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EBA/RTS/2021/11

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12 October 2021

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## Final report

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Draft regulatory technical standards on individual portfolio management of loans offered by crowdfunding service providers under Article 6(7) Regulation (EU) 2020/1503

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# 1. Executive summary

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Over the last few years, crowdfunding has become a significant means through which start-ups and SMEs can finance their projects. Unlike banking intermediation, the crowdfunding service provider does not take any risk of its own; rather, the risk remains entirely with the investor. Regulation (EU) 2020/1503 on European Crowdfunding Service Providers (ECSRP) was issued with the aim of ensuring uniform conditions for crowdfunding service providers across the Union (thus fostering the cross-border provisions of these services) and of providing a robust framework for investor protection. In particular, the disclosure of reliable and accurate information as a key component of a sound investor protection framework becomes very relevant when crowdfunding service providers offer individual portfolio management of loans, i.e. when they allocate a pre-determined amount of funds of an investor to one or multiple crowdfunding projects, in accordance with a specific mandate.

To this extent, Article 6(7) of the ECSRP mandates the EBA to submit draft regulatory technical standards to specify information that must be provided to investors to ensure they are appropriately informed about the risks they are exposed to when they invest in individual portfolio management of loans. These risks may originate from the following circumstances:

- i. Investors may underestimate the risks of their investment, assuming that every loan and project within a portfolio is subject to an adequate risk assessment process.
- ii. As crowdfunding is particularly relevant for small businesses and start-ups, often with little or no credit history, investors relying on these platforms may not be fully aware of the real quality of borrowers and may find it difficult to appreciate the risks involved for each of the loans in the portfolio.

In addition, crowdfunding platforms may set up contingency funds to compensate investors in the event of the default of a borrower and to smooth their returns. In order to avoid any misrepresentation of the underlying risk, the ECSRP makes it clear that the mere existence of these funds does not provide a guaranteed rate of return on the investment and that there is absolute discretion in respect of potential refunds. Furthermore, Article 6(7) of the ECSRP mandates the EBA to specify the policies and procedures that crowdfunding platforms must have in place with respect to contingency funds.

These draft RTS put forward the EBA proposal with respect to the disclosures and policies required for crowdfunding service providers that offer individual portfolio management of loans. First, they are required to show that the measurement techniques employed for risk assessments are based on a sufficient number of elements and are appropriate to the complexity and level of the risks underlying i) the single projects; ii) the portfolio; and iii) the project owners. This will give investors sufficient knowledge about the returns and risks of the projects and enable them to make informed decisions. Second, the draft RTS set out the information that crowdfunding platforms must disclose in relation to several key characteristics of each loan included in a certain portfolio. Third, the

policies that the crowdfunding platform needs to have in place in relation to contingency funds are specified. These policies aim to ensure that contingency funds have appropriate governance arrangements and procedures in place with respect to the collection of fees and disbursement of refunds.

By means of these requirements, the draft RTS are intended to mitigate the information gaps between project owners and investors and to ensure transparency and protection for investors.

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## Next steps

- The draft regulatory technical standards will be submitted to the Commission for endorsement [after which they will be subject to scrutiny by the European Parliament and the Council] before being published in the Official Journal of the European Union.

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## 2. Background and rationale

2. Over the last few years, crowdfunding has become a significant means through which start-ups and small and medium enterprises (SMEs) can finance their projects. Through crowdfunding, a service provider usually operates a digital platform to match or facilitate matching between prospective investors and lenders on the one hand, and owners of projects that need financing on the other. However, unlike banking intermediation, the crowdfunding service provider does not take on any risk of its own; rather, the risk remains entirely with the investor. The funding of projects can then take the form of loans ('lending-based' crowdfunding) or transferable securities ('investment-based' crowdfunding).
3. In order to ensure uniform conditions for crowdfunding service providers across the Union and thus foster the cross-border provision of crowdfunding services and the proper functioning of the internal market, Regulation (EU) 2020/1503 on European Crowdfunding Service Providers (ECSPR) has recently been issued<sup>1</sup>. The new Regulation will allow crowdfunding providers to apply for an EU passport based on a single set of rules. In turn, this will make it easier for them to offer their services across the EU.
4. The ECSPR contains two specific mandates for the EBA to develop – in close cooperation with the ESMA – two draft regulatory technical standards (RTS) on:
  - i. adequate disclosure of information to investors and appropriate policies and procedures on contingency funds with regard to individual portfolio management of loans [Article 6(7) of the ECSPR]; and
  - ii. the requirement for crowdfunding service providers to have in place an appropriate framework for credit risk assessment, loan valuation and pricing, and sound risk management practices and arrangements [Article 19(7) of the ECSPR].
5. The present draft RTS relate to the mandate arising from Article 6(7) of the ECSPR on individual portfolio management of loans. According to Article 2(1)(c) of the ECSPR, '*individual portfolio management of loans*' means '*the allocation by the crowdfunding service provider of a pre-determined amount of funds of an investor to one or multiple crowdfunding projects on its platform, in accordance with an individual investor's mandate*'. In practice, an investor provides the crowdfunding platform with a number of requirements that the projects to be financed must fulfil, and the service provider allocates the investor's funds accordingly.
6. When dealing with the allocation of their funds to a portfolio of loans by a crowdfunding service provider, it is important that investors are appropriately informed about the risks they are exposed to, which originate from the following instances:
  - i. Investors may underestimate the risks of their investment, assuming that every loan and project within a portfolio are subject to an adequate risk assessment process. Moreover, the risk of default is not borne by the crowdfunding service provider, but

<sup>1</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32020R1503&from=EN>

rather by the investors: this may lead crowdfunding platforms to take operational and reputational risks or overlook appropriate due diligence.

- ii. As crowdfunding is particularly relevant for small businesses and start-ups, often with little or no credit history, investors relying on these platforms may face an asymmetric information problem, because i) they may not be aware of the real quality of borrowers; ii) information on the creditworthiness of the project owner may be hard to collect; iii) it may be difficult to appreciate the risks involved for each of the loans in the portfolio.

7. In addition, crowdfunding platforms may set up contingency funds to compensate investors in the event of a default by one or more project owners and smooth their returns, but these tools are not mandatory and – above all – do not guarantee any payout in the event of default by a project owner.

8. In order to mitigate these information gaps and ensure transparency and adequate protection for investors, Article 6(7) of ESCPR requires that the draft RTS developed by the EBA have to specify:

- i. the elements to be included in the information to investors in respect of a description of the method to assess credit risk (Article 6(7)(a));
- ii. information about each individual portfolio (Article 6(7)(b));
- iii. the policies governing any contingency funds that the crowdfunding provider decides to operate (Article 6(7)(c))

## Structure of the draft RTS

9. The organisation of the content of the draft RTS has been quite straightforward as the mandate set out in Article 6(7) of the ESCPR already identifies three specific areas of analysis. Therefore, the draft RTS have been developed following the same structure of Article 6(7):

- i. Chapter I sets out some general provisions in terms of the quality of data to be disclosed and the format in which information will be disclosed.
- ii. Chapter II requires crowdfunding platforms to show that the measurement techniques employed for risk assessments are based on a sufficient number of elements and are appropriate to the complexity and level of the risks underlying i) the single projects; ii) the portfolio; and iii) the project owners. This will enable investors to have sufficient knowledge about the returns and risks of the projects and take informed decisions.
- iii. Chapter III sets out the information that crowdfunding platforms must disclose in relation to all the elements listed in Article 6(4) and which refers to several key characteristics of each loan included in a particular portfolio.

- iv. Chapter IV specifies the policies that the crowdfunding platform needs to have in place in relation to contingency funds. These policies aim to ensure that contingency funds have appropriate governance arrangements and procedures in respect of the collection of fees and disbursement of refunds.

### Information on the method used to assess credit risk

10. Article 4(4) of the ECSPR requires crowdfunding service providers to undertake an adequate assessment of the credit risk of the crowdfunding projects and the project owner at the moment the crowdfunding offer is made, and to base such a credit risk assessment on sufficient information. This approach is close to the one that banks need to follow when assessing credit risks at the point of loan origination, which is described in the EBA Guidelines on loan origination and monitoring<sup>2</sup>. However, in the context of individual portfolio management of loans, the investor selects a number of parameters and the crowdfunding platform allocates the funds accordingly. Therefore, as investors are not directly selecting the project they want to invest in, the need to provide adequate disclosure on how credit risk assessment is carried out becomes particularly important.
11. Therefore, Article 6(7)(a) of the ECSPR requires the specification of the elements to be included in the description of the method referred to in Article 6(2), i.e. in the description provided to investors of the method used to assess:
  - i. the credit risk of individual projects selected for the investor's portfolio
  - ii. the credit risk of the investor's portfolio as a whole
  - iii. the credit risk of the project owners selected for the investor's portfolio.
12. For this purpose, Chapter II of the draft RTS requires crowdfunding providers to demonstrate to investors that they are able to analyse credit risk at the loan/project and portfolio level, to enable them to understand the quality of the due diligence that providers carry out. Crowdfunding service providers are thus required to disclose to investors adequate information about the existence of prudent and robust credit decision-making processes for the assessment of single projects and single borrowers, as well as the elements considered when building a portfolio of loans.
13. Finally, investors need to be adequately informed that these measurement techniques are appropriate to the complexity and level of the risks underlying the single projects and/or the portfolios, based on robust data, and subject to periodic validation.

<sup>2</sup>

[https://www.eba.europa.eu/sites/default/documents/files/document\\_library/Publications/Guidelines/2020/Guidelines%20on%20loan%20origination%20and%20monitoring/884283/EBA%20GL%202020%2006%20Final%20Report%20on%20GL%20on%20loan%20origination%20and%20monitoring.pdf](https://www.eba.europa.eu/sites/default/documents/files/document_library/Publications/Guidelines/2020/Guidelines%20on%20loan%20origination%20and%20monitoring/884283/EBA%20GL%202020%2006%20Final%20Report%20on%20GL%20on%20loan%20origination%20and%20monitoring.pdf)

## Information on each individual portfolio

14. Article 6(7)(b) ECSPR requires the EBA to specify the information referred to in Article 6(4), i.e. a minimum list of items for each portfolio. However, a private lender does not usually have the resources to collect all the information; therefore, the crowdfunding provider will need to disclose a very detailed set of information on the loans included in each individual portfolio. The list of information to be disclosed in accordance with Article 6(4) is in line with the list of information to be disclosed in the Key Investor Information Sheet (KIIS) as defined in Annex I, part G of the ECSPR.
15. Therefore, the approach adopted by the EBA when developing Chapter III focuses on providing adequate details for each of the elements in Article 6(4) ECSPR to enable investors to acquire a full understanding of the features and the riskiness of loans they are investing in via a particular portfolio<sup>3</sup>. In addition, in specifying how particular information needs to be disclosed, the draft RTS aim to achieve a uniform representation of the loans in a portfolio, thus enabling investors to compare different portfolios, either on the same platform or on different ones.
16. The scope of the information to be specified by the draft RTS is already closely defined, so the room for leeway is relatively limited. However, Article 6(4)(f) requires the draft RTS to specify the information to be provided '*on any default on credit agreements by the project owner within the past five years*'. While a definition of default is provided in Article 1(1) of the Delegated Regulation xxx/XXX with regard to regulatory technical standards specifying the methodology for calculating the default rates referred to in Article 20(1) of Regulation No 2020/1503<sup>4</sup>, the ECSPR does not provide a definition of 'credit agreements', so a policy choice had to be made to define their scope for the purpose of this Chapter.
17. To that extent, it was recognised that – if not properly addressed – adverse selection mechanisms may result in only borrowers with low creditworthiness financing their projects mainly through crowdfunding platforms, thus increasing the inherent risk of this investment. For this reason, the EBA recognises the value of disclosing adequate information to investors on the financial history of the project owners to enable investors to be properly informed about the quality of project owners' creditworthiness. However, it was recognised that in the event that a project owner has already incurred a default, for instance on a bank loan, there may be hurdles for crowdfunding providers (unless they are part of a banking group) to obtain such information from national credit information systems.
18. Therefore, in order to avoid a disparity among crowdfunding service providers in accessing project owners' information, thus creating an uneven playing field among platforms belonging to – or not belonging to – banking groups, Chapter III of the draft RTS requires crowdfunding providers to ask project owners to provide information about their past defaults on credit agreements defined as loans facilitated by crowdfunding platforms.

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<sup>3</sup> It should be noted that Article 6(4) (e) of ECSPR requires the draft RTS to specify risk mitigation measures for every loan in a portfolio. While this is addressed in Article 11 of the present draft RTS, risk mitigation techniques adopted by project owners may not necessarily be fully comparable to those recognised under the CRR.

<sup>4</sup> See <https://www.esma.europa.eu/press-news/esma-news/esma-consults-regulating-crowdfunding>

19. However, in order to provide investors with adequate information about the financial history of a borrower to whom they ultimately lend their money, the draft RTS also require crowdfunding platforms to disclose information obtained by project owners about the days past due<sup>5</sup> and the amount of arrears in credit obligations that they may have stipulated outside of the crowdfunding remit.

#### Information on the policies and procedures on contingency funds

20. Several crowdfunding service providers have set up contingency funds with a view to providing some compensation to investors in the event of a default by a borrower and to smooth their returns. To this extent, the approach taken by the ECSPR is to remove the perception that the existence of these funds hides or misrepresents the underlying risk, leading investors to assume that the mere existence of these funds implies that platforms provide a guaranteed rate of return on loans. To mitigate this risk, Article 6(5)(a) of the ECSPR requires crowdfunding service providers to publish a specific risk warning, stating that the contingency fund operator has absolute discretion as to the amount that may be paid, including the possibility that no payment will be issued to investors, even in the event that they suffer a loss.

21. In addition, Article 6(5)(b) requires the disclosure of a contingency fund policy, including the source of the money paid into the fund; how the fund is governed; to whom the money belongs; how the money paid into the fund will be treated in the event of the contingency fund operator's insolvency, and the considerations involved in deciding whether or not to proceed to a payout.

22. While Article 6(5)(b) refers to a disclosure requirement, the mandate for the EBA in Article 6(7)(c) is of a prudential nature and requires the definition of the organisational arrangements and the policies and procedures that crowdfunding service providers need to have in place to ensure that the contingency fund is managed in a prudential manner. Therefore, Chapter IV defines the elements to be considered when designing policies on governance, funding and disbursement and requires the content of these policies to be consistent with the disclosure to be made to investors. In addition, Chapter IV clarifies that these policies and procedures should be reflected consistently in the content of the contingency fund policy disclosed to investors.

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<sup>5</sup> To this extent, as the information is provided directly by the project owner, a contractual notion of 'past due' is used, i.e. materiality thresholds are not applied/considered.

### 3. Draft regulatory technical standards

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**COMMISSION DELEGATED REGULATION (EU) No .../..**

**of XXX**

**[...]**

**supplementing Regulation (EU) No 2020/1503 of the European Parliament and of the Council with regard to regulatory technical standards on individual portfolio management of loans by crowdfunding service providers, specifying the elements of the method to assess credit risk and the information on each individual portfolio to be disclosed to investors, and the policies and procedures required in relation to contingency funds**

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, and in particular Article 6(7)(a) thereof,

Whereas:

- (1) When investing in a portfolio of loans offered by a crowdfunding service provider, investors do not select the projects in which they will invest their funds, but rather select a number of parameters and risk indicators and leave to the crowdfunding service provider the task of allocating the funds accordingly. Therefore, the crowdfunding service provider should disclose appropriate levels of information to prospective and current investors, allowing them to have sufficient knowledge about the returns and risks of the projects and make informed decisions.
- (2) In order to reduce the information asymmetry between crowdfunding service providers and investors, investors should be provided with all the relevant information about the composition of the portfolio, including the projects where their funds are invested, as well as the quality of the loans financing these projects. This should allow investors to better understand and compare the performance and riskiness of different portfolios, either offered on the same platform or on alternative platforms.

- (3) Investors are exposed not only to risks connected to the projects or the loans in which their funds are invested, but also to the way the crowdfunding service provider assesses the risk of these loans and projects and how it manages the selection of loans for the portfolio. In this respect, it is recognised that performing stress tests on the portfolio and sensitivity analysis on the single loan and the single project owner are particularly effective in providing a thorough and complete assessment of the investments. It is hence appropriate that the results of these analyses are disclosed to investors.
- (4) In order to ensure effective transparency, the information about the elements to be included by the crowdfunding service provider in the method employed to perform credit risk assessments should be disclosed appropriately. This will allow investors to understand whether an adequate and prudential approach is taken by crowdfunding service providers in the process of assessing the sustainability of projects being financed, the affordability of the loans for the project owners, and the composition of the individual loans in a structured portfolio.
- (5) All the relevant information should be provided to investors with regard to the risk categories for each loan in the portfolio. The allocation of loans to well-defined risk categories is one of the elements of the method to assess credit risk for the individual loans. The minimum content and governance of the risk management framework in charge of establishing risk categories 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 EBA, in close cooperation with the ESMA, is required to submit to the Commission by 10 May 2022. Until these regulatory technical standards are in place, crowdfunding service providers should establish and maintain clear and effective policies and procedures for the definition of the risk categories for the purpose of disclosing information to investors, in accordance with Article 6(4) (c) of Regulation (EU) 2020/1503.
- (6) When a crowdfunding service provider relies on a dedicated contingency fund to compensate investors for the losses they may incur in the event that project owners do not repay their loans, investors will need to be made aware that the mere existence of the contingency fund does not provide a guarantee that the investment can be considered risk-free and that they will be reimbursed in the event that the loan they have financed is in default, as there is absolute discretion on the part of the crowdfunding service provider to decide on any payments. In order to ensure adequate investor protection, it is important that crowdfunding service providers have in place appropriate policies and governance arrangements when managing, either directly or through a third-party provider, contingency funds.
- (7) This Regulation is based on the draft regulatory technical standards developed by the EBA in close cooperation with the ESMA and submitted to the Commission.
- (8) The EBA 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 Banking Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1093/2010<sup>6</sup>,

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<sup>6</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, 15.12.2020, p. 12)



HAS ADOPTED THIS REGULATION:

## CHAPTER I

### General provisions

#### *Article 1*

##### *Accuracy and reliability of information provided to investors*

1. Crowdfunding service providers shall ensure that the information provided to investors pursuant to Article 6(7) of Regulation (EU) 2020/1503 is accurate, reliable and kept regularly updated.
2. For the purpose of paragraph 1, crowdfunding service providers shall ensure that:
  - a. the data used to conduct the assessments of creditworthiness referred to in Chapter II are consistent, complete and appropriate;
  - b. the measurement techniques are appropriate to the complexity and level of the risks underlying the single crowdfunding projects and/or the portfolios, are based on reliable data, and are subject to periodic validation; and
  - c. the procedures relating to data management are robust, well documented, reliable and regularly updated.

#### *Article 2*

##### *Format of the information to be disclosed*

1. For the purpose of Chapter II, the information provided to investors shall be easily available in a dedicated section of the crowdfunding service provider's website that is clearly distinguishable from marketing communications.
2. For the purpose of Chapter III, the information provided to individual investors on their portfolio of loans shall be made available on a secure page of the crowdfunding service provider's website that shall be accessible via an adequate means of personal identification.
3. The information referred to in paragraphs 1 and 2 shall be presented in a way that is easy to read and expressed in a manner and using language that facilitates its understanding; where ordinary words can be used, technical terms should be avoided and, when used, they should be explained.

## CHAPTER II

### **Elements to be included in the description of the method to assess credit risk**

#### *Article 3*

##### *Credit risk of individual crowdfunding projects*

For the purpose of Article 6(7)(a) and in accordance with the second subparagraph of Article 6(2) of Regulation (EU) 2020/1503, the description provided to investors of the method to assess the credit risk of individual crowdfunding projects within a portfolio shall, as a minimum, include the following elements:

- a. the criteria and the key financial indicators used to establish the feasibility and sustainability of the business plans of the individual crowdfunding projects;
- b. an analysis of the expected cash flows of the crowdfunding projects and their uncertainty over different time horizons;
- c. an analysis of the characteristics – including the degree of competition – of the business sector in which the project owners operate;
- d. an assessment of the project owners' knowledge, experience, reputation and capacity to manage business activities in the project's specific sector;
- e. the procedures regarding the acceptance and recognition of collateral or guarantee and credit risk mitigation measures, where relevant;
- f. the type of the repayment schedule for the loan and the frequency of instalments;
- g. the procedures to assign each loan associated with a project to an appropriate risk category as defined by the risk management framework; and
- h. the source and type of appropriate data used for the purposes of points (a)-(e).

#### *Article 4*

##### *Credit risk at the investor's portfolio level*

1. For the purpose of Article 6(7)(a) and in accordance with the second subparagraph of Article 6(2) of Regulation (EU) 2020/1503, the description provided to investors of the method to assess credit risk at the investor's portfolio level shall, as a minimum, include an explanation of how the following elements are taken into account in the composition of the portfolio:
  - a. the distribution of loans in accordance with their maturity within the same portfolio;

- b. the level of the interest rate defined in each loan of the same portfolio;
- c. the share of loans in a single portfolio granted to the same project owner or to a group of connected project owners;
- d. the share of loans in a single portfolio granted to project owners established or operating in the same jurisdiction or geographical area;
- e. the share of loans in a single portfolio granted to project owners operating in the same business sector;
- f. the share of loans assigned to the same risk category; and
- g. the method used to evaluate the correlation of risks within the same portfolio

2. For the purpose of Article 4(1)(c), a group of connected project owners means any of the following:

- a. two or more natural or legal persons who constitute a single risk because one of them, directly or indirectly, has control over the other or others;
- b. two or more natural or legal persons to be regarded as constituting a single risk because they are so interconnected that, if one of them were to experience financial problems, the other or all of the others would also be likely to encounter funding or repayment difficulties.

3. When the crowdfunding service provider advertises a specific target rate of return on investment for a portfolio, it shall disclose the procedure employed to select the individual loans to be included in the portfolio.

## *Article 5*

### *Credit risk of project owners*

For the purpose of Article 6(7)(a) and in accordance with the second subparagraph of Article 6(2) of Regulation (EU) 2020/1503, the description provided to investors of the method used to assess the credit risk of project owners shall, as a minimum, include the following elements:

- a. the procedures for the credit approval and monitoring processes;
- b. the procedures to determine the project owner's credit scoring, where applicable;
- c. the procedures for using external ratings for the purpose of assessing a project owner's creditworthiness;
- d. the procedures regarding the acceptance and recognition of collateral or guarantee and credit risk mitigation measures, where relevant;

- e. the procedures and data used to assess the financial history of the project owner and the procedures to be followed in the event that the project owner fails or refuses to provide the required information.

## *Article 6*

### *Use of models*

1. For the purpose of Article 6(7)(a) and in accordance with the second subparagraph of Article 6(2) of Regulation (EU) 2020/1503, crowdfunding service providers shall provide adequate information on the models used for the credit risk assessment of crowdfunding projects, the creditworthiness assessment of project owners, the credit approval and monitoring processes, and the composition of portfolios.
2. For the purpose of paragraph 1, crowdfunding service providers shall disclose the following elements:
  - a. the source of the data used as input to the models;
  - b. the framework employed to ensure the quality of the input data;
  - c. the existence of appropriate governance arrangements for the design and use of such models; and
  - d. the framework to ensure that the quality of the model output is regularly assessed and validated, and where appropriate, reviewed;
3. When automated models are used in the credit risk assessment of crowdfunding projects, in the creditworthiness assessment of project owners, in the credit approval and monitoring processes, and/or in the composition of portfolios, crowdfunding service providers shall disclose:
  - a. how the use of automated models is appropriate to the size, nature and complexity of the types of crowdfunding projects selected for the investor's portfolio; and
  - b. the conditions for the application of automated decision-making in the credit approval and monitoring processes, including identifying loans, segments and limits for which automated decision-making is allowed.

## *Article 7*

### *Information on stress testing and sensitivity analysis*

1. Whereas crowdfunding service providers conduct stress test and sensitivity analysis exercises, they shall provide adequate disclosures to investors.

2. For the purpose of paragraph 1, crowdfunding service providers shall disclose information on:
  - a. at the level of the single loan and single project owner, any sensitivity analyses conducted to reflect potentially negative market and idiosyncratic events in the future that are relevant to the type and purpose of the loan; and
  - b. at the level of the portfolio, the procedures and information systems for the purpose of stress testing that are conducted to assess the resilience of the portfolio through the economic cycle and in different scenarios.

## CHAPTER III

### Information to be provided on each individual portfolio

#### *Article 8*

##### *Calculation of the weighted average annual interest rate*

1. For the purpose of calculating the weighted average annual interest rate on loans in a portfolio in accordance with point (b) of Article 6(4) of Regulation (EU) 2020/1503, crowdfunding service providers shall calculate the average (weighted for the outstanding amount of loans in a portfolio) of the annual interest rate of every loan of which the portfolio is composed.
2. For the purpose of paragraph (1), in order to calculate the weighted average annual interest rate, crowdfunding service providers shall ensure all of the following:
  - that the denominator consists of the sum of the notional amount of every loan included in the portfolio;
  - that the numerator consists of the sum of the product (i) of the notional amount and (ii) of the annual interest rate of every loan included in the portfolio;
3. For the purpose of paragraph 2, the annual interest rate corresponds to
  - a. the annual interest rate defined in the loan contract in the case of a fixed interest rate, or
  - b. the interest rate in force at the time of the publication, taking into account any upper limit defined in the loan contract, in the case of a variable interest rate, or
  - c. the weighted average of the interest rates defined in the loan contract in cases in which the loan is split into tranches earning different interest rates.

## *Article 9*

### *Distribution of loans according to risk category*

1. For the purpose of calculating the distribution of loans according to risk category, in accordance with point (c) of Article 6(4) of Regulation (EU) 2020/1503, crowdfunding service providers shall ensure that each individual loan is assigned to the relevant risk category set out in the risk management framework on the basis of sound and well-defined criteria, as referred to in Article 4(4)(f) of Regulation (EU) No 2020/1503 and as specified in accordance with Article 19(7)(d) of the same Regulation.
2. For the purpose of paragraph 1, and for each risk category, the following definition shall apply:
  - a. The distribution of loans according to risk category in absolute numbers refers to the sum of the notional amount of every loan in the same risk category.
  - b. The distribution of loans according to risk category as a percentage refers to the ratio between (i) the sum of the notional amount of every loan in the same risk category and (ii) the total notional amount of all loans within the portfolio.

## *Article 10*

### *Key information for every loan included in the portfolio*

1. For the purpose of Article 6, paragraph 4(d) of Regulation (EU) 2020/1503, the crowdfunding service provider shall provide the investor with key information for every loan of which a portfolio is composed, including as a minimum:
  - the amount of the loan, including the most recent outstanding balance;
  - the currency in which the loan is granted;
  - 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 its servicing policy;
  - the identity of the project owner by indicating its legal name, the country of incorporation and registration number, the address of its registered office and its corporate website;
  - the ownership structure of the project owner;
  - the purpose of the loan, by adding a brief description of the crowdfunding project;

- the interest rate or any other compensation defined in the loan, for each year until maturity; if the interest rate or any other compensation is not directly available, the calculation method shall be disclosed;
- the maturity date of the loan;
- the relevant risk category to which the loan is assigned in accordance with the risk management framework, as referred to in Article 4(4)(f);
- the schedule for the repayment of the principal and for the payment of interest on the loan;
- the compliance of the project owner with this instalment payment schedule by indicating any past due payment or any default as defined by Article 1(1) of the Delegated Regulation xxx/XXX with regard to regulatory technical standards specifying the methodology for calculating the default rates referred to in Article 20(1) of Regulation (EU) 2020/1503;
- the percentage of the amount of the crowdfunding project being financed by the investor through the loan, expressed as the ratio between (i) the notional amount of the loan and (ii) the total amount of the crowdfunding project.

2. The information provided for each loan included in a portfolio shall report whether a project owner has more than one crowdfunding project in place, financed through any crowdfunding service provider, and specify the information referred to under paragraph 3.
3. For the purpose of paragraph 2, the crowdfunding service provider shall require the project owner to provide the following information on his/her other crowdfunding projects:
  - a. the type of offer and the instrument used for financing the project;
  - b. the completion date (past or expected);
  - c. the notional amount that the project owner is borrowing;
  - d. other relevant information, including all other financial obligations and contingent liabilities.
4. Crowdfunding service providers shall take reasonable steps to ensure that the information provided by project owners in accordance with paragraph 3 is accurate, reliable and up to date.

## Article 11

### *Information on risk mitigation measures*

1. For the purpose of Article 6, paragraph 4(e) of Regulation (EU) 2020/1503, a ‘risk mitigation measure’ means a technique used by a project owner to reduce the credit risk associated with a loan.
2. For the purpose of paragraph 1, risk mitigation techniques can be qualified as ‘funded credit protection’ or as ‘unfunded credit protection’:
  - ‘funded credit protection’ means a technique of risk mitigation where the reduction of the credit risk associated with a loan derives from the right of the investor, in the event of the default of the loan or on the occurrence of other specified credit events relating to the project or project owner, to liquidate or obtain transfer or appropriation of, or to retain, certain assets or amounts, or to reduce the amount of the loan;
  - ‘unfunded credit protection’ means a technique of risk mitigation where the reduction of the credit risk associated with a loan derives from the obligation of a third party to pay an amount in the event of the default of the loan or on the occurrence of other specified credit events relating to the project or project owner.
3. In the event that a loan is guaranteed by ‘funded credit protection’ as defined in paragraph 2, the crowdfunding service provider shall provide, as a minimum, the following information:
  - i. the type of asset(s);
  - ii. the most recent valuation of such asset(s) and the amount(s) that can be liquidated, transferred, retained or appropriated;
  - iii. the valuation method;
  - iv. the ratio between the amount provided for in (ii) and the total notional amount of the loan, expressed as a percentage.
4. In the event that a loan is guaranteed by ‘unfunded credit protection’ as defined in paragraph 2, the crowdfunding service provider shall provide, as a minimum, the following information:
  - i. name, address and legal nature of the third party acting as protection provider or guarantor;
  - ii. the ratio between (i) the notional amount of the loan covered by the third party and (ii) the total notional amount of the loan, expressed as a percentage.
5. For the purpose of paragraphs 3 and 4, crowdfunding service providers shall ensure all of the following:

- that the eligibility and the valuation of any risk mitigation measure are assessed in accordance with adequate policies and procedures within the risk management framework, as referred to in Article 4(4)(f) of Regulation (EU) 2020/1503 and as specified in accordance with Article 19(7)(d);
- that the valuation of any risk mitigation measure takes into account all the disposition costs arising from obtaining and selling collateral.

## Article 12

### *Information on defaults on credit agreements by the project owner*

1. For the purpose of Article 6, paragraph 4(f) of Regulation (EU) 2020/1503, the following definitions shall apply:
  - a ‘default’ is defined by Article 1(1) of the Delegated Regulation xxx/XXX with regard to regulatory technical standards specifying the methodology for calculating the default rates referred to in Article 20(1) of Regulation (EU) 2020/1503;
  - a ‘credit agreement’ means an agreement whereby an investor, as defined by Article 2, paragraph 1 (i) of Regulation (EU) 2020/1503, grants to a project owner, as defined by Article 2, paragraph 1 (h) of Regulation (EU) 2020/1503, credit in the form of a loan for a specific crowdfunding project.
2. In order to comply with Article 6, paragraph 4(f) of Regulation (EU) 2020/1503, crowdfunding service providers shall require project owners to provide information on defaults that have occurred under credit agreements in the past five years.
3. The information on defaults referred to in paragraph 2 shall be provided by the project owner to the crowdfunding service provider:
  - a. at the point of loan origination;
  - b. immediately after the occurrence of a default event; and
  - c. until the maturity date of the credit agreement included in the portfolio.
4. Crowdfunding service providers shall take reasonable steps to ensure that the information provided by project owners in accordance with paragraphs 2 and 3 is accurate, reliable and up to date.
5. Crowdfunding service providers shall disclose to investors whether the source of information on defaults referred to in paragraphs 2 and 4 is included in one or more of the following and specify which:
  - a. sworn statement by the project owner;
  - b. information available in credit registers;

- c. publicly available information, including from debt collection companies or credit rating agencies;
- d. other type of information

### *Article 13*

#### *Information on past due days and arrears by the project owner*

1. In order to give investors a full understanding of the creditworthiness of the project owner, crowdfunding service providers shall disclose information on the financial history of the project owner.
2. For the purpose of paragraph 1, crowdfunding service providers shall require project owners to provide the following information for any payment obligation they have in place relating to any 'financial instrument' as defined by Article 4(1)(50) of Regulation (EU) 2013/575 over the past five years:
  - a. past due days; and
  - b. amount of arrears.
3. Crowdfunding service providers shall take reasonable steps to ensure that:
  - a. the information provided by project owners in accordance with paragraph 2 is accurate, reliable and up to date; and
  - b. the disclosure to investors of information referred to in paragraph 2 is in accordance with Regulation (EU) 2016/679 on data protection
4. Crowdfunding service providers shall disclose to investors whether the source of information referred to in paragraphs 2 and 3 is included in one or more of the following and specify which:
  - a. sworn statement by the project owner;
  - b. information available in credit registers;
  - c. publicly available information
  - d. other type of information



## *Article 14*

### *Information on fees paid in respect of the loan by the investor, the crowdfunding service provider or the project owner*

1. For the purpose of Article 6, paragraph 4(g) of Regulation (EU) 2020/1503, the crowdfunding service provider shall provide to the investor, for each of the loans included in his/her portfolio, adequate information about the fees paid in respect of these loans.
2. For the purpose of paragraph 1, the information provided to the investor shall include:
  - i. the subject paying the fees, including whether this subject is the investor, the crowdfunding service provider, the project owner or a third party;
  - ii. the monetary amount of the fees;
  - iii. the subject receiving the fees, including whether this subject is the crowdfunding service provider or a third party in the event of operational functions being outsourced;
  - iv. an indication of corresponding services remunerated by fees, including the subscription fees, management fees, fees for debt collection processes and exit fees;
  - v. the calculation method, including whether the amount of the fees represents a percentage of the notional amount of the loan or any other variable, or a fixed amount;
  - vi. the schedule of payment of the fees.

## *Article 15*

### *Information on the valuation of the loan*

1. For the purpose of Article 6(4)(h) of Regulation (EU) 2020/1503, where a crowdfunding service provider carries out a valuation of loans in one of the circumstances listed in Article 4(4)(e), it shall provide to investors adequate information about the valuation of those loans.
2. For each individual loan, the valuation of the loan shall reflect the likely actual return, defined as the discounted annual return on the investment expected by the investor on a given valuation date, based on the most recent available information.
3. For the purpose of paragraph 2, the calculation of the likely actual return shall consider the following information:
  - the interest rate or any other compensation defined in the loan;

- the yield to maturity;
- the application of any fees in accordance with Article 14 of these RTS;
- the expected default rates, defined in accordance with Article 4(1) of Delegated Regulation xxx/XXX with regard to regulatory technical standards specifying the methodology for calculating the default rates referred to in Article 20(1) of Regulation (EU) 2020/1503; and
- any other costs paid by the project owner or the investor or the crowdfunding service provider in relation to the loan.

## *Article 16*

### *Information on the valuation of the portfolio*

1. For the purpose of Article 6(4)(h) of Regulation (EU) 2020/1503, where a crowdfunding service provider carries out a valuation of loans in one of the circumstances listed in Article 4(4)(e), it shall disclose the likely actual return for each individual portfolio, defined as the simple average (loan-weighted) of the discounted annual return on investment expected by the investor for every loan of which the portfolio is composed, expressed as a percentage.
2. For the purpose of paragraph 1, in order to calculate the likely actual return of each individual portfolio, crowdfunding service providers shall ensure both of the following:
  - that the denominator consists of the sum of the notional amount of every loan of which the portfolio is composed;
  - that the numerator consists of the sum of the product (i) of the notional amount and (ii) of the likely actual return of every loan of which the portfolio is composed.
3. For each individual portfolio, the crowdfunding service provider shall disclose a measure of its risk, expressed for instance by the variance or by the standard deviation of the returns on loans within the portfolio and their correlation.
4. Crowdfunding service providers shall not manipulate or misrepresent the likely actual return disclosed in accordance with Article 6(4)(h) of Regulation (EU) No 2020/1503.



## CHAPTER IV

### **Policies, procedures and organisational arrangements required with regard to contingency funds**

#### *Article 17*

##### *General provisions*

1. In accordance with Article 6(7)(c) of Regulation (EU) 2020/1503, where a crowdfunding service provider has established and operates a contingency fund for its activity relating to the individual portfolio management of loans, it shall have in place adequate policies and procedures and organisational arrangements so as to ensure that the contingency fund is managed prudently and can fulfil its objectives.
2. For the purpose of paragraph 1, the policies, procedures and organisational arrangements relating to the contingency fund shall be approved by the management body of the crowdfunding service provider and shall be in written form, updated and well documented.

#### *Article 18*

##### *Organisational arrangements*

1. The crowdfunding service provider shall ensure a suitable and transparent organisational and operational structure for any contingency fund it may have in place and shall have a written description of it.
2. The management body of the crowdfunding service provider shall oversee the implementation of the governance and organisational arrangements of the contingency fund.
3. For the purpose of paragraph 2, all the members of the management body of the crowdfunding service provider:
  - a. shall have full knowledge of the legal, organisational and operational structure of the contingency fund and ensure that it is in line with its approved purposes; and
  - b. shall be fully aware of the structure and responsibilities and of the division of tasks within the contingency fund.
4. The organisational structure of the fund shall not impede the ability of the management body to identify, oversee and manage effectively the risks that the fund will face as a result of its operations.

## *Article 19*

### *Governance policy*

1. The crowdfunding service provider shall have in place a policy to define the governance of the contingency fund. This policy shall ensure that internal governance arrangements, processes and mechanisms are consistent, well integrated and adequate.
2. For the purpose of paragraph 1, the policy shall include the following elements and information:
  - a. the purpose of the contingency fund;
  - b. the legal and operational structure of the contingency fund, including whether it is operated by the crowdfunding service provider itself or by a third party;
  - c. the duration of the contingency fund, including cases in which the fund has an unlimited term.
3. In the event that the fund is operated by a third party, the policy in paragraph 2 shall also include the following information:
  - a. the composition of the management body of the contingency fund;
  - b. the responsibilities and duties of the management body of the contingency fund;
  - c. an explanation of the competences and skills of each member of the management body of the contingency fund;
  - d. the frequency of the meetings of the management body of the contingency fund;
  - e. the reporting requirements between the management body of the fund and the management body of the crowdfunding service provider;
  - f. the responsibilities for the documentation, management and control of the outsourcing arrangements;
  - g. the identification of one or more senior staff members who are directly accountable to the management body of the crowdfunding service provider and responsible for managing and overseeing the risks of outsourcing arrangements, including the respective documentation.



## *Article 20*

### *Funding policy*

1. The crowdfunding service provider shall have in place a policy to define how the contingency fund is financed and how the proceeds collected are managed.
2. For the purpose of paragraph 1, the following elements shall be specified:
  - a. any initial contribution made by the crowdfunding service provider into the contingency fund;
  - b. the type of fees that are collected for the purpose of accruing the contingency fund;
  - c. the criteria the contingency fund management takes into account when deciding the type of fees to be levied;
  - d. the criteria the contingency fund management takes into account when deciding the amount of fees to be levied for each loan;
  - e. the decision-making process to define the amount and nature of fees to be levied;
  - f. the investment strategy adopted by the contingency fund for the purpose of investing the funds under management;
  - g. the legal ownership of the funds;
  - h. how the funds will be dissolved in the event of the maturity of the contingency fund;
  - i. how the funds are segregated from other assets owned by the crowdfunding service provider; and
  - j. how the money paid into the fund will be treated in the event of the insolvency of the contingency fund operator.

## *Article 21*

### *Disbursement policy*

The crowdfunding service provider shall have in place a policy to define how, as a minimum, the following elements are considered in the decision on proceeding to any disbursement from the contingency fund to investors:

- a. updated available fund balance;
- b. the share of the loans that have defaulted in a given portfolio;
- c. the interest rates and maturity of the loans that have defaulted in a given portfolio;



- d. the procedure to be followed in order to consider whether to make a discretionary payment from the contingency fund;
- e. the circumstances in which the contingency fund may be activated for the payout;
- f. the criteria to be considered in the event of competing or simultaneous claims of investors on the same defaulted loans.

#### *Article 22*

##### *Business continuity policy*

Crowdfunding service providers shall establish a sound business continuity policy for the contingency fund to ensure its ability to operate on an ongoing basis and to limit possible losses in the event of temporary or definitive failure.

#### *Article 23*

##### *Transparency and disclosure to investors*

1. The management body of the crowdfunding service provider shall inform and update its staff about the contingency fund's policies and procedures in a clear and consistent way, at least to the level needed to carry out the duties of the contingency fund.
2. The policies, procedures and organisational arrangements that the crowdfunding service provider shall have in place in accordance with Article 6(7)(c) of Regulation (EU) 2020/1503 shall be consistently reflected in the contingency fund policy referred to in Article 6(5) of Regulation (EU) 2020/1503.

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

Done at Brussels,

*For the Commission  
The President*

*[For the Commission  
On behalf of the President]*

## 4. Accompanying documents

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### 4.1 Draft cost-benefit analysis/impact assessment

23. In recent years, crowdfunding platforms have developed as a form of alternative finance for start-ups and small and medium enterprises (SMEs). Through crowdfunding, a service provider operates a digital platform to facilitate matching between prospective investors and lenders with owners of projects that need financing. The new EU Regulation on crowdfunding (REGULATION (EU) 2020/1503 – ECSPR) was recently introduced with the aim of providing a standardised framework to guide the functioning of such platforms. Article 6(7) of the ECSPR mandates the EBA to develop draft regulatory technical standards (RTS) to further specify the requirements with which the crowdfunding platform should comply in relation to individual portfolio management of loans.

24. As per Article 10(1) of the EBA regulation (Regulation (EU) No 1093/2010 of the European Parliament and of the Council), any RTS developed by the EBA shall be accompanied by an Impact Assessment (IA) annex which analyses ‘the potential related costs and benefits’ before submission to the European Commission. Such an annex shall provide the reader with an overview of the findings as regards identifying the problem, the options identified to eliminate the problem and their potential impacts.

25. The EBA prepared the IA included in this consultation paper, analysing the policy options considered when developing the regulatory technical standards. Given the nature of the study, the IA is qualitative in nature.

#### A. Problem identification

26. One important difference between crowdfunding and traditional banking intermediation is that the crowdfunding service provider facilitating the match between project owners/borrowers and investors does not take any borrower’s risk of its own. Rather, the risk stemming from the creditworthiness of borrowers remains entirely with the investor. Moreover, the asymmetric information between lenders and project owners may increase the chance that the former underestimate the risks of an investment, either because of a lack of adequate information or due to the assumption that every project proposed on a platform is subject to an adequate risk assessment process. This asymmetry of information may be even greater in cases in which the crowdfunding service provider offers the individual management of a portfolio of loans, i.e. allocates a pre-determined amount of funds of an investor to one or multiple crowdfunding projects in accordance with an individual investor’s mandate, which may include the choice of a target rate.

27. Under this situation, it is necessary to develop a framework that ensures the protection of investors and provides enough transparency to inform investment decisions and limit

excessive risk-taking. The ECSPR already provides the basis for such a framework, but more detailed and technical guidelines are needed to create a comprehensive framework.

28. In addition, in the absence of an EU comprehensive framework for crowdfunding platforms, many Member States have already introduced national regimes. This has led to a lack of uniform conditions for crowdfunding platforms operating in different Member States, which in turn may create uncertainty and ultimately discourage investors from channelling their funds into prospective projects.

#### B. Policy objectives

29. As a general objective, the draft RTS aim to contribute towards enhancing transparency, providing investors with appropriate tools to make a well-informed decision about the projects and the project owners they are financing through the crowdfunding platform.

30. As a main objective, the draft RTS aim to comply with the mandate in Article 6(7) of the ECSPR as regards information on individual portfolio management of loans, i.e. in order to mitigate the information gaps that may arise between project owners and investors, the mandate requires the definition of a framework to oblige providers to disclose adequate levels of information on the method to assess credit risk and on individual loans within a portfolio, as well as to have in place adequate policies to manage any contingency funds.

31. The RTS has the following specific objectives as described in the mandate:

- i. to define the elements to be included in the information to investors in respect of the method to assess credit risk;
- ii. to define the information about each individual portfolio that should be disclosed to investors;
- iii. to define the policies governing any contingency funds that the crowdfunding provider decides to operate.

#### C. Baseline scenario

32. Article 6(7) of the ECSPR establishes the requirements that crowdfunding service providers need to have in place with regard to the obligation to provide information about the method to assess credit risk, about the individual portfolio itself and about the policies, procedures and organisational arrangements that the provider must have in place in the event that it operates a contingency fund.

33. Nevertheless, the existing regulation does not define which elements shall be included in the description of the method to assess credit risk, it does not provide details on the specific information that should be shared with investors as regards the individual portfolio and does

not define the policies, procedures and governance arrangements to be established with respect to contingency funds.

#### D. Options considered

34. When drafting the draft RTS, the EBA considered different policy options for each of the three main chapters of the RTS, corresponding to the main area of analysis.

**a. Definition of the information to be included in the description of the method to assess credit risk**

35. The EBA has assessed two options with regard to the elements that have to be included in the description of the method to assess credit risk as per the mandate in Article 6(7)(a) and in accordance with Article 6(2) ECSPR:

- **Option 1: the RTS should focus on providing investors adequate information on the method used to assess creditworthiness.**
- **Option 2: the RTS should focus more on defining the input and data used to assess creditworthiness.**

**b. Information to be disclosed by the crowdfunding platform as regards individual portfolios**

36. The EBA has assessed different options with regard to the level of information of the project owner that should be disclosed in relation to Article 6(4)(f) (i.e. scope of credit agreements for disclosure of past defaults):

- **Option 1: to limit the disclosure of information to projects funded through the same crowdfunding platform**
- **Option 2: to extend the disclosure of information to projects funded through any crowdfunding platform**
- **Option 3: to extend the disclosure of information to projects funded through any crowdfunding platform and require adequate disclosure of information about the financial history of the project owner**
- **Option 4: to require the same disclosure of information to projects funded through any crowdfunding platform and additional loans obtained via the traditional financial sector**

c. **Definition of the policies, procedures and governance arrangements of the contingency fund**

37. The EBA has assessed two different sets of options as regards the requirements to be put in place with respect to any contingency fund that the crowdfunding service providers decides to establish, in accordance with Article 6(7)(c):

- **Option 1a: to limit the content of the draft RTS to the definition of policies, procedures and governance arrangements of the contingency fund**
- **Option 1b: to extend the scope of the draft RTS to also cover disclosure requirements of policies, procedures and governance arrangements of the contingency plan**
- **Option 2a: to require that the management of the contingency fund is external to the crowdfunding service provider**
- **Option 2b: to extend option 2a to the possibility that the contingency fund is operated directly by the crowdfunding service provider**

E. Assessment of the options and the preferred option(s)

a. **Definition of the information to be included in the description of the method to assess credit risk**

38. Article 6(2) requires crowdfunding platforms to show that the measurement techniques employed for risk assessments are based on a sufficient number of elements and are appropriate to the complexity and level of the risks underlying i) the single projects; ii) the portfolio; and iii) the project owners. The mandate in Article 6(7)(a) requires the EBA to specify the elements, including the format, that are to be included in the description – provided to investors – of the method used for the assessment of credit risk referred to in Article 6(2).

39. When developing the content of this part of the draft RTS, the EBA has assessed whether these specifications should concentrate on the components of a sound credit risk assessment process or whether they should focus on defining a list of specific data or variables to be considered as input to the method to assess credit risk. To this extent, it has been noted that the reference to '*elements to be included in the description of the method*' leads more to a 'process/methodological' perspective, and that investors should be informed about the existence of a sound process to assess credit risk at various levels, rather than about the single data that are considered in the assessment.

40. Moreover, it has also been noted that this level of detail should be covered in separate RTS as per the mandate in Article 19(7)(b) and Article 4(4) that requires the EBA to specify the

information and factors that crowdfunding service providers need to consider when carrying out a credit risk assessment of the crowdfunding project or project owner before the crowdfunding offer is made. In addition, while the current draft RTS refer to a disclosure requirement, the requirement arising from Article 19(7) is of a more prudential nature, i.e. what crowdfunding platforms need to take into account in their credit risk assessment, but which they are not required to disclose.

41. For these reasons, the EBA believes that the scope of these RTS should be limited to providing investors with adequate information about the existence of prudent and robust credit decision-making processes for the assessment of single projects and single borrowers rather than specifying the list of input variables. This will be included within the scope of different RTS. Therefore, the preferred option is option 1: *the RTS shall focus on providing investors with adequate information on the method used to assess creditworthiness.*

**b. Information to be disclosed as regards individual portfolios**

42. Article 6(7)(b) requires specification of the information referred to in Article 6(4). In turn, point (f) of Article 6(4) requires specification of the information on any default on credit agreements by the project owner within the past five years. The EBA has assessed different options with regard to the scope of credit agreements whose information should be disclosed, bearing in mind that the disclosure of historical information on the project owner's creditworthiness is a key element in providing an adequate level of protection to investors.

43. The history of default events or financial information of the borrower that could be of interest to investors should not be limited to loans financed through the same crowdfunding platform, but it could extend to funds obtained from other crowdfunding platforms or also from the financial sector. To this extent, option 4: *'to extend the disclosure of information to projects funded through any crowdfunding platform and additional loans obtained via the traditional financial sector'* would achieve the maximum level of transparency and the highest possible level of protection for investors. However, in order to be effectively implemented, this option would possibly imply that crowdfunding service providers can participate in the same credit information systems as banks. In this way, they would be able to access information from the banking system but, at the same time, banks should ideally be able to access information on loans granted via crowdfunding platforms. This would ensure reciprocity and would ultimately allow an in-depth assessment of borrowers' creditworthiness at the system level. In the absence of a centralised credit information system, this option could create excessive burdens for crowdfunding platforms as they may face legal impediments to accessing and disclosing all the relevant information on defaults on bank loans by the borrower. Moreover, Article 6(4) refers to 'defaults' on 'credit agreements'; to this extent, it has been noted that i) the definition of default for loans facilitated by crowdfunding platforms is provided in Article 1(1) of Delegated Regulation xxx/XXX with regard to regulatory technical standards specifying the methodology for calculating the default rates referred to in Article 20(1) of Regulation (EU) 2020/1503, which is different from the definition of default on bank loans as provided by Article 178 CRR; ii) the definition of credit agreements is not provided in the ECSPR. Therefore,

including defaults on bank loans and defaults on crowdfunding loans under the definition of defaults on credit agreements would possibly lead to some inconsistencies.

44. Conversely, options 1 and 2 would create less of a burden for the platforms but would not provide a full set of information for investors. Asking the platform to acquire information limited to loans granted via the crowdfunding platform would be of limited use, and mandating the crowdfunding service provider to get the information on loans from other crowdfunding platforms would only provide a partial picture of the borrower's creditworthiness.

45. Option 4 would enable the provision of relevant information to investors to be ensured at the same level as options 1 and 2. However, it would also require the provision of additional information on the financial history of the project owners in respect of other credit obligations. However, information concerning defaults on bank loans would not always be available to crowdfunding providers, and project owners themselves might not know whether a default classification is assigned on the basis of 'unlikeliness to pay' considerations, or on more objective parameters such as past due days. Therefore, as it has been recognised that there is additional value in providing information about the past financial history of the project owners even outside the crowdfunding remit, it was decided to include the disclosure of data on past due days and the amount of arrears on other credit obligations that the project owners may have. In any case, in order to mitigate the drawback relating to the reliability of information on credit financial history, crowdfunding service providers are also required to disclose the source of that information, to ensure transparency and further investor protection. Option 4 is therefore considered the most balanced option: *to extend the disclosure of information to projects funded through any crowdfunding platform and additional loans obtained via the traditional financial sector.*

c. **The definition of policies and procedures and governing the contingency plan**

46. Article 6(7)(c) requires the EBA to specify the 'policies, procedures, organisational arrangements that the crowdfunding service providers are to have in place as regards any contingency funds they might offer as referred to in paragraphs 5 and 6'; in turn, Article 6(5) (b) refers to the description and the elements of the 'contingency fund policy' that should be disclosed to investors by the crowdfunding service provider. The EBA discussed whether the draft RTS should specify the elements included in the 'contingency fund policy' to be disclosed to investors that are already identified in Article 6(5)(b).

47. To this extent, it has been noted that, while the requirement set out in Article 6(5)(b) is a disclosure requirement, Article 6(7) is instead of a prudential nature, and may be wider in scope than the content of Article 6(5)(b), which defines the minimum set of information that needs to be disclosed to investors. For these reasons, the preferred option is to limit the content of the RTS to the definition of policies, procedures and governance of the contingency fund (Option 1b) without creating any additional disclosure requirements. However, the draft RTS require the policies and procedures that the crowdfunding service provider needs to have

in place as per Article 6(7)(c) to be consistent with the contingency fund policy disclosed to investors in accordance with Article 6(5)(b).

48. While the decision to have a contingency fund in place is entrusted to the crowdfunding service provider, Article 6(5)(a) and Article 6(5)(b)(iv) refer to a 'contingency fund operator', thus implying that the fund may be operated by a third party, possibly on the basis of a mandate issued by the crowdfunding service provider, as confirmed also by some market practices. However, the EBA did not want to limit the possibility that – especially in the early stages – a contingency fund could be operated directly by the crowdfunding service provider. The underlying approach is that the ownership of policies and procedures always remains with the crowdfunding service provider, which can delegate the management of the fund to a third party. In this latter case, the draft RTS require that – within the governance policy – clear rules and procedures are established with respect to the mandate that the provider assigns to the third party operator. In this respect, Option 2b (to allow management of the contingency fund both by the crowdfunding service provider and by a third party) has been chosen as the one that could leave more operational flexibility to crowdfunding platforms.

## 4.2 Views of the Banking Stakeholder Group (BSG)

The Banking Stakeholder Group (BSG) submitted a response to the draft RTS set out in the Consultation Paper EBA/CP/2021/22. The complete response can be found on the EBA website<sup>7</sup>.

In general, the BSG argued that it would have been preferable to consider the requirements developed under these draft RTS alongside those under the draft RTS in relation to Article 19(7), in particular on the way credit risk is actually assessed, and in relation to the risk framework given the interaction between disclosure and the actual assessment of credit risk.

With regard to the elements to be disclosed in the description of the method to assess credit risk, the BSG argued that if some elements that are required to be covered in the disclosures are not mandatory under Article 19(7)(b), it should be clarified whether the CSP should disclose that a given element is *not* part of its credit risk assessment. The BSG suggested having more clarity on the type of repayment schedule (Article 3) and on the formulation of Article 5. Some concerns were expressed on the disclosure regarding the use of models (Article 6) as potentially being too granular, and the BSG stressed the need to ensure that the formulation of Article 7 on stress test and scenario analysis does not create a disincentive for crowdfunding service providers to carry out such exercises. Otherwise, the BSG expressed broad agreement with the scope of information proposed.

On the information to be provided for each portfolio, the BSG expressed some concerns regarding the fact that risk categories will be introduced (at a later stage) by the draft RTS from Article 19(7) and so, if crowdfunding service providers use their own risk categories in the interim period, this may lead to a sub-optimal use of resources. It was also suggested to formulate Articles 15 and 16 to avoid any doubt that loan valuation may be optional. Otherwise, the BSG expressed broad agreement with the scope of information proposed.

In terms of best practices to be followed for disclosure to investors, the BSG suggested bearing in mind the customer experience and the characteristics of different technology platforms through which investors access information provided by the CSPs (i.e. traditional websites as well as smartphone applications).

The BSG did not agree with limiting the disclosure of past defaults just to credit agreements relating to crowdfunding platforms, as this may disguise situations where a borrower has defaulted on other credit agreements. To this extent, the BSG suggested that crowdfunding service providers should be able to require project owners to disclose their credit history to raise funds through the platform and for the crowdfunding service providers to carry out reasonable checks from available sources.

On the content of policies and procedures to have in place for contingency funds, the BSG suggested adding a requirement for policies on the segregation and safeguarding of funds intended to be used for contingency funds in the funding policy (Article 20) and a provision to address the situation of competing claims by different investors in the disbursement policy (Article 21).

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[https://www.eba.europa.eu/sites/default/documents/files/document\\_library/Publications/Consultations/2021/Consultation%20on%20draft%20RTS%20on%20Individual%20Portfolio%20Management%20of%20loans%20offered%20by%20crowdfunding%20service%20providers/1018946/BSG%202021%20058%20%28BSG%20response%20to%20CP%20on%20RTS%20Crowdfunding%20loan%20portfolio%20management%29.pdf](https://www.eba.europa.eu/sites/default/documents/files/document_library/Publications/Consultations/2021/Consultation%20on%20draft%20RTS%20on%20Individual%20Portfolio%20Management%20of%20loans%20offered%20by%20crowdfunding%20service%20providers/1018946/BSG%202021%20058%20%28BSG%20response%20to%20CP%20on%20RTS%20Crowdfunding%20loan%20portfolio%20management%29.pdf)

## 4.3 Feedback on the public consultation and on the opinion of the BSG

The EBA publicly consulted on the draft proposal contained in this paper.

The consultation period lasted for 3 months and ended on 4 September 2021. Four responses were received (including the BSG opinion), which were all published on the EBA website.

This paper presents a summary of the key points and other comments arising from the consultation, the analysis and discussion triggered by these comments and the actions taken to address them if deemed necessary.

In cases in which the respondents made similar comments or the same body repeated its comments in the response to different questions, the comments and the EBA's analysis are included in the section of this paper where the EBA considers them most appropriate.

Changes to the draft RTS have been incorporated as a result of the responses received during the public consultation.

### Summary of key issues and the EBA's response

In general, the respondents welcomed the introduction of a regulatory framework to provide uniform and consistent rules to address asymmetric information issues between investors and project owners, although there were some concerns that the current draft RTS may increase transaction costs and should aim to achieve more standardisation. While specific comments and drafting suggestions by single respondents are addressed in the table on the next pages, there are three issues that were raised by more than one respondent:

- 1) Data on financial history and creation of a centralised database: the feedback received highlighted the importance of investors being adequately informed about the financial history of borrowers, not only with respect to credit agreements in place with other crowdfunding platforms, but also at other financial intermediaries. To this extent, one common point made by more than one respondent was the proposal to establish a centralised database. More specifically, it was argued that – in order for crowdfunding service providers to be able to have access to project owners' financial history – a centralised database/repository should be created that could collect data on defaults and other matters relating to borrowers' past performance.

**EBA's response:** as already explained in Section 4.1, a centralised credit information system that could be accessible both by banks and by crowdfunding service providers would ensure reciprocity and ultimately would allow an in-depth assessment of borrowers' creditworthiness at the system level. However, the creation of such a centralised repository system appears outside the mandate given to the EBA for the development of the current draft RTS.

2) Interaction of draft RTS from Article 6(7) with draft RTS from Article 19(7): some concerns were expressed about the different timeline of delivery (and possibly of the consequent entry into force) of the current draft RTS (November 2021) and the RTS from Article 19(7) ECSPR (May 2022). In particular, the concerns highlighted two main issues:

- a. Credit risk assessment: it was noted that there might be some overlap and interaction between the provisions of Article 6(7)(a) on the disclosure of elements to be included in the description of credit risk assessment and the provisions of Article 19(7)(b) on the information and factors that need to be considered when conducting credit risk assessments. To this extent, it was argued that it might be difficult to comment on the disclosure requirements if there is not yet full visibility on the prudential ones.
- b. Risk categories: while risk categories will be introduced by the framework for risk management in the draft RTS arising from Article 19(7)(d), the distribution of loans according to risk category is a disclosure requirement to be specified in the current draft RTS, in accordance with Article 6(7)(b) and Article 4(4) ECSPR. To this extent, there is a concern that allowing crowdfunding service providers to use their own risk categories until the draft RTS from Article 19(7) is in place may lead to uncertainties and inefficiencies.

**EBA response:** While there are some common elements and possible overlaps, the scope of the current draft RTS should be limited to providing investors with adequate information about the existence of prudent and robust credit decision-making processes for the assessment of single projects and single borrowers rather than specifying the list of input variables, which instead will be addressed by the draft RTS arising from Article 19(7). As regards the specification of risk categories, the distribution of loans according to risk category needs to be addressed by the current RTS, which have an earlier delivery date than the RTS arising from Article 19(7). The EBA will ensure that the definition of risk categories within the risk management framework to be defined in the draft RTS arising from Article 19(7) will avoid inconsistencies with the current draft RTS.

3) General clarification on interpretations of the ECSPR: some respondents asked more general questions about the interpretation of the ECSPR for matters that appear to fall outside the remit of the current draft RTS.

**EBA response:** while many of the questions are relevant to the application of the ECSPR, they are beyond the mandate of the current draft RTS and cannot be addressed here.



## Summary of responses to the consultation and the EBA's analysis

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
<b>General comments</b>			
<b>Introduction of a centralised database</b>	<p>Two respondents suggested that the establishment of a centralised database or repository collecting information from different financial institutions could help crowdfunding service providers (CSPs) to access information on project owners more quickly. This is seen as relevant to both the set of information to be provided and to the scope of credit agreements for which CSPs shall disclose the default rate pursuant to Article 6(4) ECSPR.</p>	<p>The EBA is of the opinion that the introduction of a central repository collecting data on project owners would facilitate access to relevant information for CSPs, both on loans and other financial commitments in place at other CSPs, and at other financial institutions, and would possibly reduce the burden relating to data collection and the respective costs. Nevertheless, the establishment of such a central database goes beyond the mandate of the current draft RTS and thus cannot be addressed in this text.</p>	<p>No change introduced to the draft RTS with respect to the CP version.</p>
<b>Alignment of deadlines of draft RTS arising from Article 6(7) and RTS from Article 19(7)</b>	<p>One respondent argued that it would have been preferable to consider the requirements of the present draft RTS alongside the draft RTS arising from Article 19(7) given the interaction between disclosures about how credit risk is assessed and the underlying policies and practices.</p>	<p>While the two draft RTS have different deadlines for submission to the European Commission, the EBA is working to ensure that the requirements relating to credit risk assessments, both for disclosure and as a 'prudential' requirement, are consistent and avoid potential misunderstandings</p>	<p>No change introduced to the draft RTS with respect to the CP version.</p>
<b>Definition of loans</b>	<p>One respondent requested more clarity with respect to the use of 'loan' in comparison with 'security' in the context of the current RTS, and in general for individual portfolio management of loans in the ECSPR. To this extent, it was argued that it would be useful to have certainty that a 'loan' is not re-characterised as a 'security', and that CSPs currently operating under a MiFID II license may</p>	<p>Article 2(1)(b) of the ECSPR already defines a loan as 'an agreement whereby an investor makes available to a project owner an agreed amount of money for an agreed period of time and whereby the project owner assumes an unconditional obligation to repay that amount to the investor, together with the accrued interest, in accordance with the instalment payment schedule'.</p>	<p>No change introduced to the draft RTS with respect to the CP version.</p>



Comments	Summary of responses received	EBA analysis	Amendments to the proposals
Update of information	<p>consider renaming current securities as 'loans' without materially changing their legal conditions.</p>	<p>One respondent expressed concerns about the requirement of Article 1(1) that information should be updated 'on a continuous basis'. It is argued that this may constitute a delivery obligation for the CSPs, as they may depend on the ability of the project owner to provide the relevant information instantly. If this is not the case, this means that the crowdfunding service provider may be in breach of its obligations under the RTS.</p>	<p>The EBA believes it is essential that information provided to investors is kept updated. However, there is merit in recognising that the specification 'on a continuous basis' may lead to a result obligation for CSPs to deliver an outcome that may not always be under their direct control.</p>
Clarification on the operating model of individual portfolio management	<p>One respondent asked for a number of clarifications on the operating model of individual portfolio management of loans. In particular, the respondent asked whether:</p> <ul style="list-style-type: none"> <li>the mandate is limited in time and the platform has a limited time to invest the funds?</li> <li>the investor is allowed to end the mandate whenever he or she wishes</li> <li>the warnings provided to non-sophisticated investors on a case-by-case basis if they want to exceed their investment limit are compatible with individual portfolio management</li> <li>there could be mandates on external bank accounts, or whether the CSPs are required to place orders through their payment service provider.</li> </ul>	<p>The EBA is of the opinion that the questions asked, while raising relevant points, are indeed outside the mandate of Article 6(7) ECSPR.</p>	<p>No change introduced to the draft RTS with respect to the CP version.</p>



Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	<ul style="list-style-type: none"> <li>The platforms could offer packages of projects corresponding to the degrees of risk and the criteria expected by potential investors as soon as information is appropriately disclosed</li> </ul>		
<b>Responses to questions in Consultation Paper EBA/CP/2021/22</b>			
<b>Question 1. Do you have any comment on the elements to be disclosed as part of the description of the credit risk assessment process?</b>			
<b>Definition of default in draft RTS from Article 20(3) ECSPR</b>	<p>One respondent argued that the definition of default adopted in Delegated Regulation xxx/XXX with regard to regulatory technical standards specifying the methodology for calculating the default rates referred to in Article 20(1) of Regulation No 2020/1503 should be clarified in the section relating to the 'unlikeliness to pay' as the wording suggests that in the event of a distress situation <u>all of the investors</u> must give their consent before a restructuring with a material loss can be carried out. It is argued that, with a high number of investors, this may cause a significant delay or even impede any agreement to restructuring. It is then suggested that CSPs could enter into an agreement with investors on a restructuring procedure before an investment is made, or stipulate agreements allowing the CSP to decide on behalf of all investors if this is in the interests of the majority of investors.</p>	<p>In order to ensure consistency, the draft RTS arising from Article 6(7) developed by the EBA refer to the definition of default provided in Article 1 of the Delegated Regulation xxx/XXX with regard to regulatory technical standards specifying the methodology for calculating the default rates referred to in Article 20(1) of Regulation (EU) 2020/1503. However, the current draft RTS developed by the EBA cannot amend or include new definitions in relation to Delegated Regulation xxx/XXX with regard to regulatory technical standards specifying the methodology for calculating the default rates referred to in Article 20(1) of Regulation (EU) 2020/1503.</p>	No change introduced to the draft RTS with respect to the CP version.
<b>Standardisation of the risk assessment</b>	<p>One respondent argued that the assessment of the project owner's risk should be standardised as experience in the banking sector shows that the same borrower may be subject to different risk</p>	<p>The EBA is of the opinion that the present draft RTS aim to provide details on the elements of the description of the risk assessment conducted within individual portfolio management of loans. In order to</p>	No change introduced to the draft RTS with



Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	<p>assessments by different financial institutions. Therefore, it is suggested that the risk assessment conducted by the CSPs should require a standardised set of information.</p> <p>The same respondent also suggested that CSPs should conduct two types of risk assessment: an 'external' risk assessment for the purpose of transparency and comparability, and an 'internal' risk assessment focusing on internal risk management, control and prevention. It is argued that the former should be standardised, while the latter should be used as a validation tool.</p>	<p>ensure adequate disclosure of information to investors, the draft RTS aim to ensure consistency and comparability in the description provided to prospective investors. The type of methodology used for the purpose of risk assessment, and its potential standardisation, appear outside the mandate arising from Article 6(7) ECSPR.</p> <p>Nonetheless, as both the ECSPR and the EBA appreciate the need to ensure that credit risk assessment is conducted according to common standards across different CSPs, the draft RTS developed under Article 19(7) focus on the information and factors that CSPs must consider when conducting their risk assessment.</p>	<p>respect to the CP version.</p>
Scope of disclosure	<p>One respondent argued that the information that is provided to crowdfunding investors through individual portfolio management is wider in scope than the information that is provided to lenders that invest directly in a project, and that such information would be relevant in both cases.</p>	<p>The information provided to investors when they decide to invest directly in a crowdfunding project is governed by Article 23 ECSPR and Delegated Regulation xxx/XXX with regard to regulatory technical standards for the key investment information sheet referred to in Article 23(16) of Regulation (EU) 2020/1503. The EBA believes that widening the scope of disclosure required for direct investments in loans to align it with that required for individual portfolio management of loans is beyond the mandate established in Article 6(7) ECSPR.</p>	<p>No change introduced to the draft RTS with respect to the CP version.</p>
Interaction with draft RTS from Article 19(7)	<p>One respondent argued that it is not clear the effect that disclosure requirements will have unless the elements in the current draft RTS are specified as mandatory under the RTS provided for in Article</p>	<p>The EBA believes that, while there is some interaction between the two provisions, the requirements are different not only in terms of their purpose (disclosure vs. prudential), but also in terms of their</p>	<p>No change introduced to the draft RTS with</p>



Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	<p>19(7)(b) of the ECSPR. The respondent added that, if there are elements to be covered in the disclosure that are not mandatory under Article 19(7)(b), greater clarity will be required as to whether the intention is that the CSP should disclose that a given element is not part of its credit risk assessment process.</p>	<p>scope and content. The scope is different, as Article 6(7) relates only to the assessments carried out for the purpose of individual portfolio management of loans, while Article 19(7) refers to all loans for which CSPs set a price. The content is also different, as Article 6(7)(a) requires the specification of 'the elements to be included in the description of the method' to assess credit risk, while Article 19(7) requires specification of the 'information and factors'. Therefore, while the mandate arising from Article 6(7) seems more focused on the methodology, the mandate arising from Article 19(7)(b) relates more to the input that CSPs should consider when assessing credit risk.</p> <p>Nevertheless, as there are some elements that may be included in both draft RTSs, the EBA is ensuring that the final texts are consistent.</p>	<p>respect to the CP version.</p>
<b>Article 3 (type of repayment schedule)</b>	<p>One respondent asked for clarification of the meaning of the 'type' of repayment schedule mentioned in Article 3 of the draft RTS.</p>	<p>The EBA is of the opinion that the repayment schedule may have to be a significant element of the assessment of riskiness, as crowdfunding projects may be subject to variable cash flows. In this context, the meaning of 'type' should encompass both the frequency of the instalment schedule and the features of the repayment arrangement. Therefore, as the current wording may lead to some misunderstandings, it needs to be clarified.</p>	<p>The wording of point f) of Article 3 has been amended to clarify that it refers both to the type of repayment and the frequency of the instalment schedule.</p>
<b>Article 5 (meaning of framework)</b>	<p>One respondent suggested being more specific in relation to the word 'framework' used in Article 5(a)(b)(c).</p>	<p>The framework for credit approval, credit scoring and use of external ratings is meant to indicate the set of</p>	<p>In order to enhance clarity, avoid misunderstanding</p>



Comments	Summary of responses received	EBA analysis	Amendments to the proposals
		procedures that are needed to accomplish that specific task.	and ensure consistency with point d), the word 'framework' has been replaced by the word 'procedures'.
<b>Article 5 (creditworthiness assessment)</b>	One respondent suggested clarifying the requirement for a 'creditworthiness assessment' within the elements to assess the credit risk of a project owner.	The EBA believes that the mention of a 'creditworthiness assessment' in Article 5(e) is indeed redundant and not necessary with respect to the content of the whole article.	Point e) of Article 5 has been deleted
<b>Article 6 (use of models)</b>	One respondent expressed some concern about the disclosure of information regarding the use of models, as this may be too granular.	The EBA believes that models are indeed part of the methods used to assess credit risk, so some information should be disclosed in that respect as well.	No change introduced to the draft RTS with respect to the CP version.
<b>Article 7 (disclosure of scenario analysis)</b>	One respondent expressed concerns that requiring the disclosure of scenario analysis and stress testing 'where applicable' could create disincentives for CSPs to carry out such analysis.	The reference to 'where applicable' was targeted towards requiring the disclosure of stress testing and sensitivity analysis tools where these are used by CSPs. However, the EBA agrees that the current wording may lead to potential disincentives to carry out these tasks and should be clarified.	The text of Article 7 has been amended and split between point 1) requiring CSPs to disclose information on the stress test and sensitivity analysis they conduct and point 2) detailing the information to be disclosed. Recital (3) has also been amended to stress



Comments	Summary of responses received	EBA analysis	Amendments to the proposals
			the relevance of these exercises.
<b>Question 2. Do you agree with the information to be provided for each portfolio, in accordance with Article 6(7)(b) and 6(4)?</b>			
<b>Article 8 (calculation of the weighted average annual interest)</b>	One respondent noted that the weights do not aggregate at 100% and that the text 'and (ii) of the annual interest rate of every loan included in the portfolio;' in Article 8(2) should be deleted.	The EBA believes that the formulation to indicate the calculation of the weighted average annual interest rate is correct and that there is no need to amend it. As an example, assume a portfolio made up of three different loans. L1: amount 5,000, interest rate 2%; L2: amount 3,000, interest rate 7%; L3: amount 2,000, interest rate 5%. The weighted interest rate is then $(5000*2\%+3000*7\%+2000*5\%)/10000= 4.1\%$	No change introduced to the draft RTS with respect to the CP version.
<b>Article 9 (distribution of loans vs. loan amounts)</b>	One respondent suggested that the text should be amended to address the distribution of 'loan amounts' rather than of 'loans'.	The EBA believes that it is better to maintain the wording of the draft RTS aligned to the requirement of Article 6(4)(c), and refer to the distribution of loans rather than 'distribution of loan amounts', as the latter may be confusing in this context.	No change introduced to the draft RTS with respect to the CP version.
<b>Article 9 (distribution of loans according to risk category)</b>	One respondent argued that allowing CSPs to establish policies and procedures for that purpose until the draft RTS from Article 19(7) are in place may lead to uncertainties and the potentially sub-optimal use of resources by CSPs. The respondent then suggested that this part of the draft RTS should enter into force at a later stage, together with the draft RTS from Article 19(7).	The disclosure of the distribution of loans according to risk category is a requirement stemming directly from Article 6(4) ECSPR, for which the EBA is providing more specification in the current draft RTS, which needs to be delivered to the European Commission before 10 November 2021. The definition of risk categories is part of the risk management framework to be defined in the RTS arising from Article 19(7), which have a later delivery date (10 May 2022). However, the EBA believes that it is not possible to require that one Article of the draft RTS have a later	No change introduced to the draft RTS with respect to the CP version.



Comments	Summary of responses received	EBA analysis	Amendments to the proposals
		delivery date than the deadline for the rest of the draft RTS.	
<b>Articles 15 and 16 (optionality of loan valuation)</b>	One respondent commented that the use of 'in case' could introduce a degree of doubt about whether the CSP has an obligation to carry out a valuation, while the underlying ECSPR is clear that there is such an obligation in specified circumstances. The respondent then suggested an alternative formulation such as 'where a CSP carries out a valuation of a loan in one of the circumstances specified in Article 4(4)(e) of Regulation EU No. 2020/1503 or otherwise, it shall....'.	The EBA believes that the observation is pertinent and the text will be amended to avoid giving the false impression that there is optionality as regards the need to carry out the valuation of a loan in accordance with Article 4(4)(e) ECSPR.	The text has been amended along the lines suggested.
<b>Article 16 (use of value at risk)</b>	One respondent suggested that Article 16(3) should be amended and rather address the value at risk than the 'variance or by the standard deviation of the returns of loans'.	Article 16(3) mentions the variance or the standard deviation of loans as examples of measures of the risk of the portfolio. Therefore, the EBA believes that nothing prevents CSPs from using and disclosing more sophisticated measures like value at risk, as they deem appropriate.	No change introduced to the draft RTS with respect to the CP version.
<b>Question 3. Based on your experience of investor information documents required under your national regulatory framework on crowdfunding: have you seen good practices for information disclosure for loans included in individual portfolio management?</b>			
<b>Disclosure of information through apps and websites</b>	One respondent argued that when designing disclosure requirements, it is important to bear in mind the customer experience and the characteristics of different technology platforms. This should include considerations of how disclosures will be accessed where consumers are	As required by Article 2(1) of the current draft RTS, the disclosure of information to investors will need to be included in dedicated webpages that are clearly separated from other marketing communications. The EBA believes that this principle should apply irrespective of the device that is used to access the	No change introduced to the draft RTS with respect to the CP version.



Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	interacting primarily through smartphone 'apps' as well as more traditional websites.	crowdfunding platform (e.g. PC, tablet, or mobile phone).	
Publication of indicators of default	One respondent explained that – alongside publication of the default rate indicators required by the local regulator – many CSPs publish a grid of additional indicators that are complementary to the legal indicators put in place by the regulator. The publication of such additional information increases the transparency and the level of disclosure for investors and offers a valuable tool to analyse the historical performance of projects and compare platforms against each other.	The EBA welcomes the introduction of industry-led best practices in the disclosure of information, which could facilitate comparisons among different projects and enhance investors' knowledge and financial education.	No change introduced to the draft RTS with respect to the CP version.
<b>Question 4. Do you agree with the scope of credit agreements relevant for the information on past defaults being made available to investors?</b>			
Clarification of 'reasonable measures'	One respondent asked for clarification of the meaning of the 'reasonable measures' that CSPs should take when obtaining information on financial history from project owners.	Article 13(3) requires CSPs to take reasonable steps to ensure that information provided by project owners is accurate and that its disclosure is in compliance with Regulation (EU) 2016/679. In this context, 'reasonable steps' means the CSP shall endeavour to obtain – to the extent possible – the relevant information from the project owner. The EBA believes that it is preferable to avoid giving prescriptive indications on the nature of the actions to be taken to allow CSPs to proceed with more flexibility.	No change introduced to the draft RTS with respect to the CP version.
Scope of credit agreements	One respondent argued that limiting the disclosure just to credit agreements relating to crowdfunding platforms may be highly misleading for investors	As noted in para. 43 of the Impact Assessment section, Article 6(4) refers to 'defaults' on 'credit agreements'; to this extent, it has been noted that i) the definition of default for loans facilitated by the crowdfunding platforms is provided in Article 1(1) of	No change introduced to the draft RTS with



Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	<p>because it will disguise situations where a borrower has defaulted on credit agreements elsewhere.</p> <p>The same respondent suggested that it should be feasible for CSPs to require project owners to disclose their credit history.</p>	<p>the draft RTS developed by ESMA from Article 20(3), which is different from the definition of default on banking loans as provided by Article 178 CRR; ii) the definition of 'credit agreements' is not provided in the ECSPR. Therefore, the EBA believes that including defaults on banking loans and defaults on crowdfunding loans under the definition of defaults on credit agreements would possibly lead to some inconsistencies. Moreover, information on default on banking loans would not be always available to crowdfunding providers, and project owners themselves might not know whether a default classification is assigned on the basis of 'unlikeliness to pay' considerations, or on more objective parameters.</p> <p>Nevertheless, as it has been recognised that there is additional value in providing information about the past financial history of the project owners above and beyond the crowdfunding remit, Article 13 of the draft RTS requires the disclosure of data on past due days and the amount of arrears on other credit obligations that the project owners may have.</p>	<p>respect to the CP version.</p>

#### Question 5. Do you agree with the content of policies and procedures that crowdfunding service providers need to have in place with respect to contingency funds?

Article 20 (funding policy)	<p>One respondent suggested that there should also be a requirement for policies on the segregation and safeguarding of funds to ensure that the funds are actually available when needed.</p>	<p>The EBA is of the opinion that a policy relating to the funding of a contingency fund should also include the description of how funds are segregated.</p>	<p>Article 20 has been amended to include a point on the segregation of funds.</p>
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Comments	Summary of responses received	EBA analysis	Amendments to the proposals
Article 21 (disbursement policy)	One respondent suggested that some consideration should be given to how the competing claims of different investors will be evaluated.	The EBA is of the opinion that a policy relating to the disbursement of funds should indicate how simultaneous claims of several investors should be treated.	Article 21 has been amended to include a point on the disbursement of funds in the event of competing investors' claims.

