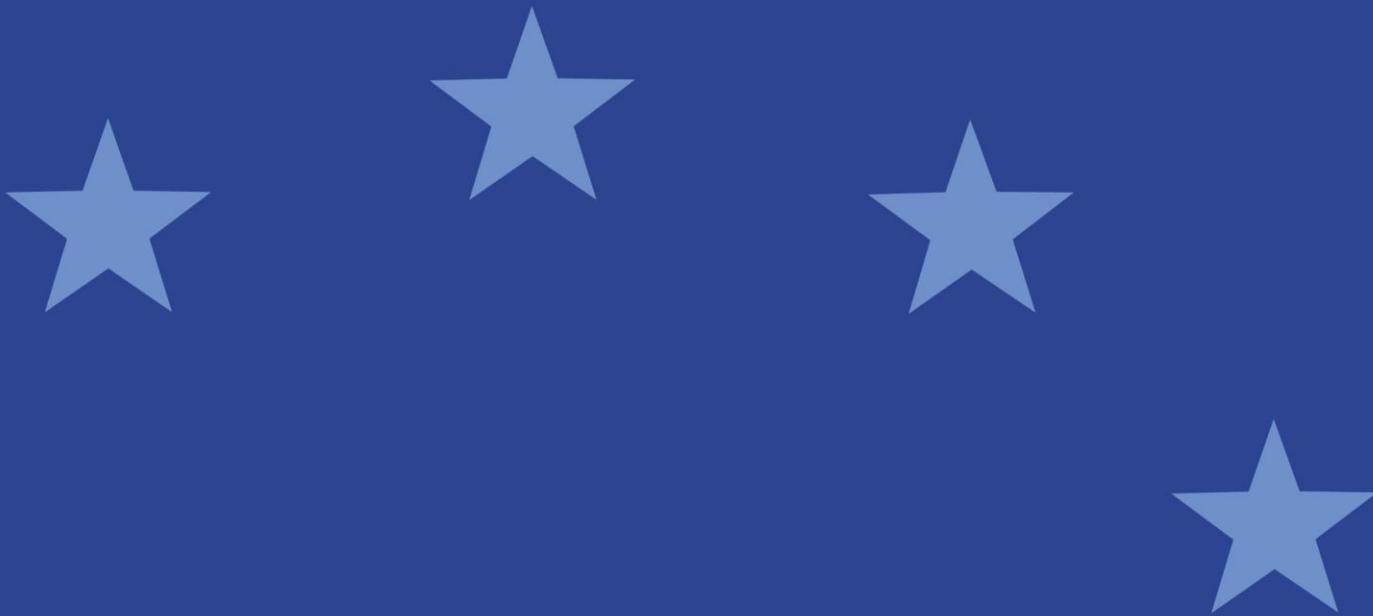




European Securities and  
Markets Authority

# Final Report

**Draft technical standards under the European crowdfunding service providers for business Regulation**





Date: 10 November 2021

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## Acronyms and definitions used

CA	National competent authority or authorities designated by a Member State in accordance with Article 29 of the ECSPR
CSP	Crowdfunding Service Provider as defined in point (e) of Article 2(a) of the ECSPR
EBA	European Banking Authority
ECSPR	Regulation (EU) 2020/1503 of the European Parliament and of the Council of 7 October 2020 on European crowdfunding service providers for business, and amending Regulation (EU) 2017/1129 and Directive (EU) 2019/1937
ESMA	European Securities and Markets Authorities
ITS	Implementing Technical Standards
PRIIPS	Regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products
RTS	Regulatory Technical Standards

# 1. Executive Summary

## Reasons for publication

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

On 26 February 2021, ESMA published a Consultation Paper to seek stakeholders' views on ESMA's proposals for 7 RTSs and 2 ITSs. The consultation period closed on 28 May 2021. ESMA received 32 responses, 8 of which were confidential. The answers received are available on ESMA's website unless respondents requested otherwise.

In addition, ESMA developed 1 RTS and 2 ITS for which ESMA considered that conducting a public consultation would be highly disproportionate in relation to the scope and impact of these three technical standards<sup>1</sup>.

ESMA sought the advice of the ESMA Securities and Markets Stakeholder Group's (SMSG) established under Regulation (EU) No 1095/2010.

## Contents

Sections 2 to 10 sets out the feedback statements relating to each of the 9 draft technical standards for which ESMA conducted a public consultation and Section 11 to 12 presents the analysis of the 3 technical standards for which ESMA did not conduct a public consultation.

Section 13 consists of 13 Annexes. Annex I contains the costs/benefit analyses undertaken in relation to the draft technical standards. Annex II to XIII contain the draft technical standards.

## Next Steps

The draft technical standards are submitted to the European Commission for adoption. In accordance with Articles 10 and 15 of Regulation (EU) 1095/2010, the European Commission shall decide whether to adopt the technical standards within 3 months.

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<sup>1</sup> RTS pursuant to Article 31(8), ITS pursuant to Article 31(9) and ITS pursuant to 32(4) of the ECSPR. These technical standards concern cooperation between competent authorities and between competent authorities and ESMA.

## 2. Complaint handling

### 2.1. Background and legal basis

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

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

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

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

### 2.2. Feedback from stakeholders

3. The majority of respondents supported the requirements set out in the draft RTS with regards to the timeline for complaints handling by CSPs. Most respondents expressed the view that the proposed requirements were detailed enough and adequate in order to ensure investor protection.
4. Some respondents noted that the nature of some complaints may require CSPs to engage into detailed investigations, while others may be handled within a relatively short time-period and concluded that setting a fixed timeframe for replies to complaints could lead to excessive burden for CSPs.
5. Based on this feedback, ESMA decided not to make requirements more granular or to set a fixed deadline for CSPs to handle a complaint and reply to complainants.
6. Some respondents also expressed the view that the concept of complaints was broad and needed further clarification in the RTS. On this point, ESMA notes that the ECSPR (Article 7(1)) limits the scope of the requirements set out in Article 7 to complaints received from "clients" of the CSP; a term defined in point (g) of Article 2(1) of the ECSPR. ESMA sees the benefit that defining the term "complaint" in the draft RTS could bring to market participants as well as clients of CSPs and amended the draft RTS accordingly. ESMA's

aim is to align the concept of complaints under the ECSPR with definitions used across the financial sector<sup>2</sup>.

7. ESMA also considered beneficial to align the language regime for the complaint handling procedures and the standard template with the one used for the KIIS in Article 23(3) and marketing communications in Article 27(3) of the ECSPR. This alignment will ensure a high level of consumer protection without excessively increasing the burden of CSPs.

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<sup>2</sup> e.g. EBA-ESMA Guidelines for complaints handling for the securities and banking sector (JC 2014 43) or the EIOPA Guidelines on complaints-handling by insurance undertakings (EIOPA-BoS-12/069)

## 3. Conflicts of interest

### 3.1. Background and legal basis

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

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

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

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

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

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

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

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

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

### **3.2. Feedback from stakeholders**

13. The majority of respondents supported the content of the list set out in Article 1(5) of the draft RTS and agreed that the requirements set out in Article 3 of the draft RTS provided for arrangements balancing adequately the need to protect investors with the objective to limit unnecessary burden for CSPs.
14. A few respondents suggested that ESMA issues additional guidance on certain aspects of the conflicts of interest regime set out in Article 8 of the ECSPR and not covered in the draft RTS. ESMA takes note of these suggestions and will consider working on these issues in the future.
15. Some respondents also suggested the insertion of some granular requirements in the draft RTS, including in relation to the location of the webpage presenting potential conflicts of interests on the CSP's website. While these requirements are too granular to be inserted in the draft RTS, ESMA will also consider these suggestions in the context of its supervisory convergence work.
16. Based on the overall positive feedback on the draft RTS, ESMA only made minor drafting adjustments to the draft RTS.

## 4. Business continuity plan

### 4.1. Background and legal basis

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

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

*[...]*

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

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

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

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

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

*[...]*

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

*[...]*

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

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

#### **4.2. Feedback from stakeholders**

19. The respondents generally approved the content of the draft RTS. However, a number of respondents noted that the concept of “*significant business interruption or incident*” was too vague and could lead to diverging interpretation. Some respondents also noted that the requirements set out in point (b) of Article 5(2) of the draft RTS to describe “potential” significant business interruptions or incidents was too broad and very difficult for CSP to comply with adequately.
20. In order to address these concerns, ESMA inserted a definition of “*significant business interruption*” in Article 1. This definition has been built through a reference to the concept of “critical services” referred to in the ECSPR (Point (j) of Article 12(2)).
21. ESMA also adjusted the requirements in point (b) of Article 5 in a way that shall ensure a high level of protection while reducing the burden for CSPs.
22. A few respondents also expressed concerns in relation the requirements applicable with respects to sound administration of agreements. These respondents expressed concerns with what they interpreted to be a requirement for CSPs to keep a paper copy of all agreements and of all critical information. Conscious that the majority of CSP operates paperless (or predominantly paperless), ESMA’s intention was to require that only agreements and critically important documents originally issued and handled in paper form be stored in a safe place. ESMA has amended the text of the draft RTS to clarify this point and avoid any misunderstanding.

## 5. Application for authorisation

### 5.1. Background and legal basis

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

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

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

*[...]*

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

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

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

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

### 5.2. Feedback from stakeholders

*Comments to Article 1 to 6 of the draft RTS*

23. One respondent asked whether further clarification on the meaning of “missing information” under Article 4 of the draft RTS and its difference with the “changes of information” under Article 5 of the draft RTS could be provided.
24. ESMA would like to clarify that the reference to “missing information” under Article 4 of the draft RTS refers to all the information that the CA that is handling the authorisation process identifies as missing and due by the applicant for the purpose of the finalisation of the completeness assessment of the application in accordance with Article 12(4) of the ECSPR (CA’s initiative). On the other hand, the “changes to the information provided in the application” described in Article 5 of the draft RTS refers to updated or changed

information that the applicant shall provide to the relevant CA when there is a change in the information provided at the time of the submission of the authorisation (applicant's initiative).

25. One respondent stated that the draft RTS should also cover the procedure for supplementing the existing authorisation, *i.e.*, if a service provider permitted to operate lending-based platform also wishes to start facilitating security-based projects. In such cases, a simplified procedure should also be in place.
26. ESMA would like to stress that, according to Article 13(2) of ECSPR, a CSP seeking authorisation to extend its business to additional crowdfunding services not foreseen at the time of the authorisation granted under Article 12 shall submit a request for extension of its authorisation to the competent authorities that granted the CSP its authorisation under Article 12 by complementing and updating the information referred to in Article 12(2) of the ECPR. According to Article 13(2) of the ECSPR, the request for extension shall be processed in accordance with Article 12(4) to (11) and thus with this draft RTS.
27. Several respondents questioned the meaning of "material changes" mentioned in Article 5(3) of the draft RTS, according to which, if the changes to the application for authorisation notified to the relevant CA by the applicant in accordance with Article 5(1) are material, the application shall be treated as a new application for the purpose of Article 12(8) of the ECSPR. ESMA has amended the text of Article 5 of the draft RTS accordingly.
28. Some respondents asked whether further guidance could be provided about the treatment of prudential safeguards (*i.e.*, the minimum capital requirement) or the procedure to ensure correctness and completeness of the KIIS. ESMA believes that for the purpose of the authorisation of CSPs, Article 11 of the ECSPR provides the needed information on the prudential requirements for CSPs. Regarding the KIIS, ESMA agrees that further clarification on the application of such requirement might be provided. However, this aspect is not in the scope of the mandate given to ESMA under Article 12 of the ECSPR. ESMA will nevertheless consider exploring options to provide such clarifications in the context of its supervisory convergence work.

#### *Comments to the Annex to the draft RTS – Content of the application*

29. Respondents provided both general comments and more focussed comments on specific fields of the application forms.
30. The general comments provided with regard to the content of the application are mixed. Some respondents claimed that the information requested in the RTS is excessive and too burdensome for the application process while others expressed their appreciation for the details provided in the annex to the RTS as this will facilitate the applicants'

compliance with the regulation and achieve a good level of harmonisation and level-playing-field across the Union.

31. ESMA believes that the details provided in the Annex to the draft RTS are in line with the mandate provided under Article 12(16) of the ECSPR and fulfil the ECSPR overarching objective of creating a smooth and functioning cross-border crowdfunding service market by providing common rules for the interactions between prospective CSPs and CAs and by establishing a common standard form for the submission of the applications to CAs in which the information requirements are detailed mirroring the list established under Article 12(2) of the ECSPR.
32. A few respondents questioned the relevance of requiring the submission of the legal entity identifier (LEI) of the prospective CSP since not all platforms possess this code (Field 1, sub-field 6). On the same issue, the Global LEI Foundation (established by the Financial Stability Board in June 2014) expressed their appreciation for the inclusion of the LEI among the information to be provided by applicants as this may facilitate the cross-border activity by CSPs. ESMA would like to comment that, in accordance with Field 1, sub-field 6 of the Annex to the draft RTS, applicants should provide the LEI when this is available.
33. One respondent noted that the Field 2 of the Annex to the draft RTS did not seem to require the contact details of the person who is filing the application (*i.e.*, address, email, and phone number). The Annex to the draft RTS has been amended in order to incorporate the contact details of the person in charge of the application.
34. With regard to the programme of operation (Field 5 of the Annex to the draft RTS) the following comments were provided:
  - a) Some respondents claimed that the information requirement on asset-safekeeping, payment services, bulletin board under point (c) of sub-field 1 goes beyond and above the intended requirements in ECSPR. ESMA would like to state that the above specifications are important for CAs to assess the compliance of the applicant with the rules concerning those services or certain prudential requirements. The performance of these services requires the adoption by the prospective CSP of certain specific procedures and measures that the CA will need to assess in the context of the authorisation process.
  - b) Some respondents found that the request of information on the offers that the applicant plans to present (point (d) of sub-field 1) is not required by the ECSPR. Furthermore, while an indication on the sector may be given upfront by the applicant, the information on the instruments to be used may vary over time and depend to a very large extent on the respective project owners and cannot necessarily be foreseen by the applicant or may vary over time. ESMA understands the concerns

raised by respondents and has amended the text of the Annex to the draft RTS accordingly. Prospective CSPs will have to provide information on the types of investments offered on the crowdfunding platform.

- c) Some respondents suggested that the description of the selection procedure (point (e) of Sub-field 1) should be moved to Field 6 of the Annex to the draft RTS as it seems more consistent with the group of information concerning the governance arrangements. ESMA believes that the information on the selection procedure should remain under Field 5 where other information on the offers to be published on the crowdfunding platforms are provided.
- d) A number of respondents questioned whether only services subject to further authorisation under national law have to be disclosed in the application process under point (g) of sub-field 1, while non-reserved activities should not be indicated. ESMA would like to note that the spirit of the ECSPSR is to provide CAs with information on all the other services provided by the prospective CSPs. This is confirmed by Article 14(1)(f) according to which the register of all crowdfunding service providers that ESMA has to establish shall contain information on *any other services provided by the crowdfunding service provider not covered by the ECSPSR with a reference to the relevant Union or national law*.
- e) One national crowdfunding association wondered whether the decision of a CSP to prohibit investors from investing, if the amount they wish to invest, their financial situation, or their understanding of the products and risks, do not seem relevant to the investment in question is consistent with the principle of non-discrimination established under point (b) of sub-field 2. ESMA understands the issue raised by the respondent. However, ESMA is of the opinion that if a CSP were to apply an operating scheme in which, under certain conditions, the CSP may prevent the investor or potential investor from making the investment, also such a scheme would need to comply with the principle of non-discrimination. This means that the conditions for the application of such an operating scheme should be objective and predetermined by the CSP, in the sense that the scheme applies to all investors or potential investors who meet the same conditions (without any discrimination among investors) and is clearly disclosed to the clients or potential clients of the CSP.
- f) Two respondents stated that point (c) of sub-field 2 (description of the procedures for the transmission of the orders collected from investors) seems to imply that CSPs have to transfer the payment order to an intermediary for the execution. The respondent asked ESMA to confirm that CSPs can transmit the order related to the subscription of a financial instrument directly to the issuer. ESMA would like to clarify that CSPs are authorised to provide, *inter alia*, reception and transmission of client

orders (Article 2(1)(a)(ii) of the ECSPR). The ECSPR does not prescribe that the orders shall be transmitted to an intermediary for their execution, while it requires that the funding of crowdfunding projects, or any other payment, is made only by means of a payment service provider in accordance with Directive (EU) 2015/2366. The payment service can be provided through the crowdfunding platform by the CSP itself or by specific arrangements with an authorised third-party. According to the ECSPR, when a CSP does not provide payment services in relation to the crowdfunding services, either itself or through a third party, the CSP shall put in place and maintain arrangements to ensure that project owners accept funding of crowdfunding projects, or any other payment, only by means of a payment service provider. ESMA has amended the wording of point (c) sub-field 2 of Field 5 to clarify the scope of the requirement described therein in relation to the information that the applicant shall provide to the CA.

- g) One respondent suggested that applicants should also provide the description of the platform trading rules, in particular how these rules will ensure fair and equal treatment of Investors when determining how a crowdfunding project is to be allocated among those who are interested. ESMA has amended the text of point (c) of sub-field 2 of Field 5 of the Annex to the RTS.
  - h) A significant number of respondents pointed out the difficulty for applicants to provide an exhaustive description of their marketing strategy at the point of the application (as required under sub-field 3). Respondents in particular did not understand well the requirement to describe the "*media visibility and frequency*". ESMA would like to underline that the programme of operations is an extremely important piece of information that CAs shall consider when assessing the application for authorisation. A clear description of the services that the applicant intends to provide along with the details on the platform and the marketing strategy are essential for the CA to understand whether the prudential, organisational and governance arrangements are appropriate and consistent for the purpose of the authorisation. With regard to the information on the marketing strategy, ESMA understands the concern expressed by a number of respondents and has amended the text of the Annex to the draft RTS accordingly.
35. Some respondents suggested to move the requirement to provide the forecast accounting plans including balance sheets and a profit / loss accounts or income statements for the first three business years as well as the planning assumptions for the above from Field 9 (Description of the prudential safeguards) to Field 5 (Programme of operations). ESMA believes that the forecast calculations and plans are well placed under Field 9 as they serve as basis for the determination of the prudential requirements that the CA shall assess at the point of authorisation.

36. Some respondents questioned the choice to require to all major shareholders (who/which directly or indirectly hold 20% or more of the share capital or voting rights) to complete sub-field 1 (Ownership structure chart of the applicant) and sub-field 10 (information on the group structure of the applicant) of Field 12 on the proof of good repute of major shareholders. ESMA believes that the information concerning the ownership structure and group structure of each major shareholder are important as they can facilitate the assessment of the good repute by CAs.
37. Some respondents argued the need to require the proof of good repute of major shareholders. Others questioned the scope of the assessment of the good repute of major shareholders and natural persons responsible for the management of the applicant. ESMA would like to underline that Field 12 and Field 13 of the Annex to the RTS have been elaborated on the basis of Article 12(2)(k) and (l) and Article 12(3) of the ECSPR. ESMA firmly believes that the good reputation of the major shareholders of a prospective CSP, along with the good reputation and quality of the persons responsible for its management, is extremely important to achieve a sound reputation of the CSP itself also for the purpose of the protection of investors and the development of a cross-border crowdfunding market. ESMA also believes that the above is consistent with Recital (32) of the ECSPR and with the approach of the proposal for a EU Regulation on the prevention of the use of the financial system for the purpose of anti-money laundering that, in Recital (12), states that the safeguards set out in the ECSPR for the authorisation of CSPs with regard to the assessment of the good repute of the management and the assessment that the European Commission will have to carry out by 10 November 2023 provide a justification for not including the CSPs in the scope of the Union AML-TF legislation. Therefore, ESMA is of the view that CAs shall be enabled to carefully assess the compliance with these requirements. Nonetheless, some clarifications to the text of Fields 12 and 13 of the Annex to the draft RTS have been provided in relation to the scope of the requirement concerning the good repute of major shareholders and natural persons responsible for the management of a CSP.
38. The following comments were provided regarding Field 13 on the identity and proof of good repute, sufficient time commitment and suitability of the natural persons involved in the management of the applicant:
- a) Some respondents suggested to delete point (c) of sub-field 9<sup>4</sup> (relevant professional past experiences and reasons for departure) because the information is highly personal, especially when it comes to the reasons of departure of a job. Other respondents questioned the application of sub-field 9 (Curriculum Vitae) and 10<sup>5</sup>

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<sup>4</sup> That corresponds to point (b) of sub-field 10 in the post-consultation draft RTS.

<sup>5</sup> That correspond to, respectively, sub-fields 10 and 11 in the post-consultation draft RTS.

(Time commitment) to natural persons who are responsible for internal control functions and for the supervisory board. ESMA would like to note that according to Article 12(3)(b) of the ECSPR, applicants shall provide to CAs at the point of authorisation the proof that the natural persons involved in the management of the prospective crowdfunding service provider collectively possess sufficient knowledge, skills, and experience to manage and control the prospective crowdfunding service provider and that those natural persons are required to commit sufficient time to the performance of their duties. Consistently with other EU legislative framework (e.g., for investment firms or credit institutions) the reference to the management does not only covers the executive function of the management body but also its supervisory function. In addition, ESMA would like to emphasise that, in accordance with Article 12(8) of the ECSPR, CAs may refuse authorisation if there are objective and demonstrable grounds for believing that the management body of the prospective CSP could pose a threat to its effective, sound and prudent management and business continuity, and to the adequate consideration of the interest of its clients and the integrity of the market. For the purpose of ensuring a sound management of the CSP, which is crucial to ensure the achievement of the objectives of the ECSPR, CAs should be able to assess the curriculum vitae and the time commitment also of the heads of the internal control functions.

- b) Some respondents suggested that sub-field on the time commitment should be deleted as too burdensome. ESMA would like to underline that, according to Article 12(3)(b) of the ECSPR the natural persons involved in the management of the prospective crowdfunding service provider are required to commit sufficient time to the performance of their duties. The information requirement concerning the time-commitment allows CAs to assess whether this requirement is fulfilled.
39. One respondent stated that, with regard to Field 17 (provision of payment services), it may happen that service providers are reluctant to sign preliminary agreements, and this could be a roadblock for some market participants if the CA does not accept the application without such preliminary agreement. ESMA would like to stress that Article 12(2)(p) of the ECSPR makes an explicit reference to the arrangements through which the payment services are provided and CAs shall assess these arrangements at the point of authorisation. A clarification on the scope of the relevant requirements in this context has been provided in Field 17 of the Annex to the draft RTS.
40. Some respondents noted that the reference to Article 21, paragraph 42 of the ECSPR stated in point (c) of Field 19 of the Annex to the RTS is not correct. The text of the Annex to the draft RTS has been amended and now it refers to Article 21, paragraph 4 of the ECSPR.

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

### 6.1. Background and legal basis

#### **Article 20(3) of ECSPR**

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

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

#### **Article 20(1) of ECSPR**

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

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

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

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

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

*[...]*

### 6.2. Feedback from stakeholders

#### *Calculation of the default*

41. Many respondents found the methodology for the calculation of the default too narrow with particular reference to the 90-day past due on any material credit obligation as provided under Article 1(1)(b) of the draft RTS. In addition, according to respondents, such definition does not allow project owners to enter possible extension of the loan or new repayment schedule, which seems to be a frequent market practice.

42. ESMA considers it appropriate to maintain the reference to the 90-day past due term which should ensure a level playing field between credit institutions and lending-CSPs and would avoid creating barriers for the development of a loan-based crowdfunding market. ESMA also believes that this term would also better respond to the objective of the ECSPR and the CMU of contributing to providing access to finance for SMEs and completing the Capital Markets Union (see Recital (2) of ECSPR) and at the same time preserving the objective of investor protection.
43. One respondent considered that the requirement according to which CSPs shall have “effective processes that allow them to obtain the relevant information (...)” appears too burdensome as CSPs do not have inspection powers and may not force project owners to provide information.
44. ESMA acknowledges the potential difficulty of obtaining all the information by project owners. However, ESMA would like to underline that the decision to offer a loan on a crowdfunding platform shall be based on the information that the project owner provides to the CSP. Therefore, the CSP shall make all efforts necessary to gather information and to ensure that information collected from project owners is reliable and consistent.

#### *Calculation of the default rates*

45. A few respondents suggested that the severity of the potential losses should be taken into account for the purpose of the calculation of the default rates. In addition, some respondents expressed their preference for a volume/amount-based calculation of the default rates.
46. ESMA, in cooperation with the EBA, decided to adopt a count-based approach for the calculation of the default rates of crowdfunding loans that CSPs shall disclose to investors. ESMA believes that the default rates published on crowdfunding platforms aims at providing investors with information which may contribute to their understanding of the risk of losing the money that they are considering investing in a crowdfunding loan (or portfolio of loans).
47. ESMA notes that Article 20 of the ECSPR refers to the default rates of the loans offered on a (loan-based) crowdfunding platform. This information should therefore be referred to the risk of default of the loans offered on a crowdfunding platform irrespectively of the severity of the loss observed due to this default (loss given default). Therefore, ESMA believes that the default rate shall provide investors with the frequency of the unfavourable event (default) and this calculation should not be influenced by specific arrangements that can potentially be included in the credit agreement signed between the borrower and the investors (e.g., partial reimbursement), which may affect the amount of the loan that will be repaid to investors.

48. With respect to the amount versus loan-based calculation, ESMA believes that a loan-based approach is more appropriate for the following reasons:
- a) From a legal point of view, Article 20 of the ECSPR refers to the rates of the defaulted loans and not to the rates of defaulted amounts.
  - b) From a consumer protection perspective, an amount-based default rate would introduce a bias towards those loans and projects with the largest outstanding amount. However, the total outstanding amount of a project is not necessarily representative of the amount that an investor will invest on the project. As such, a loan-based default rate is more representative of the total loss incurred by an investor investing an equal amount into different projects offered by the CSP. In addition, an amount-based default rate could result in the performance of the smaller loans to be diluted and not be fully represented, which could provide misleading information to investors. This is likely to happen for non-sophisticated investors who may decide to invest a small amount of money in one or more loan. Lastly, an amount-based default rate is a potentially more volatile metric, particularly when the CSP offers only a few loans with a large outstanding amount.
  - c) From an incentive perspective, giving more prominence to larger loans in the calculation of the default rate could risk influencing the behaviour of CSPs which could result in preferring loans with larger volume at the expense of loans with smaller volume.
  - d) From a practical perspective, the loan-based calculation is less complex of the amount-based one as it does not require CSPs to calculate the outstanding amount of the loan when they have to calculate the default rates.
49. With regard to the possibility for CSPs to disclose a volume-based default rate on a voluntary basis and in addition to the default rates disclosed for the purpose of the ECSPR, ESMA believes that the disclosure of two different default rates may create confusion for investors and is not in line with the maximum harmonisation objective that stems from the ECSPR. Platforms may in any case decide to calculate the amount-based default rate as one of their internal tools for monitoring the performance of the loans they offer or manage.
50. Some respondents argued that CSPs should be allowed to calculate default rates based on different standards, for instance default rate standards established and maintained by the national associations of CSPs.
51. While ESMA values the role industry associations may play in helping CSPs in understanding the methodologies provided in the RTS issued in accordance with Article

20 of the ECSPR, ESMA is of the view that the objective of Article 20 of the Regulation is to achieve a maximum harmonisation with regard to the methodologies for the calculation requirements in order to contribute to the overarching objective of the ECSPR of realising a pan-European crowdfunding market for EU SMEs and investors.

52. One respondent questioned whether CPSs can make use of additional and voluntary performance indicators already used in some jurisdictions.
53. ESMA believes that the use of voluntary performance indicators (which differ from the default rates) may have a positive influence on the development of sound market practices. However, it should be clear that default rates that CPSs shall disclose should remain those provided in the RTS issued under Article 20 of the ECSPR in order to achieve maximum harmonisation and level playing field across the EU and allow investors to compare crowdfunding platforms and crowdfunding projects.
54. One respondent asked if some practical examples of the calculation of the default rates could be provided.
55. ESMA would like to clarify that, in accordance with the draft RTS, the default rate is calculated as simple average of the observed one-year default rates over the entire historical observation period using non-overlapping 12-month observation windows. Article 2 of the draft RTS provides the methodology for the calculation of the default rate of the loans offered on a crowdfunding platform (in line with Article 20(1)(a) of the ECSPR), while Article 3 provides the methodologies for the calculation of the default rate of loans by risk category (in line with Article 20(1)(b) of the ECSPR). In addition, Articles 2 and 3 of the draft RTS provide the methodology for the calculation of the annual default rate as well as specifications on the loans to be included in the calculation and the length of the underlying historical observation period. In particular, the draft RTS defines the one-year default rates, which is consistent with the capital requirement regulation (Article 180(1)(a) of regulation (EU) no 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012) and homogenous to yearly interest rates. As such, these default rates represent the share of loans going from a non-defaulted status into a defaulted status at least once during a one-year observation period. Hence, the expected default rate defined in the draft RTS provides an estimate of the proportion of currently non defaulted loans that are expected to default in a one-year observation period. Consequently, in order to base the estimation of such expected default rate from the actual default rate, the calculation of the actual default rate is restricted to loans in a non-defaulted status at the beginning of the one-year observation period. ESMA and EBA prepared an example for the calculation of the yearly default rate in the tables below.

	Jan-18	Feb-18	Mar-18	Apr-18	May-18	Jun-18	Jul-18	Aug-18	Sep-18	Oct-18	Nov-18	Dec-18
1	1											
2	1									X		
3	1						1			X		
4	0											
5	0				0							
6	1				1							
7	0									0	X	
8	1		1					0				
9	0								X			
10	0							0		X		

Denominator	Numerator
1	0
1	0
1	1
0	0
0	0
1	1
0	0
1	1
0	0
0	0

Loan	Comments
1	Non-defaulted in January 2018: included in the denominator. No default observed in 2018: not included in the numerator.
2	Non-defaulted in January 2018: included in the denominator. No default observed in 2018: not included in the numerator. Remark: <b>No</b> adjustment performed due to the maturity lower than 12 months
3	Non-defaulted in January 2018: included in the denominator. Default observed in 2018: included in the numerator. Remark: <b>No</b> adjustment performed due to the maturity lower than 12 months
4	Not in the portfolio in January 2018: not included in the denominator Not included the denominator: not included in the numerator
5	Not in the portfolio in January 2018: not included in the denominator Not included the denominator: not included in the numerator Remark: the default is therefore <b>not</b> included in the numerator
6	Non-defaulted in January 2018: included in the denominator. Default observed in 2018: included in the numerator.
7	Defaulted in January 2018: not included in the denominator Not included the denominator: not included in the numerator Remark: the default is therefore <b>not</b> included in the numerator
8	Non-defaulted in January 2018: included in the denominator. Default observed in 2018: included in the numerator. Remark: only 1 default included in the numerator (not 2)
9	Idem as loan 4
10	Idem as loan 5

56. One respondent noted that the disclosure of defaults rates should cover at least the last three (3) years.
57. ESMA would like to note that the according to Article 2(3), Article 3(3) and Article 4(2) of the draft RTS the underlying historical observation period used to calculate the default rates shall be at least 36 months.
58. Some respondents asked whether further details could be provided with regard to the identification of adjustments in case of bias due to short-term loans for the purpose of the calculation of the default rates and the calculation of the expected default rates.
59. The calculation of the yearly default rate is dependent on the reference date chosen by the CSP. As such, short term loans, may not enter into the calculation of the yearly default rate in the case where they have not been incepted at the reference date. This particular case is illustrated above via loan 9, which was not in the portfolio at the reference date of 1<sup>st</sup> of January and is therefore not considered for the calculation of the yearly default rate. In the case where this particular situation is not peculiar but is the result of some seasonal trends in the yearly business cycle, this may result in a bias in the calculation of the

expected default rate. For this reason, CSP should analyse whether a different reference date would give more appropriate results. In the example above, a calculation of the yearly default rate from the 1<sup>st</sup> of April would ensure that most of the loans are considered in the yearly default rate. However, once the reference date is selected, a shorter maturity should not impact the calculation of the yearly default rate (as illustrated via loans 1, 2 and 3 above).

60. With regard to the calculation of the expected default rates, ESMA would like to underline that the calculation of the expected default rate may vary from CSP to CSP. Therefore, each CSP should carefully monitor the performance of the loans and the terms on which the loans were agreed; if changes are expected that would worsen the performance of a loan which fall in the scope of the calculation of the expected default rate, this information should be incorporated into the expected default rate.
61. One respondent questioned whether CSPs have to determine risk categories of all loans and argued that the draft RTS should be more flexible towards CSPs who do not determine risk categories for each loan.
62. ESMA would like to stress that, according to Article 20(1)(b)(i) of the ECSPR, CSPs shall publish annually the expected and actual default rate of all loans the crowdfunding service provider has facilitated, by risk category and by reference to the risk categories set out in the risk-management framework. Therefore, each loan should be allocated to a risk category. The draft RTS does not provide detailed indications for the assignment of the loans to risk categories as those requirements would be out of the scope of the mandate given to ESMA in close cooperation with the EBA under Article 20(4) of the ECSPR. However, the definition of risk categories and the underlying criteria will be considered for the purpose of the draft RTS developed by the EBA in accordance with Art. 19(7)(d) of ECSPR.

## 7. Entry knowledge test and simulation of the ability to bear loss

### 7.1. Background and legal basis

#### Background/Mandate

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

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

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

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

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

## 7.2. Feedback from stakeholders

66. A number of respondents expressed the view that the list set out in Article 3(1) of the draft RTS was too extensive and was not aligned with the assessment that a CSP should do with respect to investments often consisting of very small amounts. ESMA notes that the provision provided in the RTS in relation to information to be requested by CSPs pursuant to Article 21(2) of the ECSPR (i.e. Article 3 of the draft RTS) are aligned with requirements applicable to financial firms required to perform comparable tests of the appropriateness of products to their (prospective) customers. ESMA also notes that that Article 3(1) of the draft RTS provides for a provision (i.e. *“to the extent appropriate to the nature, scale and complexity of the crowdfunding service to be offered and the type of investment envisaged”*) aiming at introducing proportionality. ESMA nevertheless decided to adjust the list of information set out in point (a), (b) and (c) of Article 3(1) with a view to ease the process for CSPs while maintaining a high level of investor protection for non-sophisticated investors.
67. A number of respondents expressed concerns about the relevance of imposing CSPs to offer non-sophisticated investors the possibility to use on-line calculation tool. Some noted that they were anticipating that non-sophisticated investors would not use the online tool and stressed the costs associated for CSPs. Others expressed concerns about the risks that some CSPs use this online tool to collect information, including sensitive information, about non-sophisticated investors, potentially without their full consent. ESMA is of the view that an online tool will contribute ensuring that non-sophisticated investors simulate their ability to bear loss in an easy and meaningful way. ESMA considers that this requirement will trigger a once-off limited cost and decided to maintain it in the draft RTS. However, ESMA amended the RTS with the aim to ensure that CSPs could not collect information inputted by non-sophisticated investors for the purpose of the simulation of their ability to bear loss and ensuring that the result of the simulation is shared willingly by the non-sophisticated investors and not automatically collected by CSPs.
68. The majority of respondents agreed with the suggested method to calculate the net worth of non-sophisticated investors. A few respondents noted however that additional flexibility could be given to prospective investors to determine the date in relation to which the valuation of the components used to calculate the net worth should be valued. ESMA considers that allowing such additional flexibility could be beneficial and amended the draft RTS accordingly.

## 8. Key investment information sheet

### 8.1. Background and legal basis

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

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

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

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

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

*[...]*

69. Article 23(1) of the ECSPR requires CSPs to provide prospective investors with a key investment information sheet which contains all the information referred to in the same Article 23. The purpose of the key investment information sheet is to enable prospective investors to make an informed investment decision (Recital 50 of the ECSPR).
70. More precisely, Article 23(2) of the ECSPR provides that CSPs have to provide prospective investors with a key investment information sheet drawn up by the project owner for each crowdfunding offer. This key investment information sheet must be drafted in at least one of

the official languages of the Member State whose CAs granted the authorisation to the CSP (in accordance with Article 12 of the ECSPR), or in another language accepted by those CAs.

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

- a) The CSP must request the project owner to notify it of any change of information in order to keep the key investment information sheet updated at all times and for the duration of the crowdfunding offer. CSPs must also immediately inform investors (who, among others, have made an offer to invest), about any material change to the information in the respective key investment information sheet (Article 23(8)).
  - b) Member States are required to ensure the responsibility of at least the project owner (or its administrative, management or supervisory bodies) for the information given in a key investment information sheet. Those responsible for the key investment information sheet must be clearly identified in the respective document (Article 23(9)).
  - c) Member States are obliged to ensure that their laws, regulations and administrative provisions on civil liability apply to natural and legal persons responsible for the information given in a key investment information sheet (including any translation thereof), at least in certain situations. This includes the situation where the information given in the key investment information sheet is misleading or inaccurate (Article 23(10)).
  - d) CSPs must have in place and apply adequate procedures to verify the completeness, correctness and clarity of the information contained in the key investment information sheet (Article 23(11)).
  - e) When a CSP identifies an omission, mistake or inaccuracy in the key investment information sheet that could have a material impact on the expected return of the investment that provider must signal this shortcoming to the respective project owner. Additionally, this Article sets out a several actions which a CSP or a project owner must take to address the deficiency in the key investment information sheet. Those actions encompass, among others, that the project owner is obliged to promptly complete or correct the respective information (Article 23(12)).
75. Moreover, Article 23(13) of the ECSPR provides that prospective investors may request a CSP to arrange for a translation of the key investment information sheet into a language of the investor's choice. The translation must faithfully and accurately reflect the content of the original key investment information sheet. However, where the CSP does not provide the requested translation of the sheet, the CSP is required to clearly advise the prospective investor to refrain from making the investment.
76. CAs of the Member State where the authorisation was granted to the CSP may require an *ex ante* notification of a key investment information sheet at least seven working days before making it available to prospective investors. Nevertheless, key investment information sheets are not required to be subject to *ex ante* approval by the CAs (Article 23(14) of the ECSPR).

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

## 8.2. Feedback from stakeholders

### *Extent of the provisions specifying the requirements for the KIIS model*

78. While some respondents strongly supported the extent of the KIIS and its requirements, some other stakeholders noted that the KIIS was too extensive. Those respondents highlighted that ESMA's proposed KIIS model was too detailed both for project owners and investors.
79. Some of the respondents that disagreed with ESMA's proposed KIIS model, stated that the KIIS was too extensive for small project owners. Those respondents expressed the view that the required information was disproportionate and would deter potential project owners, particularly in light of the liability attached to the preparation of the KIIS. Additionally, some of those respondents noted that also for investors, the information was too detailed, specifically as often small amounts would be invested. Accordingly, proposals of those respondents included the deletion of the requirements relating to the ownership structure, conflict of interests and the number of previous offers. Furthermore, it was stated that it was difficult to provide all the required information in a six-page document.
80. Moreover, respondents that disagreed with the extent of the KIIS model proposed by ESMA also provided comments related to particular requirements of the suggested KIIS model that are summarised below:
81. Some respondents questioned the need of a fixed ex-ante deadline upon which the offer would be closed for prospective investors. These respondents expressed the view that such a deadline would unnecessarily pressure both project owners and investors.
82. ESMA is of the view that the project owner shall be able to close the offer ahead of the deadline. The deadline is merely the end-date of the longest possible offer period. Prospective investors need clarity on whether the project will materialise or when they will get their money back (or when their commitments are no longer binding). Following the expiration of the deadline, the original offer is terminated. If the crowdfunding offer was not successful (i.e. the target capital or funds have not been raised), the complete amount needs to be returned to the prospective investors and all commitments are cancelled. Any further offer from thereon is an entirely new offer that, inter alia, requires a new KIIS (which, of course, may be heavily based on the same or similar terms as the original offer).

83. Some respondents stated that the information on the amount of own funds committed to the crowdfunding project by the project owner did not add any value and should therefore be optional.
84. ESMA notes that the ECSPR (Annex I, Part B, letter (e)) requires the disclosure of the “*amount of own funds committed to the crowdfunding project by the project owner*” as part of the KIIS.
85. Some respondents expressed the view that the type 3 and type 5 risks were always applicable to crowdfunding projects and hence did not add much value in informing investors.
86. ESMA acknowledges that the type 3 and type 5 risks are always valid and applicable to all crowdfunding projects. They can, however, be tailored to the relevant project. Furthermore, ESMA is of the view that these risks, if they materialise, have such a significant impact on the investor’s investment, that the investors should be reminded of these risks in the KIIS.
87. Some stakeholders noted that instead of disclosing the defaults on credit agreements by the project owner within the past five years, the CSP should check this as part of due diligence. Accordingly, the CSP should not accept the project owner, if it has defaulted too many times. Furthermore, one respondent stated that the provision to disclose any default on credit agreements by the project owner within the past five years was not sufficiently clear, because the term credit agreement was not clear.
88. ESMA notes that this KIIS requirement is prescribed by Level 1 (Annex I, Part G, letter (e) of the ECSPR) and hence cannot be deleted. The KIIS does not go beyond this Level 1 requirement. Furthermore, ESMA does not agree with the notion that the term credit agreement is not clear. Lastly, ESMA agrees with the expressed view that previous defaults of the project owner under credit agreements should be captured by the CSP’s due diligence. This obligation of the CSP, however, does not replace the disclosure requirement but works in parallel.
89. A few respondents noted that the requirement to provide information on conflict of interests in the KIIS was not clear. In particular, it was not clear whether this requirement related to the relationship between the project owner and the investors. This requirement should therefore be deleted, also because (i) the Level-1-text of the ECSPR did not provide for this information and (ii) the identification, management and disclosure of conflict of interests was the responsibility of the CSP.
90. The disclosure of conflicts of interest disclosure in the KIIS is in fact not mandated by the ECSPR. ESMA, therefore, deleted, the relevant sections in the KIIS.
91. A few stakeholders noted that the term "intention" used in relation to the information disclosure requirements on “the amount of own funds committed by the project owner”, was not clear. It

would therefore be better to limit the information disclosed in this section to actual investments made or committed.

92. ESMA agrees with this comment and amended the RTS accordingly.
93. A few respondents questioned why the annual interest rate should specifically be calculated by way of the Actual/365 method. These respondents proposed to allow project owners to choose the methodology while clearly stating what methodology is used.
94. ESMA sees the merits of this proposal of more flexibility and will adjust the RTS accordingly.
95. Furthermore, some respondents noted that in many cases the delivery date of admitted crowdfunding instruments was unclear and depended on how quickly the project owner fulfilled the additional conditions (e.g. loans may have mortgages or pledges as collateral and the date of establishing this collateral is sometimes hard to predict. Additionally, the establishment of the collateral may not match the delivery date of the loan provided, because it also depends on other parties (i.e. notary, the project owner itself). Thus, in the view of those stakeholders, a deadline for the moment the loan has to be 'delivered' would not be appropriate, while such a deadline to highlight the date until when investments are possible.
96. ESMA acknowledges that it may be difficult to give a precise date for the delivery of the admitted crowdfunding instruments and the relevant collateral. ESMA amended the RTS to allow project owners to state a "drop-dead date", indicating the latest possible date at which the underlying conditions (e.g. the relevant collateral) of the admitted crowdfunding instrument needs to be provided.

#### *Alternative structure of the KIIS*

97. No respondent disagreed with the structure of the KIIS, also because the KIIS follows the structure of the Level 1 text.

#### *Practices of information disclosure to help investors to better understand risks, benefits and other key features related to crowdfunding offers under the ECSPR*

98. Respondents had differing views on whether the six-pages-limit prescribed for the KIIS was too short or too long. While some respondents expressed the view that a meaningful and complete disclosure was hardly possible on six pages some other stakeholders were of the view that the KIIS was already too long and too convoluted and that a shorter, more focused version of the KIIS would be more useful for investors.
99. It was further stated that it should be made clearer that the responsibility for the KIIS lies with the project owner. In practice, the KIIS was often prepared by the CSP which was subject to a

conflict of interest. It was therefore suggested to disclose any third parties who participated in the preparation of the KIIS.

*Additional costs and/or benefits from the proposed approach taken*

100. Whereas some respondents again endorsed the scope and level of detail of the KIIS, some other respondents reiterated the view that the required information was too detailed, both for small crowdfunding project and for investors who may have difficulties to process so much information.

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

### 9.1. Background and legal basis

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

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

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

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

### 9.2. Feedback from stakeholders

103. Respondents generally supported the proposals with respect to data standards and formats, templates and procedures for the information to be reported by CSPs to CAs and, subsequently, by CAs to ESMA. A few respondents appreciated, in particular, that the proposed reporting to CAs was identical to the reporting to ESMA, subject to data anonymisation, and considered that ESMA should ensure that CAs would not impose additional reporting requirements on CSPs. A few respondents did not have an opinion on data reporting matters.
104. Some respondents expressed the view that the requirement to obtain and report the Legal Entity Identifier (LEI) by project owners would incur unnecessary costs while not bringing added value. According to the feedback, most project owners, at least in certain jurisdictions, did not have the LEI code. Some respondents suggested that national

identifiers, e.g. those issued by commercial registers, could be used instead. A few respondents also asked whether the LEI code would need to be renewed on an annual basis.

105. As regards the reporting formats, a majority of respondents supported the development of a common reporting template using either MS Excel or CSV format. In particular, some respondents agreed that the format would not need to be machine-readable and should be based on easily available solutions to avoid unnecessary burden. On the contrary, a few respondents noted that a common template should not be mandatory or that the choice of format should be left to the discretion of CAs.
106. A few respondents underlined that the requested data was very sensitive business information which, in most cases, would not become publicly available. Thus, it would be important to assure that the data would be received and stored in a safe manner and in accordance with applicable laws at all times, and that it would only be shared publicly on an anonymised or aggregated basis.
107. Concerning data anonymisation upon transmission by CAs to ESMA, a majority of respondents noted that they would not envisage any impact due to the anonymisation method used by CAs when transmitting data to ESMA. Some respondents underlined the need to transmit to ESMA only anonymised data, or even more generic and aggregate than reported to CAs, also noting that only aggregated market statistics could be published. On the contrary, a few stakeholders noted that anonymisation was not necessary. One respondent supported the use of hashing algorithms to anonymise data and suggested to include more details with that regard in the draft ITS, while also noting that the use of CSV format would be less suitable for the anonymisation operation.
108. One respondent considered that the proposed reporting deadline of 2 months was too short due to manual work required to prepare the reports. Another stakeholder expressed preference for reporting once every two years and underlined the need to avoid double reporting, e.g. duplication with AML and cybersecurity reporting requirements.
109. In view of the general support provided by the respondents, ESMA maintains its approach with respect to data standards and formats, templates and procedures for the information to be reported in accordance with Article 16 of the ECSPR presented in the consultation paper, with a few amendments described below.
110. Given the support of respondents for the reporting format to be based on easily available solutions, ESMA consider it justified to further clarify the ITS provisions so that it requires the submission of data in a common electronic spreadsheet CSV data format. Given the suggestions by some respondents to allow CAs to define reporting format at national level, ESMA considers it beneficial to allow reporting information also in alternative formats

accepted by CAs, that would enable the reuse of the already existing national systems. ESMA also considers that the reporting templates for data submission to CAs and to ESMA under Article 16(1) and 16(2) of the ECSPR respectively should be aligned, with the only difference related to the anonymisation of data submitted to ESMA.

111. ESMA took into consideration the concerns raised by some stakeholders with respect to the sensitive nature of data and proposed to include in the ITS a requirement for the procedures on reporting data to competent authorities to include mechanisms ensuring security and confidentiality of the reported data. ESMA considers that such mechanisms are not relevant for the transmission of data from CAs to ESMA as the data transmitted to ESMA will be anonymised. Moreover, it is reminded that, in accordance with Article 16(2) of the ECSPR, ESMA intends to only publish aggregated statistics on the crowdfunding market in the Union, whereas the detailed data reported to ESMA will not be published.
112. ESMA does not share the point of view of some respondents opposing the requirement to report the LEI by project owners and maintains its proposed approach with that regard, taking into consideration the below aspects:
  - a) The LEI is a critical data element allowing clear and unique identification of legal entities engaging in financial transactions, enhancing transparency in the global marketplace. The LEI has been already introduced in the key reporting regimes in the Union and further extension of its use in the new reporting regimes is crucial to ensure consistency and comparability of supervisory data.
  - b) The issuance of LEI is organised as a competitive market and there are 39 Local Operating Units (LOU) worldwide accredited to issue the LEI. The entities are free to choose the LOU they request the LEI from. The price for obtaining the LEI ranges from 189 to 49 EUR. ESMA also notes that, for the reporting purposes under Article 16 of the ECSPR, there is no requirement to renew the LEI on an annual basis.
  - c) To support this view further, ESMA also takes note of the European Commission's communication on a Digital Finance Strategy for the EU which envisages the development of a strategy on supervisory data to ensure, among others, full use of available international standards and identifiers including the Legal Entity Identifier<sup>6</sup>.

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<sup>6</sup> Communication from the European Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a Digital Finance Strategy for the EU, COM/2020/591 final, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52020DC0591>

113. Considering that the stakeholder generally supported the proposal with respect to the anonymisation of data transmitted by CAs to ESMA, ESMA maintains the approach proposed in the consultation paper.
114. Given that the scope and the volume to be reported is limited, as well as the complexity of the reporting template is relatively low, ESMA considers that the proposed deadline to report within 2 months after the year end is appropriate and will allow CAs and ESMA timely performance of their tasks. ESMA also notes that the annual frequency of the reporting is envisaged by the Regulation and cannot be changed in the draft ITS.

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

### 10.1. Background and legal basis

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

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

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

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

### 10.2. Feedback from stakeholders

117. Respondents agreed with the information to be requested from CAs pursuant to the two templates.
118. Some respondents suggested that the publication requirements set out in Article 28(1) of the ECSPR be extended to other areas of financial legislation. ESMA reminds that its mandate to prepare draft technical standards is strictly limited to the provisions of Article 28 of the ECSPR and that it cannot suggest an extension of this publication requirements in other area of financial law.

## 11. Cooperation between competent authorities

### 11.1. Background and legal basis

#### **Article 31(8) of ECSPR**

*ESMA shall develop draft regulatory technical standards to specify the information to be exchanged between competent authorities in accordance with paragraph 1.*

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

#### **Article 31(9) of ECSPR**

*ESMA shall develop draft implementing technical standards to establish standard forms, templates and procedures for the cooperation and exchange of information between competent authorities.*

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

### 11.2. Analysis

119. Article 31 sets out requirements applicable to CAs in relation to exchange of information, cooperation in investigation, supervision and enforcement activities.
120. Article 31 requires ESMA to develop a RTS to specify the information to be exchanged and an ITS to establish standards forms, template and procedures for the cooperation and exchange of information between CAs.
121. When developing this RTS and ITS, ESMA has striven to put in place an efficient and robust cooperation framework comparable to what is in place in relation to other European financial legislative frameworks.

## 12. Cooperation between competent authorities and ESMA

### 12.1. Background and legal basis

#### **Article 32(4) of ECSPR**

*In order to ensure uniform conditions of application of this Article, ESMA shall develop draft implementing technical standards to establish standard forms, templates and procedures for the cooperation and exchange of information between competent authorities and ESMA.*

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

### 12.2. Analysis

122. Article 32 sets out requirements applicable to CAs and ESMA to ensure a smooth and effective both ways cooperation. ESMA developed this ITS with this aim.



## **13. Annexes**

## **Annex I: Cost-benefit analysis**

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

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

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

ESMA's objective in drafting the RTS is to promote investor protection and a shared culture of complaints handling by CSPs by ensuring that clients are enabled to express in a uniform way across the Union their dissatisfaction with crowdfunding services provided by CSPs.

#### *Benefits*

Having harmonised complaint handling requirements regarding CSPs' complaint handling procedures, the format for filing complaints and CSPs' investigations of and responses to complaints will provide clients of CSPs across the Union with common and understandable information on the complaint handling process and a uniform way for clients to submit complaints to CSPs will help ensure that complaints are treated in a fair, independent and harmonised way by CSPs.

Moreover, setting out common rules for complaints handling may lead to increased efficiency, effectiveness and independence of the complaints handling process.

Overall, having standardised complaints handling requirements as set out in the draft RTS will enhance investor protection and promote a shared culture of complaints handling by CSPs across the Union.

#### *Costs*

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

## *Conclusions*

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

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

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

Article 8 of the ECSPR sets out requirements for CSPs in the field of the conflicts of interest. ESMA's mandate according to Article 8(7) of the ECSPR does not cover all requirements set out in Article 8.

When drafting the draft RTS pursuant to Article 8(7), ESMA has focused its attention on offering a regime that balances the need to ensure that the operations of CSP are not impaired by conflicts of interest while ensuring that the burden for CSP is proportionate to the investor protection benefit.

#### *Benefits*

Having further specified the requirements applicable to the maintenance and operation of internal rules to prevent conflicts of interest will ensure a harmonised approach of CSPs across the Union and guarantee a high level of protection for investors.

The requirements set out in the draft RTS regarding the mitigation measures to be implemented and the disclosure of conflicts of interest will provide CSPs with additional clarity on the requirements set out in Article 8 of the ECSPR and will help them design their internal procedure and provide them with guidance as to how to manage their disclosure obligations.

#### *Costs*

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

## *Conclusions*

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

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

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

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

When drafting this draft RTS, ESMA has focused on:

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

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

#### *Benefits*

Further specifying the measures and procedures for the business continuity plan referred to in Article 12(2)(j) will provide harmonised standards for the business continuity plans of prospective CSPs across the Union. In particular, the common requirements set out in the

draft RTS aim to ensure (i) the continuity of critical services related to existing investments, (ii) the sound administration of agreements between CSPs and their clients and the sound administration of critical business data, and (iii) the mitigation of detrimental consequences of a significant business interruption of incident.

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

### *Costs*

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

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

### *Conclusions*

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

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

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

The information that prospective CSPs have to provide to CAs for the purpose of the authorisation to provide crowdfunding services are established under the Article 12(2) and (3) of the ECSPR. In accordance with the mandate given to ESMA by Article 12(16) of the ECSPR, the draft RTS further specifies the requirements required by the same Article for the application as CSP. In line with the mandate, the draft RTS also specifies the arrangements, the template and the procedures for the application for authorisation.

In light of the above, the analysis of the impacts of the draft RTS on authorisation should focus on the benefits and costs stemming from the specific provisions of the RTS which are not included in the Level 1.

### *Benefits*

One of the objectives of the ECSPR is to create a smooth and functioning cross-border crowdfunding service market. This requires a sufficient scale and public confidence in those services (Recital 30 of the ECSPR). The Regulation lays down uniform, proportionate and directly applicable requirements for the authorisation of CSPs which should therefore facilitate cross-border provision of those services, reduce operational risks, and ensure a high degree of transparency and investor protection.

Taking into account the ECSPR's objectives, the draft RTS intends to harmonise the process for the authorisation of CSPs by providing common rules for the communications between prospective CSPs and CAs and by establishing a common standard form for the submission of the applications to CAs in which the information to be provided are detailed mirroring the list established under Article 12(2) of the ECSPR.

ESMA believes that the provisions of the draft RTS will provide certainty, clarity and predictability to firms with regard to the authorisation process and to supervisory decision on the authorisation process.

The standardised list of information which is provided in the Annex to the draft RTS will also benefit CAs by facilitating a guidance in the authorisation process and will likely reduce inquiries by applicants and simplify internal processes.

Enhanced and harmonised requirements for the good reputation assessment of major shareholders and persons in charge of the management of the CSP will benefit the clients of the CSP and, ultimately, serve investor protection and market integrity.

As empowered by Article 12(16) of the ECSPR, ESMA has specified the standard forms, templates and procedures for the notification or provision of information to the CAs by entities applying for an authorisation as CSP. ESMA believes that common standard forms, templates and procedures further contribute to the common understanding and enforcement among Member States' CAs of the authorisation process. For CAs, it is likely that a clearer legal framework with specified templates and procedures will clarify the authorisation process, by reducing the volume of enquiries by applicants and simplifying internal processes. For applicants, the standardisation of forms and procedures will provide

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

### *Costs*

CAs of those Member States where a national legislation on crowdfunding is already in place will have to review their internal application process to reflect, where needed, the standardised list of information. While this may lead to staff training costs to process the additional or different information that will be provided, no significant additional costs linked to the draft RTS are expected in this case.

CAs of those Member States where a national legislation on crowdfunding does not exist will have to set up an internal application process, identify an adequate number of staff to deal with applications for CSPs and organise the relevant staff training. However, ESMA expects that the bulk of these costs will derive directly from the Level 1 requirements contained in the ECSPR with more limited additional costs stemming from the implementation of the draft RTS

Similarly, prospective CSPs will have to prepare their applications in order to comply with the requirements set out in the ECSPR (Article 12(8) of ECSPR) while specific additional costs linked to the compliance with the templates for the application provided in the Annex to the draft RTS 4 are relatively limited.

### *Conclusions*

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

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

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

The main purpose of the requirements on the disclosure of default rates set out in Article 20 of the ECSPR concerns the need to reduce the information asymmetries between

investors and CSPs and to allow investors to purchase the investment options that are consistent with their needs and objectives.

This disclosure aims therefore at facilitating investors' understanding of the risks involved when they act as lenders<sup>1</sup> (both directly and indirectly through investing in a portfolio of loans) on a crowdfunding platform. These requirements deal with the possible behaviour of investors that may decide to invest in loans offered by a crowdfunding platform on the basis of the returns offered by those loans without giving due consideration to the associated risks and to the level of defaults of the loans offered on that platform.

In order to strengthen the benefits of such disclosure for investors, the ECSPR opts for its harmonisation across the Union and mandates ESMA, in close cooperation with the EBA, to specify the calculation of the default rates that CSPs have to disclose in accordance with Article 20 of the ECSPR.

In accordance with the mandate given to ESMA by Article 20(3) of the ECSPR, the draft RTS further specifies the requirements for the calculation of the default rates by CSPs that facilitate the granting of loans through crowdfunding platforms.

In light of the above, the analysis of the impacts of the draft RTS should focus on the benefits and costs stemming from the specific provisions of the RTS which are not included in the level 1.

### *Benefits*

The disclosure of default rates will reduce information asymmetries and the associated risk of investors not understanding the nature and type of risk involved in the investment they make.

The harmonised methodologies proposed in the draft RTS for the calculation of the default rates that CSPs will have to disclose will help standardising the preparatory internal governance arrangements for CSPs and the meaning of the information disclosed by CSPs across the Union. This should further allow investors to compare crowdfunding platforms and to develop a cross-border loan-based crowdfunding market in line with the purpose of the Capital Markets Union project. The harmonisation of the rules will also simplify the

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

relationships between project owners and CSPs and reduce the misalignment of incentives between CSPs, project owners and investors.

Enabling investors to make informed investment decisions should reduce the risk of potential consumer detriment (allowing them to be better remunerated for the risks they take). This should improve the trust in the crowdfunding environment and drive a more effective development of the market.

### *Costs*

The main costs for CSPs stem from the compliance with the disclosure requirements established under Article 20 of ECSPR (and, more in general, with the risk-management framework in accordance with Article 19 of ECSPR which is not part of this Consultation Paper<sup>2</sup>).

Costs for CSPs will be mainly represented by the setting up of arrangements that will allow the compliance with the methodology for the calculation of the default rates as specified in the draft RTS. Staff training might also need to be put in place.

### *Conclusions*

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

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

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

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

Article 21 of the ECSPR provides that CSPs shall, before giving prospective non-sophisticated investors full access to invest on their crowdfunding platform, assess whether and which crowdfunding services offered are appropriate for the prospective non-sophisticated investors. CSPs are also expected to require prospective non-sophisticated investors to simulate their ability to bear loss, calculated as 10 % of their net worth (Article 21(5) of the ECSPR).

Article 21(8) requires ESMA to develop draft RTSs to specify the arrangements necessary to (a) carry out the assessment referred to in Article 21(1), (b) carry out the simulation referred to in Article 21(5) and (c) provide the information referred to in Article 21(2) and (4).

While drafting this RTS, ESMA focused on achieving a high level of protection for non-sophisticated investors by trying to ensure that when accessing CSPs' services, they are aware of and understand the risks associated with investments in crowdfunding projects, receive appropriate risk warnings and avoid overexposure.

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

### *Benefits*

#### Entry knowledge test

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

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

Providing harmonised requirements for the online calculation tool will be beneficial to non-sophisticated investors as this will ensure that the tool is accessible and easy to use for non-sophisticated investors who will simply need to input the information set out in points

(a) to (c) of Article 21(5) of the ECSPR. A high level of investor protection is further ensured through requiring that the results of the simulation be displayed in a manner which is clear and readable for non-sophisticated investors.

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

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

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

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

#### *Costs*

##### For CSPs

CSPs will incur both one-off and ongoing costs in relation to the set up and maintenance of the entry knowledge test and the related requests for information from non-sophisticated investors. Moreover, CSPs will bear some one-off costs related to setting up the simulation of the non-sophisticated investor's ability to bear loss (i.e. the online calculation tool), the issuance of the risk warnings and the calculation of the net worth of non-sophisticated investors.

The bulk of these costs derive from the Level 1 requirements rather than the RTS and are therefore deemed necessary and unavoidable.

#### *Conclusions*

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

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

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

Pursuant to Article 23 of the ECSPR, CSPs shall provide prospective investors with a Key Investment Information Sheet (KIIS). The Key Investment Information Sheet shall set forth the information needed to make an informed investment decision. Article 23 and Annex 1 of the ECSPR further elaborate on what information shall be included in the Key Investment Information Sheet.

Article 23(16) of the ECSPR mandates ESMA to further elaborate by way of a RTS the requirements and model for presenting the information that shall be set forth in the KIIS, including the presentation of certain risks, financial ratios and costs and charges information.

The draft RTS contains a general, explanatory part and a KIIS model further demonstrating what information shall be disclosed and the way it should be presented.

### *Benefits*

The KIIS will help investors to make an informed investment decision. It will also standardise the content and the presentation of information relating to the project owner, the crowdfunding project and the terms and conditions of the offer, thereby allowing for comparability.

The KIIS strives to disclose all material information while attempting to strike the right balance between investor information and protection needs and the entrepreneurial and venture capital nature of crowdfunding.

### *Costs*

#### *For prospective crowdfunding providers*

Pursuant to Article 23(2) of the ECSPR, the KIIS shall be drafted by the project owner. The costs associated with the KIIS are therefore primarily born by project owners who may, however, and for all practical purposes will work together on the KIIS with CSPs. The relevant information will have to be gathered and presented as required by the RTS, including the KIIS template.

This will result in costs for the project owner. The information, however, should be readily available. Moreover, completing the KIIS model following its instructions should be feasible for any project owner and CSP without help of external experts such as lawyers or accountants. The KIIS and its requirements should therefore not unduly burden project owners and in any event not outweigh the benefits to investors.

### *Conclusions*

***The KIIS itself and the respective model set forth in the RTS pursuant to Article 23(16) of the ECSPR are therefore proportionate.***

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

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

Article 16 of the ECSPR establishes the obligation of CSPs to annually report on the funded projects to their CA. This information shall be transmitted, after anonymisation of project owners(s) identity, to ESMA to allow for the publication of annual statistics on the crowdfunding market. As mandated in 16(3), ESMA shall develop draft technical standards to establish data standards and formats, templates and procedures for the information to be reported.

Therefore, ESMA's objectives in drafting the ITS are to ensure that (i) the national CAs have regular information to monitor its own markets, (ii) that the information is consistent within the EU to both provide the foreseen statistics described in the article and allow national CAs to benchmark the national activity and (iii) by virtue of using common data standards and information available to the CSPs the costs of reporting are maintain relatively low and the data quality is high.

### *Benefits*

The main benefits linked to the draft ITS are:

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

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

### *Costs*

#### For prospective CSPs

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

#### For CAs

- One-off costs: Costs to implement the harmonised templates including the inclusion of format and consistency validation costs. Given the relative simplicity of the reporting regime, the costs are not expected to be significant.
- On-going costs: Intake of the information provided annually, data quality analysis and data storage. At this stage, additional costs are not expected to be significant.
- Data transmission to ESMA: The template for reporting to ESMA has been designed to be similar to the template use to collect information from CSPs, taking aside anonymization, to reduce one-off and on-going costs by NCAs.

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

### *Conclusions*

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

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

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

Article 28(2) requires CAs to notify ESMA of national provisions on marketing requirements and to provide summaries thereof. Article 28(3) requires CAs to notify any change made in the information notified under Article 28(2). As mandated in Article 28(5), ESMA shall develop draft implementing technical standards to determine standard forms, templates and procedures for the notifications under Article 28.

The notifications set out in paragraphs 2 and 3 of Article 28 will facilitate ESMA in carrying out its duty under Article 28(6) which is to publish and maintain on its website the summary referred to in paragraph 2 and the hyperlinks to the websites of CAs referred to in paragraph 1 containing the notified national provisions on marketing requirements.

As the ECSPR is a new regime, procedures and templates for notifications referred to in Article 28(2) and (3) do not currently exist.

ESMA's objectives in drafting the draft Article 28(5) ITS are to ensure that the procedures and templates for the Article 28(2) and (3) notifications provide certainty, clarity, predictability and uniformity as to the form and content of the notifications. In particular, this will enable ESMA to carry out its duties and responsibilities under Article 28.

#### *Benefits*

Standardised templates for the notifications under Article 28(2) and (3) will help ESMA in processing the notifications received and will ensure that ESMA obtains the information necessary from CAs to fulfil its tasks under Article 28.

Moreover, having common templates will benefit CAs as the form and content of the notifications are determined from the outset. This will reduce the need for enquiries by CAs and simplify internal processes.

Finally, having two templates will ensure a clear distinction between the notifications under Article 28(2) and Article 28(3) and will help ESMA in processing the notifications and information provided.

### *Costs*

For CAs:

One-off costs for CAs include implementation costs and some staff costs to respond to the harmonised templates requirements.

CAs will incur on-going costs related to updating the information provided and data storage costs. At this stage, additional costs are not expected to be significant.

For ESMA:

ESMA will also incur costs, both of one-off and ongoing nature, to implement draft Article 28(5) ITS. Those costs will cover, for instance, (i) putting in place a necessary contact point for the reception of notifications and (ii) setting up an IT system to pool the information received.

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

### *Conclusions*

In light of what has been illustrated above, ESMA believes that the overall (compliance) costs associated with the implementation of the draft Article 28(5) ITS are fully justified by the objectives described above and will be largely compensated by the benefits of having a harmonised regime for notifications of national provisions on marketing requirements.

ESMA is also of the view that the costs that it will incur due to the implementation of the draft Article 28 ITS are necessary and ensue directly from its new responsibilities and powers under Article 28 the ECSPR and are, thus, unavoidable.

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

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

**of XXX**

**supplementing Regulation (EU) 2020/1503 of the European Parliament and of the Council with regard to regulatory technical standards specifying the requirements, standard formats and procedures for complaint handling**

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2020/1503 of the European Parliament and of the Council of 7 October 2020 on European crowdfunding service providers for business, and amending Regulation (EU) 2017/1129 and Directive (EU) 2019/1937<sup>1</sup>, and in particular the third subparagraph of Article 7(5) thereof,

Whereas:

- (1) Crowdfunding service providers should ensure that their clients are able to easily access a clear, understandable and up-to-date description of the complaints handling procedure by making such description available on their website. In order to promote a common approach for the application of Regulation (EU) 2020/1503, this Regulation sets out the minimum content of descriptions of complaint handling procedures.
- (2) To ensure harmonised complaints handling procedures among crowdfunding service providers across the Union, clients should file their complaints using a harmonised standard format.
- (3) In order to provide for an adequate level of protection of investors, it is appropriate to require crowdfunding service providers to ensure that complaints can be filed in any of the languages used to promote their services or crowdfunding offers in the Union.
- (4) To ensure a prompt and timely handling of complaints, crowdfunding service providers should, inter alia, be required to acknowledge receipt of any complaint and confirm whether the complaint is admissible within 10 working days of its receipt. Where a complaint is deemed inadmissible, the complainant should be provided with the reasons for this position. Upon acknowledgment of receipt of the complaint, the complainant should receive the contact details of the person or department to whom queries linked to the complaint may be addressed, as well as an indicative timeframe within which a decision on the complaint may be expected.

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

- (5) To ensure a prompt, timely and fair investigation of complaints crowdfunding service providers should, upon receipt of a complaint, assess whether it is clear, complete and includes all relevant evidence and information necessary for handling it. Where appropriate, additional information should be promptly requested. To the same end, crowdfunding services providers should seek to gather and investigate all relevant evidence and information regarding the complaint. Complainants should be kept duly informed about the process.
- (6) To ensure a fair handling of complaints, it is necessary that decisions on complaints address all points raised by the complainant. Moreover, complaints presenting similar circumstances should give rise to decisions that are consistent with each other, unless the crowdfunding service provider is able to provide justification for any possible deviation from a previously taken decision.
- (7) For a prompt handling of complaints, decisions on complaints should be communicated to the complainant as soon as possible and within the timeframe defined in the complaints handling procedure. In the exceptional circumstances where the crowdfunding service provider foresees that meeting such timeframe may not be possible, the causes of the delay should be communicated to the complainant together with the deadline by which a decision will be delivered.
- (8) Where the final decision on a given complaint does not fully satisfy the complainant's request, it is appropriate that the decision includes a thorough explanation for such outcome and that the complainant receives information about the remaining options.
- (9) In order to ensure efficient interactions, crowdfunding service providers should communicate with complainants in clear and understandable language. Communications of crowdfunding service providers should be made in writing by electronic means or, upon the complainant's request, in paper form.
- (10) This Regulation is based on the draft regulatory technical standards submitted to the Commission by the European Securities and Markets Authority (ESMA).
- (11) ESMA has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the advice of the Securities and Markets Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council<sup>2</sup>,

HAS ADOPTED THIS REGULATION:

#### *Article 1*

#### ***Definition***

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

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<sup>2</sup> Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

- (a) ‘Complaints’ means a statement of dissatisfaction addressed to a crowdfunding service provider by one of its clients relating to the provision of crowdfunding services within the meaning of point (a) of Article 2(1) of Regulation (EU) 2020/1503.

## *Article 2*

### ***Complaint handling procedures***

1. Crowdfunding service providers shall have in place complaint handling procedures which provide clear and accurate information about the complaint handling process.
2. Complaint handling procedures shall contain at least the following:
  - (a) the conditions for the admissibility of complaints;
  - (b) information that complaints are filed and handled free of charge;
  - (c) a detailed description of how complaints shall be filed, including:
    - (i) information that complaints must be filed using the standard template set out in the Annex;
    - (ii) the type of information and evidence to be provided by the complainant;
    - (iii) the identity and contact details of the person to whom or department to which complaints shall be addressed;
    - (iv) the electronic platform, system or address to which complaints shall be submitted;
    - (i) the language or languages in which a complaint may be filed pursuant to Article 3(2) of this Regulation.
  - (d) the process that will be followed for complaints handling, as specified in Articles 4 to 6;
  - (e) the timeframe within which a decision on the complaint will be notified to the complainant.
3. Crowdfunding service providers shall amend the procedures referred to in paragraph 1, as appropriate. They shall publish an up-to-date description of such procedures, as well as the standard template set out in the Annex, in an easily accessible manner on their website.
4. The description of the complaint handling procedures and the standard template set out in the Annex to this Regulation shall be published in each of the languages of the key investment information sheet pursuant to Articles 23 and 24 of Regulation (EU) 2020/1503 or marketing communications pursuant to Article 27(1) of the same Regulation.

## *Article 3*

### ***Standard format and language***

1. Crowdfunding service providers shall ensure that clients submit complaints by electronic means, using the standard template set out in the Annex.

2. Crowdfunding service providers shall also ensure that clients are able to file complaints in any of the languages referred to in Article 2(4).

#### *Article 4*

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

1. Crowdfunding service providers shall acknowledge receipt of a complaint and confirm whether it is admissible within 10 working days of its receipt. In case a complaint does not fulfil the conditions of admissibility, crowdfunding service providers shall provide the complainant with a clear explanation of the reasons for rejecting the complaint as inadmissible.
2. The acknowledgment of receipt of a complaint shall contain the following:
  - (a) the identity and contact details, including e-mail address and telephone number, of the person to whom or department to which complainants may address any query related to their complaint;
  - (b) a reference to the timeframe referred to in point (e) of Article 2(2).

#### *Article 5*

##### ***Investigation of complaints***

1. Upon receipt of an admissible complaint, crowdfunding service providers shall, without undue delay, assess whether the complaint is clear and complete. In particular, they shall assess whether the complaint includes all relevant information and evidence. Where a crowdfunding service provider concludes that a complaint is unclear or incomplete, it shall promptly request any additional information or evidence necessary for the proper handling of the complaint.
2. Crowdfunding service providers shall seek to gather and examine all relevant information and evidence regarding a complaint.
3. Crowdfunding service providers shall keep the complainant duly informed about any additional steps taken to handle the complaint and reply to reasonable information requests made in this regards by the complainant without any undue delay.

#### *Article 6*

##### ***Decisions***

1. A decision on a complaint shall address all points raised in the complaint and state the reasons for the outcome of the investigation. It shall be consistent with any previous decision taken by the crowdfunding service provider in respect of similar complaints, unless the crowdfunding service provider is able to justify why a different approach is followed.
2. Crowdfunding service providers shall communicate their decision on a complaint to the complainant as soon as possible and within the timeframe referred to in point (e) of Article 1(2) of this Regulation.
3. Where, in exceptional situations, the decision on a complaint cannot be provided within the timeframe referred to in point (e) of Article 2(2), crowdfunding service providers shall

clearly inform the complainant about the causes of the delay and specify the deadline for delivering the decision.

4. In case the decision does not satisfy the complainant's demand or only partially satisfies it, it shall include a thorough explanation of this outcome and shall inform the complainant about the remedies open to him or her such as the possibility to file a complaint to a competent authority in accordance with Article 38 of Regulation (EU) 2020/1503 or to take civil action.

#### *Article 7*

##### ***Communication with complainants***

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

#### *Article 8*

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

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

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

Done at Brussels,

*For the Commission*  
*The President*

**ANNEX**

*Standard format for the submission of complaints*

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

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

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

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

TELEPHONE	EMAIL



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

LAST NAME/ LEGAL ENTITY NAME	FIRST NAME

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

TELEPHONE		EMAIL	

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

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

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

TELEPHONE		EMAIL	

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

LAST NAME/ LEGAL ENTITY NAME	FIRST NAME

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

TELEPHONE		EMAIL	



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

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

**3.b Description of the complaint's subject-matter (please clearly specify the subject matter of the complaint)**

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

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



**3.d Description of damage, loss or detriment caused (where relevant)**

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

In (place)

on (date)

.....

*SIGNATURE*



***COMPLAINANT / LEGAL REPRESENTATIVE***

*Documentation provided (please check the appropriate box):*

*Power of attorney or other relevant document .....*

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

*Other documents supporting the complaint:*

.....

.....

.....

.....

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

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

**of XXX**

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

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2020/1503 of the European Parliament and of the Council of 7 October 2020 on European crowdfunding service providers for business, and amending Regulation (EU) 2017/1129 and Directive (EU) 2019/1937<sup>1</sup>, and in particular the fourth subparagraph of Article 8(7) thereof,

Whereas:

- (1) It is appropriate that crowdfunding service providers maintain and operate effective internal rules to prevent conflicts of interest pursuant to Article 8(3) of Regulation (EU) 2020/1503, which are set out in writing. In order to ensure that such rules meet their objectives over time, crowdfunding service provider shall review them periodically including at least on an annual basis, and ensure that appropriate measures are taken to address any deficiency regarding such rules.
- (2) Internal rules to prevent conflicts of interest should be appropriate to the nature, scale and complexity of the crowdfunding services provided as well as to the size and organisation of the provider's business. In this regard, they should take into account, where relevant, circumstances related to the fact that the crowdfunding service provider belongs to a group.
- (3) In designing internal rules for preventing conflicts of interest, crowdfunding service providers should prioritise the prevention, identification and management of conflicts of interest over relevant disclosure requirements.

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

- (4) Steps that crowdfunding service providers should take in accordance with Article 8(4) of Regulation (EU) 2020/1503 should aim at ensuring with reasonable confidence that risks of damage to client interests will be prevented and, where this is not possible, appropriately mitigated.
- (5) To ensure that clients can take an informed decision about services presenting actual conflict of interests, crowdfunding service providers should keep up-to-date the information disclosed pursuant to Article 8(5) of Regulation (EU) 2020/1503 of the general nature and sources of conflicts of interest as well as the steps taken to mitigate them. Such disclosure should be appropriate to the nature of the clients to whom or which it is addressed, in particular taking into account their qualification as sophisticated or non-sophisticated (prospective) investors. It should include a description of the conflicts of interests and the related risks for the clients.
- (6) This Regulation is based on the draft regulatory technical standards submitted to the Commission by the European Securities and Markets Authority (ESMA).
- (7) ESMA has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council<sup>2</sup>,

HAS ADOPTED THIS REGULATION:

#### *Article 1*

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

1. Crowdfunding service providers shall establish, implement and maintain effective internal rules on conflicts of interest that are set out in writing and appropriate to the size and organisation of the crowdfunding service provider, as well as the nature, scale and complexity of its business.
2. In case they are members of a group, crowdfunding service providers shall ensure that internal rules to prevent conflicts of interest take into account any circumstances of which they are, or should be, aware and which may give rise to a conflict of interest because of the structure and business activities of other members of the group.
3. Crowdfunding service providers shall also ensure that the internal rules to prevent conflicts of interest shall at least require the crowdfunding service provider to:

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<sup>2</sup> Regulation (EU) No 1095/2010 of the European Parliament and of the Council establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84.).

- (a) identify whether any of the persons referred to in points (a), (b) and (c) of the first subparagraph of Article 8(2) of Regulation (EU) 2020/1503 have been accepted as investors in the crowdfunding projects offered on their crowdfunding platform;
- (b) identify any other circumstances which may give rise to an actual or potential conflict of interest between the persons referred to in Article 8(4) of Regulation (EU) 2020/1503. Such circumstances should take into account the size and activities of the crowdfunding service provider and, where applicable, of the group to which it belongs, and the risk of damage to the interests of clients.
- (c) specify procedures to be followed and measures to be adopted in order to comply, where relevant, with the requirements mentioned in subparagraph 2 of Article 8(2) of Regulation (EU) 2020/1503 and pursuant to point (b) above.

When establishing and assessing their interest internal rules to prevent conflicts of interest, crowdfunding service providers shall set out appropriate steps to prevent, manage and mitigate conflicts of interest and shall avoid over-relying on the disclosure requirements set out in Article 8(5) of Regulation (EU) 2020/1503 without taking appropriate steps to mitigate them.

4. The rules implemented to meet the requirements referred to in point (b) of paragraph 3 shall be designed to ensure that relevant persons engaged in different business activities involving a conflict of interest of the kind specified therein carry on those activities at a level of independence appropriate to the size and activities of the crowdfunding service provider and, where applicable, of the group to which it belongs, and to the risk of damage to the interests of clients.
5. The rules implemented to meet the requirement referred to in point (c) of paragraph 3 shall, at least, include:
  - (a) effective procedures to prevent or control the exchange of information between relevant persons engaged in activities involving a risk of a conflict of interest where the exchange of that information may harm the interests of one or more clients;
  - (b) separate supervision of relevant persons whose principal functions involve carrying out activities on behalf of, or providing services to, clients whose interests may conflict, or who otherwise represent different interests that may conflict, including those of the crowdfunding service provider;
  - (c) removal of any direct link between the remuneration of relevant persons principally engaged in one activity and the remuneration of, or revenues generated by, different relevant persons principally engaged in another activity, where a conflict of interest may arise in relation to those activities;
  - (d) measures to prevent or limit any person from exercising inappropriate influence over the way in which a relevant person carries out crowdfunding services, and

- (e) measures to prevent or control the simultaneous or sequential involvement of a relevant person in separate crowdfunding services where such involvement may impair the proper management of conflicts of interest.
6. Crowdfunding service providers shall assess and periodically review the internal rules referred to in Article 8(3) of Regulation (EU) 2020/1503 and shall take all appropriate measures to address any deficiencies identified. Such review shall be performed at least on an annual basis.

#### *Article 2*

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

1. Steps that crowdfunding service providers are required to take in accordance with Article 8(4) of Regulation (EU) 2020/1503 shall aim at ensuring with reasonable confidence that risks of damage to client interests will be prevented, and where this is not possible, appropriately mitigated.
2. For the purposes of identifying the types of conflict of interest that arise in the course of providing crowdfunding services and whose existence may damage the interests of a client, besides those mentioned in subparagraph 1 of Article 8(2) of Regulation (EU) 2020/1503, crowdfunding service providers shall take into account, by way of minimum criteria, whether any of the persons referred to in Article 8(4) of Regulation (EU) 2020/1503:
  - (a) is likely to make a financial gain, or avoid a financial loss, at the expense of the client;
  - (b) has an interest in the outcome of a service provided to the client which is distinct from the client's interest in that outcome;
  - (c) has a financial or other incentive to favour the interest of a client or group of clients over the interests of another client.

#### *Article 3*

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

1. The information referred to in Article 8(5) of Regulation (EU) 2020/1503 shall be published and updated on the crowdfunding service provider's website on a place that is easily accessible and can be easily found by clients. The information referred to in Article 8(5) of Regulation (EU) 2020/1503 shall also be disclosed to clients on a durable medium, unless no conflict of interest has been identified in accordance with Article 8(4) of Regulation (EU) 2020/1503 and, where relevant, updated.
2. The disclosure referred to in paragraph 1 shall be made in due time so as to enable clients to take an informed decision about the service in the context of which the conflict of interest arises. It shall include a specific and clear description of the conflicts of interest and associated risks identified in the context of a given service, taking into account the nature

of the clients to whom the disclosure is being made, in particular their qualification as sophisticated or non-sophisticated prospective investors.

*Article 4*

***Entry into force and application***

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

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

Done at Brussels,

*For the Commission*  
*The President*

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

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

**of XXX**

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

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2020/1503 of the European Parliament and of the Council of 7 October 2020 on European crowdfunding service providers for business, and amending Regulation (EU) 2017/1129 and Directive (EU) 2019/1937<sup>3</sup>, and in particular the fourth subparagraph of Article 12(16) thereof,

Whereas:

- (1) In order to ensure that the measures and procedures for the business continuity plan referred to in point (j) of Article 12(2) of Regulation (EU) No 2020/1503 are duly harmonised within the Union, it is important to further specify the measures and procedures of such plan.
- (2) In order to properly address the risks associated with the cessation of critical services, the business continuity plan should aim at ensuring that critical services including those that are outsourced, continue to be performed despite the failure of the crowdfunding service provider, or the third party to which critical services may have been outsourced.
- (3) Given the range of events that can have a detrimental impact on the performance of critical services, it is relevant to require that the business continuity plan address situations triggering a significant defect or default in the performance of critical services.
- (4) To ensure that the business continuity plan is effective, it is appropriate to set out the minimum content of measures and procedures for the business continuity plan.
- (5) This Regulation is based on the draft regulatory technical standards submitted to the Commission by the European Securities and Markets Authority (ESMA).

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<sup>3</sup> OJ L 347, 20.10.2020, p.1.

- (6) ESMA has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the advice of the Securities and Markets Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council<sup>4</sup>,

HAS ADOPTED THIS REGULATION:

*Article 1*

***Definition***

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

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

*Article 2*

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

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

*Article 3*

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

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<sup>4</sup> Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p.84).

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

#### *Article 4*

##### ***Sound administration of agreements***

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

## *Article 5*

### ***Procedures***

1. The procedures referred to in points (a) and (b) of Article 2(2) shall be adapted to the business model of the crowdfunding service provider and shall at least include:
  - (a) a compilation of a list of contact details of the persons or department in charge in case of failure of the crowdfunding service provider;
  - (b) the identification of, at least, the three most likely scenarios of failure and the description of measures to be taken to mitigate its impact on the continuity of critical services,
  - (c) provisions regarding access by staff of the crowdfunding service provider to the workspace and company network;
  - (d) provisions regarding access to client information and, where relevant, client assets;
  - (e) an identification of operational and financial risks as well as measures to reduce their occurrence;
  - (f) an identification of critical business systems and contingency measures to ensure their continuity;
  - (g) an identification of critical business relationships (including outsourced functions);
  - (h) procedures aiming at ensuring the continuity of communication between the crowdfunding service provider, its clients, business partners, employees and competent authorities.

## *Article 6*

### ***Entry into force***

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

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

Done at Brussels,

*For the Commission*  
*The President*

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

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

**of XXX**

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

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 2020/1503 of the European Parliament and of the Council of 7 October 2020 on European crowdfunding service providers for business, and amending Regulation (EU) 2017/1129 and Directive (EU) 2019/1937<sup>1</sup>, and in particular the fourth subparagraph of Article 12(16) thereof,

Whereas:

- (1) It is appropriate to set out common standard forms, templates, and procedures to ensure a uniform mechanism by which competent authorities effectively exercise their powers in respect of applications for authorisation of prospective crowdfunding service providers.
- (2) To facilitate communication between a prospective crowdfunding service provider and the competent authority, the latter should designate a contact point specifically for the purpose of the application process and should make the relevant contact details public on its website.
- (3) In order to enable the competent authority to carry out a thorough assessment of the completeness of the application, where the competent authority requires the prospective crowdfunding service provider to provide missing information, the time limit for the completeness assessment referred to in Article 12(4) of Regulation (EU) 2020/1503 should be suspended from the date such information is requested until the date it is received by the competent authority.
- (4) In order to allow the competent authority to assess whether changes to the information provided in the application for authorisation may affect the procedure of authorisation, it is appropriate to require applicants to communicate such changes without undue delay and to

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

establish that the time limits for assessing the information provided in the application in accordance with Article 12(8) of Regulation (EU) 2020/1503 are cleared and run again from the date on which the amended information is provided to the competent authority.

- (5) Regulation (EU) 2016/679 of the European Parliament and of the Council<sup>2</sup> applies to the processing of personal data by the Member States in the application of this Regulation.
- (6) This Regulation is based on the draft regulatory technical standards submitted to the Commission by the European Securities and Markets Authority (ESMA).
- (7) ESMA has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group established in accordance with Article 37 of Regulation (EU) 1095/2010 of the European Parliament and of the Council<sup>3</sup>,

HAS ADOPTED THIS REGULATION:

#### *Article 1*

##### ***Designation of a contact point***

Competent authorities shall designate a contact point for receiving the applications for authorisation as a crowdfunding service provider pursuant to Article 12 of Regulation (EU) No 2020/1503. The contact details of the designated contact point shall be kept up-to-date and made public on the website of each respective competent authority.

#### *Article 2*

##### ***Standard form***

Prospective crowdfunding service providers shall submit their application for authorisation by filling in the standard form set out in the Annex.

#### *Article 3*

##### ***Acknowledgement of receipt***

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

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

<sup>3</sup> Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p.84).

#### *Article 4*

##### ***Time limit suspension in case of missing information***

Where the competent authority requires the prospective crowdfunding service provider to provide missing information in accordance with Article 12(4) of Regulation (EU) 2020/1503, the time limit for the completeness assessment provided therein shall be suspended from the date such information is requested until the date it is received.

#### *Article 5*

##### ***Notification of changes***

1. The prospective crowdfunding service provider shall notify the competent authority of any changes to the information provided in the application for authorisation without undue delay. The prospective crowdfunding provider shall provide the updated information by using the standard form set out in the Annex.
2. The time limit referred to in Article 12(8) of Regulation (EU) 2020/1503 shall apply from the date on which the updated information is provided by the prospective crowdfunding service provider.

#### *Article 6*

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

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

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

Done at Brussels,

*For the Commission*  
*The President*

**ANNEX**

**APPLICATION FOR AUTHORISATION AS CROWDFUNDING SERVICE PROVIDER**

**Information to be provided to the competent authority**

<b>CONTENT OF THE APPLICATION</b>				
<i>Prospective crowdfunding service providers (“applicants”) shall set out the relevant information or make reference to the relevant annexes to the application containing the information on the following.</i>				
<i>When notifying changes to the information provided in the application for authorisation, applicants shall set out only the information for which a change is notified. Where relevant, applicants shall clearly indicate, in the updated version of the relevant annexes which form part of the application, the changes that have been made to the information initially provided.</i>				
<b>Field</b>		<b>Sub-field</b>		<b>Description</b>
1	Applicant	1	Full legal name	Full legal name of the applicant
		2	Trading name(s)	Trading name(s) to be used to provide the crowdfunding services

Field		Sub-field		Description
		3	Internet address	Internet address of the website operated by the applicant
		4	Physical address	Registered address of the applicant
		5	National ID/Registration number (where available)	National identifier of the applicant or evidence of the registration with the national register of companies
		6	LEI (where available)	Legal entity identifier of the applicant
2	Name and contact details of the person in charge of the application	1	Full name	Full first name(s) and surname(s) of the contact person
		2	Function	Function and/or title of the contact person within the applicant or status as an external person ( <i>e.g.</i> , consultant, law firm) and proof that the person has the power to file the application
		3	Postal address (if different from the physical address of the applicant)	

Field		Sub-field		Description
		4	Telephone number	
		5	Email address	
3	Legal form	n/a	Legal form of incorporation under national legislation	
4	Articles of association	n/a	Articles of association and, where available, deed of incorporation	
5	Programme of operations setting out the types of crowdfunding services that the applicant intends to provide and the crowdfunding platform that	1	Information on the types of crowdfunding services	<p>The applicant shall indicate:</p> <p>(a) The crowdfunding services that the applicant intends to provide (cross as appropriate):</p>

Field		Sub-field		Description
	it intends to operate, including where and how crowdfunding offers are to be marketed			<input type="checkbox"/> Facilitation of granting of loans, which includes the provision of relevant information such as default rates of loans  <input type="checkbox"/> Placing without a firm commitment basis of transferable securities and admitted instruments for crowdfunding purposes and the reception and transmission of orders in relation to those transferable securities and admitted instruments  (b) (Where the applicant provides or intends to provide facilitation of granting of loans) Whether the applicant intends to provide individual portfolio management of loans including a description of the internal arrangements for the provision of such activity and a description of the contractual arrangements that the applicant will establish with project owners and with investors (with particular reference to the mandates that investors will give to the applicant)

Field		Sub-field		Description
				<p>(c) Other services or activities that the prospective crowdfunding service provider intends to provide (cross as appropriate):</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Asset safekeeping</li> <li><input type="checkbox"/> Payment services</li> <li><input type="checkbox"/> Use of special purpose vehicles for the provision of crowdfunding services</li> <li><input type="checkbox"/> Application of credit scores to crowdfunding projects</li> <li><input type="checkbox"/> Suggestion of the price and / or the interest rate of crowdfunding offers</li> <li><input type="checkbox"/> Operating a bulletin board</li> <li><input type="checkbox"/> Establishing and operating contingency funds</li> </ul> <p>(d) The types of offers that the applicant plans to present (such as loan-based projects, equity-based projects, the type of sector or</p>

Field		Sub-field		Description
				<p>business activity, the type of investments to be offered on the crowdfunding platform, and types of investors targeted)</p> <p>(e) The selection procedure setting out the details of the methods adopted to select the offers to be presented on the crowdfunding platform, including the nature and the extent of the due diligence undertaken in respect of project owners</p> <p>(f) The arrangements to make public the offers on the crowdfunding platform and how the interests of investors for a crowdfunding project will be communicated to the relevant project owner</p> <p>(g) Any other services/activities currently (or intended to be) provided by the applicant not covered by Regulation (EU) 2020/1503 that may be provided according to Union or national law including references to and a copy of the relevant authorisations (where applicable)</p>

Field		Sub-field		Description
		2	Information on the crowdfunding platform	<p>Description of:</p> <ul style="list-style-type: none"> <li>(a) the arrangements to make the information referred to in Article 19 of Regulation (EU) 2020/1503 available on the website of the applicant’s crowdfunding platform, including relevant IT arrangements</li> <li>(b) the arrangements to make the crowdfunding platform an internet-based information system, publicly accessible and without discriminatory access</li> <li>(c) the procedures and arrangements for the prompt, fair and expeditious provision of the crowdfunding services, including the description of: the procedures for the reception and transmission of client orders; the systems for processing such orders; and how these procedures and arrangements allow for the reception and transmission and execution of the client orders on an equal basis.</li> <li>(d) mechanisms that the applicant plans to implement to facilitate the information flows between the project owner and the</li> </ul>

Field		Sub-field		Description
				investors, or between the investors, if applicable
		3	Marketing strategy	Description of the marketing strategy that the prospective crowdfunding service provider plans to use in the Union, including languages of the marketing communications; identification of the Member States where advertisements will be most visible in media and the expected means of communication that will be used

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

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

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

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

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

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

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

Field		Sub-field		Description
				(c) For undertakings in the process of being incorporated, a bank statement issued by a bank certifying that the funds are deposited in the applicant's bank account
		2	Insurance policy	(a) Copy of the subscribed insurance policy incorporating all the elements necessary to comply with Article 11(6) and (7) of Regulation (EU) 2020/1503, where available, or  (b) Copy of the preliminary insurance agreement incorporating all the elements necessary to comply with Article 11(6) and (7) of Regulation (EU) 2020/1503 signed by an undertaking authorised to provide insurance in accordance with Union law or national law

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

Field		Sub-field		Description
		2	Name	<p>(a) The full first name(s) and surname(s) in case of natural persons</p> <p>(b) National ID number (ID or passport) in case of natural persons</p> <p>(c) The legal name and legal form, in case of legal persons</p> <p>(d) National ID/registration number (where available) in case of legal persons</p>
		3	Date and place of birth (where applicable)	Date and place of birth of shareholders who are natural persons
		4	Domicile or registered address	<p>(a) The domicile, in case of natural persons</p> <p>(b) The registered address, in case of legal persons</p>
		5	Additional information in case of legal persons	Where the shareholder holding 20% or more of the share capital or voting rights is a legal person a complete list of members of the management body and of persons who effectively direct its business, their name, date and place of birth, domicile, their national identification number where available

Field		Sub-field		Description
		6	Amount of the holding	Amount of the shares capital or voting rights held by the person in absolute value and in percentage terms. In case of indirect shareholder, the amount shall refer to the intermediate holder
		7	Information in case of indirect holding	Name and contact details of the person through which the share capital or voting rights are held
		8	Proof of good repute	<p>(a) Official certificate or other equivalent document in accordance with national law proving the absence of criminal records</p> <p>(b) Information on criminal investigations and/or proceedings, as well as relevant civil and administrative cases, in respect of infringements of national rules in the fields of commercial law, insolvency law, financial services law, anti-money laundering law, fraud law or professional liability obligations, notably through an official certificate (if and so far as it is</p>

Field		Sub-field		Description
				<p>available from the relevant Member State or third country) or through another equivalent document. In the event of the existence of civil and/or administrative sanctions in respect of the abovementioned fields, a detailed description thereof shall be provided. For ongoing investigations or proceedings, the information may be provided through a declaration of honour</p> <p>(c) Information on refusal of registration, authorisation, membership, or licence to carry out trade, business or a profession; or the withdrawal, revocation or termination of such a registration, authorisation, membership or licence; or expulsion by a regulatory or government body or a professional body or association. Information on any ongoing procedure related to the foregoing shall also be provided</p>

Field		Sub-field		Description
				(d) Information on dismissal for employment, or a position of trust, fiduciary relationship, or similar situation, and description of the reasons for such dismissal
		9	Pre-existing (and ongoing) assessment	Information on whether an assessment of the good repute of the shareholder has already been (or is being) conducted by another competent authority or any other authority under other financial legislation, including the name of that authority and, where applicable, the date and outcome of its assessment
		10	Information on the group structure (where applicable)	Information on whether the applicant is: <ul style="list-style-type: none"> <li>(a) a subsidiary of a crowdfunding service provider authorised in another Member State</li> <li>(b) a subsidiary of the parent undertaking of a crowdfunding service provider that is authorised in another Member State</li> </ul>

Field		Sub-field		Description
				(c) controlled by the same natural or legal persons who control a crowdfunding service provider authorised in another Member State
13	Identity of the natural persons responsible for the management of the applicant and proof that the natural persons involved in the management of the applicant are of good repute and possess sufficient knowledge, skills, and experience to manage the prospective crowdfunding provider and commit sufficient time to the performance of their duties	Sub-fields 1-12 shall be repeated and completed for each natural person who is member of the management or supervisory bodies of the applicant, and for each natural person who effectively directs the business Sub-fields 1-8 and 10-11 shall be repeated and completed for each natural person who is responsible of internal control functions (where appointed)		
		1	Full name	Full first name(s) and surname(s) of the relevant natural person
		2	ID/Passport number	
		3	Date and place of birth	
		4	Domicile	

Field		Sub-field		Description
		5	Postal address	Postal address, if different from the address of domicile
		6	Telephone number	
		7	Email address	
		8	Position	Position within the management body or the organisation of the applicant at which the natural person is/will be appointed
		9	Proof of good repute	<p>(a) Official certificate or other equivalent document in accordance with national law proving the absence of criminal records</p> <p>(b) Information on criminal investigations and/or proceedings, as well as relevant civil and administrative cases, in respect of infringements of national rules in the fields</p>

Field		Sub-field		Description
				<p>of commercial law, insolvency law, financial services law, anti-money laundering law, fraud law or professional liability obligations, notably through an official certificate (if and so far, as it is available from the relevant Member State or third country) or through another equivalent document. In the event of the existence of civil and/or administrative sanctions in respect of the abovementioned fields, a detailed description thereof shall be provided. For ongoing investigations or proceedings, the information may be provided through a declaration of honour</p> <p>(c) Information on refusal of registration, authorisation, membership, or licence to carry out trade, business or a profession; or the withdrawal, revocation or termination of such a registration, authorisation, membership or licence; or expulsion by a regulatory or government body or a professional body or association.</p>

Field		Sub-field		Description
				<p>Information on any ongoing procedure related to the foregoing shall also be provided</p> <p>(d) Information on dismissal for employment, or a position of trust, fiduciary relationship, or similar situation, and description of the reasons for such dismissal</p> <p>(e) Any other information deemed relevant by the competent authority for the assessment of the good repute</p>
		10	Curriculum Vitae	<p>Curriculum vitae stating</p> <p>(a) relevant education (including the name(s) and type(s) of educational institution(s), type, and date of diploma(s)) and professional training (including the topic of the training, type(s) of educational institution(s) and date by which training was completed)</p> <p>(b) relevant professional experience (in and outside the financial sector), including the names of all organisations for which the person has worked, and nature and duration</p>

Field		Sub-field		Description
				<p>of the functions performed (start and end dates) and the reason of for departure (new function within the company/group, voluntary departure, forced departure or expiry of the mandate)</p> <p>(c) for positions held in the previous 10 years, when describing those activities, details shall be included on all powers held and the areas of operations under control.</p> <p>The curriculum vitae may also include details (name, address, telephone number, email) of any reference person(s) who may be contacted by the competent authority (this field is not mandatory)</p>
		11	Time to be committed to the performance of the duties	<p>Information on the minimum time that will be devoted to the performance of the person's functions within the prospective crowdfunding service provider (annual and monthly indications), including information on:</p> <p>(a) the number of directorships in financial and non-financial companies held by that person at the same time</p>

Field		Sub-field		Description
				<p>(b) the directorships in organisations which do not pursue predominantly commercial objectives held by that person at the same time</p> <p>(c) other external professional activities, and any other functions and relevant activities, both within and outside the financial sector</p>
		12	Pre-existing (or ongoing) assessment of the reputation and experience	The information on whether an assessment of the good reputation and of the knowledge and experience of the natural person has already been (or is being) conducted by another competent authority or any other authority under other financial legislation including the date of the assessment, the identity of that authority and, where applicable, the date and the outcome of this assessment
		13	Self-assessment of the collective knowledge, skills, and experience	Details of the result of the assessment on the collective possession of sufficient knowledge, skills, and experience to manage the prospective crowdfunding provider by the natural persons involved in the management of the prospective crowdfunding service provider, performed by the applicant itself

Field		Sub-field		Description
14	Description of the internal rules to prevent persons referred to in the first subparagraph of Article 8(2) from engaging, as project owners, in crowdfunding services offered by the prospective crowdfunding service provider	n/a	Internal procedures on conflicts of interest of project owners	Description of the relevant internal rules adopted by the applicant
15	Description of outsourcing arrangements	n/a	Information on outsourcing arrangements	Description of: <ul style="list-style-type: none"> <li>(a) the operational functions that the applicant plans to outsource, including cloud outsourcing</li> <li>(b) the third parties to whom the operational functions will be outsourced (where available), including the indication of their location and a summary of the outsourcing arrangements in case the third party is located in a third country (where available)</li> <li>(c) the internal arrangements and resources allocated to the control of the outsourced functions</li> </ul>

Field		Sub-field		Description
				(d) the service level agreements in place with the service providers
16	Description of procedures to handle complaints from clients	n/a	Information on complaint handling	Description of the procedures to handle complaints from clients adopted by the applicant, including the timeframe within which a decision on the complaint will be notified to potential complainants, as provided in the Commission Delegated Regulation (EU) adopted in accordance with Article 7(5) of Regulation (EU) 2020/1503
17	Confirmation of whether the applicant intends to provide payment services	n/a	Information on payment services	1. The applicant shall inform the competent authority whether the payment services will be provided (cross as appropriate):

Field		Sub-field		Description
	<p>itself or through a third party, under Directive (EU) 2015/2366, or through an arrangement in accordance with Article 10(5) of Regulation (EU) 2020/1503</p>			<p><input type="checkbox"/> The applicant itself. If so, the applicant shall provide information on the relevant authorisation as payment service provider in accordance with Directive 2015/2366</p> <p><input type="checkbox"/> An authorised third party. If so, the applicant shall indicate the name of the third party, and the applicant shall submit a copy of the subscribed agreement with the third party incorporating all the elements necessary to comply with Regulation (EU) 2020/1503, when available, or a copy of the preliminary agreement with the third party, incorporating all the elements necessary to comply with Regulation (EU) 2020/1503 signed by a third party authorised to payment services in accordance with Union law or national law</p> <p><input type="checkbox"/> Through arrangements in accordance with Article 10(5) of Regulation (EU) No 2020/1503, which ensure that project owners accept funding of crowdfunding projects, or any other payment, only by means of a payment service provider in accordance with Directive (EU) 2015/2366. If</p>

Field		Sub-field		Description
				<p>so, the applicant shall provide a description of such arrangements.</p> <p>2. The applicant shall include a description of the procedures and systems established by which the funds from the investors will be sent to the project owner and by which the investors will receive the remuneration of the capital invested</p>
18	Procedures to verify the completeness, correctness and clarity of the information contained in the key investment information sheet	n/a	Procedures on the key investment information sheet	Description of the relevant procedures adopted by the applicant
19	Procedures in relation to investment limits for non-sophisticated investors referred to in Article 21(7) of Regulation (EU) 2020/1503	n/a	Procedures on investment limits for non-sophisticated investors	<p>1. The applicant shall provide a description of the procedures adopted in order:</p> <p>a) to carry out the assessment whether and which crowdfunding services offered are appropriate, including details on information requested to non-sophisticated investors about their experience, investment objectives, financial situation and basic understanding of risks involved in investing in general and in investing in the types of</p>

Field		Sub-field		Description
				<p>investments offered on the crowdfunding platform, referred to in Article 21(1) and (2) of Regulation (EU) 2020/1503</p> <p>b) to carry out the simulation required to prospective non-sophisticated investors of their ability to bear loss, referred to in Article 21(5) of Regulation (EU) 2020/1503</p> <p>c) to provide the information referred to in Article 21(4) of Regulation (EU) 2020/1503</p> <p>2. The applicant shall provide a description of the procedures adopted by the applicant on investment limits for non-sophisticated investors, including the description of the content of the specific risk warning and the arrangements to acquire from the investor the explicit consent</p>

## **Annex VI Draft RTS Pursuant to Article 20(3) of the ECSPR**

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

**of XXX**

#### **supplementing Regulation (EU) 2020/1503 of the European Parliament and of the Council with regard to regulatory technical standards specifying the methodology for calculating default rates of loans offered on a crowdfunding platform**

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2020/1503 of the European Parliament and of the Council of 7 October 2020 on European crowdfunding service providers for business, and amending Regulation (EU) 2017/1129 and Directive (EU) 2019/1937<sup>1</sup>, and in particular the third paragraph of Article 20(3) thereof,

Whereas:

- (1) Article 20(3) of Regulation (EU) 2020/1503 delegates to the Commission the power to supplement that Regulation by adopting regulatory technical standards to specify the methodology for calculating the default rates of the projects offered on a crowdfunding platform referred to in Article 20(1) thereof.
- (2) In order to prevent the provision of mis-leading information to investors, the provisions set out in this Regulation refer to the level of an individual loan with regard to a particular project since in principle one project may offer more than one loan. To this purpose, crowdfunding service providers shall not automatically consider the different loans to the same project defaulted at the same time. Nevertheless, crowdfunding service providers should take into account that some indications of default are related with the status of the project as a whole rather than with that of a particular loan. Additionally, where a significant part of the loans to the project is in default, crowdfunding service providers may consider it unlikely that the other loans of that project will be paid in full without recourse to actions such as realising security and treat them as defaulted as well.
- (3) In order to avoid regulatory arbitrage and enable investors to compare the performance of crowdfunding service providers and, in particular, the quality of projects offered on crowdfunding platforms, it is appropriate to provide methodological guidance by specifying the elements on the basis of which crowdfunding service providers shall consider a default to have occurred with regard to a particular loan offered on their

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

crowdfunding platform. Crowdfunding service providers should have in place effective processes that enable them to obtain the relevant information in order to identify the occurrence of the default of loans offered on their crowdfunding platform without undue delay.

- (4) Crowdfunding service providers who provide crowdfunding services consisting of the facilitation of granting of loans should have in place systems and procedures to calculate the actual and expected default rate of the loans offered on their crowdfunding platforms in accordance with the methodologies set out in this Regulation. This Regulation refers to one-year default rates as reference periods, to ensure consistency with the capital requirement regulation (Article 180(1)(a) of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012) and homogenous to yearly interest rates. As such, these default rates represent the share of loans going from a non-defaulted status into a defaulted status at least once during a one-year observation period. Hence, the expected default rate defined in this regulation provides an estimate of the proportion of currently non defaulted loans that will default in a one-year observation period. Consequently, in order to base the estimation of such expected default rate from the actual default rate, the calculation of the actual default rate is restricted to loans in a non-defaulted status at the beginning of the one-year observation period. To ensure a fair representation of the default rates to investors, crowdfunding service providers should not manipulate or misrepresent the default rates calculated in accordance with this Regulation and disclosed in accordance with Article 20(1) of Regulation (EU) No 2020/1503. In particular, for the purpose of the calculation of the yearly default rates (loan-based calculation), no weighting scheme should be applied. Hence, the monetary amount should not be used to give more predominance to some loans in the default rate calculation. In case of bias due to the relevant presence of short-term loans, crowdfunding service providers should take appropriate adjustments in the calculation of the default rate for the purpose of this Regulation.
- (5) Inconsistent, inaccurate, incomplete, or outdated data may lead to errors in the risk estimation and in the calculation of the default rates for the purposes of Article 20 of Regulation (EU) 2020/1503. Consequently, in order to ensure reliability and high quality of data, the procedures related to gathering and storing of data should be robust and well documented.
- (6) The information concerning the performance of the loans facilitated by a crowdfunding service provider and the reference to the risk categories set out in the risk-management framework should be the basis of crowdfunding service providers' internal method for the calculation of the actual and expected default rates. The minimum content and governance of the risk-management framework will be specified by the regulatory technical standards that the Commission will have to adopt in accordance with Article 19(7) of Regulation (EU) 2020/1503 on the basis of the draft that the European Banking Authority (EBA), in close cooperation with the European Securities and Markets Authority (ESMA), shall submit to the Commission by 10 May 2022.
- (7) This Regulation is based on the draft regulatory technical standards developed by ESMA in close cooperation with the EBA and submitted to the Commission.

- (8) ESMA has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, but also analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council,

HAS ADOPTED THIS REGULATION:

*Article 1*

*Default of loans offered on a crowdfunding platform*

1. Crowdfunding service providers shall consider a default to have occurred with regard to a particular loan offered on their crowdfunding platform when either or both of the following events have taken place:
  - (a) the crowdfunding service provider considers that the project owner is unlikely to pay in full, or otherwise fulfil its credit obligations related to a particular loan, without recourse to actions such as realising security,
  - (b) the project owner is more than 90 days past due on any material credit obligation related to a particular loan.
2. For the purpose of point (a) of paragraph 1, the following elements shall be considered as indicators of unlikelihood to pay:
  - (a) a distressed restructuring of the credit obligation related to a particular loan has occurred where this is likely to result in a diminished financial obligation caused by the material forgiveness, or postponement, of principal, interest or, where relevant, fees. Such distressed restructuring shall be considered to have occurred when concessions have been extended towards a project owner facing or about to face difficulties in meeting its financial commitments,
  - (b) the project owner's application for, or placement in, bankruptcy or similar protection, where this would avoid or delay repayment to investors of a credit obligation related to a particular loan.
3. For the purpose of point (b) of paragraph 1, where the credit arrangement explicitly allows the project owner to change the schedule, suspend or postpone the payments under certain conditions and the project owner acts within the rights granted in the contract, the changed, suspended or postponed instalments shall not be considered past due, but the counting of days past due shall be based on the new schedule once it is specified. Crowdfunding service providers shall nonetheless analyse the reasons for such changes in schedule, suspension or postponement of the payments and assess the possibility of unlikelihood to pay pursuant to point (a) of paragraph 1.

4. Crowdfunding service providers shall disclose the materiality threshold used for the purpose of point (b) of paragraph 1.
5. Crowdfunding service providers shall inform investors without delay in case of default of a loan.

#### *Article 2*

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

1. For the purpose of the disclosure referred to in point (a) of Article 20(1) of Regulation (EU) 2020/1503, crowdfunding service providers shall calculate the simple average of the observed one-year default rate over the entire historical observation period using non-overlapping 12-month observation windows.
2. In order to calculate the one-year default rate, crowdfunding service providers shall cumulatively ensure that:
  - (a) the denominator consists of the number of non-defaulted loans observed at the beginning of the 12-month observation window,
  - (b) the numerator includes all loans considered in the denominator that had at least one default event during the 12-month observation window.
3. Loans for which no payment is scheduled during a 12-month period shall be excluded from the data set used to calculate the default rate for the stated period.
4. For the purpose of paragraph 1 and irrespective of whether a crowdfunding service provider is using external, internal, or pooled data sources, or a combination of the three, the length of the underlying historical observation period used shall be at least 36 months for at least one source. If the available observation period spans a longer period for any source, this longer period shall be used. Where a crowdfunding service provider has been in operation for less than 36 months, it shall use the period over which it has been in operation.
5. Crowdfunding service providers shall disclose the denominator and numerator used to calculate the one-year default rate in accordance with paragraph 2.

#### *Article 3*

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

1. For the purpose of publication of actual default rates of all loans in accordance with point (b)(i) of Article 20(1) of Regulation (EU) 2020/1503, crowdfunding service providers shall calculate the simple averages of the observed one-year default rate by risk category over the entire historical observation period using non-overlapping 12-month observation windows.

2. In order to calculate the one-year default rate by risk category, crowdfunding service providers shall cumulatively ensure that:
  - (a) the denominator consists of the number of non-defaulted loans observed at the beginning of the 12-month observation period within the risk category for which the default rate is calculated,
  - (b) the numerator includes all loans considered in the denominator that had at least one default event during the 12-month observation period.
3. Loans, for which no payment is scheduled during a 12-month period, shall be excluded from the data set used to calculate the default rate for the stated period.
4. For the purpose of paragraph 1, irrespective of whether a crowdfunding service provider is using external, internal, or pooled data sources, or a combination of the three, the length of the underlying historical observation period used shall be at least 36 months for at least one source. If the available observation period spans a longer period for any source, this longer period shall be used. Where a crowdfunding service provider has been in operation for less than 36 months, it shall use the period over which it has been in operation.
5. Crowdfunding service providers shall disclose the denominator and numerator used to calculate the actual default rate of all loans by risk category in accordance with points (a) and (b) of paragraph 2.

#### *Article 4*

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

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

#### *Article 5*

##### ***Assignment to risk categories***

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

*Article 6*

***Data accuracy***

Crowdfunding service providers shall ensure the consistency and appropriateness of data used to calculate the default rates in accordance with this Regulation.

*Article 7*

***Entry into force and application***

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

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

Done at Brussels,

*For the Commission*  
*The President*

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

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

**of XXX**

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

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2020/1503 of the European Parliament and of the Council of 7 October 2020 on European crowdfunding service providers for business, and amending Regulation (EU) 2017/1129 and Directive (EU) 2019/1937<sup>2</sup>, and in particular the fourth subparagraph of Article 21(8) thereof,

Whereas:

- (1) In order to establish a solid and harmonised framework ensuring that crowdfunding service providers run the entry knowledge test for prospective non-sophisticated investors in a meaningful way, it is important that those investors are requested information regarding their experience and basic understanding of risks, including information about the types of investment services and financial investments with which they are familiar as well as information about their investment experience.
- (2) In order to ensure that crowdfunding service providers ascertain that prospective non-sophisticated investors understand the level of risk associated with crowdfunding investments, it is necessary to require crowdfunding service providers to take reasonable steps to ensure that the information collected from prospective non-sophisticated investors is reliable and reflects accurately their knowledge, skills, experience and financial situation, investment objectives and basic understanding of the risks involved.
- (3) To avoid crowdfunding service providers taking divergent approaches in respect of the risk warning they have to communicate to prospective non-sophisticated investors failing the entry knowledge test and in order to ensure that those investors are informed clearly and in a uniform manner about the risks they would incur if they decided to invest in

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<sup>2</sup> OJ L 347, 20.10.2020, p.1.

crowdfunding services, it is important to harmonise the text of such warning as well as the way in which this warning should be displayed to prospective non-sophisticated investors.

- (4) In order to promote investor protection and ensure that the simulation of the ability to bear loss is performed adequately by prospective non-sophisticated investors, crowdfunding service providers should make available on their website an internet-based calculation tool aiming at helping prospective non-sophisticated investors to simulate their ability to bear loss. However, because of the personal nature of the information to be inputted by prospective non-sophisticated investors in such internet-based calculation tool, it is appropriate to require that such tool is setup in a way that prevents crowdfunding service providers from being able to access or record the information inputted by prospective non-sophisticated investors.
- (5) In order to ensure that information inputted in the calculation tool by prospective non-sophisticated investors cannot be collected without their express consent, it is appropriate to provide that the internet-based calculation tool should be set up in a way that prevents crowdfunding service providers from altering or interfering with the result of the simulation performed by prospective non-sophisticated investors. Furthermore, in order to protect prospective non-sophisticated investors and notably to enable them to check that the information they inputted is correct and accurate, it is relevant to require that the result of the simulation to bear loss may not be collected directly by crowdfunding service providers but rather could only be shared willingly by prospective non-sophisticated investors once it consider that the result of the simulation reflects adequately its ability to bear loss.
- (6) In order to ensure flexibility in the way the simulation of the ability to bear loss is performed, crowdfunding service providers should not be prevented from offering prospective non-sophisticated investors the possibility to simulate their ability to bear loss without the help of an internet-based calculation tool, provided that such possibility is offered in addition to making the internet-based calculation tool available on the crowdfunding service providers' website.
- (7) In order to ensure an harmonised approach in the simulation of prospective non-sophisticated investors' ability to bear loss, this Regulation sets out how the net worth of prospective non-sophisticated investors should be calculated, based on their annual income, total liquid assets and annual financial commitments.
- (8) Given the risks of divergent approaches, and the potential negative consequences of such divergences on the meaningfulness of the simulation of prospective non-sophisticated investors' ability to bear loss, it is appropriate to specify with a sufficient degree of details how each of the components used to calculate the net worth should be computed and to establish a common date for the valuation of the various components.
- (9) This Regulation is based on the draft regulatory technical standards submitted to the Commission by the European Securities and Markets Authority (ESMA).
- (10) ESMA has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group

established in accordance with Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council<sup>3</sup>,

HAS ADOPTED THIS REGULATION:

## CHAPTER I

### **Arrangements necessary to carry out the assessment referred to in Article 21(1) and to provide the information referred to in Article 21(2) and (4) of Regulation (EU) 2020/1503**

#### *Article 1*

#### ***Assessment of appropriateness of crowdfunding services pursuant to Article 21(1) of Regulation (EU) 2020/1503***

1. For the purposes of assessing whether and which crowdfunding services offered are appropriate for prospective non-sophisticated investors, crowdfunding service providers shall consider whether:
  - (a) the prospective non-sophisticated investor has the necessary experience and knowledge to understand the risks involved in investing in general;
  - (b) the prospective non-sophisticated investor has the necessary experience and knowledge to understand the risks involved in the types of investments offered on the crowdfunding platform.
2. For the purposes of point (b) of paragraph 1, crowdfunding service providers shall assess the prospective non-sophisticated investor's understanding of what constitutes a crowdfunding service and the risks involved in it.

#### *Article 2*

#### ***Reliability of the information set out in Article 21(2) of Regulation (EU) 2020/1503***

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

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<sup>3</sup> Regulation (EU) No 1095/2010 of the European Parliament and of the Council establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84.).

2. For the purposes of paragraph 1, crowdfunding service providers shall, at least, take all the following steps:
  - (a) raising the attention of prospective non-sophisticated investors on the importance of providing accurate and up-to-date information;
  - (b) ensuring that the means used to collect information are fit-for-purpose and appropriately designed for use by prospective non-sophisticated investors;
  - (c) ensuring that questions used in the process are likely to be understood by prospective non-sophisticated investors and granular enough to collect information reflecting adequately and accurately the situation of prospective non-sophisticated investors.

### *Article 3*

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

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

#### *Article 4*

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

1. When issuing the risk warning referred to in Article 21(4) of Regulation (EU) 2020/1503, crowdfunding service providers shall refrain from encouraging prospective non-sophisticated investors to proceed with the investment.
2. The risk warning issued by crowdfunding service providers pursuant to Article 21(4) of Regulation (EU) 2020/1503 shall conform to the Annex to this Regulation and shall be displayed to non-sophisticated investors in an easily readable way and in a prominent window on the crowdfunding service providers' website.
3. The prominent window displaying the risk warning referred to in paragraph 2 shall remain on screen until the non-sophisticated investor acknowledges that they have received and understood the warning issued by the crowdfunding service provider pursuant to Article 21(4) of Regulation (EU) 2020/1503.

## **CHAPTER II**

### **Simulation of prospective non-sophisticated investors' ability to bear loss pursuant to Article 21(5) of Regulation (EU) 2020/1503**

#### *Article 5*

##### ***Transmission of the result of the simulation of the ability to bear loss***

Crowdfunding service providers shall request prospective non-sophisticated to provide them with the result of the simulation carried out pursuant to Article 21(5) of Regulation (EU) 2020/1503.

#### *Article 6*

##### ***Simulation of the ability to bear loss using an online calculation tool***

1. Crowdfunding service providers shall make available on their website a tool enabling prospective non-sophisticated investors to simulate their ability to bear loss.
2. The tool shall compute the ability to bear loss of prospective non-sophisticated investors based on the information listed in points (a) to (c) of Article 21(5) of Regulation (EU) 2020/1503, as provided by the non-sophisticated investor.
3. The tool shall be easy to use and shall not require prospective non-sophisticated investors to perform any tasks other than inputting the information set out in points (a) to (c) of Article 21(5) of Regulation (EU) 2020/1503.

4. The tool shall display the result of the simulation in a manner which is clear and easily readable for prospective non-sophisticated investors.
5. The tool shall be set up in a way that does not enable crowdfunding service providers to access or record the information inputted by prospective investors pursuant to paragraph 3 or to amend or in any way interfere with the result of the simulation referred to in paragraph 4. The tool may however embed a feature enabling the prospective non-sophisticated investor to transmit the result of the simulation to the crowdfunding service provider in compliance with Article 5.

#### *Article 7*

##### ***Simulation of the ability to bear loss without using the online calculation tool***

In addition to the on-line tool referred to in Article 6, crowdfunding service providers may also offer prospective non-sophisticated investors the possibility to simulate their ability to bear loss through a different method. In such case, crowdfunding service providers shall provide prospective non-sophisticated investors with appropriate information about the method which they may use to simulate their ability to bear loss.

#### *Article 8*

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

For the purposes of the simulation referred to in Article 21(5) of Regulation (EU) 2020/1503, the net worth of prospective non-sophisticated investors shall be calculated as follows:

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

#### *Article 9*

##### ***Net annual income***

1. The net annual income referred to in Article 8 shall be calculated as the total annual income perceived by the non-sophisticated investor after deduction of associated costs and charges, social contributions and taxes.
2. For the purposes of paragraph 1, the total annual income shall result from the sum of any labour income, any interests on bank deposits or other debt instruments, any dividend payments or any real estate income, whereby:
  - (a) ‘labour income’ shall include wages, unemployment benefits and pension payments received by the non-sophisticated investor but shall exclude exceptional payments;

- (b) ‘interests on bank deposits or other debt instruments’ shall include payments on bank deposits or other debt instruments received by the non-sophisticated investor during the preceding calendar year but shall exclude those which are exceptional by nature;
- (c) ‘dividend payments’ shall include payments received by the prospective non-sophisticated investor by virtue of holding shares or units of a collective investment scheme or other equity instruments, but shall exclude any capital gain realised by selling all or part of such holding;
- (d) ‘real estate income’ shall include any payment received in relation to the renting of real estate properties but shall exclude any capital gain realised by selling all or part of such real estate properties.

#### *Article 10*

#### ***Total liquid assets***

1. The total liquid assets referred to in Article 8 shall be calculated as the sum of the total cash held by a non-sophisticated investor on saving accounts and current accounts as well as the value of assets that can be easily and swiftly converted into cash, including but not limited to:
  - (a) saving products that can be turned into cash within a maximum of 30 calendar days;
  - (b) financial instruments negotiated on a regulated market within the meaning of Article 4(1)(21) of Directive 2014/65/EU of the European Parliament and of the Council<sup>4</sup>;
  - (c) shares and units of collective investment schemes offering redemption rights at least on a weekly basis.
2. The following shall not be considered as liquid assets:
  - (a) real estate properties;
  - (b) amounts paid to a pension scheme for occupational retirement purposes;
  - (c) company shares which are not freely redeemable or transferable, including previous crowdfunding investments.

#### *Article 11*

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<sup>4</sup> Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU, OJ L 173, 12.6.2014, p. 349.

### ***Annual financial commitments***

The annual financial commitments referred to in Article 8 shall include all the tabled expenditures for which a non-sophisticated investor has undertaken a commitment in relation to a given calendar year, including but not limited to:

- (a) alimony and child support payments;
- (b) rent and mortgage payments;
- (c) repayments of loans;
- (d) payments of insurance premiums;
- (e) utilities expenses payments, including those made to cover electricity, heating and water expenses;
- (f) service subscription payments;
- (g) income tax and property taxes.

### ***Article 12***

#### ***Valuation date of the components of the net worth***

1. Total liquid assets referred to in Article 10 and annual financial commitments referred to in Article 11 shall be valued as of 31 December of the calendar year preceding the one in which the simulation is performed, unless a valuation at such date would not accurately reflect the current situation of the prospective investor's net worth. In such case, the valuation shall be performed at a more recent date enabling a more accurate valuation.
2. For the purposes of paragraph 1, a more recent date may be any date between 31 December of the calendar year preceding the one in which the simulation is performed and the date on which the simulation is performed and shall be the same for the valuation of the total liquid assets and the annual financial commitments. When determining such date, prospective non-sophisticated investors shall consider whether taking such date as the reference date will enable an accurate valuation in respect of the three components referred to in Article 8.
3. The net annual income referred to in Article 9 shall be the one of the calendar year preceding the year in which the simulation is performed. However, where the valuation of the liquid assets and annual financial commitments is performed using a more recent date pursuant to paragraph 2, the net annual income shall be the one received during the twelve months preceding such more recent date.

*Article 13*

***Entry into force***

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

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

Done at Brussels,

*For the Commission*  
*The President*



## ANNEX

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

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

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

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

**of XXX**

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

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2020/1503 of the European Parliament and of the Council of 7 October 2020 on European crowdfunding service providers for business, and amending Regulation (EU) 2017/1129 and Directive (EU) 2019/1937<sup>1</sup>, and in particular the fourth subparagraph of Article 23(16) thereof,

Whereas:

- (1) To ensure the comparability among key investment information sheets of different crowdfunding offers and facilitate the drafting of key investment information sheets by project owners, it is important to set out a model for the presentation of the relevant information. This model would ensure that project owners follow a similar presentation pattern in form and substance, whilst allowing for the required flexibility that considers the specificities of each crowdfunding offer.
- (2) To ensure the interoperability of data and to enable cross-referencing information included in the key investment information sheet with other information, in particular the information reported in accordance with [ITS pursuant to Article 16(3) of the ECSPR], each key investment information sheet should include a unique identifier of the crowdfunding offer to which it relates.
- (3) To give project owners the possibility to provide prospective investors with further relevant information, hyperlinks may be included as set forth in the model laid down in the Annex to this Regulation. Hyperlinks, however, may in no case impair the comprehensiveness of the key investment information sheet as a stand-alone document. Hence, the use of hyperlinks should not exempt project owners from including the relevant information in the key investment information sheet in a clear and comprehensive manner.

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

- (4) To allow the comparability and clarity of key financial information included in the investment information sheet and thus enhance transparency for prospective investors, financial statements and information should be presented in accordance with commonly recognised standards and principles.
- (5) This Regulation is based on the draft regulatory technical standards submitted to the Commission by the European Securities and Markets Authority (ESMA).
- (6) ESMA has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the advice of the Securities and Markets Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council<sup>2</sup>,

HAS ADOPTED THIS REGULATION:

#### *Article 1*

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

1. The information in the key investment information sheet referred to in Article 23 of Regulation (EU) 2020/1503 shall be presented using the model laid down in the Annex to this Regulation.
2. The information referred to in paragraph 1 shall be made available as soon as the relevant crowdfunding offer is published by the crowdfunding service provider.

#### *Article 2*

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

1. The information referred to in Article 1 shall be presented in a way that is easy to read and shall be expressed in a way that facilitates the understanding of the information, including by prospective non-sophisticated investors.
2. The language used in the key investment information sheet shall be clear and succinct and technical terms shall be avoided where everyday words can be used instead.

#### *Article 3*

##### **Identifier of the crowdfunding offer**

1. The key investment information sheet shall include a standardised, permanent and unique identifier of the relevant crowdfunding offer.
2. The identifier referred to in paragraph 1 shall be the result of the concatenation of the following elements in the following order:

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<sup>2</sup> Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

- (a) the ISO 17442 legal entity identifier (LEI) code of the crowdfunding service provider;
  - (b) a code composed of eight numerical characters which shall be generated internally by the crowdfunding service provider and which shall be unique to each crowdfunding offer published by the crowdfunding service provider.
3. The identifier formed in accordance with paragraph 2 shall not be altered upon the modification of the key investment information sheet resulting from any of the following:
  - (a) the translation of the key investment information sheet into different languages pursuant to Article 23(4) and (13) of Regulation (EU) 2020/1503;
  - (b) updates to the key investment information sheet pursuant to Article 23(8) and (12) of Regulation (EU) 2020/1503;
  - (c) other non-material alteration of the information included in the key investment information sheet.

#### *Article 4*

##### **Choice of terms in the key investment information sheet model**

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

- (a) the expressions ‘target capital’ or ‘capital raising’ shall be used for crowdfunding offers relating to (i) equity transferable securities, or (ii) admitted instruments for crowdfunding purposes;
- (b) the expressions ‘target funds’ or ‘funds borrowing’ shall be used for crowdfunding offers relating to (i) loans, (ii) non-equity transferable securities, or (iii) hybrid instruments;
- (c) the terms ‘transferable securities’ or ‘admitted instruments for crowdfunding purposes’ shall be chosen in accordance with the type of instruments offered.

#### *Article 5*

##### **Use of hyperlinks in the key investment information sheet model**

1. The key investment information sheet may contain hyperlinks as set out in the model laid down in the Annex to this Regulation.
2. The hyperlinks shall be complementary to the information given and shall in no case, except as otherwise provided in the model, replace that information.
3. The hyperlinks shall be consistent with the information provided elsewhere in the key investment information sheet and the external resources referenced in the hyperlinks shall be freely and easily accessible.

#### *Article 6*

##### **Main risk types associated with a crowdfunding offer**

The types of main risks which are associated with a crowdfunding offer and which hence shall be disclosed in the key investment information sheet relating to that offer are set out in Part C of the Annex to this Regulation. Where applicable, other risks shall also be disclosed.

The description of the risks associated with a crowdfunding offer shall be of relevance to that specific offer and shall be prepared solely for the benefit of prospective investors and shall not give general statements on investment risks or limit the liability of the project owner or any persons acting on their behalf.

#### *Article 7*

##### **Financial ratios, statements and information in the key investment information sheet model**

1. The financial ratios which shall be used to enhance the clarity of key financial information included in the key investment information sheet are set out in Part A(e) of the Annex.
2. The financial statements and information referred to in the key investment information sheet model laid down in the Annex to this Regulation shall be presented in accordance with International Financial Reporting Standard (IFRS) or local Generally Accepted Accounting Principles (GAAP), as applicable.

#### *Article 8*

##### **Entry into force**

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

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

Done at Brussels,

*For the Commission*  
*The President*

## ANNEX

### KEY INVESTMENT INFORMATION SHEET MODEL

#### KEY INVESTMENT INFORMATION SHEET

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

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

#### *Risk warning*

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

You may not receive any return on your investment.

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

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

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

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

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

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

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

## Overview of the crowdfunding offer

<b>Offer identifier</b>	Identifier of the offer as described in Article 3
<b>Project owner and project name</b>	
<b>Type of offer and instrument type</b>	
<b>Target amount</b>	Target amount and currency of the crowdfunding offer, including the equivalent value in euro and the date of the exchange rate, if the crowdfunding offer provides for a non-euro currency.
<b>Deadline</b>	The date on which the offer will be closed for prospective investors.

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

(a)	<p><b>Project owner and crowdfunding project<sup>1</sup></b>  <i>[Complete this section by including the information indicated below, as applicable]</i></p> <p><b>Identity:</b> Legal name of the project owner, country of incorporation/registration and registration number.</p> <p><b>Legal form:</b> Legal form.</p> <p><b>Contact details:</b> Website, address of the registered office, email and phone number.</p> <p><b>Ownership:</b> The date of the last change of ownership and a brief description of the ownership structure of (i) the project owner and, (ii) where relevant, the project. This information may be presented as a diagram.<sup>2</sup></p> <p><b>Management:</b> A brief description of the project owner’s management bodies. Where available and deemed appropriate, a hyperlink to the curricula vitae of the members of the management bodies may be included.</p>
(b)	<p><b>Responsibility for the information provided in this key investment information sheet</b>          “The project owner declares that, to the best of its knowledge, no information has been omitted or is materially misleading or inaccurate. The project owner is responsible for the preparation of this key investment information sheet.”  <i>[Complete this section by listing the natural and legal persons who are responsible for the information given in the key investment information sheet according to national law. In the case of natural persons, such as the members of the project owner’s administrative, management and/or supervisory bodies, indicate their names and functions. In the case of legal persons, indicate their names and registered offices.]</i>          “The declaration of [each of] the above person[s] with respect to their responsibility for the information given in this key investment information sheet pursuant to Article 23(9) of Regulation (EU) 2020/1503 of the European Parliament and of the Council<sup>3</sup> is included as [Annex [A] hereto<sup>4</sup>].”</p>
(c)	<p><b>Principal activities of the project owner; products or services offered by the project owner</b></p>

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

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

<sup>3</sup> 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, OJ L 347, 20.10.2020, p. 1.

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

	A short description of the nature of the project owner's current principal activities and business achievements, including, where relevant, a brief presentation of its strategy and added value created.
(d)	<p><b>Hyperlink to the most recent financial statements of the project owner</b></p> <p>To the extent available, a hyperlink to the most recent financial statements of the project owner shall be included.</p> <p>If the financial statements have been audited, a hyperlink to the relevant audit report(s) may also be included.</p> <p>If the most recent financial statements are not available, this fact shall be explicitly mentioned. The reasons for such unavailability may be specified. Only where the most recent financial statements are not available, a hyperlink to the up-to-date balance sheet of the project owner may be included instead, if available.</p> <p>Where there is an SPV interposed between the project owner and the investors, the information above may be provided also with regard to the SPV.</p>
(e)	<p><b>Key annual financial figures and ratios for the project owner for the last three years</b></p> <p>Presentation of the key annual financial figures and ratios such as:</p> <ul style="list-style-type: none"> <li>(a) turnover;</li> <li>(b) annual net profit;</li> <li>(c) total assets;</li> <li>(d) gross, operating and net profit margins;</li> <li>(e) net debt; debt to equity ratio;</li> <li>(f) acid test ratio; debt service cover ratio;</li> <li>(g) EBITDA;</li> <li>(h) return on equity;</li> <li>(i) ratio of intangible fixed assets to total assets.</li> </ul>
(f)	<p><b>Description of the crowdfunding project, including its purpose and main features</b></p> <p>A description of the crowdfunding project, including its purpose and main features and the intended use of the funds raised.</p>

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

(a)	<b>Minimum [target capital to be raised] or [target funds to be borrowed] in a single crowdfunding offer</b>			
	[Amount and currency]			
	<b>The number of offers (public or non-public) that have already been completed by the project owner or crowdfunding provider for this crowdfunding project</b>			
	Type of offer and instruments offered	Completion date	Amount [raised / borrowed] and target amount (including the euro-equivalent value and the date of the exchange rate in case of non-euro currencies)	Other relevant information, if any

(b)	<b>Deadline for reaching the [target capital to be raised] or [target funds to be borrowed]:</b> [The date on which the offer will be closed for potential investors.]
(c)	<b>Information on the consequences if the [target capital is not raised] or [target funds are not borrowed] by the deadline</b> Information on the consequences relating to the crowdfunding process and the investors' participations, if the crowdfunding offer does not reach the targeted minimum amount, such as: <ul style="list-style-type: none"> <li>• whether the crowdfunding offer and the investors' commitments would be cancelled;</li> <li>• whether any amounts that were paid by investors would be refunded and, if so, under what modalities and when;</li> <li>• whether investors would incur any fees or expenses as a result of the offer not reaching the targeted amount.</li> </ul>
(d)	<b>The maximum offer amount when different from the [target capital] or [target funds] referred to in point (a) above</b> Maximum offer amount and currency (including the euro-equivalent value in case of a non-euro currency), if such amount is different from the [target capital] or [target funds].
(e)	<b>Amount of own funds committed to the crowdfunding project by the project owner</b> An indication of whether major shareholders or members of the project owner's management, supervisory or administrative bodies have invested in, subscribed for or committed to invest in or subscribe for the offered instruments, and the amount thereof, including as a percentage with respect to the offer's target amount.
(f)	<b>Change of the composition of the project owner's capital or loans related to the crowdfunding offer</b> A description of the changes that will result in the composition of the project owner's capital and indebtedness as a consequence of the crowdfunding offer.

### Part C: Main risk types

<p><b>Presentation of the main risks</b></p> <p>Complete this section by describing the main risks associated with the crowdfunding project according to the types of main risks identified below.</p> <p>The following list of main risk types is non-exhaustive. Any other main risk which is relevant to the crowdfunding project, the crowdfunding offer, the project owner, the transferable securities and the admitted instruments for crowdfunding purposes or loans shall also be described in this Part C.</p> <p><b>Type 1 – Project risk</b></p> <p>Risks that are inherent to the project and that may cause the project to fail. These risks may concern, but are not limited to: (i) project dependencies, such as funding, legal, licensing, copyrights; (ii) occurrence of adverse scenarios with a negative impact; (iii) (technological) development of competitors or competitive products; or (iv) risks deriving from the project owner.</p> <p><b>Type 2 – Sector risk</b></p> <p>Risks that are inherent to the specific sector. Such risks may be caused, for instance, by a change in the macro-economic circumstances, a decrease of demand in the sector in which the crowdfunding project operates and dependencies on other sectors.</p>
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The sector of the project shall be described by using the taxonomy described in Article 2(1)(a) of Regulation (EC) No 1893/2006 of the European Parliament and of the Council<sup>5</sup> (i.e. first level of classification).

**Type 3 - Risk of default**

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

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

**Type 4 - Risk of lower, delayed or no returns**

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

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

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

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

The risk that investors cannot sell their investment.

**Type 7 – Other risks**

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

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

(a)	<p><b>Total amount and type of [transferable securities] or [admitted instruments for crowdfunding purposes] to be offered</b></p> <p>At least the following information shall be specified:</p> <ul style="list-style-type: none"> <li>(a) a description of the type and class of instruments to be offered;</li> <li>(b) where applicable, the number of instruments to be offered, their denomination, currency and terms;</li> <li>(c) the relative seniority of the instruments in the issuer’s capital structure in the event of insolvency, including, where applicable, information on the ranking and subordination of the securities.</li> </ul>
(b)	<p><b>Subscription price</b></p> <p>The price at which the [transferable securities] or [admitted instruments for crowdfunding purposes] will be offered. Where applicable, this section shall also indicate the minimum subscription amount per investor.</p>
(c)	<p><b>Whether oversubscriptions are accepted and how they are allocated</b></p>
(d)	<p><b>Terms of subscription and payment</b></p> <p>This section shall include a clear description of the terms of subscription, including the transfer of the subscription price, and of the payment process, including timing and method.</p> <p>It may also include a hyperlink to a description of the subscription process and instructions.</p>
(e)	<p><b>Custody and delivery of [transferable securities] or [admitted instruments for crowdfunding purposes] to investors</b></p> <p>This section shall (i) specify the delivery date (or where no such firm commitment can be made, the latest possible delivery date) and the process of delivery of the relevant instruments (including any collateral</p>

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

	<p>to the instruments), and (ii) indicate the name and contact details (including e-mail) of the issuer or its agent.</p> <p>Where custody services are not provided by the crowdfunding service provider, a clear statement to that effect shall be made.</p> <p>This section shall include the identity, registration and contact details of the custodian. It shall be mentioned whether or not any fee shall be due by the investor to the custodian.</p>
(f)	<p><b>Information relating to the guarantee or collateral by which the investment is secured (if applicable)</b></p> <p>(i) Is the [guarantor] or [collateral provider] a legal person?</p> <p>(ii) The identity, legal form and contact details of the [guarantor] or [collateral provider]</p> <p>(iii) Information on the nature and the terms of the [guarantee] or [collateral] (including its ranking)</p>
(g)	<p><b>Information relating to a firm commitment to buy back the [transferable securities] or [admitted instruments for crowdfunding purposes] (where applicable)</b></p> <p><b>Description of the buy-back arrangement</b></p> <p>This section shall provide clear and concise information with respect to any buy-back commitment. Where appropriate, more detailed information may be provided by way of a hyperlink.</p> <p><b>Time period for the buy-back</b></p> <p>Description of the conditions to participate in the buy-back (including any applicable deadlines).</p>
(h)	<p><b>Interest rate and maturity information</b></p> <p>This section shall apply to non-equity transferable securities (such as bonds) or hybrid instruments (such as bonds convertible to shares).</p> <p><b>Nominal interest rate:</b></p> <p>The nominal interest rate per year shall be clearly stated. Furthermore, this section shall include a brief explanation of the method used for its calculation or a hyperlink to the website of the crowdfunding service provider including such explanation.</p> <p>The annual interest rate shall be disclosed with two decimals of precision and in the following preferred format:</p> <p>[●] % per year (calculated by way of the [include the applied calculation method]); or where the interest rate is variable, brief information about the key factors determining the interest rate (e.g. EURIBOR plus X%) and its calculation.</p> <p><b>Date from which the interest becomes payable:</b></p> <p><b>Due dates for interest payments:</b></p> <p><b>Maturity date (including intermediate repayments where applicable):</b></p> <p><b>Applicable yield:</b></p> <p>The yield shall be calculated as a yearly rate and in line with the method used for the calculation of the annual nominal interest rate and provided with two decimals of precision. The key assumptions on which the yield calculation is based shall also be briefly disclosed.</p>

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

(a)	<b>Is an SPV interposed between the project owner and the investor?</b> Yes/no
(b)	<b>Contact details of the SPV</b> If the answer to the above question is ‘yes’, this section shall specify the SPV’s identity, legal form and registered office.

**Part F: Investor rights**

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

(a)	<b>Key rights attached to the [transferable securities] or [admitted instruments for crowdfunding purposes]</b> A short description of the key rights attached to the instruments, grouped by types, such as: (a) dividend rights; (b) voting rights; (c) information access rights; (d) pre-emption rights in offers for subscription of instruments of the same class; (e) right to share in the issuer’s profits; (f) right to share in any surplus in the event of liquidation; (g) redemption rights; (h) conversion rights; (i) joint exit rights in the event of the occurrence of an operative event (i.e., change of control, tag-along rights). A hyperlink to the project owner’s constitutional documents and/or any other relevant legal documents, together with references to the relevant articles or section numbers, may be included.
(b) and (c)	<b>Restrictions to which the [transferable securities] or [admitted instruments for crowdfunding purposes] are subject and restrictions on the transferring of the instruments.</b> This section shall include a description of any shareholders’ agreement or other arrangement preventing or in any case limiting the transferability of the instruments, such as clauses restricting the right to sell the instruments (for example approval clauses or temporary inalienability clauses). This section shall also include a description of other restrictions to which the instruments are subject, such as any forced disposal clause (for example exclusion clauses, repurchase clauses, joint exit obligation in the event of a change of control, drag-along rights), specifying in particular the financial conditions of such disposals.
(d)	<b>Opportunities for the investor to exit the investment</b>
(e)	<b>For equity instruments, distribution of capital and voting rights before and after the capital increase resulting from the offer (assuming all the [transferable securities] or [admitted instruments for crowdfunding purposes] will be subscribed)</b> When presenting the distribution of capital and voting rights before and after the capital increase resulting from the offer, the following information shall be included for each class of share capital: (a) the total of the issuer’s authorised share capital; (b) the number of shares issued and fully paid and issued but not fully paid; and (c) the par value per share, or that the shares have no par value. If there are shares not representing capital, state the number and main characteristics of such shares.

**Part G: Disclosures related to loans**

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

**Part H: Fees, information and legal redress**

(a)	<p><b>Fees and costs incurred by the investor relating to the investment (including administrative costs resulting from the sale of admitted instruments for crowdfunding purposes)</b></p> <p>This section shall contain a presentation in table-format of all direct and indirect fees, commissions, costs and charges incurred by the investor in relation to their investment and exit from the investment. Where euro (or other applicable currency) amounts and percentage values are stated, they shall be calculated for a hypothetical investment of EUR 10 000 and on an annual basis.</p>			
	<p><b>Fees, Charges and other Costs</b></p>	<p><b>in €</b> <b>(or other applicable currency)</b></p>	<p><b>as percentage of total investment amount</b></p>	<p><b>Examples</b> <b>(non-exhaustive)</b></p>

	<b>One-off</b>	Entry Costs (please provide details)	€[...]	[...]%	The costs the investor pays when entering the investment. These costs comprise of (i) costs relating to the investor's subscription (such as notary fees, up-front-loads, and stamp duties), and (ii) costs relating to the underlying asset (such as finder's and agent fees, notary fees, real estate and other acquisition taxes)
		Exit costs  Costs (please provide details)	€[...]	[...]%	The costs the investor pays when exiting the investment at maturity (such as finder's and agent fees, notary fees, real estate and other acquisition taxes, winding-down expenses)
	<b>Ongoing</b>		€[...]	[...]%	The costs the investor incurs during the holding period of the investment (such as custody and management fees, audit and legal fees, ongoing taxes relating to your investment or the underlying asset)
	<b>Incidental</b>	Performance Fees/  Carried Interest (please provide details)	€[...]	[...]%	Fees the investor pays to the project owner(s) if certain success parameters are met
Other incidental Fees (please provide details)		€[...]	[...]%	Finder's fees, refinancing fees, transaction fees (to the extent not already included in the one-off fees)	
(b)	<b>Where and how additional information about the crowdfunding project, the project owner [and, where applicable, the SPV] can be obtained free of charge</b>				
(c)	<b>How and to whom the investor may address a complaint about the investment or about the conduct of the project owner or the crowdfunding service provider</b> The following information shall be provided in summary: (a) steps to be followed for filing a complaint about the investment or about the conduct of the project owner or the crowdfunding service provider; (b) a link to the relevant webpage and form for such complaints;				

	(c) an up-to-date website or email address to which such complaints may be submitted.
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## **Annex IX Draft ITS pursuant to Article 16(3) of the ECSPR**

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

**of XXX**

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

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2020/1503 of the European Parliament and of the Council on European crowdfunding service providers for business, and amending Regulation (EU) 2017/1129 and Directive (EU) 2019/1937<sup>6</sup>, and in particular the third subparagraph of Article 16(3) thereof,

Whereas:

- (1) In order to promote a common approach to the application by crowdfunding service providers and competent authorities of the reporting requirements set out in Article 16(1) and (2) of Regulation (EU) 2020/1503, common data standards and formats, templates and procedures for the information to be reported to competent authorities and ESMA respectively should be established.
- (2) For the purposes of effective data analysis by competent authorities, there should be consistency in the standards and formats used by crowdfunding service providers when reporting information on projects funded through their crowdfunding platforms. Therefore, this Regulation sets out a template which provides for common standards and formats for reporting that information.
- (3) In order to allow the timely collection of information by competent authorities, and subsequent submission to ESMA, crowdfunding service providers should report to competent authorities information for a given calendar year no later than by the end of February of the following year. The report should include information on all projects funded on a crowdfunding service provider's platform, including those which did not raise any money during the year, in order to provide competent authorities and ESMA with comprehensive information which is necessary to enhance the competent authorities' capability to supervise the respective entities as well as to enable ESMA to develop and

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<sup>6</sup> OJ L 347, 20.10.2020, p. 1.

publish complete statistics relating to the crowdfunding market in the Union. Crowdfunding service providers should ensure that the information they provide is complete and accurate.

- (4) Given that the information to be reported by crowdfunding service providers is sensitive and should be provided on a confidential basis, it is appropriate that the procedures for reporting this information includes clear mechanisms to ensure the confidentiality of the information reported.
- (5) In order to ensure the certain and efficient identification of project owners, common identifiers thereof should be reported. In case the project owner is a legal entity, the ISO 17442 legal entity identifier code (LEI) of the project owner should be reported. Given that there is no common international standard for the identification of natural persons and considering nonetheless the importance of ensuring a clear identification also of project owners which are natural persons, for those project owners, the identifier set out in Article 6 of Commission Delegated Regulation (EU) 2017/590<sup>7</sup> should be reported. Furthermore, in order to ensure the interoperability of data and to enable supplementing the reported information with other data available in the key investment information sheet, the identifier of the crowdfunding offer determined in accordance with Article 4 of Regulation 202\*/\*\* [RTS pursuant to Article 23(16) of the ECSPR] should be reported.
- (6) In order to enable ESMA to perform effective cross-border aggregation and comparison of information and to develop statistics relating to the crowdfunding market in the Union, there should be consistency in the standards and formats used when providing information on crowdfunding projects by competent authorities to ESMA. Therefore, this Regulation sets out a template which provides for common standards and formats for reporting that information. Competent authorities should provide ESMA with complete and accurate information, with the identification of the project owner anonymised using a common method.
- (7) This Regulation is based on the draft implementing technical standards submitted to the Commission by the European Securities and Markets Authority (ESMA).
- (8) ESMA has conducted open public consultations on the draft implementing technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the advice of the Securities and Markets Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and the Council<sup>8</sup>,

HAS ADOPTED THIS REGULATION:

*Article 1*

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

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<sup>7</sup> Commission Delegated Regulation (EU) 2017/590 of 28 July 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the reporting of transactions to competent authorities (OJ L 87, 31.3.2017, p.449).

<sup>8</sup> Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

1. Information reported pursuant to Article 16(1) of Regulation (EU) 2020/1503 shall include the complete and accurate details referred to in Table 2 of the Annex to this Regulation, in accordance with the standards and formats specified in that Table, using an electronic form in a common CSV template or in another alternative format accepted by the competent authority to which the information is to be reported.
2. The procedures for reporting information in accordance with this Article shall include mechanisms to ensure the confidentiality of the information reported.
3. The information referred to in paragraph 1 shall be reported, for each calendar year, by the end of February of the following calendar year.
4. The information reported pursuant to paragraph 1 shall include the following details:
  - (a) for the crowdfunding service provider, the ISO 17442 legal entity identifier (LEI) code;
  - (b) for the project owner:
    - (i) the LEI code, if the project owner is a legal person;
    - (ii) the identifier set out in Article 6 of Commission Delegated Regulation (EU) 2017/590, if the project owner is a natural person;
  - (c) for each individual project, the identifier of the crowdfunding offer determined in accordance with Article 4 of Regulation 202\*/\*\* [*RTS pursuant to Article 23(16) of the ECSPR*].

## *Article 2*

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

1. Information reported pursuant to Article 16(2) of Regulation (EU) 2020/1503 shall include the complete and accurate details referred to in Table 3 of the Annex to this Regulation, in accordance with the standards and formats specified in that Table, using an electronic form in a common CSV template.
2. The information permitting the identification of the project owner shall be anonymised using a common cryptographic hashing algorithm.

## *Article 3*

### *Entry into force*

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

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

Done at Brussels,

*For the Commission  
The President*



## ANNEX

### Table 1

*Legend for Tables 2 and 3*

SYMBOL	DATA TYPE	DEFINITION
{ALPHANUM-n}	Up to n alphanumerical characters	Free text field.
{COUNTRYCODE_2}	2 alphanumerical characters	2 letter country code, as defined by ISO 3166-1 alpha-2 country code
{CURRENCYCODE_3}	3 alphanumerical characters	3 letter currency code, as defined by ISO 4217 currency codes
{DECIMAL-n/m}	Decimal number of up to n digits in total of which up to m digits can be fraction digits	Numerical field for both positive and negative values. – decimal separator is “.” (full stop); – thousand separator is not used; – negative numbers are prefixed with ‘-’ (minus); – values are rounded and not truncated.
{INTEGER-n}	Integer number of up to n digits in total	Numerical field for both positive and negative integer values. – thousand separator is not used; – negative numbers are prefixed with ‘-’ (minus).
{LEI}	20 alphanumerical characters	The ISO 17442 legal entity identifier (LEI) code
{NATIONAL_ID}	35 alphanumerical characters	The identifier is derived in accordance with Article 6 of Commission Delegated Regulation (EU) 2017/590.

**Table 2**  
***Information to be reported to competent authorities***

N	FIELD	CONTENT TO BE REPORTED	FORMAT AND STANDARDS TO BE USED FOR REPORTING
1	Crowdfunding service provider identification code	Code used to identify the crowdfunding service provider responsible for submitting the report.	{LEI}
2	Reporting period	The year which the report is submitted for.	YYYY
<p>Information on the projects for which a crowdfunding offer has been made by the crowdfunding service provider during the reporting period.</p> <p>Fields 3-6 shall be repeated for each project. If the amount raised is expressed in more than one currency, fields 5-6 shall be repeated for each currency respectively.</p>			
3	Identifier of the crowdfunding offer	Unique identifier of the crowdfunding offer as specified in [Article 4 of RTS pursuant to Article 23(16) of the ECSPR].	{ALPHANUM-28}
4	Sector	Sector of the project as specified in the first level of classification set out in Article 2(1)(a) of Regulation (EC) No 1893/2006 of the European Parliament and of the Council <sup>9</sup> .	{ALPHANUM-1}
5	Amount raised	The amount raised for the project.  The information reported in this field shall be consistent with the values provided in field 12.	{DECIMAL-18/5}

<sup>9</sup> Regulation (EC) No 1893/2006 of the European Parliament and of the Council of 20 December 2006 establishing the statistical classification of economic activities NACE Revision 2 and amending Council Regulation (EEC) No 3037/90 as well as certain EC Regulations on specific statistical domains (OJ L 393, 30.12.2006, p. 1).

6	Amount raised currency	Currency in which the amount raised is expressed.	{CURRENCYCODE_3}
<p>Information on the project owner(s) of each project.</p> <p>Field 7 shall be repeated for each project owner.</p>			
7	Project owner(s) identifier	<p>Code used to identify the project owner:</p> <p>(i) where the project owner is a legal entity, the LEI code;</p> <p>(ii) where the project owner is a natural person, the identifier determined in accordance with Article 6 of Commission Delegated Regulation (EU) 2017/590.</p>	<p>{LEI}</p> <p>{NATIONAL_ID}</p>
<p>Information on the investors and the instruments issued for each project.</p> <p>If different types of instruments, different types of investors, different countries of investors or currencies are to be reported, fields 8-13 shall be repeated as many times as required for each combination of instrument type, investor type, investor country and currency.</p>			
8	Instrument type	Type of instruments issued.	<p>LOAN – Loans</p> <p>ICFP – Admitted instruments for crowdfunding purposes</p> <p>EQUI – Equity instruments which are transferable securities pursuant to point (44) of Article 4(1) of Directive 2014/65/EU of the European Parliament and of the Council<sup>10</sup>, such as those referred to in point (a) thereof</p> <p>DEBT – Debt instruments which are transferable securities pursuant to point (44) of Article 4(1) of</p>

<sup>10</sup> Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU, OJ L 173, 12.6.2014, p. 349.

			<p>Directive 2014/65/EU, such as those referred to in point (b) thereof</p> <p>OTHR – Other transferable securities, pursuant to point (44) of Article 4(1) of Directive 2014/65/EU, such as those referred to in point (c) thereof</p>
9	Investor type	<p>Type of investors indicating whether the investor is:</p> <p>(i) a natural or legal person who is a professional client by virtue of points (1) to (4) of Section I of Annex II to Directive 2014/65/EU;</p> <p>(ii) a natural or legal person who has the approval of the crowdfunding service provider to be treated as a sophisticated investor in accordance with the criteria and the procedure laid down in Annex II to Regulation (EU) 2020/1503;</p> <p>(iii) a non-sophisticated investor;</p> <p>(iv) the project owner.</p> <p>Where the amount reported in field 12 refers to the amount invested into the project by the project owner, then the investor type reported in this field shall include the project owner as referred to in point (iv).</p>	<p>PROF – a professional client in accordance with points (1) to (4) of Section I of Annex II to Directive 2014/65/EU</p> <p>SOPH – a sophisticated investor in accordance with the criteria and the procedure laid down in Annex II to Regulation (EU) 2020/1503</p> <p>RETL – Non-sophisticated investor</p> <p>OTHR – Project owners</p>
10	Investor country	Country of fiscal residency of the investors.	{COUNTRYCODE_2}

11	Number of investors	The number of individual investors for the given investor type and the investor country.	{INTEGER-9}
12	Invested amount	The total amount invested for the given investor type and the investor country expressed in the currency used for the payment.	{DECIMAL-18/5}
13	Invested amount currency	Currency in which the invested amount is expressed.	{CURRENCYCODE_3}

**Table 3**  
***Information to be reported to ESMA***

N	FIELD	CONTENT TO BE REPORTED	FORMAT AND STANDARDS TO BE USED FOR REPORTING
1	Crowdfunding service provider identification code	Code used to identify the crowdfunding service provider responsible for submitting the report.	{LEI}
2	Reporting period	The year which the report is submitted for.	YYYY
<p>Information on the projects for which a crowdfunding offer has been made by the crowdfunding service provider during the reporting period.</p> <p>Fields 3-6 shall be repeated for each project. If the amount raised is expressed in more than one currency, fields 5-6 shall be repeated for each currency respectively.</p>			
3	Identifier of the crowdfunding offer	Unique identifier of the crowdfunding offer as specified in [Article 4 of RTS pursuant to Article 23(16) of the ECSPR]	{ALPHANUM-28}
4	Sector	Sector of the project as specified in the first level of classification set out in Article 2(1)(a) of Regulation (EC) No 1893/2006..	{ALPHANUM-1}
5	Amount raised	The amount raised for the project.  The information reported in this field shall be consistent with the values provided in field 12.	{DECIMAL-18/5}
6	Amount raised currency	Currency in which the amount raised is expressed.	{CURRENCYCODE_3}
<p>Information on the project owner(s) of each project.</p> <p>Field 7 shall be repeated for each project owner.</p>			

7	Project owner(s) anonymised identifier	The identifier of the project owner anonymised in accordance with Article 2(2).	{ALPHANUM}
<p>Information on the investors and instruments issued for each project.</p> <p>If different types of instruments or different types of investors, different countries of investors or currencies are to be reported, fields 8-13 shall be repeated as many times as required for each combination of instrument type, investors type, investors country and currency.</p>			
8	Instrument type	Type of instruments issued.	<p>LOAN – Loans</p> <p>ICFP – Admitted instruments for crowdfunding purposes</p> <p>EQUI – Equity instruments which are transferrable securities pursuant to point (44) of Article 4(1) of Directive 2014/65/EU, such as those referred to in point (a) thereof</p> <p>DEBT –Debt instruments which are transferrable securities pursuant to point (44) of Article 4(1) of Directive 2014/65/EU, such as those referred to in point (b) thereof</p> <p>OTHR – Other transferable securities pursuant to point (44) of Article 4(1) of Directive 2014/65/EU, such as those referred to in point (c) thereof</p>
9	Investor type	<p>Type of investors indicating whether the investor is:</p> <p>(i) a natural or legal person who is a professional client by virtue of points (1) to (4) of Section I of Annex II to Directive 2014/65/EU;</p> <p>(ii) a natural or legal person who has the approval of the crowdfunding service provider to</p>	<p>PROF – a professional client in accordance with point (1) to (4) of Section I of Annex II to Directive 2014/65/EU</p> <p>SOPH – a sophisticated investor in accordance with the criteria and the procedure laid down in Annex II to Regulation (EU) 2020/1503</p>

		<p>be treated as a sophisticated investor in accordance with the criteria and the procedure laid down in Annex II to Regulation (EU) 2020/1503;</p> <p>(iii) a non-sophisticated investor;</p> <p>(iv) the project owner.</p> <p>Where the amount reported in field 12 refers to the amount invested into the project by the project owner, then the investor type reported in this field shall include the project owner as referred to in point (iv).</p>	<p>RETL – Non-sophisticated investor</p> <p>OTHR – Project owners</p>
10	Investor country	Country of fiscal residency of the investors.	{COUNTRYCODE_2}
11	Number of investors	The number of individual investors for the given investor type and the investor country.	{INTEGER-9}
12	Invested amount	The total amount invested for the given investor type and the investor country expressed in the currency used for the payment.	{DECIMAL-18/5}
13	Invested amount currency	Currency in which the invested amount is expressed.	{CURRENCYCODE_3}

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

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

**of XXX**

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

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2020/1503 of the European Parliament and of the Council on European crowdfunding service providers for business<sup>11</sup>, and, in particular, the third subparagraph of Article 28(5) thereof,

Whereas:

- (1) To ensure legal certainty and easier market access, it is appropriate to set out standard forms, templates and procedures for competent authorities of Member States to notify and update the European Securities and Markets Authority (ESMA) of their national laws, regulations and administrative provisions which specifically govern marketing communications of crowdfunding service providers, as well as summaries thereof.
- (2) To ease the processing of these notifications and facilitate ESMA in meeting the publication requirements referred to in Article 28(6) of Regulation (EU) 2020/1503, competent authorities of Member States should be required to proceed to the notifications within specific timeframes and using harmonised standard forms and templates.
- (3) To facilitate the processing of notifications by ESMA, it is appropriate to provide for two different templates which competent authorities should use depending on whether they make a notification pursuant to Article 28(2) or 28(3) of Regulation (EU) 2020/1503.
- (4) This Regulation is based on the draft implementing technical standards submitted to the Commission by ESMA.
- (5) ESMA has conducted open public consultations on the draft implementing technical standards on which this Regulation is based, analysed the potential related costs and

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<sup>11</sup> OJ L 347, 20.10.2020, p. 1

benefits and requested the advice of the Securities and Markets Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council<sup>12</sup>,

HAS ADOPTED THIS REGULATION:

#### *Article 1*

##### ***Contact point***

ESMA shall communicate to competent authorities the contact details, including the electronic address, that shall be used for the notifications under Article 28(2) and (3) of Regulation (EU) 2020/1503.

#### *Article 2*

##### ***Timeframe***

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

#### *Article 3*

##### ***Templates and submission***

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

#### *Article 4*

##### ***Entry into force***

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

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

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<sup>12</sup> Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).



Done at Brussels,

*For the Commission  
The President*



## ANNEX I

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

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

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

#### SECTION A

##### **General information**

Date of notification:

FROM:

Member State:

Competent authority:

Legal address:

Details of the person in charge of the notification:

Name:

Telephone:

Email:

EN

EN

SECTION B

**Information concerning the notified national laws, regulations and administrative provisions applicable to marketing communications**

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

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

		customary in the sphere of international finance)	
	7	Additional information (optional)	



## ANNEX II

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

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

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

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

### SECTION A

#### General information

Date of notification:

FROM:

Member State:

Competent authority:

Address:

Details of the person in charge of the notification:

Name:

Telephone:

Email:

SECTION B

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

Field	Subfield	Description	
1		<p><i>In case a notification involves multiple changes to a single national law, regulation or administrative provision, subfields 1-8 shall be completed once and include all changes made to such national measure.</i></p> <p><i>In case the notification involves changes to multiple national measures, subfields 1-8 shall be repeated and completed for each notified national measure.</i></p>	
	1	Type of national measure	<i>Explain whether the notified national measure is a law, regulation or administrative provision.</i>
	2	Official title in original language of the notified national law, regulation or administrative provision applicable to marketing	

		communications of crowdfunding service providers	
	3	Translation of the official title of the law, regulation or administrative provision provided under point 2 in a language customary in the sphere of international finance	
	4	Date of adoption of the notified law, regulation, administrative provision or other act that change the information initially provided pursuant to Article 28(2) of Regulation (EU) 2020/1503	
	5	Date of entry into application of the notified law, regulation, administrative provision or other act that change the information initially provided under Article 28(2) of Regulation (EU) 2020/1503	

	6	Hyperlink to the relevant section of the Member State's official website containing the full text of the notified national law, regulation, administrative provision or other act	
	7	Summary of the national law, regulation or administrative provision notified pursuant to Article 28(2) of Regulation (EU) 2020/1503 as updated further to the changes notified in this form (in a language customary in the sphere of international finance)	
	8	Additional information (optional)	

## **Annex XI Draft RTS pursuant to Article 31(8) of the ECSPR**

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

**of XXX**

**supplementing Regulation (EU) 2020/1503 of the European Parliament and of the Council with regard to regulatory technical standards for the exchange of information between competent authorities in relation to investigation, supervision and enforcement activities**

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2020/1503 of the European Parliament and of the Council on European crowdfunding service providers for business, and amending Regulation (EU) 2017/1129 and Directive (EU) 2019/1937<sup>1</sup>, and in particular the third subparagraph of Article 31(8) thereof,

Whereas:

- (1) The information to be exchanged by competent authorities in accordance with Regulation (EU) 2020/1503 should be of a sufficient scope and nature to allow them to effectively carry out their investigation, supervision and enforcement activities under that Regulation. Consequently, it is necessary to specify the information that competent authorities should exchange to be able to investigate, supervise and enforce the conduct of crowdfunding service providers, other legal or natural persons as well as unincorporated entities in their respective jurisdictions pursuant to Regulation (EU) 2020/1503.
- (2) In order for competent authorities to be able to effectively monitor crowdfunding service providers, they should exchange general background information and constituting documents, including national incorporation documents, or other documents that provide an insight into the structure and operational activities of crowdfunding service providers. They should also exchange information relating to the authorisation process and the management bodies of crowdfunding service providers, including information on the suitability and the reputation of members of the management body, as well as information on shareholders, sanctions and enforcement actions and information on crowdfunding service providers' relevant conduct and compliance history.

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

- (3) In order to discharge their supervisory duties in a comprehensive manner, competent authorities should also exchange relevant information on other natural or legal persons and unincorporated entities falling within the scope of Regulation (EU) 2020/1503, including information on third parties designated to perform functions in relation to the provision of crowdfunding services.
- (4) Exchange of information between competent authorities will be most useful in, but should not be limited to, the circumstances where issues of regulatory concern may arise related to the entities subject to Regulation (EU) 2020/1503, including the initial application for authorisation of crowdfunding service providers, the on-going oversight of an entity's compliance with that Regulation, regulatory approvals as well as supervisory and enforcement actions which may impact the operations of an entity in another jurisdiction.
- (5) This Regulation is based on the draft regulatory technical standards submitted to the Commission by the European Securities and Markets Authority (ESMA).
- (6) ESMA did not conduct public consultations on the draft regulatory technical standards on which this Regulation is based, nor did it analyse the potential costs and benefits, as this would have been highly disproportionate to the scope and impact of those standards, taking into account the fact that they principally concern competent authorities.
- (7) ESMA has requested the advice of the Securities and Markets Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council<sup>2</sup>,

HAS ADOPTED THIS REGULATION:

*Article 1*

**Information to be exchanged in relation to crowdfunding service providers**

Competent authorities shall exchange the following information in relation to a crowdfunding service provider:

- (a) general information and documents relating to the crowdfunding service provider:
  - (i) the name of the crowdfunding service provider, the address of its head and/or registered office, contact details, its ISO 17442 legal entity identifier (LEI) code and relevant excerpts from nationally held registers;
  - (ii) information concerning constitutional documents that the crowdfunding service provider is required to have under the applicable national legislation;

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<sup>2</sup> Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

- (b) information relating to the natural persons responsible for the management of the crowdfunding service provider which was provided as part of the authorisation process, including:
- (i) their name and personal identification number, where the latter is available in the relevant Member State;
  - (ii) information on the positions which such persons hold within the crowdfunding service provider;
- (c) information necessary to assess the good repute and suitability of the natural persons responsible for the management of the crowdfunding service provider, including where available:
- (i) information relating to their work experience;
  - (ii) information relating to their reputation, including but not limited to:
    - information on criminal records, and/or administrative and/or civil sanctions and information on criminal investigations opened against such persons in respect of infringements of national rules in the fields of commercial law, insolvency law, financial services law, anti-money laundering law, fraud law or professional liability obligations, through an official certificate, or other equivalent document in accordance with national law. In the event of the existence of civil and/or administrative sanctions, a detailed description thereof shall be provided;
    - information on ongoing investigations or proceedings;
    - information on refusal of registration, authorisation, membership or license to carry out a business or a profession; the withdrawal, revocation or termination of such a registration, authorisation, membership or license, or exclusion by a regulatory or government body or by a professional body or association;
    - information on dismissal from a position of employment or from a position of trust, fiduciary relationship or similar situation and description of the reasons for such dismissal;
- (d) information on shareholders who hold 20 % or more of the share capital or voting rights of the crowdfunding service provider, including information on the absence of

criminal records and/or administrative and/or civil sanctions and information on criminal investigations opened against them, in respect of infringements of national rules in the fields of commercial law, insolvency law, financial services law, anti-money laundering law, fraud law or professional liability obligations. In the event of the existence of civil and/or administrative sanctions, a detailed description thereof shall be provided;

- (e) information on the crowdfunding service provider's organisational structure, operating conditions and compliance with the requirements set out in Regulation (EU) 2020/1503, which was provided as part of the authorisation process and as updated through the supervisory activities of the competent authority receiving the request for information, including but not limited to:
  - (i) information on the governance arrangements and internal control mechanisms ensuring compliance with Regulation (EU) 2020/1503, including risk-management and accounting procedures;
  - (ii) a program of operations setting out the types of crowdfunding services provided by the crowdfunding service provider in accordance with Regulation (EU) 2020/1503;
  - (iii) compliance records of the crowdfunding service provider, including information held by competent authorities;
  - (iv) information that can be requested from crowdfunding service providers in relation to the activities and requirements specified in Articles 3 to 11 of Regulation (EU) 2020/1503.
- (f) information on the authorisation or withdrawal of authorisation of the crowdfunding service provider in accordance with Articles 12, 13 and 17 of Regulation (EU) 2020/1503;
- (g) information on any penalty, including criminal penalties, administrative measures and enforcement actions, imposed against the crowdfunding service provider;
- (h) any other information necessary for cooperating in investigation, supervision and enforcement activities pursuant to Article 31(1) of Regulation (EU) 2020/1503.

## *Article 2*

### **Information to be exchanged in relation to other persons and unincorporated entities**

1. In relation to a natural person, competent authorities shall exchange at least information on the person's name, date and place of birth, personal identification number where available in the relevant Member State, address and contact details.
2. In relation to a legal person, other than a crowdfunding service provider, or to an unincorporated entity, a competent authority may also request documents certifying:
  - (a) the person or entity's business name;
  - (b) the address of its head and/or registered office, and postal address if different;
  - (c) its contact details and national identification number or the LEI code where available;
  - (d) the registration of legal form in accordance with the applicable national legislation;
  - (e) a complete list of persons who effectively direct its business, including their name, date and place of birth, address, contact details and, their personal identification number where available in the relevant Member State.
3. Competent authorities shall exchange any other information necessary for cooperating in investigation, supervision and enforcement activities pursuant to Article 31(1) of Regulation (EU) 2020/1503.

## *Article 3*

### **Entry into force**

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

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

Done at Brussels, [date]

*For the Commission*

*The President*

## **Annex XII Draft ITS pursuant to Article 31(9) of the ECSPR**

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

**of XXX**

**laying down implementing technical standards for the application of Regulation (EU) 2020/1503 of the European Parliament and of the Council with regard to standard forms, templates and procedures for the cooperation and exchange of information between competent authorities**

**(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2020/1503 of the European Parliament and of the Council on European crowdfunding service providers for business, and amending Regulation (EU) 2017/1129 and Directive (EU) 2019/1937<sup>3</sup>, and in particular the third subparagraph of Article 31(9) thereof,

Whereas:

- (1) In order to ensure that competent authorities are able to cooperate and exchange information in an efficient and timely manner for the purposes of Regulation (EU) 2020/1503 and provide each other with full mutual assistance, it is appropriate to lay down standard forms, templates and procedures to be used by competent authorities for such cooperation and exchange of information, including for the submission of requests for cooperation or exchange of information, acknowledgement of receipt of such requests, replies to such requests and the unsolicited exchange of information.
- (2) To facilitate communication between competent authorities, each competent authority should designate and communicate to ESMA a contact point to deal with the exchange of information and cooperation in accordance with this Regulation.
- (3) In order to ensure transparency and to foster a more efficient cooperation and exchange of information between competent authorities, the competent authority receiving a request for cooperation or exchange of information should notify the requesting competent authority of its refusal to act on the request for any of the exceptional circumstances set out in Article 31(2) of Regulation (EU) 2020/1503.
- (4) To enhance the effectiveness of competent authorities' cooperation in supervision, investigation and enforcement activities for the purposes of Regulation (EU) 2020/1503,

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<sup>3</sup> OJ L 347, 20.10.2020, p. 1.

it is important to set out common and uniform procedures in case the requested cooperation involves the taking of statements. These procedures set out the elements which competent authorities should consider, in conformity to the applicable national law, when cooperating on the taking of a statement from any person, including the rights of the person from whom the statement is to be taken and the arrangements enabling competent authorities' staff to proceed efficiently with the cooperation.

- (5) To ensure that competent authorities engage efficiently in requests for cooperation on an on-site inspection or investigation, including on the appropriateness to carry out a joint on-site inspection or investigation, this Regulation lays down common and uniform procedures to facilitate the communication, consultation and interaction between the requesting competent authority and the requested competent authority throughout the process.
- (6) This Regulation is based on the draft implementing technical standards submitted to the Commission by the European Securities and Markets Authority (ESMA).
- (7) ESMA did not conduct public consultations on the draft implementing technical standards on which this Regulation is based, nor did it analyse the potential related costs and benefits, as this would have been highly disproportionate in relation to the scope and impact of those standards, taking into account the fact that they principally concern competent authorities.
- (8) ESMA has requested the opinion of the Securities and Markets Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council<sup>4</sup>,

HAS ADOPTED THIS REGULATION:

#### *Article 1*

#### **Contact points**

1. Competent authorities shall each designate contact points for the purposes of cooperating and exchanging information pursuant to Article 31 of Regulation (EU) 2020/1503.
2. Competent authorities shall communicate the details of their contact points to ESMA and inform ESMA of any changes in those details.
3. ESMA shall maintain an up-to-date list of all contact points designated in accordance with paragraph 1 and update that list as necessary for use by the competent authorities.

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<sup>4</sup> Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

## *Article 2*

### **Request for cooperation or exchange of information**

1. A competent authority shall make a request for cooperation or exchange of information using the form set out in Annex I.
2. When making a request for cooperation or exchange of information, the requesting competent authority shall:
  - (a) specify the details of the relevant information that it is seeking from the recipient of the request;
  - (b) identify, where appropriate, issues relating to the confidentiality of the information sought.
3. In urgent cases, the requesting competent authority may make the request for cooperation or exchange of information orally, provided that subsequent confirmation of the request is made in writing within a reasonable timeframe using the form set out in Annex I, unless the competent authority receiving the request agrees otherwise.

## *Article 3*

### **Acknowledgement of receipt of a request for cooperation or exchange of information**

1. Within 10 working days of receipt of a request made pursuant to Article 2, the competent authority receiving the request shall send an acknowledgement of receipt to the requesting competent authority using the form set out in Annex II and, where possible, shall indicate an estimate date for response.
2. Where the competent authority receiving the request has any doubt in relation to the precise content of the cooperation or exchange of information requested, it shall request further clarifications as soon as possible using any means appropriate, whether oral or written.

## *Article 4*

### **Reply to a request for cooperation or exchange of information**

1. In responding to a request made pursuant to Article 2, the competent authority receiving the request shall:
  - (a) use the form set out in Annex III;

- (b) take all reasonable steps within its powers to provide the requested cooperation or information;
  - (c) act without undue delay and in a manner which ensures that any necessary regulatory action can proceed expediently, taking into account the complexity of the request and the need to involve third parties or another competent authority.
2. In urgent cases, the competent authority receiving the request may reply to a request for cooperation or exchange of information orally, provided that the response is subsequently given in writing within a reasonable timeframe using the form set out in Annex III, unless the requesting competent authority agrees otherwise.

#### *Article 5*

### **Means of communications**

1. Except where otherwise stated in this Regulation, any forms to be used under this Regulation shall be transmitted in writing by post or electronic means.
2. In determining the most appropriate means of communication in any particular case, due account shall be taken of confidentiality considerations, the time necessary for correspondence, the volume of material to be communicated, and the ease of access to the information by the requesting competent authority.
3. Any means of communication under this Regulation shall ensure that the completeness, integrity and confidentiality of the information subject matter of the exchange are maintained during the transmission.

#### *Article 6*

### **Procedures for processing and executing a request for cooperation or exchange of information**

1. The requesting competent authority shall respond promptly to any clarifications asked by the competent authority receiving the request pursuant to Article 3(2).
2. The competent authority receiving the request shall notify the requesting competent authority where it anticipates a delay of more than 5 working days beyond the estimated date of response specified in the acknowledgement of receipt in accordance with the first paragraph of Article 3.

3. Where the request has been qualified by the requesting competent authority as urgent, the competent authority receiving the request and the requesting competent authority shall agree on the frequency with which the former will update the latter on its handling of the request and on the date when it expects to provide a response.
4. The competent authority receiving the request and the requesting competent authority shall cooperate to resolve any difficulties that may arise in executing the request.
5. To ensure improvement of cooperation, both competent authorities shall provide, where appropriate, feedback to each other on the usefulness of the assistance received, the outcome of the case in relation to which the assistance was sought and any problems encountered in providing such assistance.

#### *Article 7*

### **Notification of refusal of the recipient to act on the request for cooperation or exchange of information**

If the competent authority receiving a request made pursuant to Article 2 refuses to act, in full or in part, on such request pursuant to Article 31(2) of Regulation (EU) 2020/1503, it shall notify, within 15 working days of receipt of the request, the requesting competent authority of its refusal to act on the request using the form set out in Annex IV.

#### *Article 8*

### **Procedures for a request for cooperation concerning the taking of a statement**

1. Where a request for cooperation made pursuant to Article 2 includes the taking of a statement from any person, the requesting competent authority and the competent authority receiving the request shall, in conformity to the applicable national law, assess and take into account as relevant:
  - (a) the rights of the person from which the statement is to be taken;
  - (b) the role of the staff of both competent authorities in the taking of the statement;
  - (c) whether the person from whom the statement is to be taken has the right to be assisted by a legal representative and, if so, the scope of the legal representative's assistance during the taking of the statement, including in relation to any record or report of the statement;
  - (d) any other relevant circumstances, including, if applicable, whether the statement is to be taken on a voluntary or compelled basis;

- (e) whether, based on the information that is available at the time of the request, the person from which the statement is to be taken is a witness in or subject to administrative or judicial investigation;
  - (f) whether, based on the information that is available at the time of the request, the statement could be or is intended to be used in legal proceedings;
  - (g) the recording of the statement and the applicable procedures, including whether it will be contemporaneous or summarised in written minutes or in an audio or audiovisual recording;
  - (h) procedures for the certification or confirmation of the statement by the person providing the statement, including whether that takes place after the statement is taken;
  - (i) the delivery procedures of the statement to the requesting competent authority, including the requested format and time period.
2. The competent authority receiving the request and the requesting competent authority shall ensure that arrangements are in place for their staff to proceed efficiently and to be able to agree on any additional information that may be necessary, including on the following:
- (a) planning of dates;
  - (b) the list of questions to be asked to the person from which the statement is to be taken and its review;
  - (c) travelling or video conference arrangements, including ensuring that, where needed, the competent authorities concerned are able to meet to discuss the matter prior to the taking of the statement;
  - (d) translation arrangements.

### *Article 9*

#### **Procedures for a request for cooperation on an on-site inspection or investigation**

1. Where a request for cooperation made pursuant to Article 2 concerns the carrying out of an on-site inspection or investigation, the requesting competent authority and the competent authority receiving the request shall consult each other on the best way to give effect to that request, including on the merits of conducting a joint on-site inspection or a joint investigation.
2. In deciding on the best way to give effect to a request for cooperation pursuant to paragraph 1, competent authorities shall take into account at least the following:
  - (a) the content of the request, including any suggestion on the appropriateness to carry out the investigation or the on-site inspection jointly;

- (b) whether they are separately conducting their own inquiries into a matter with cross-border implications and whether that matter would be more suitably dealt with by joint collaboration;
  - (c) the legal and regulatory framework applicable in each of the competent authorities' jurisdictions, ensuring that both competent authorities have a good understanding of the potential constraints and legal limitations on their conduct and on any proceedings that may follow, including any issues relating to the principle of ne bis in idem;
  - (d) the management and direction needed for the investigation or on-site inspection;
  - (e) the allocation of resources and appointment of staff in charge of carrying out the investigation or on-site inspection;
  - (f) the possibility to establish a joint action plan and timings of work;
  - (g) the actions to be taken, jointly or individually, by the competent authorities;
  - (h) the mutual sharing of the information gathered and reporting on the outcomes of the individual actions taken.
3. Where the competent authority receiving the request carries out the on-site inspection or investigation itself pursuant to point (a) of Article 31(4) of Regulation (EU) 2020/1503, it shall keep the requesting competent authority informed of the progress of these activities and shall deliver its findings in good time.
4. Where the competent authorities decide to carry out a joint investigation or a joint on-site inspection pursuant to point (b) of Article 31(4) of Regulation (EU) 2020/1503, they shall:
- (a) engage in ongoing dialogue to coordinate the information gathering process and the finding of facts;
  - (b) work closely and cooperate with each other when conducting the investigation or the on-site inspection;
  - (c) identify the specific legal requirements that form the subject matter of the investigation or the on-site inspection;
  - (d) provide mutual assistance on subsequent enforcement proceedings to the extent legally permitted, including coordinating in respect of any proceedings or other enforcement action related to the outcome of the investigation or the on-site inspection or, where appropriate, the prospects of a settlement;
  - (e) where relevant, agree at least upon the following:
    - (i) the drawing up of a joint action plan specifying the substance, nature and timing of the actions to be taken, including the allocation of responsibilities in delivering the outcome of the work and taking into account each competent authority's respective priorities;
    - (ii) the identification and assessment of any applicable legal limitations or constraints and any differences in procedures with respect to investigative or

enforcement action or any other proceedings, including the rights of any person subject to investigation;

- (iii) the identification and assessment of specific legal professional privileges that may have an impact on the investigation proceedings as well as the enforcement proceedings, including self-incrimination;
- (iv) the public and press strategy;
- (v) the intended use of the information exchanged during the joint investigation or joint on-site inspection.

#### *Article 10*

### **Unsolicited exchange of information**

1. Where a competent authority has information that it believes would assist another competent authority in carrying out its duties under Regulation (EU) 2020/1503, it shall transmit that information using the form set out in Annex III.
2. By way of derogation from paragraph 1, if the competent authority sending the information believes that the information should be sent urgently, it may initially communicate the information orally, provided that it is subsequently transmitted within a reasonable timeframe using the form set out in Annex III, unless the competent authority receiving the information agrees otherwise.

#### *Article 11*

### **Entry into force**

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

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

Done at Brussels,

*For the Commission*  
*The President*

## ANNEX I

### Form for a request for cooperation or exchange of information

#### Request for cooperation or exchange of information

Reference number: .....

Date: .....

#### General information

FROM:

Member State:

Requesting competent authority:

Address:

(Contact point details)

Name:

Telephone:

Email:

TO:

Member State:

Recipient:

Address:

(Contact point details)

Name:

Telephone:

Email:

Dear [insert appropriate name]

In accordance with Article 31 of Regulation (EU) 2020/1503, your input is sought in relation to the matter(s) set out in further detail below.

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

### **Type of request**

Please tick the appropriate box(es)

- Supervisory activities (provision of information, taking of a statement, other)
- Investigation or on-site inspections
- Enforcement
- Authorisation procedure

**Reasons for the request**

.....  
.....  
.....

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

The request concerns [cooperation] or [exchange of information] on.....

.....  
.....  
.....  
.....  
.....

*[Insert description of the subject matter of the request, the purpose for which the cooperation or exchange of information is sought, the facts underlying any investigation which forms the basis of the request and an explanation of its helpfulness]*

Further to.....

.....

.....  
.....

*[If applicable, insert details of the previous request in order to enable it to be identified]*

**Supervisory Activities (provision of information, taking of a statement)**

**Provision of information**

(a) Please provide a detailed description of the specific information sought with reasons why that information will be of assistance and, if known, a list of the persons considered as possessing the information sought and/or the places where such information may be obtained.

.....  
.....  
.....  
.....

(b) If the request concerns cooperation or exchange of information relating to a specific transferable security, an admitted instrument for crowdfunding purposes or a loan of a crowdfunding offer, please provide the following information:

Crowdfunding offer ID:.....

*[Insert precise description of the crowdfunding offer, including the identifier referred to in Article 3 of RTS under Article 23(16) of the Regulation 2020/1503 ]*

Personal ID:.....

*[Insert the identity of any person connected with the crowdfunding offer and/or the relevant crowdfunding service provider]*

Date:.....

*[Insert the date of when the crowdfunding offer was provided on the crowdfunding platform]*

(c) If the request concerns information relating to the business or activities of a person, please provide information as precise as possible to enable that person to be identified.

.....  
.....  
.....  
.....

(d) If there are special considerations on the sensitivity of the information sought (including due to investigatory considerations), please provide an indication of such sensitivity and any special precautions that have to be taken in collecting the information.

.....  
.....  
.....  
.....

(e) Please provide any additional information.

.....  
.....  
.....  
.....

*[Specify whether the requesting competent authority has been or will be in contact with any other authority or law enforcement agency in its Member State in relation to the subject matter of the request or whether there is any other authority which the requesting authority is aware that has an active interest in the subject matter of the request]*

(f) In case of an urgent request and the setting of any deadline, please provide full explanation of the urgency of the request and an explanation of any deadline that the requesting competent authority has asked for the information to be provided by.

**Taking of a statement**

Please indicate:

(a) Statement under: oath /affirmation  where permissible, neither

(b) Need and purpose of the taking of the statement:

.....  
.....  
.....

(c) Name of person(s) from whom the statement is to be obtained:

.....  
.....  
.....

*[Insert details of the persons from which the statement is to be taken to enable the requested competent authority to begin the summoning process where applicable]*

(d) Detailed description of the information sought, including a preliminary list of questions (if available at the time of the request).

.....  
.....  
.....  
.....

(e) Any additional information which may be useful:

.....  
.....

*[Whether the requesting competent authority requests its staff to participate in the taking of the statement, insert details of the participating officials of the requesting competent authority, and, where appropriate, a description of any legal and procedural requirements that must be complied with to ensure the admissibility of the statement in the jurisdiction of the requesting's competent authority]*

**On-site inspection or investigation**

If the request concerns an on-site inspection or investigation, please provide information to enable the recipient to assess which of the actions set out in points (a) to (e) of the second subparagraph of Article

31(4) of Regulation (EU) 2020/1503 it may take and whether it may have an interest in entering into a joint on-site inspection or investigation. Please also provide information on the requesting competent authority's proposal for the inspection or investigation, its reasoning and the benefits to the recipient.

.....

*[Include all relevant information to enable the recipient of the request to provide the necessary assistance, as appropriate]*

.....

**Enforcement**

(a) Please provide a detailed description of the specific information sought with reasons why that information will be of assistance.

.....  
.....  
.....  
.....

(b) If the request concerns cooperation or exchange of information relating to a specific transferable security, an admitted instrument for crowdfunding purposes or a loan of a crowdfunding offer, please provide the following information

Crowdfunding offer ID:.....

*[Insert precise description of the crowdfunding offer, including the identifier referred to in Article 3 of (RTS under Article 23(16) of the Regulation 2020/1503 ]*

Personal ID:.....

*[Insert the identity of any person connected with the crowdfunding offer and/or the relevant crowdfunding service provider]*

Date:.....

*[Insert the date of when the crowdfunding offer was provided on the crowdfunding platform ]*

**Authorisation procedure**

***a) Subject matter:***

.....  
.....  
.....

***b) Information on the authorisation procedure:***

.....  
.....  
.....

***c) Information on any other competent authority involved:***

.....  
.....  
.....

*[Please provide information here or make reference to the annexed documentation containing the information]*

***d) Information sought:***

.....  
.....  
.....

*[Please insert a specific description of the information sought, including any relevant documents requested with reasons why that information is necessary for the review of the application of authorisation]*

***e) Any additional information which may be useful:***

.....  
.....  
.....

*[Insert any other relevant information. If there are special considerations on the sensitivity of the information sought, please provide an indication of such sensitivity and any special precautions that have to be taken in collecting the information.]*

Yours sincerely,

[signature]



ANNEX II

**Form for the acknowledgement of receipt**

Acknowledgement of receipt

Reference number:

Date:

FROM:

Member State:

Recipient:

Address:

(Contact point details)

Name:

Telephone:

Email:

TO:

Member State:

Requesting competent authority:

Address:

(Contact point details)

Name:

Telephone:

Email:

Dear *[insert appropriate name]*

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

Estimated date of response: .....

Yours sincerely,

[signature]



## ANNEX III

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

[Reply to a request for cooperation or exchange of information] [Unsolicited exchange of information]

Reference number:

Date:

#### **General information**

FROM:

Member State:

Requesting competent authority:

Address:

(Contact point details)

Name:

Telephone:

Email:

TO:

Member State:

Recipient:

Address:

(Contact point details)

Name:

Telephone:

Email:

Dear *[insert appropriate name]*

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

**Information gathered**

.....  
.....  
.....  
.....

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

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

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

The *[insert name of the requesting or receiving competent authority]* shall observe the requirements set out in Article 35 of Regulation (EU) 2020/1503.

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

.....  
.....  
.....  
.....

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

.....  
.....  
.....  
.....

Yours sincerely,

[signature]

## ANNEX IV

### Form for the notification of refusal

#### Notification of refusal

Reference number:

Date:

FROM:

Member State:

Requesting competent authority:

Address:

(Contact point details)

Name:

Telephone:

Email:

TO:

Member State:

Recipient:

Address:

(Contact point details)

Name:

Telephone:

Email:

Dear *[insert appropriate name]*

Following your request *[insert reference to request]*, we hereby notify you that we refuse to act thereon due to exceptional circumstances in accordance with Article 31(2) of Regulation (EU) 2020/1503.

We relied upon the following exceptional circumstance for this refusal to act on your request

.....  
.....

*[Insert description of the relevant circumstance in accordance with points (a) to (c) of Article 31(2) of Regulation (EU) 2020/1503].*

Our decision to refuse to act on your request relied upon the following reason(s).....

.....  
.....

*[Insert full reasons for the recipient's refusal to act on the requesting competent authority's request for cooperation or request for information, having regard to the exceptional circumstance on which the refusal is based]*

Yours sincerely,

[signature]

## **Annex XIII Draft ITS pursuant to Article 32(4) of the ECSPR**

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

**of XXX**

**laying down implementing technical standards for the application of Regulation (EU) 2020/1503 of the European Parliament and of the Council with regard to standard forms, templates and procedures for the cooperation and exchange of information between competent authorities and ESMA**

**(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2020/1503 of the European Parliament and of the Council on European crowdfunding service providers for business and amending Regulation (EU) 2017/1129 and Directive (EU) 2019/1937<sup>5</sup>, and in particular the third subparagraph of Article 32(4) thereof,

Whereas:

- (1) To ensure that competent authorities and the European Securities and Markets Authority (ESMA) are able to cooperate and exchange information in an efficient and timely manner for the purposes of Regulation (EU) 2020/1503, it is appropriate to set out standard forms, templates and procedures to be used by competent authorities and ESMA for such cooperation and exchange of information, including for the submission of relevant requests, acknowledgement of receipt of, and replies to, such requests, as well as for the unsolicited transmission of information.
- (2) To facilitate communication between competent authorities and ESMA, each of them should designate a contact point to deal with the the cooperation and exchange of information in accordance with this Regulation.
- (3) To ensure that the requested competent authorities process requests for cooperation of information efficiently and expeditiously, it is appropriate to set out that each request should clearly set out the reasons for such request. Beyond the use of templates and forms for requests for cooperation or requests for information and replies to such requests, the procedures for cooperation and exchange of information should facilitate, the, interaction between the competent authorities and ESMA, throughout the process.

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<sup>5</sup> OJ L 347, 20.10.2020, p. 1–49.

- (4) Given the possibility for competent authorities to ask for ESMA's coordination of an on-site inspection or investigation with cross-border effect, it is appropriate to set out a standard form to be used by competent authorities proceeding to such requests.
- (5) This Regulation is based on the draft implementing technical standards submitted to the Commission by ESMA.
- (6) ESMA did not conduct public consultations on the draft implementing technical standards on which this Regulation is based, nor did it analyse the potential related costs and benefits, as this would have been highly disproportionate in relation to the scope and impact of those standards, taking into account that they principally concern competent authorities of the Member States and ESMA.
- (7) ESMA has requested the opinion of the Securities and Markets Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council<sup>6</sup>,

HAS ADOPTED THIS REGULATION:

*Article 1*

**Contact points**

1. Competent authorities and ESMA shall each designate contact points for the purposes of the communication of requests for cooperation and exchange of information made pursuant to Article 32 of Regulation (EU) 2020/1503.
2. Competent authorities shall notify ESMA of the details of their contact points. They shall keep ESMA informed of any changes in those details.
3. ESMA shall maintain and keep up-to-date a list of all contact points designated in accordance with paragraph 1.

*Article 2*

**Request for cooperation or exchange of information**

1. A requesting competent authority and ESMA shall make a request for cooperation and exchange of information using the standard form set out in Annex I. It shall address the request to the contact point of the requested competent authority or ESMA, as appropriate.

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<sup>6</sup> Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

2. When making a request for information, a requesting competent authority or ESMA shall:
  - (a) specify the details of the relevant information sought;
  - (b) identify, where appropriate, issues relating to the confidentiality of the information sought.
3. In urgent cases, the requesting competent authority or ESMA may make the request for cooperation or exchange of information verbally, provided that subsequent confirmation of the request is made in writing within a reasonable timeframe, unless the requested competent authority or, as appropriate, ESMA agrees otherwise.

### *Article 3*

#### **Acknowledgement of receipt of a request for cooperation or exchange of information and request for clarification**

1. Within 10 working days of receipt of a request made pursuant to Article 2, the requested competent authority or ESMA, as appropriate, shall send an acknowledgement of receipt to the requesting competent authority or ESMA, as appropriate, using the form set out in Annex II, and, where possible, indicate an estimate date for response.
2. In case a requested competent authority or ESMA, as appropriate, has any doubt in relation to the precise content of cooperation or information requested, it shall request further clarifications as soon as possible using any appropriate means, whether oral or written. The authority to which such request is addressed shall provide a prompt response.

### *Article 4*

#### **Reply to a request for cooperation or exchange of information**

1. In responding to a request made pursuant to Article 2, the requested competent authority or ESMA, as appropriate, shall:
  - (a) use the standard form set out in Annex III;
  - (b) take all reasonable steps within its powers to provide the requested cooperation or information;
  - (c) act without undue delay, taking into account the complexity of the request and any need to involve third parties.
2. In urgent cases, the requesting competent authority or ESMA, as appropriate, may reply to a request for cooperation or exchange of information orally, provided that the response is

subsequently given in writing within a reasonable timeframe using the form set out in Annex III, unless the requested competent authority or ESMA, as appropriate, agrees otherwise.

#### *Article 5*

### **Means of communication**

1. Except where otherwise stated in this Regulation, any standard forms to be used under this Regulation, shall be transmitted in writing by post or electronic means.
2. In determining the most appropriate means of communication, due account shall be taken of confidentiality considerations, the time necessary for correspondence, the volume of material to be communicated, and the ease of access to the information by the requesting competent authority or ESMA, as appropriate.
3. Any means of communication under this Regulation shall ensure the completeness, integrity and confidentiality of the information subject matter of the exchange are maintained during the transmission.

#### *Article 6*

### **Procedures for processing a request for cooperation or exchange of information**

1. The requesting competent authority or ESMA, as appropriate, shall notify the requesting competent authority or ESMA, as appropriate where it becomes aware of circumstances that may lead to a delay of more than five working days beyond the estimated date of response specified in accordance with Article 3(1).
2. Where the request has been qualified by the requesting competent authority or ESMA, as appropriate as urgent, the requested competent authority or ESMA, as appropriate, shall agree on the frequency with which it will update the former on any progress made regarding the processing of the request and about the estimated date of response.
3. Competent authorities and ESMA shall cooperate to resolve any difficulties that may arise in processing a request.
4. Competent authorities and ESMA shall provide, where appropriate, feedback to each other on the usefulness of assistance received, the outcome of the case in relation to which the assistance was sought and any problems encountered in providing such assistance.

#### *Article 7*

### **Request to ESMA for coordination of an on-site inspection or investigation**

1. Competent authorities shall request ESMA to coordinate an on-site inspection or investigation in accordance with Article 32(2) of Regulation (EU) 2020/1503 using the standard form set out in Annex IV.
2. Competent authorities shall without delay provide ESMA with all information necessary to carry out its duties.
3. Where ESMA is requested under Article 32(2) of Regulation (EU) No 1503/2020 to coordinate an investigation or inspection with cross-border effect, ESMA may establish a temporary group on an ad hoc basis to include the competent authorities of the Member States affected by that investigation or inspection.

#### *Article 8*

### **Unsolicited transmission of information**

1. Where a requesting competent authority or ESMA has information that it believes would assist ESMA or the competent authority respectively, in carrying out their duties under Regulation (EU) 2020/1503, it shall transmit that information using the standard form set out in Annex III.
2. By way of derogation from paragraph 1, if the competent authority or ESMA sending the information believes that the information should be sent urgently, it may initially communicate the information verbally, provided that subsequent transmission of information is made using the standard form set out in Annex III, unless the competent authority or ESMA receiving the information agrees otherwise.

#### *Article 9*

### **Entry into force**

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

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

Done at Brussels,



*For the Commission  
The President*

ANNEX I

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

Request for cooperation or exchange of information

Reference number:

Date:

**General information**

FROM:

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

(Contact details of the contact point):

Name:

Telephone:

Email:

TO:

Member State (if applicable):

Recipient:

Address:

(Contact details of the contact point):

Name:

Telephone:

Email:

Dear [*insert appropriate name*],

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

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

**Type of request**

Please tick the appropriate box(es):

- Investigatory and supervisory powers of CAs
  
- Cooperation between CAs
  
- Precautionary measures
  
- Other

If other, please specify:

.....  
.....  
.....  
.....

**Reasons for the request**

.....  
.....  
.....

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

The request concerns cooperation or exchange of information on.....

.....  
.....  
.....  
.....  
.....

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

Further to.....

.....  
.....  
.....

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

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

.....  
.....  
.....  
.....  
.....

**Additional information:**

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The information included in this request shall be kept confidential in accordance with Article 35 of Regulation (EU) 2020/1503 and any personal data provided shall be processed by ESMA in accordance with Regulation (EU) 2018/1725<sup>7</sup>.

Yours sincerely,

*[signature]*

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<sup>7</sup> Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC.

ANNEX II

**Form for the acknowledgement of receipt**

Acknowledgement of receipt

Reference number:

Date:

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

(Contact details of the contact point)

Name:

Telephone:

Email:

TO:

Member State (if applicable):

Recipient:

Address:

(Contact details of the contact point)

Name:

Telephone:

Email:

Dear *[insert appropriate name]*

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

Estimated date of response: .....

Yours sincerely,

[signature]

*ANNEX III*

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

Reply to a request for cooperation or exchange of information

Reference number:

Date:

**General information**

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

(Contact details of the contact point):

Name:

Telephone:

Email:

TO:

Member State:

Recipient:

Address:

(Contact point details):

Name:

Telephone:

Email:

Dear *[insert appropriate name]*,

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

**Information gathered**

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

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

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

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

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.....

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

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.....  
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Yours sincerely,

[signature]



*ANNEX IV*

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

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

Reference number:

Date:

**General information**

FROM:

Member State:

Requesting competent Authority:

Address:

(Contact details of the contact point):

Name:

Telephone:

Email:

TO:

European Securities and Markets Authority (ESMA)

(Contact details of the contact point):

Name:

Telephone:

Email:

**Information on the request for coordination**

**Reasons for the request**

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

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

.....  
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.....  
.....

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

Further to.....  
.....  
.....  
.....

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

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

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Additional information:

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The information included in this request shall be kept confidential in accordance with Article 35 of Regulation (EU) 2020/1503 and the personal data provided shall be processed by ESMA in accordance with Regulation (EU) 2018/1725.

Yours sincerely,

[signature]