EU) 2020/1503.
- (3) Prospective investors may consult several crowdfunding offers. In order to allow them to quickly identify the key features of each crowdfunding offer, this Regulation provides that the key investment information sheet model should include a short overview of the offer at the beginning of the document.

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<sup>1</sup> OJ L 347, 20.10.2020, p.1.

- (4) When a project owner is only recently established and does not yet have financial statements other than the opening balance sheet, it should be possible for the project owner to provide prospective investors with that document. This Regulation therefore provides that a hyperlink to a project owner's up-to-date balance sheet may be included in the key investment information sheet where its most recent financial statements are not available.
- (5) The use of hyperlinks is permitted. Hyperlinks, however, may not impair the comprehensiveness of the key investment information sheet as a stand-alone document. Hence, the permission to include hyperlinks does not alleviate project owners from including material information in the key investment information sheet.
- (6) This Regulation is based on the draft regulatory technical standards submitted to the Commission by the European Securities and Markets Authority (ESMA).
- (7) 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 Council<sup>2</sup>,

HAS ADOPTED THIS REGULATION:

#### *Article 1*

##### *Key investment information sheet model*

The information in the key investment information sheet shall be presented using the model laid down in the Annex of this Regulation.

#### *Article 2*

##### *Availability of the key investment information sheet prior to the investment*

1. The key investment information sheet shall be made available as soon as the relevant crowdfunding offer is published on the crowdfunding service provider's website or via any other durable medium.
2. Before accepting an investment, the crowdfunding service provider shall ensure that the investor has been provided with the relevant key investment information sheet in a durable medium.

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<sup>2</sup> 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).

### *Article 3*

#### *Format and language requirements of the key investment information sheet model*

1. The content of the key investment information sheet shall be presented in the sequence laid down in the Annex.
2. The information in the key investment information sheet shall be presented in a way that is easy to read.
3. The information referred to in paragraph 1 shall be clearly expressed in a way which facilitates its understanding, including by prospective non-sophisticated investors.
4. For those purposes, the language used shall be clear and succinct and technical terms shall be avoided where everyday words can be used instead.

### *Article 4*

#### *Identifier of the crowdfunding offer*

1. The crowdfunding service provider shall include in the key investment information document a standardised, permanent and unique identifier of the offer.
2. The identifier shall be the result of the concatenation of the following elements:
  - (a) the LEI of the crowdfunding service provider;
  - (b) a code specified using eight numerical characters that shall be unique by crowdfunding offer published by the crowdfunding service provider.
3. The previous identifier shall not be altered upon the modification of the key investment information sheet resulting from:
  - (a) the translation of the key investment information sheet into different languages as described in Article 23(4) of Regulation (EU) 2020/1503;
  - (b) updates of the key investment information sheet foreseen in Article 23(8) and Article 24(2) of Regulation (EU) 2020/1503; or
  - (c) other non-material alteration of information available in the key investment information sheet.

### *Article 5*

#### *Choice of terms*

Where the key investment information sheet model laid down in the Annex of this Regulation enables a choice of terms or expressions, such choice shall be made as follows:

- (a) the expressions 'target capital' or 'capital raising' shall be used for crowdfunding offers relating to (i) equity transferable securities, or (ii) admitted instruments for crowdfunding purposes;
- (b) the expression 'target funds' or 'funds borrowing' shall be used for crowdfunding offers relating to (i) loans, (ii) non-equity transferable securities or (iii) hybrid instruments;

- (c) the terms ‘transferable securities’ or ‘admitted instruments for crowdfunding purposes’ shall be chosen in accordance with the type of instruments offered.

#### *Article 6*

##### *Hyperlinks*

5. Hyperlinks may be included as indicated in the key investment information sheet model laid down in the Annex of this Regulation.
6. The hyperlinks shall be complementary to the information given and shall in no case, except as otherwise provided, replace that information.
7. The hyperlinks shall be consistent with the information provided elsewhere in the key investment information sheet and the resources referenced by the hyperlinks shall be freely and easily accessible.

#### *Article 7*

##### *Main risk types*

1. The key investment information sheet shall include a description of the main risks related to the crowdfunding project as set forth in Part C of the Annex of this Regulation. Where applicable, other risks such as geographic, political and regulatory risks shall also be included.
2. The description of the risks associated with the crowdfunding offer shall be of relevance to the specific crowdfunding offer and shall be prepared solely for the benefit of prospective investors and shall not give general statements on investment risks, or limit the liability of the project owner or any persons acting on their behalf.

#### *Article 8*

##### *Financial ratios related to key financial information*

In the section entitled “Key annual financial figures and ratios for the project owner for the last three years”, project owners shall provide financial ratios of the company for which the offer is made. If available, such financial ratios shall be provided for the last three financial years of the company. Those figures shall be calculated in accordance with IFRS or local Generally Accepted Accounting Principles (GAAP). Relevant financial ratios may include, but are not limited to, the items listed in section (e) of Part A of the Annex of this Delegated Regulation.

### *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*.

It shall apply from [...].

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

*For the Commission*  
*The President*

## ANNEX

### KEY INVESTMENT INFORMATION SHEET MODEL

#### KEY INVESTMENT INFORMATION SHEET

This crowdfunding offer has been neither verified nor approved by [competent authorities – insert full denomination of competent authority/ies] or the European Securities and Markets Authority (ESMA). The appropriateness of your experience and knowledge have not necessarily been assessed before you were granted access to this investment.

By making this investment, you assume full risk of taking this investment, including the risk of partial or entire loss of the money invested.

##### *Risk warning*

Investment in this crowdfunding project entails risks, including the risk of partial or entire loss of the money invested. Your investment is not covered by the deposit guarantee schemes established in accordance with Directive 2014/49/EU of the European Parliament and of the Council\*. Nor is your investment covered by the investor compensation schemes established in accordance with Directive 97/9/EC of the European Parliament and of the Council\*\*.

You may not receive any return on your investment.

This is not a savings product and we advise you not to invest more than 10 % of your net worth in crowdfunding projects.

You may not be able to sell the investment instruments when you wish. If you are able to sell them, you may nonetheless incur losses.

\* Directive 2014/49/EU of the European Parliament and of the Council of 16 April 2014 on deposit guarantee schemes (OJ L 173, 12.6.2014, p. 149).

\*\* Directive 97/9/EC of the European Parliament and of the Council of 3 March 1997 on investor-compensation schemes (OJ L 84, 26.3.1997, p. 22).'

##### *Pre-contractual reflection period for non-sophisticated investors*

Non-sophisticated investors benefit from a reflection period during which they can, at any time, revoke their offer to invest or expression of interest in the crowdfunding offer without giving a reason and without incurring a penalty. The reflection period starts at the moment the prospective non-sophisticated investor makes an offer to invest or signals its expression of interest and expires after four calendar days therefrom.

*[Insert here the modalities whereby non-sophisticated investors can exercise their revocation right during the reflection period, together with information on this process and its consequences.]*

## Overview of the offer

<b>Offer identifier</b>	Identifier of the offer as described in Article 4
<b>Project owner and project name</b>	
<b>Type of offer and instrument type</b>	
<b>Target amount</b>	Target amount and currency of the crowdfunding offer, including the equivalent value in euro and the date of the exchange rate, if the crowdfunding offer provides for a non-euro currency.
<b>Deadline</b>	The date on which the offer will be closed for prospective investors.

## Part A: Information about the project owner(s) and the crowdfunding project

(a)	<b>Project owner and crowdfunding project<sup>1</sup></b>  <b>Identity:</b> Legal name of the project owner, country of incorporation/registration and registration number.  <b>Legal form:</b> Legal form.  <b>Contact details:</b> Website, address of the registered office, email and phone number.  <b>Ownership:</b> The date of the last change of ownership and a brief description of the ownership structure of (i) the project owner and, (ii) where relevant, the project. This information may be presented as a diagram. <sup>2</sup>  <b>Management:</b> A brief description of the project owner's management bodies. Where available and deemed appropriate, a hyperlink to the relevant curricula vitae may be included.  <b>Conflict of interest:</b> If so, please describe
(b)	<b>Responsibility for the information provided in this key investment information sheet</b>  "The project owner declares that, to the best of its knowledge, no information has been omitted or is materially misleading or inaccurate. The project owner is responsible for the preparation of this key investment information sheet."  <i>[Complete this section by listing the natural and legal persons who are responsible for the information given in the key investment information sheet according to national law. In the case of natural persons, such as the members of the project owner's administrative, management and/or supervisory bodies,</i>

<sup>1</sup> Without prejudice to the obligation to provide the information set out in this section, the project owner may also include its logo in this section.

<sup>2</sup> In case for example the project owner is part of a group, the diagram could display the structure of the group and the project owner's position within the group.

	<p><i>indicate their names and functions. In the case of legal persons, indicate their names and registered offices.]</i></p> <p>“The declaration of [each of] the above person[s] with respect to their responsibility for the information given in this key investment information sheet pursuant to Article 23(9) of Regulation (EU) 2020/1503 of the European Parliament and of the Council<sup>3</sup> is included as [Annex [A] hereto<sup>4</sup>]”.</p>
(c)	<p><b>Principal activities of the project owner; products or services offered by the project owner</b></p> <p>A short description of the nature of the project owner's current principal activities and business achievements, including, where relevant, a brief presentation of its strategy and added value created.</p>
(d)	<p><b>Hyperlink to the most recent financial statements of the project owner</b></p> <p>To the extent available, a hyperlink to the most recent financial statements of the project owner shall be included.</p> <p>If the financial statements have been audited, a hyperlink to the relevant audit report(s) may also be included. If the accounts have not been audited, a specific statement to that effect shall be included.</p> <p>If the most recent financial statements do not exist, this fact shall be explicitly mentioned together with the reasons for the unavailability. Only where the most recent financial statements are not available, a hyperlink to the up-to-date balance sheet of the project owner may be included instead, if available.</p> <p>If an SPV is interposed between the project owner and the investors, the information above shall also be provided with regards to the SPV.</p>
(e)	<p><b>Key annual financial figures and ratios for the project owner for the last three years</b></p> <p>To the extent available, key annual financial figures and ratios such as:</p> <ul style="list-style-type: none"> <li>(a) turnover;</li> <li>(b) annual net profit;</li> <li>(c) total assets;</li> <li>(d) gross, operating and net profit margins;</li> <li>(e) net debt; debt to equity ratio;</li> <li>(f) acid test ratio; debt service cover ratio; EBITDA;</li> <li>(g) return on equity;</li> <li>(h) ratio of intangible fixed assets to total assets.</li> </ul>
(f)	<p><b>Description of the crowdfunding project, including its purpose and main features</b></p> <p>A description of the crowdfunding project, including its purpose and main features and the intended use of the funds raised.</p>

<sup>3</sup> Regulation (EU) 2020/1503 of the European Parliament and of the Council (OJ L 347, 20.10.2020, p. 1–49).

<sup>4</sup> The declaration of each responsible person shall conform to Article 23(9) of Regulation (EU) 2020/1503.



**Part B: Main features of the crowdfunding process and conditions for the [capital raising] or [funds borrowing]**

(a)	<p><b>Minimum [target capital to be raised] or [target funds to be borrowed] in a single crowdfunding offer</b></p> <p>[Amount and currency]</p> <p><b>The number of offers (public or non-public) that have already been completed by the project owner or crowdfunding provider for this crowdfunding project</b></p> <table border="1" data-bbox="277 631 1382 891"> <thead> <tr> <th data-bbox="277 631 475 831">Type of offer and instruments offered</th><th data-bbox="475 631 639 831">Completion date</th><th data-bbox="639 631 1062 831">Amount [raised / borrowed] and target amount (including the euro-equivalent value and the date of the exchange rate in case of non-euro currencies)</th><th data-bbox="1062 631 1382 831">Other relevant information, if any</th></tr> </thead> <tbody> <tr> <td data-bbox="277 831 475 891"></td><td data-bbox="475 831 639 891"></td><td data-bbox="639 831 1062 891"></td><td data-bbox="1062 831 1382 891"></td></tr> </tbody> </table>	Type of offer and instruments offered	Completion date	Amount [raised / borrowed] and target amount (including the euro-equivalent value and the date of the exchange rate in case of non-euro currencies)	Other relevant information, if any				
Type of offer and instruments offered	Completion date	Amount [raised / borrowed] and target amount (including the euro-equivalent value and the date of the exchange rate in case of non-euro currencies)	Other relevant information, if any						
(b)	<p><b>Deadline for reaching the [target capital to be raised] or [target funds to be borrowed]:</b></p> <p><i>[The date on which the offer will be closed for potential investors.]</i></p>								
(c)	<p><b>Information on the consequences if the [target capital is not raised] or [target funds are not borrowed] by the deadline</b></p> <p>Information on the consequences relating to the crowdfunding process and the investors' participations, if the crowdfunding offer does not reach the targeted minimum amount, such as</p> <ul style="list-style-type: none"> <li>• whether the crowdfunding offer and the investors' commitments would be cancelled;</li> <li>• whether any amounts that were paid by investors would be refunded and, if so, under what modalities and when;</li> <li>• whether investors would incur any fees or expenses as a result of the offer not reaching the targeted amount.</li> </ul>								
(d)	<p><b>The maximum offer amount when different from the [target capital] or [target funds] referred to in point (a) above</b></p> <p>Maximum offer amount and currency (including the euro-equivalent value in case of a non-euro currency), if such amount is different from the [target capital] or [target funds].</p>								
(e)	<p><b>Amount of own funds committed to the crowdfunding project by the project owner</b></p> <p>An indication of whether major shareholders or members of the project owner's management, supervisory or administrative bodies intend to subscribe for the offered instruments, and the amount thereof, including as a percentage with respect to the offer's target amount.</p>								
(f)	<p><b>Change of the composition of the project owner's capital or loans related to the crowdfunding offer</b></p> <p>A description of the changes that will result in the composition of the project owner's capital and indebtedness as a consequence of the crowdfunding offer.</p>								

## Part C: Main risk types

### Presentation of the main risks

Complete this section by describing the main risks associated with the crowdfunding project according to the types of main risks identified below.

The following list of main risk types is non-exhaustive. Any other main risk which is relevant to the crowdfunding project shall also be described in this Part C of the key investment information sheet.

#### Type 1 – Project risk

Risks that are inherent to the project and that may cause the project to fail. These risks may concern, but are not limited to: project dependencies, such as funding, legal, licensing, copyrights, occurrence of adverse scenarios with a negative impact, (technological) development of competitors or competitive products, or risks deriving from the project owner.

#### Type 2 – Sector risk

Risks that are inherent to the specific sector. Such risks may be caused, for instance, by a change in the macro-economic circumstances, a decrease of demand in the sector in which the crowdfunding project operates and dependencies on other sectors.

The sector of the project shall be described by using the taxonomy of Regulation (EC) No 1893/2006 of the European Parliament and of the Council<sup>5</sup> of 20 December 2006 establishing the statistical classification of economic activities NACE 2 at Section level (i.e. first level of classification as described in Article 2 (1) (a).

#### Type 3 - Risk of default

The risk that a project or the project owner may be subject to bankruptcy or other insolvency proceedings, and other occurrences concerning the project or the project owner which may result in the loss of the investment for the investors.

Such risks may be caused by a variety of factors, including but not limited to: (severe) change in macro-economic circumstances, mismanagement, lack of experience, fraud, the financing not fitting the business purpose, unsuccessful product launch, lack of cash flow.

#### Type 4 - Risk of lower or delayed returns

The risk that the return is lower than expected or that project defaults on capital or interest payments.

#### Type 5 - Risk of a platform failure

The risk that the crowdfunding platform is temporarily or permanently not able to provide its services.

#### Type 6 - Risk of illiquidity of the investment

The risk that investors cannot sell their investment.

#### Type 7 – Other risks

Risks that are, inter alia, out of the project owner's control, such as political and regulatory risks.

<sup>5</sup> Regulation (EC) No 1893/2006 of the European Parliament and of the Council of 20 December 2006 establishing the statistical classification of economic activities NACE Revision 2 and amending Council Regulation (EEC) No3037/90 as well as certain EC Regulations on specific statistical domains, OJ L 393, 30.12.2006, p. 1.

**Part D: Information related to the offer of transferable securities and admitted instruments for crowdfunding purposes**

(a)	<p><b>Total amount and type of [transferable securities] or [admitted instruments for crowdfunding purposes] to be offered</b></p> <p>At least the following information shall be specified:</p> <ul style="list-style-type: none"> <li>(a) the name of the issuer and an indication of whether the issuer is the project owner or the SPV mentioned in Part E of the key investment information sheet;</li> <li>(b) a description of the type and class of the instruments offered;</li> <li>(c) where applicable, number of instruments issued, their denomination, currency and the term of the instruments;</li> <li>(d) the relative seniority of the instruments in the issuer's capital structure in the event of insolvency, including, where applicable, information on the ranking and subordination of the securities.</li> </ul>
(b)	<p><b>Subscription price</b></p> <p>The price at which the [transferable securities] or [admitted instruments for crowdfunding purposes] will be offered. Where applicable, this section shall also indicate the minimum subscription amount per investor.</p>
(c)	<p><b>Whether oversubscriptions are accepted and how they are allocated</b></p>
(d)	<p><b>Terms of subscription and payment</b></p> <p>This section shall include a clear description of the terms of subscription, including the transfer of the subscription price, and of the payment process, including timing and method.</p> <p>It may also include a hyperlink to a description of the subscription process and instructions.</p>
(e)	<p><b>Custody and delivery of [transferable securities] or [admitted instruments for crowdfunding purposes] to investors</b></p> <p>This section shall (i) specify the delivery date and process of delivery of the relevant instruments and (ii) indicate the name and contact details (including e-mail) of the issuer or its agent.</p> <p>Where custody services are not provided by the crowdfunding service provider, a clear statement to that effect shall be made.</p> <p>This section shall include the identity, registration and contact details of the custodian. It shall be mentioned whether or not any fee shall be due by the investor to the custodian.</p>
(f)	<p><b>Information relating to the guarantee or collateral by which the investment is secured (if applicable)</b></p> <ul style="list-style-type: none"> <li>(i) Is the [guarantor] or [collateral provider] a legal person?</li> <li>(ii) The identity, legal form and contact details of the [guarantor] or [collateral provider]</li> </ul>

	<b>(iii) Information on the nature and the terms of the [guarantee] or [collateral] (including its ranking)</b>
(g)	<p><b>Information relating to a firm commitment to buy back the [transferable securities] or [admitted instruments for crowdfunding purposes] (where applicable)</b></p> <p><b>Description of the buy-back arrangement</b></p> <p>This section shall provide clear and concise information with respect to the buy-back commitment. Where appropriate, more detailed information may be provided by way of a hyperlink.</p> <p><b>Time period for the buy-back</b></p> <p>Description of the conditions to participate in the buy-back (including any applicable deadlines).</p>
(h)	<p><b>Interest rate and maturity information</b></p> <p>This section shall apply to non-equity transferable securities (such as bonds) or hybrid instruments (such as bonds convertible to shares).</p> <p><b>Nominal interest rate:</b></p> <p>The annual interest rate shall be calculated by way of the Actual/365 method, with two decimals of precision and in the following preferred format:</p> <p>[●] % per year (calculated by way of the Actual/365 method)”; or</p> <p>where the interest rate is variable, brief information about the key factors determining the interest rate (e.g. EURIBOR plus X%) and its calculation.</p> <p><b>Date from which the interest becomes payable:</b></p> <p><b>Due dates for interest payments:</b></p> <p><b>Maturity date (including intermediate repayments where applicable):</b></p> <p><b>Applicable yield:</b></p> <p>The yield shall be calculated as a yearly rate and by way of the Actual/365) method and provided with two decimals of precision. The key assumptions on which the yield calculation is based shall also be briefly disclosed.</p>

#### Part E: Information on special purpose vehicles (SPV)

(a)	<p><b>Is an SPV interposed between the project owner and the investor?</b></p> <p>Yes/no</p>
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(b)	<b>Contact details of the SPV</b>  This section shall also specify the SPV's identity, legal form and registered office.
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## Part F: Investor rights

In accordance with Article 23(7) of Regulation (EU) 2020/1503, in the case of admitted instruments for crowdfunding purposes, where the information required under Part F exceeds one side of A4-sized paper format if printed, the remainder shall be produced in an annex attached to the key investment information sheet.

(a)	<b>Key rights attached to the [transferable securities] or [admitted instruments for crowdfunding purposes]</b>  A short description of the key rights attached to the instruments, grouped by types, such as:  (a) dividend rights;  (b) voting rights;  (c) information access rights;  (d) pre-emption rights in offers for subscription of instruments of the same class;  (e) right to share in the issuer's profits;  (f) right to share in any surplus in the event of liquidation;  (g) redemption rights;  (h) conversion rights.  (i) clauses conferring a joint exit right in the event of the occurrence of an operative event (i.e., change of control, tag-along rights).  A hyperlink to the project owner's constitutional documents and/or any other relevant legal documents, together with references to the relevant articles or section numbers may be included.
(b) and (c)	<b>Restrictions to which the [transferable securities] or [admitted instruments for crowdfunding purposes] are subject and restrictions on the transferring of the instruments.</b>  This section shall include a description of any shareholders' agreement or other arrangement preventing or in any case limiting the transferability of the instruments, such as clauses restricting the right to sell the instruments (for example approval clauses or temporary inalienability clauses).  This section shall also include a description of other restrictions to which the instruments are subject, such as any forced disposal clause (for example exclusion clauses, repurchase clauses, joint exit obligation in the event of a change of control, drag-along rights), specifying in particular the financial conditions of such disposals;
(d)	<b>Opportunities for the investor to exit the investment</b>
(e)	<b>For equity instruments, distribution of capital and voting rights before and after the capital increase resulting from the offer (assuming all the [transferable securities] or [admitted instruments for crowdfunding purposes] will be subscribed)</b>

	<p>When presenting the distribution of capital and voting rights before and after the capital increase resulting from the offer, the following information shall be included for each class of share capital:</p> <p>(a) the total of the issuer's authorised share capital;</p> <p>(b) the number of shares issued and fully paid and issued but not fully paid; and</p> <p>(c) the par value per share, or that the shares have no par value.</p> <p>If there are shares not representing capital, state the number and main characteristics of such shares.</p>
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#### Part G: Disclosures related to loans

(a)	<b>The nature, duration and other material terms of the loan</b>
(b)	<p><b>The applicable interest rates or, where applicable, other compensation to the investor</b></p> <p>The annual interest rate shall be calculated by way of the Actual/365 method, with two decimals of precision and in the following preferred format:</p> <p>[...] % per year (based on the actual number of days in a year)"; or</p> <p>where the interest rate is variable, brief information about the key factors determining the interest rate (e.g. EURIBOR plus X%) and its calculation.</p>
(c)	<b>Risk mitigation measures, including the existence of collateral providers or guarantors or other types of guarantees</b>
(d)	<p><b>The schedule for the repayment of the principal and payment of interest</b></p> <p>Where advance repayment is permitted, on the initiative of the project owner or of the lender, it shall be described, stipulating repayment terms and conditions.</p>
(e)	<p><b>Any default on credit agreements by the project owner within the past five years</b></p> <p><i>[For the purposes of this section, the definition of default as set out in Article 1 of the Delegated Regulation (EU) .../... [RTS 5] shall apply.]</i></p>
(f)	<p><b>The servicing of the loan (including in situations where the project owner does not meet its obligations)</b></p> <p>This section shall specify the entity (including its legal name, registration number and place of registration, registered office and contact details) responsible for the servicing of the loan and provide brief information with respect to its servicing policy, which shall include key information about the procedures undertaken in case that the obligations under the loan are not met. A hyperlink may be provided to the relevant page or document containing the detailed servicing policy.</p>

## Part H: Fees, information and legal redress

(a)

**Fees and costs incurred by the investor relating to the investment (including administrative costs resulting from the sale of admitted instruments for crowdfunding purposes)**

This section shall contain a presentation in table-format of all direct and indirect fees, commissions, costs and charges incurred by the investor in relation to his and her investment and exit from the investment.

Where Euro (or other applicable currency) amounts and percentage values are stated, they shall be calculated for a hypothetical investment of EUR 10 000 and on an annual basis.

Fees, Charges and other Costs		in €  (or other applicable currency)	as percentage of total investment amount	Examples  (non-exhaustive)
One-off	Entry Costs (please provide details)	€[...]	[...]%	The costs you pay when entering the investment. These costs comprise of (i) costs relating to your subscription (such as notary fees, up-front-loads, and stamp duties) (ii) of costs relating to the underlying asset (such as finder's and agent fees, notary fees, real estate and other acquisition taxes)
	Exit  Costs (please provide details)	€[...]	[...]%	The costs you pay when exiting the investment at maturity (such as finder's and agent fees, notary fees, real estate and other acquisition taxes, winding-down expenses)
Ongoing		€[...]	[...]	The costs you incur during the holding period of the investment, (e.g. custody and management fees, audit and legal fees, ongoing taxes relating to your investment or the underlying asset)
Incidental	Performance Fees/  Carried Interest (please provide details)	€[...]	[...]%	Fees you pay to the project owner(s) if certain success parameters are met

		Other incidental Fees (please provide details)	€[...]	[...]%	Finder's fees, refinancing fees, transaction fees (to the extent not already included in the one-off fees)
(b)	<b>Where and how additional information about the crowdfunding project, the project owner [and, where applicable, the SPV] can be obtained free of charge</b>				
(c)	<b>How and to whom the investor may address a complaint about the investment or about the conduct of the project owner or the crowdfunding service provider</b>  The following information shall be provided in summary format:  (a) steps to be followed for lodging a complaint about the investment or about the conduct of the project owner or the crowdfunding service provider;  (b) a link to the relevant webpage for such complaints;  (c) an up-to-date postal address and an email address to which such complaints may be submitted.				



## **Annex X**

## **Draft ITS pursuant to Article 16(3) of the ECSPR**

### **COMMISSION IMPLEMENTING REGULATION (EU) .../...**

#### **of XXX**

#### **supplementing Regulation (EU) 2020/1503 of the European Parliament and of the Council with regard to implementing technical standards specifying data standards and formats, templates and procedures for reporting information on projects funded through crowdfunding platforms**

(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 on European crowdfunding service providers for business<sup>1</sup>, and in particular the third subparagraph of Article 16(3) thereof,

Whereas:

- (1) In order to promote a common approach to the application by crowdfunding service providers and competent authorities of the reporting requirements set out in Regulation (EU) 2020/1503, common data standards and formats, templates and procedures for the information to be reported to competent authorities and ESMA should be established.
- (2) For the purposes of effective data analysis by competent authorities, there should be consistency in the standards and formats used when reporting information on projects funded through crowdfunding platforms.
- (3) In order to allow the timely collection and aggregation of information by competent authorities, and subsequent submission to ESMA, crowdfunding service providers should report to competent authorities information for a given calendar year no later than by the end of February of the following year. The reports should include information on all projects, including those which did not raise any funds during the year, in order to provide competent authorities and ESMA with comprehensive information to enhance the competent authorities' capability to supervise the respective entities as well as to monitor

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<sup>1</sup> OJ L 347, 20.10.2020, p. 1.

the markets development and the efficiency of the regime. Crowdfunding service providers should ensure that the data they provide is complete and accurate.

- (4) In order to ensure certain and efficient identification of project owners, common identifiers of the project owner should be reported. In case the project owner is a legal entity, the legal entity identifier (LEIs) of the project owner should be reported. Given that there is no common international standard for the identification of natural persons, the identifier set out in Article 6 of the Commission Delegated Regulation (EU) 2017/590 should be reported in case the project owner is a natural person.
- (5) In order to enable ESMA to perform cross-border aggregation and comparison of information, competent authorities should provide ESMA with information on the identification of the project owner anonymised using a common method.
- (6) This Regulation is based on the draft implementing technical standards submitted to the Commission by ESMA.
- (7) ESMA has conducted open public consultations on the draft implementing 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 the Council<sup>2</sup>,

HAS ADOPTED THIS REGULATION:

#### *Article 1*

##### *Data standards and formats, templates and procedures for reporting information to competent authorities*

1. A report made by crowdfunding service providers pursuant to Article 16(1) of Regulation (EU) 2020/1503 shall be made in an electronic format and shall include the complete and accurate details set out in Annex I.
2. Crowdfunding service providers shall report information referred to in paragraph 1 using standards and formats which are set out in the template specified in Annex I.
3. Crowdfunding service providers shall report the information referred to in Article 16(1) of Regulation (EU) 2020/1503 in relation to each calendar year by the end of February of the following calendar year.
4. The information on each individual project shall be transmitted using the identifier foreseen for the crowdfunding offer as specified in Article 4 of Regulation 202\*/\*\* [RTS7].
5. The following details on the project owner shall be transmitted in the reports submitted pursuant to paragraph 1 of this Article:
  - (a) if the project owner is a legal person, the ISO 17442 legal entity identifier code shall be reported;

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<sup>2</sup> 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).

- (b) if the project owner is a natural person, the identifier set out in Article 6 of the Commission Delegated Regulation (EU) 2017/590<sup>3</sup> shall be reported.

## *Article 2*

### *Data standards, formats and template for reporting information to ESMA*

1. A report made by competent authorities pursuant to Article 16(2) of Regulation (EU) 2020/1503 shall be made in an electronic format and shall include the complete and accurate details set out in Annex II.
2. Competent authorities shall report information referred to in paragraph 1 using standards and formats which are set out in the template specified in Annex II.

## *Article 3*

### *Anonymisation of information*

The information on the identification of the project owner provided under Article 2 of this Regulation shall be anonymised using a common method.

## *Article 4*

### *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*.

It shall apply from [...].

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

*For the Commission*  
*The President*

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<sup>3</sup> Commission Delegated Regulation (EU) 2017/590 of 28 July 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the reporting of transactions to competent authorities (OJ L 87, 31.3.2017).

## ANNEX I

### *Template for reporting information to competent authorities*

N	FIELD	CONTENT TO BE REPORTED	FORMAT AND STANDARDS TO BE USED FOR REPORTING
1	Crowdfunding service provider identification code	Code used to identify the crowdfunding service provider submitting the report.	{LEI}
2	Reporting period	The year which the report is submitted for	YYYY
<p>Information on the projects upon which a crowdfunding offer have been made by the service provider during the reference calendar year</p> <p>Fields 3-7 shall be repeated for each project.</p>			
3	Identifier of the crowdfunding offer	Unique identifier of the crowdfunding offer as specified in [Article 4 of RTS7]	{ALPHANUM-28}
4	Sector	Sector of the project as specified in the first level of classification set out in Article 2(1)(a) of Regulation (EC) No 1893/2006 of the European Parliament and of the Council <sup>4</sup>	{ALPHANUM-1}
5	Amount raised	The amount raised for the project.	{DECIMAL-18/5}
6	Amount raised currency	Currency in which the amount raised is expressed.	{CURRENCYCODE_3}
<p>Information on the project owner(s) of each project</p> <p>Field 7 shall be repeated for each project owner</p>			

<sup>4</sup> Regulation (EC) No 1893/2006 of the European Parliament and of the Council of 20 December 2006 establishing the statistical classification of economic activities NACE Revision 2 and amending Council Regulation (EEC) No 3037/90 as well as certain EC Regulations on specific statistical domains (OJ L 393, 30.12.2006, p. 1–39)

7	Project owner(s) identifier	<p>Code used to identify the project owner.</p> <p>Where the project owner is a legal entity, the LEI code of the disposer shall be used.</p> <p>Where the project owner is a non-legal entity, the identifier specified in Article 6 of Commission Delegated Regulation (EU) 2017/590<sup>5</sup> shall be used.</p>	<p>{LEI}</p> <p>{NATIONAL_ID}</p>
<p>Information on the investors and instruments issued for each project.</p> <p>If different type of the instrument is issued or different types or countries of investors or different currencies are to be reported, the fields 8-13 shall be repeated as many times as required for each instrument type, investors type, investors country and currency.</p>			
8	Instrument type	Type of instrument issued.	<p>LOAN – Loan</p> <p>ICFP – Admitted instrument for crowdfunding purposes</p> <p>SHRS – Share</p> <p>DEBT – Debt instrument</p> <p>OTHR – Other transferable security</p>
9	Investors type	Type of investors.	<p>PROF – Sophisticated investor</p> <p>RETL – Non-sophisticated investor</p> <p>OTHR – Project owners</p>
10	Investors country	Country of fiscal residency of the investors.	{COUNTRYCODE_2}

<sup>5</sup> Commission Delegated Regulation (EU) 2017/590 of 28 July 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the reporting of transactions to competent authorities (OJ L 87, 31.3.2017, p. 449–478)

11	Number of investors	The number of individual investors for the given investor type and the investor country.	{INTEGER}
12	Invested amount	The total amount invested for the given investor type and the investor country expressed in the currency used for the payment	{DECIMAL-18/5}
13	Invested amount currency	Currency in which the invested amount is expressed	{CURRENCYCODE_3}

## ANNEX II

### *Template for reporting information to ESMA*

N	FIELD	CONTENT TO BE REPORTED	FORMAT AND STANDARDS TO BE USED FOR REPORTING
1	CFSP identification code	Code used to identify the CFSP submitting the report.	{LEI}
2	Reporting period	The year which the report is submitted for	YYYY
<p>Information on the projects upon which a crowdfunding offer have been made by the service provider during the reference calendar year</p> <p>Fields 3-6 shall be repeated for each project.</p>			
3	Identifier of the crowdfunding offer	Unique identifier of the crowdfunding offer as specified in [Article 4 of RTS7]	{ALPHANUM-28}
4	Sector	Sector of the project as specified in Regulation (EC) No 1893/2006 of the European Parliament and of the Council of 20 December 2006 establishing the statistical classification of economic activities NACE 2 at Section level (i.e. first level of classification as described in Article 2 (1) (a).	{ALPHANUM-1}
5	Amount raised	The amount raised for the project.	{DECIMAL-18/5}
6	Amount raised currency	Currency in which the amount raised is expressed.	{CURRENCYCODE_3}
<p>Information on the project owner(s) of each project</p> <p>Field 7 shall be repeated for each project owner</p>			

7	Project owner(s) anonymized identifier	The identifier of the project owner anonymised in accordance with Article 3 of this regulation.	{ALPHANUM-??}
<p>Information on the investors and instruments issued for each project.</p> <p>If different type of the instrument is issued or different types or countries of investors or different currencies are to be reported, the fields 8-13 shall be repeated as many times as required for each instrument type, investors type, investors country and currency.</p>			
8	Instrument type	Type of instrument issued.	LOAN – Loan  ICFP – Admitted instrument for crowdfunding purposes  SHRS – Share  DEBT – Debt instrument  OTHR – Other transferable security
9	Investors type	Type of investors.	PROF – Sophisticated investor  RETL – Non-sophisticated investor  OTHR – Project owners
10	Investors country	Country of fiscal residency of the investors.	{COUNTRYCODE_2}
11	Number of investors	The number of individual investors for the given investor type and the investor country.	{INTEGER}
12	Invested amount	The total amount invested for the given investor type and the investor country expressed in the currency used for the payment	{DECIMAL-18/5}
13	Invested amount currency	Currency in which the invested amount is expressed	{CURRENCYCODE_3}



## **Annex XI                      Draft ITS pursuant to Article 28(5) of the ECSPR**

### **COMMISSION IMPLEMENTING REGULATION (EU) .../...**

**of XXX**

**supplementing Regulation (EU) 2020/1503 of the European Parliament and of the Council with regard to implementing technical standards specifying the standard forms, templates and procedures for the notifications of national marketing requirements applicable to crowdfunding service providers by competent authorities to ESMA**

(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 on European crowdfunding service providers for business<sup>1</sup>, and in particular the third subparagraph of Article 28(5) thereof,

Whereas:

- (1) To provide legal certainty and ensure easier market access, it is appropriate to set out standard forms, templates and procedures for competent authorities of Member States to notify and update ESMA of their national laws, regulations and administrative provisions which specifically govern marketing communications of crowdfunding service providers, as well as summaries thereof.
- (2) To ease the processing of these notifications and facilitate ESMA in meeting of the publication requirements referred to in Article 28(6) of Regulation (EU) 2020/1503, competent authorities of Member States should be required to proceed to the notifications within specific timeframes and using harmonised standard forms and templates.

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<sup>1</sup> OJ L 347, 20.10.2020, p. 1

- (3) In order to distinguish the types of notifications being made and facilitate their processing by ESMA, it is appropriate to provide for two different templates laying down a standard form which competent authorities should use depending on whether they make a notification pursuant to Article 28(2) or 28(3) of Regulation (EU) 2020/1503.
- (4) This Regulation is based on the draft implementing technical standards submitted to the Commission by ESMA.
- (5) ESMA has conducted open public consultations on the draft implementing 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 Council<sup>2</sup>,

HAS ADOPTED THIS REGULATION:

#### *Article 1*

##### *Subject matter*

This Regulation lays down standard forms, templates and procedures for notifications by competent authorities to ESMA pursuant to Article 28(2) and (3) of Regulation (EU) 2020/1503.

#### *Article 2*

##### *Contact point*

ESMA shall communicate to competent authorities the contact details, including the electronic address, that they shall use when proceeding to the notifications referred to in Article 28(2) and (3) of Regulation (EU) 2020/1503.

#### *Article 3*

##### *Timeframe*

1. Competent authorities shall proceed to the notification referred to in Article 28(2) of Regulation (EU) 2020/1503 within two months after the entry into application of this Regulation.
2. Competent authorities shall proceed to the notification referred to in Article 28(3) of Regulation (EU) 2020/1503 without delay and, in any case, no later than the date of entry into application in the relevant Member State of the modification to be notified.

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<sup>2</sup> 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).

#### *Article 4*

##### *Templates and submission*

1. Competent authorities shall proceed to the notification referred to in Article 28(2) of Regulation (EU) 2020/1503 using the template set out in Annex I of this Regulation.
2. Competent authorities shall proceed to the notification referred to in Article 28(3) of Regulation (EU) 2020/1503 using the template set out in Annex II.
3. Competent authorities shall submit the templates referred to in paragraphs 1 and 2 using the electronic address provided by ESMA pursuant to Article 2 of this Regulation.

#### *Article 5*

##### *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*.

It shall apply from [...].

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

*For For the Commission  
The President*

## ANNEX I

### *Template for the notifications pursuant to Article 28(2) of Regulation (EU) 2020/1503*

#### **Notification to ESMA of the national laws, regulations and administrative provisions applicable to marketing communications of crowdfunding service providers pursuant to Article 28(2) of Regulation (EU) 2020/1503**

*[Please fill out this form in a language customary in the sphere of international finance.]*

## SECTION A

### **General information**

Date of notification:

FROM:

Member State:

Competent authority:

Legal address:

Details of the person in charge of the notification:

Name:

Telephone:

Email:

## SECTION B

### Information concerning the notified national laws, regulations and administrative provisions applicable to marketing communications of crowdfunding service providers

Field	Subfield	Description
1	<i>In case a notification involves multiple national measures, subfields 1-7 shall be repeated and completed for each notified national measure.</i>	
	1	Type of national measure Whether the notified national measure is a law, regulation or administrative provision.
	2	Official title of the notified national law, regulation or administrative provision applicable to marketing communications of crowdfunding service providers
	3	Translation of the official title of the law, regulation or administrative provision

		provided under point 2 in a language customary in the sphere of international finance	
	4	Date of entry into application in the national legal system of the notified law, regulation or administrative provision	
	5	Hyperlink to the relevant section of the Member State's official website containing the full text of the national law, regulation or administrative provision	
	6	Summary of the notified national law, regulation or administrative provision (in a language customary in the sphere of international finance)	

	7	Additional information (optional)	
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## **ANNEX II**

### **Template for the notifications pursuant to Article 28(3) of Regulation (EU) 2020/1503**

**Notification to ESMA of changes in the national laws, regulations or administrative provisions applicable to marketing communications of crowdfunding service providers pursuant to**

**Article 28(3) of Regulation (EU) 2020/1503**

*[Please fill out this form in a language customary in the sphere of international finance.]*

### **SECTION A**

#### **General information**

Date of notification:

FROM:

Member State:

Competent authority:

Address:

Details of the person in charge of the notification:

Name:

Telephone:

Email:



## SECTION B

### Information concerning the changes in the national laws, regulations or administrative provisions applicable to marketing communications

Field	Subfield	Description
1	<p><i>In case a notification involves multiple changes to one national measure, subfields 1-8 shall be dedicated to that one national measure and include all changes made to it.</i></p> <p><i>In case the notification involves changes to multiple national measures, subfields 1-8 shall be repeated and completed for each notified national measure.</i></p>	
	1	Type of national measure
	2	Official title of the notified national law, regulation or administrative provision applicable to marketing communications of crowdfunding service providers
		Whether the notified national measure is a law, regulation or administrative provision.

	3	Translation of the official title of the law, regulation or administrative provision provided under point 2 in a language customary in the sphere of international finance	
	4	Date of adoption of the notified law, regulation, administrative provision or other act that change the information initially provided pursuant to Article 28(2) of Regulation (EU) 2020/1503	
	5	Date of entry into application of the notified law, regulation, administrative provision or other act that change the information initially provided under Article 28(2) of Regulation (EU) 2020/1503	
	6	Hyperlink to the relevant section of the Member State's official website containing the full text of the notified national law, regulation, administrative provision or other act	

	7	Summary of the national law, regulation or administrative provision notified pursuant to Article 28(2) of Regulation (EU) 2020/1503 as updated further to the changes notified in this form (in a language customary in the sphere of international finance)	
	8	Additional information (optional)	