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INFORMATION NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee/Council
Subject:	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on European Crowdfunding Service Providers (ECSP) for Business - Outcome of the European Parliament's first reading, (Strasbourg, 25 to 28 March 2019)

I. INTRODUCTION

The rapporteur, Ashley FOX (ECR, UK), presented a report on the proposal for a Regulation on behalf of the Committee on Economic and Monetary Affairs. The report contained one amendment (amendment 1) to the proposal.

II. VOTE

When it voted on 27 March 2019, the plenary adopted in a single vote the amendment (amendment 1) to the proposal for a Regulation.

The Commission's proposal as thus amended constitutes the Parliament's first-reading position which is contained in its legislative resolution as set out in the Annex hereto¹.

¹ The version of the Parliament's position in the legislative resolution has been marked up to indicate the changes made by the amendments to the Commission's proposal. Additions to the Commission's text are highlighted in ***bold and italics***. The symbol "■" indicates deleted text.

European Crowdfunding Service Providers (ECSP) for business ***I

European Parliament legislative resolution of 27 March 2019 on the proposal for a regulation of the European Parliament and of the Council on European Crowdfunding Service Providers (ECSP) for Business (COM(2018)0113 – C8-0103/2018 – 2018/0048(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2018)0113),
 - having regard to Article 294(2) and Article 114 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C8-0103/2018),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to the opinion of the European Economic and Social Committee of 11 July 2018²,
 - having regard to Rule 59 of its Rules of Procedure,
 - having regard to the report of the Committee on Economic and Monetary Affairs (A8-0364/2018),
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Amendment 1

AMENDMENTS BY THE EUROPEAN PARLIAMENT*

to the Commission proposal

² OJ C 367, 10.10.2018, p. 65.

* Amendments: new or amended text is highlighted in bold italics; deletions are indicated by the symbol **■**.

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
on European Crowdfunding Service Providers (ECSP) for Business

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Central Bank,³

Having regard to the opinion of the European Economic and Social Committee,⁴

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Crowdfunding is increasingly an established form of [alternative finance](#) for *start-ups, as well as for* small and medium enterprises (SMEs) at an early stage of company growth, typically relying on small investments. Crowdfunding represents *an increasingly important* type of intermediation where a crowdfunding service provider *operates* a digital platform *open to the public* in order to match *or facilitate the matching of* prospective investors *or lenders* with businesses that seek funding, irrespective of whether that funding leads to a

³ OJ C , , p. .

⁴ OJ C , , p. .

loan agreement, to an equity stake or to another transferable security based stake, *without the crowdfunding service provider taking on own risk*. It is therefore appropriate to include in the scope of this Regulation both lending-based crowdfunding and investment-based crowdfunding.

- (2) Crowdfunding can contribute to provide access to finance for *SMEs* and complete the Capital Markets Union (CMU). Lack of access to finance for such firms constitutes a problem even in Member States where access to bank finance has remained stable throughout the financial crisis. Crowdfunding has emerged as an established practice of funding a project or *business*, typically by a large number of people or organisations, through online platforms on which *private individuals*, organisations and businesses, including business start-ups, raise relatively small amounts of money.
- (3) The provision of crowdfunding services generally relies on three types of actors: the project owner, that proposes the project *or the business loans* to be funded, investors who fund the proposed project, generally by limited investments *or loans*, and an intermediating organisation in the form of a service provider that brings together project owners and investors *or lenders* through an online platform.
- (4) In addition to providing an alternative source of financing, including venture capital, crowdfunding can offer other benefits to firms. It can provide concept and idea validation to the project *or business*, give access to a large number of people providing the entrepreneur with insights and information and be a marketing tool.
- (5) Several Member States have already introduced domestic bespoke regimes on crowdfunding. Those regimes are tailored to the characteristics and needs of local markets and investors. As a result, the existing national rules diverge as regards the conditions of operation of crowdfunding platforms, the scope of permitted activities and the licencing requirements.
- (6) The differences between the existing national rules are such as to obstruct the cross-border provision of crowdfunding services and thus have a direct effect on the functioning of the internal market in such services. In particular, the fact that the legal framework is fragmented along national borders creates substantial legal compliance costs for retail investors who often face difficulties which are disproportional to the size of their investment in determining the rules applicable to cross-border crowdfunding services. Therefore, such

investors are often discouraged from investing cross-border via crowdfunding platforms. For the same reasons crowdfunding service providers operating such platforms are discouraged from offering their services in a Member State other than the one in which they are established. As a result, crowdfunding activities have remained hitherto largely national to the detriment of a Union-wide crowdfunding market, thus depriving businesses of access to crowdfunding services, *especially in cases where a business operates in a Member State lacking access to crowd because of its comparatively smaller population.*

- (7) In order to foster cross border crowdfunding activities and to facilitate the exercise of the freedom to provide and receive such services in the internal market for crowdfunding providers it is therefore necessary to address the existing obstacles to the proper functioning of the internal market in crowdfunding services., Providing for a single set of rules on the provision of crowdfunding services giving crowdfunding service providers the option to apply for a single Union-wide authorisation to exercise their activity under those rules is a suitable first step for fostering cross border crowdfunding activities and thus enhance the operation of the Single Market.
- (8) By addressing the obstacles to the functioning of the internal market in crowdfunding services, this Regulation aims to foster cross-border business funding. Crowdfunding services in relation to lending to consumers, as defined in Article 3(a) of Directive 2008/48/EC of the European Parliament and of the Council⁵, should therefore not fall within the scope of this Regulation.
- (9) In order to avoid that the same activity is subject to different authorisations within the Union, crowdfunding service provided by persons that have been authorised under Directive 2014/65/EU of the European Parliament and of the Council⁶ or provided in accordance with national law should be excluded from the scope of this Regulation.
- (10) In relation to lending-based crowdfunding, the facilitation of granting of loans, including services such as presenting crowdfunding offers to clients or rating the creditworthiness of project owners, should accommodate different business models enabling a loan agreement to

⁵ Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC (OJ L 133, 22.5.2008, p. 66).

⁶ 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).

be concluded through a crowdfunding platform between one or more clients and one or more project owners.

- (11) In relation to investment-based crowdfunding, the transferability of a security is an important safeguard for investors to be able to exit their investment since it provides them with the legal possibility to dispose of their interest on the capital markets. This Regulation therefore only covers and permits investment-based crowdfunding services in relation to transferable securities. Financial instruments other than transferable securities should however be excluded from the scope of this Regulation because those securities entail risks for investors that cannot be properly managed within this legal framework.
- (11a) The characteristics of initial coin offerings (ICOs) differ considerably from crowdfunding regulated in this Regulation. Among others, ICOs typically do not use intermediaries, such as crowdfunding platforms, and often raise funds in excess of EUR 1 000 000. The inclusion of ICOs in this Regulation would not tackle the problems associated with ICOs as a whole.*
- (12) Given the risks associated with crowdfunding investments, it is appropriate, in the interest of the effective protection of investors *and of the provision of a mechanism of market discipline*, to impose a threshold for a maximum consideration for each crowdfunding offer. That threshold should be set at EUR 8 000 000, *which is the maximum threshold up to which Member States are able to exempt offers of securities to the public from the obligation to publish a prospectus in accordance with* Regulation (EU) 2017/1129 of the European Parliament and of the Council⁷. *Notwithstanding the high standard of investor protection needed, that threshold should be set in accordance with practices on national markets to make the Union platform attractive for cross-border business funding.*
- (12a) This Regulation lays down the content of a key investment information sheet to be supplied to potential investors for every crowdfunding offer. As the key investment information sheet is designed to be tailored to the specific features of a crowdfunding offer and the information needs of investors, it should replace the prospectus required by Regulation (EU) 2017/1129 when securities are offered to the public. Crowdfunding*

⁷ Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC (OJ L 168, 30.6.2017, p. 12).

offers under this Regulation should therefore be excluded from the scope of Regulation (EU) 2017/1129 and that Regulation should be amended accordingly.

- (13) To avoid regulatory arbitrage and to ensure the effective supervision of crowdfunding service providers, crowdfunding service providers should be prohibited from accepting deposits or other repayable funds from the public, unless they are authorised as a credit institution in accordance with Article 8 of Directive 2013/36/EU of the European Parliament and of the Council⁸.
- (14) In order to achieve that purpose, crowdfunding service providers should be given the option to apply for a single Union-wide authorisation and to exercise their activity in accordance with those uniform requirements. However, to preserve the broad availability of crowdfunding offers targeted solely at national markets, where crowdfunding service providers choose to provide their services under the applicable national law, they should remain able to do so. Accordingly, the uniform requirements laid down in this Regulation should be optional and therefore not apply to such crowdfunding service providers choosing to remain active on national basis only.
- (15) In order to maintain a high standard of investor protection, to reduce the risks associated with crowdfunding and to ensure fair treatment of all clients, crowdfunding service providers should have in place a policy designed to ensure that projects are selected in a professional, fair and transparent way and that crowdfunding services are provided in the same manner.
- (15a) For the same reasons, crowdfunding service providers that use ICOs on their platform should be excluded from this Regulation. To achieve efficient regulation on the emerging ICO technology, the Commission could in future propose a comprehensive Union-level legislative framework based on a thorough impact assessment.*
- (15b) Alternative investment instruments, such as ICOs, have potential in funding SMEs, innovative start-ups and scale-ups, can accelerate technology transfer, and can be an essential part of the capital markets union. The Commission should assess the need to*

⁸ Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).

propose a separate, Union legislative framework for ICOs. Increased legal certainty across the board could be instrumental in increasing investor and consumer protection and reducing risks stemming from asymmetric information, fraudulent behaviour and illegal activities.

- (16) In order to improve the service to their clients, *who can be prospective or actual investor or project owner*, crowdfunding service providers should be able to exercise discretion on behalf of clients with respect to the parameters of the clients' orders, provided that they take all necessary steps to obtain the best possible result for their clients and that they disclose the exact method and parameters of the discretion. In order to ensure that prospective investors are offered investment opportunities on a neutral basis, crowdfunding service providers should not pay or accept any remuneration, discount or non-monetary benefit for routing investors' orders to a particular offer provided on their platform or to a particular offer provided on a third party platform.
- (17) This Regulation aims to facilitate direct investment and to avoid creating regulatory arbitrage opportunities for financial intermediaries regulated under other Union legislation, in particular Union rules governing asset managers. The use of legal structures, including special purpose vehicles, to interpose between the crowdfunding project *or business* and investors, should therefore be strictly regulated and permitted only *to eligible counterparties or elective professional investors as defined in Directive 2014/65/EU*.
- (18) Ensuring an effective system of governance is essential for the proper management of risk and for preventing any conflict of interest. Crowdfunding service providers should therefore have governance arrangements that ensure effective and prudent management and their management should be of good repute and have adequate knowledge and experience. Crowdfunding service providers should also establish procedures to receive and handle complaints from clients.
- (19) Crowdfunding service providers should operate as neutral intermediaries between clients on their crowdfunding platform. In order to prevent conflicts of interests, certain requirements should be laid down with respect to crowdfunding service providers and managers and employees, or any person directly or indirectly controlling them. *Unless financial interests in projects or offers are disclosed in advance on their website*, crowdfunding service providers should be prevented from having any financial participation in the crowdfunding

offers on their crowdfunding platforms. ***That will allow crowdfunding service providers to align their interests with the interests of the investors.*** Furthermore, shareholders holding 20 % or more of share capital or voting rights, ***and*** managers, or any person directly controlling crowdfunding platforms, should not act as clients, in relation to the crowdfunding services offered on that crowdfunding platform.

- (20) In the interest of an efficient and smooth provision of crowdfunding services, crowdfunding service providers should be allowed to entrust any operational function, in whole or in part, to ***other*** service providers provided that the outsourcing does not impair materially the quality of crowdfunding services providers' internal controls and effective supervision.. Crowdfunding service providers should however remain fully responsible for compliance with this Regulation.
- (21) The holding of clients' funds and the provision of payment services require an authorisation as a payment service provider in accordance with Directive (EU) 2015/2366 of the European Parliament and of the Council⁹. That mandatory authorisation requirement cannot be satisfied by an authorisation as a crowdfunding service provider. Therefore, it is appropriate to clarify that where a crowdfunding service provider carries out such payment services in connection with its crowdfunding services, it needs to be authorised also as a payment institution in accordance with Directive (EU) 2015/2366. In order to enable a proper supervision of such activities, the ***national competent authority*** should be informed about whether the crowdfunding service provider intends to carry out payment services itself with the appropriate authorisation, or whether such services will be outsourced to an authorised third party.
- (22) The growth and smooth functioning of cross-border crowdfunding services requires a sufficient scale and public confidence in those services. It is therefore necessary to lay down uniform, proportionate and directly applicable requirements for authorisation and a single point of supervision.
- (23) A high level of investor confidence contributes to the growth of crowdfunding services. Requirements for crowdfunding services should therefore facilitate cross-border provision of

⁹ Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC (OJ L 337, 23.12.2015, p. 35).

those services, reduce operational risks and ensure a high degree of transparency and investor protection.

- (24) Crowdfunding services can be exposed to money laundering and terrorist financing risks, as underlined in the Commission's Report on the assessment of the risks of money laundering and terrorist financing affecting the internal market and relating to cross-border situations¹⁰. Safeguards should therefore be envisaged when meeting conditions for authorisation, assessing the good repute of the management, providing payment services only through licensed entities subject to anti-money laundering and terrorist financing requirements. With a view to further ensuring financial stability by preventing risks of money *laundering* and terrorism financing, *and taking into account the maximum threshold of funds that can be raised by a crowdfunding offer in accordance with this Regulation*, the Commission should assess the necessity and proportionality of subjecting crowdfunding service providers, *authorised under this Regulation to some or all of the* obligations for compliance with the national provisions implementing Directive (EU) 2015/849 in respect of money laundering or terrorism financing and adding such crowdfunding service providers to the list of obliged entities for the purposes of Directive (EU) 2015/849.
- (25) To enable crowdfunding service providers to operate cross-border without facing divergent rules and thereby facilitating the funding of projects across the Union by investors from different Member States, Member States should not be allowed to impose additional requirements on crowdfunding service providers that are authorised *under this Regulation*.
- (26) The authorisation process should enable *the national competent authority* to be informed about the services that the prospective crowdfunding service providers intend to provide *and the crowdfunding platforms that they intend to operate*, to assess the quality of their management, and to assess the internal organisation and procedures set up by the prospective crowdfunding service providers to ensure compliance with the requirements set out in this Regulation.
- (27) To facilitate transparency for retail investors as regards the provision of crowdfunding services, ESMA should establish a public and up-to-date register of all crowdfunding

¹⁰ COM(2017) 340 final, Report from the Commission to the European Parliament and the Council on the assessment of the risks of money laundering and terrorist financing affecting the internal market and relating to cross-border activities.

services *providers authorised and* operating *crowdfunding platforms* in the Union in accordance with this Regulation.

- (28) The authorisation should be withdrawn where the conditions for its issuance are no longer met. In particular, *the national competent authority* should be able to assess whether the good repute of the management has been affected or whether the internal procedures and systems have seriously failed. To enable *the national competent authority* to assess whether the authorisation as a crowdfunding service provider should be withdrawn, *the national competent authority* should *be* informed whenever a crowdfunding service provider, or a third party acting on its behalf, has lost its authorisation as a payment institution, or has been found to be in breach of Directive (EU) 2015/849 of the European Parliament and of the Council¹¹.
- (29) In order for prospective investors to have a clear understanding of the nature, risks, costs and charges of crowdfunding services, crowdfunding service providers should provide their clients with *clear and disaggregated* information.
- (30) Investments in products marketed on crowdfunding platforms are not comparable to traditional investments products or savings products and should not be marketed as such. However, to ensure that prospective investors understand the level of risk associated with crowdfunding investments, crowdfunding service providers *is mandatory to* run an entry knowledge test of their prospective investors to establish their *understanding of the* investment. Crowdfunding service providers should explicitly warn prospective investors whenever the crowdfunding services provided are deemed as inappropriate for them.
- (31) In order to enable investors to make an informed investment decision, crowdfunding service providers should provide prospective investors with a key investment information sheet. The key investment information sheet should warn prospective investors that the investing environment they have entered into entails risks and is covered neither by the deposit compensation scheme, nor by the investor compensation guarantees.

¹¹ Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73).

- (32) The key investment information sheet should also take into account the specific features and risks associated with early stage companies, and focus on material information about the project owners, the investors' rights and fees, and the type of securities offered and loan agreements. Because the project owner concerned is in the best position to provide that information, the key investment information sheet should be drawn up by that project owner. However, since crowdfunding service providers are responsible for informing their prospective investors, they *are responsible for the completeness of* the key investment information sheet .
- (33) To ensure seamless and expedient access to capital markets for start-ups and SMEs, to reduce their costs of financing and to avoid delays and costs for crowdfunding service providers, the key investment information document should not be approved by a competent authority.
- (34) To avoid unnecessary costs and administrative burden on the cross-border provision of crowdfunding services, marketing communications should not be subject to translation requirements .
- (35) Crowdfunding service providers should not be able to provide any discretionary or non-discretionary matching of buying and selling interest, because that activity requires an authorisation as an investment firm in accordance with Article 5 of Directive 2014/65/EU, or as a regulated market in accordance with Article 44 of that Directive. Crowdfunding service providers should, in the interest of transparency and flow of information, be able to allow investors who have made investments through their platform to contact, and transact with, each other over their platforms in relation to investments originally made on their platform. Crowdfunding service *providers* should however inform their clients that they *do* not operate a trading system and that any buying and selling activity on their platforms is at the client's discretion and responsibility.
- (36) To facilitate transparency and to ensure proper documentation of communications with the client, crowdfunding service providers should keep all appropriate records related to their services and transactions.
- (37) To ensure fair and non-discriminatory treatment of investors *and project owners*, crowdfunding service providers that are promoting their services through marketing communications should not treat any particular project more favourably than other projects

offered on their platform, *unless there is an objective reason to do so such as specific requirements of the investor or in the light of an investor's predetermined risk profile*. Crowdfunding service providers should however not be prevented from mentioning successfully closed offers in which investments through the platform are no longer possible *and are encouraged to allow for comparability of the performance of their closed projects*.

(38) To provide for more legal certainty to crowdfunding service providers operating across the Union and to ensure easier market access, complete information about the laws, regulations and administrative provisions applicable in the Member States, and summaries thereof, which specifically govern marketing communications of crowdfunding service providers, should be published electronically¹. For that purpose, competent authorities and ESMA should maintain central databases.

(39) To develop a better understanding of the extent of regulatory divergences existing among the Member States regarding the requirements applicable to marketing communications, competent authorities should provide ESMA annually with a detailed report on their enforcement activities in this area.

(39a) In order to ensure the consistent application of the authorisations of, and requirements for, crowdfunding services providers operating across the Union, regulatory technical standards should be developed by ESMA for submission to the Commission.

(40) It is important to effectively and efficiently ensure compliance with the requirements for authorisation and for the provision of crowdfunding services, in accordance with this Regulation. *The national competent authority* should² grant authorisation and exercise oversight. *The national competent authority* should *have* the power to request information, carry out general investigations and on-site inspections, issue public notices and warnings and impose sanctions. *The national competent authority* should make use of its oversight and sanctioning competences in a proportionate manner.

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(42) *The national competent authority* should charge fees on directly supervised entities to cover its costs, including overheads. The level of the fee should be proportionate to the size of a directly supervised entity, having regard to the early stage of development of the crowdfunding industry.

- (43) Since the objectives of this Regulation, namely to address the fragmentation of the legal framework applicable to crowdfunding services in order to ensure the proper functioning of the internal market in such services while enhancing investor protection as well as market efficiency and contributing to establishing the Capital Markets Union, cannot be sufficiently achieved by the Member States but can rather be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.
- (44) The application of this Regulation should be deferred to align it with the application of the national rules transposing Directive XXX/XXXX/EU (Directive (EU) .../... of of the European Parliament and of the Council), which exempts crowdfunding service providers falling under the scope of this Regulation from the application of Directive 2014/65/EU.
- (45) This Regulation respects the fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union. Therefore, this Regulation should be interpreted and applied in accordance with those rights and principles.
- (46) The European Data Protection Supervisor was consulted in accordance with Article 28(2) of Regulation (EC) No 45/2001 of the European Parliament and of the Council¹²,

HAVE ADOPTED THIS REGULATION:

Chapter I

Subject matter, scope and definitions

Article 1

Subject matter

This Regulation establishes uniform requirements for the following:

- (a) the operation and organisation of crowdfunding service providers;

¹² Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).

- (b) the authorisation and supervision of crowdfunding service providers;
- (c) transparency and marketing communications in relation to the provision of crowdfunding services in the Union.

Article 2

Scope

1. This Regulation shall apply to legal persons who choose to seek authorisation in accordance with Article 10 and to crowdfunding service providers authorised in accordance with that Article, in relation to the provision of crowdfunding services. ***Those legal persons shall have an effective and stable establishment in a Member State in order to be eligible to apply for authorisation.***
2. This Regulation shall not apply to:
 - (a) crowdfunding services that are provided to project owners that are consumers, as defined in Article 3(a) of Directive 2008/48/EC;
 - (b) crowdfunding services that are provided by natural or legal persons that have been authorised as an investment firm in accordance with Article 7 of Directive 2014/65/EU;
 - (c) crowdfunding services that are provided by natural or legal persons in accordance with national law;
 - (d) crowdfunding offers with a consideration of more than ***EUR 8 000 000*** per crowdfunding offer, which shall be calculated over a period of 12 months with in regard to a particular crowdfunding project.
- 2a. ***National laws on licence requirements relating to project owners or investors shall not prevent those project owners or investors from using crowdfunding services provided by crowdfunding service providers pursuant to, and authorised by, this Regulation.***

Article 3

Definitions

1. For the purposes of this Regulation, the following definitions shall apply:
 - (a) ‘crowdfunding service’ means the *provision* of a crowdfunding platform which *enables either* of the following:
 - (i) *direct crowdfunding service, comprising the facilitation of matching a specific investor with a specific project owner and of matching a specific project owner with a specific investor,*
 - (ii) *intermediated crowdfunding service, comprising the facilitation of matching an investor with a project owner and determining the pricing and packaging of offers in respect thereof, or the facilitation of matching a project owner with an investor and determining pricing of offers in respect thereof, or both;*
 - (b) ‘crowdfunding platform’ means an electronic system operated or managed by a crowdfunding service provider;
 - (c) ‘crowdfunding service provider’ means a legal person who provides *one or more* crowdfunding services and has been authorised for that purpose by the *relevant national competent authority* in accordance with Article 10 of this Regulation;
 - (d) ‘crowdfunding offer’ means any communication by crowdfunding service providers that contains information which enables prospective investors to decide on the merits of entering into a crowdfunding transaction;
 - (e) ‘client’ means any prospective or actual investor or project owner to whom a crowdfunding service provider provides or may provide crowdfunding services;
 - (f) ‘project owner’ means any person that seeks to *obtain funding* through a crowdfunding platform;
 - (g) ‘investor’ means any person that, through a crowdfunding platform, grants loans or acquires transferable securities;

- (h) ‘crowdfunding project’ means the *purpose for which* a project owner funds or seeks to *raise funds* through the crowdfunding offer;
- (i) ‘transferable securities’ means transferable securities as defined in Article 4(1)(44) of Directive 2014/65/EU;
- (j) ‘marketing communications’ means any information or communication from a crowdfunding service provider to a prospective investor or prospective project owner about the services of the crowdfunding service provider, other than investor disclosures required under this Regulation;
- (k) ‘durable medium’ means an instrument which enables the storage of information in a way that is accessible for future reference and for a period of time adequate for the purposes of the information and which allows for the unchanged reproduction of the information stored;
- (l) ‘special purpose vehicle’ or ‘SPV’ means *an entity created solely for, or which solely serves the purpose of*, a securitisation within the meaning of Article 1(2) of Regulation (EU) No 1075/2013 of the European Central Bank¹³;
- (la) *‘loan’ means an agreement which obliges an investor to make available to a project owner an agreed sum of money for an agreed period of time and under which the project owner is obliged to repay that amount within the agreed time;*
- (lb) *‘national competent authority’ or ‘NCA’ means the national authority, or authorities, designated by a Member State and having the necessary powers and allocated responsibilities for performing the tasks related to the authorisation and supervision of crowdfunding service providers within the scope of this Regulation.*

¹³ OJ L 297, 7.11.2013, p. 107.

Chapter II

Provision of crowdfunding services and organisational and operational requirements of crowdfunding service providers

Article 4

Provision of crowdfunding services

1. Crowdfunding services shall only be provided by legal persons that have an effective and stable establishment in a Member State of the Union and that have been authorised as crowdfunding service providers in accordance with Article **10** of this Regulation.

Legal persons established in a third country cannot apply for authorisation as crowdfunding service providers under this Regulation.

2. Crowdfunding service providers shall act honestly, fairly and professionally in accordance with the best interests of their clients and prospective clients.
3. Crowdfunding service providers shall not pay or accept any remuneration, discount or non-monetary benefit for routing investors' orders to a particular crowdfunding offer made on their platform or to a particular crowdfunding offer provided on a third party platform.
4. Crowdfunding service providers may exercise discretion on behalf of their clients with respect to the parameters of the clients' orders, in which case they shall disclose to their clients the exact method and parameters of that discretion and take all necessary steps to obtain the best possible result for their clients.
5. As regards the use of special purpose vehicles for the provision of crowdfunding services *for investors who are not eligible counterparties as defined in Directive 2014/65/EU*, crowdfunding service providers shall only have the right to transfer one asset to the special purpose vehicle to enable investors to take exposure to that asset by means of acquiring securities. The decision to take exposure to that underlying asset shall exclusively lie with investors.

Article 4a

Intermediated crowdfunding services

For the purposes of this Regulation, intermediated crowdfunding services shall be considered to comprise the following:

- a. the placing without a firm commitment basis, as referred to in point (7) of Section A of Annex I to Directive 2014/65/EU, of transferable securities or of the facilitation of loans issued by project owners;*
- b. the offer of investment advice, as referred to in point (5) of Section A to Annex I to Directive 2014/65/EU, with regards to transferable securities or the facilitation of loans issued by project owners; and*
- c. the reception and transmission of client orders, as referred to in point (1) of Section A to Annex I to Directive 2014/65, in relation to transferable securities or the facilitation of loans issued by project owners.”*

Article 5

Effective and prudent management

The management of crowdfunding service providers shall establish, and oversee the implementation of, adequate policies and procedures to ensure effective and prudent management, including the segregation of duties, business continuity and the prevention of conflicts of interest, in a manner that promotes the integrity of the market and the interest of their clients. *Crowdfunding service providers who offer the services referred to in point (iia) of Article 3(1)(a) shall ensure that they have in place adequate systems and controls for the management of risk and financial modelling for that offer of services.*

Article 5a

Due diligence requirements

- 1a. Crowdfunding service providers shall undertake at least a minimum level of due diligence in respect of project owners that propose their project to be funded by the crowdfunding platform of a crowdfunding service provider.*

2a. *The minimum level of due diligence referred to in paragraph 1 shall comprise all of the following:*

(a) evidence that the project owner has no criminal record regarding infringements of national commercial law, national insolvency law, national financial services law, anti-money laundering law, national fraud law or national professional liability obligations;

(b) evidence that the project owner that seeks to be funded through the crowdfunding platform:

(i) is not established in a non-cooperative jurisdiction, as recognised by the relevant Union policy, or in a high-risk third country pursuant to Article 9(2) of Directive (EU) 2015/849; or

(ii) effectively complies with Union or internationally agreed tax standards on transparency and exchange of information.

Article 6

Complaints handling

1. Crowdfunding service providers shall *have in place and publish descriptions of* effective and transparent procedures for the prompt, fair and consistent handling of complaints received from clients.
 2. *Crowdfunding service providers shall ensure that clients are* able to file complaints *against them* free of charge.
 3. Crowdfunding service providers shall *develop and make available to clients a standard template for complaints and shall* keep a record of all complaints received and the measures taken.
- 3a. *Crowdfunding service providers shall investigate all complaints in a timely and fair manner and communicate the outcome within a reasonable period of time to the complainant.*

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

ESMA shall submit those draft regulatory technical standards to the Commission by ... [XXX (months) from the date of entry into force of this Regulation].

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph of this paragraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1095/2010.

Article 7

Conflicts of interest

1. Crowdfunding service providers shall not have any financial participation in any crowdfunding offer on their crowdfunding platforms.

By way of derogation from the first subparagraph, crowdfunding service providers may hold a financial participation in a crowdfunding offer on their crowdfunding platforms when information on that participation is made clearly available to clients by publishing clear and transparent selection procedures.

2. Crowdfunding service providers shall not accept as their clients any of their shareholders holding 20% or more of share capital or voting rights, any of their managers, or any person directly linked to those shareholders **and** managers by control as defined in Article 4(1)(35)(b) of Directive 2014/65/EU.
3. Crowdfunding service providers shall maintain and operate effective internal rules to prevent conflicts of interest **and they shall ensure that their employees can not hold directly or indirectly an influence over projects in which they have a financial participation.**
4. Crowdfunding service providers shall take all appropriate steps to prevent, identify, manage and disclose conflicts of interest between the crowdfunding service providers themselves, their shareholders, their managers and employees, or any person directly or indirectly linked to them by control, as defined in Article 4(1)(35)(b) of Directive 2014/65/EU, and their clients, or between one client and another client.

5. Crowdfunding service providers shall disclose to their clients the general nature and sources of conflicts of interest and the steps taken to mitigate those.
6. The disclosure referred to in paragraph 5 shall:
 - (a) be made in a durable medium;
 - (a) include sufficient detail, taking into account the nature of each client, to enable each client to take an informed decision about the service in the context of which the conflict of interest arises.
7. ***ESMA shall develop draft regulatory technical standards to specify the following:***
 - (a) the requirements for the maintenance or operation of ***financial participation selection procedures and*** internal rules referred to in ***paragraphs 1 and 3***;
 - (b) the steps referred to in paragraph 4;
 - (c) the arrangements for the disclosure referred to in paragraphs 5 and 6.

ESMA shall submit those draft regulatory technical standards to the Commission by ... [XXX (months) from the date of entry into force of this Regulation].

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1095/2010.

Article 7a

Alignment of the interests of crowdfunding platform with the investors

1. ***To ensure that crowdfunding platforms align their incentives with those of investors, incentive mechanisms shall be encouraged.***
2. ***Crowdfunding platforms may participate in the funding of a project. That participation shall not exceed 2% of the capital accumulated for the project.***
3. ***A success fee (carry) may be granted to the crowdfunding service provider whenever the project exits successfully from the crowdfunding platform.***

4. *Crowdfunding service providers shall describe to ESMA the alignment of interests policy that they plan to use prior to the authorisation and request its approval.*
5. *Crowdfunding platforms may modify the alignment of interests policy every three years. Any modification is subject to approval by ESMA.*
6. *Crowdfunding platforms shall explicitly describe their alignment of interests policy on their website in a prominent place.*

Article 8

Outsourcing

1. Crowdfunding service providers shall, when relying on a third party for the performance of operational functions, take all reasonable steps to avoid additional operational risk.
2. Outsourcing of operational functions shall not impair the quality of the crowdfunding service providers' internal control and the ability of *the national competent authority* to monitor the crowdfunding service provider's compliance with all obligations laid down in this Regulation.
3. Crowdfunding service providers shall remain fully responsible for compliance with this Regulation with respect to the outsourced activities.

Article 9

Client asset safekeeping, holding of funds and providing payment services

1. Crowdfunding service providers shall inform their clients of the following:
 - (a) whether, and on which terms and conditions they provide asset safekeeping services, including references to applicable national law;
 - (b) whether asset safekeeping services are provided by them or by a third party;
 - (c) whether payment services and the holding and safeguarding of funds are provided by the crowdfunding service provider or through a third party provider acting on their behalf.

2. Crowdfunding service providers or third party providers acting on their behalf shall not hold clients' funds or provide payment services unless those funds are intended for the provision of payment services related to the crowdfunding services and the crowdfunding service provider or the third party provider acting on its behalf is a payment service provider as defined in Article 4(11) of Directive (EU) 2015/2366.
3. The funds referred to in paragraph 2 shall be safeguarded in accordance with the national provisions transposing Directive (EU) 2015/2366.
4. Where crowdfunding service providers do not provide payment services or the holding and safeguarding of funds in relation to the crowdfunding services either themselves or through a third party, such crowdfunding service providers shall put in place and maintain arrangements to ensure that project owners accept funding of crowdfunding offers or any payment only by means of a payment service provider *or an agent providing payment services* as defined in Article 4(11) *and Article 19* of Directive (EU) 2015/2366.

Chapter II

Authorisation and supervision of crowdfunding service providers

Article 10

Authorisation as a crowdfunding service provider

1. *In order to become a crowdfunding service provider under this Regulation, a prospective crowdfunding service provider shall apply to the national competent authority of the Member State in which it is established for authorisation to provide crowdfunding services.*
2. The application referred to in paragraph 1 shall contain all of the following:
 - (a) the address of the prospective crowdfunding service provider;
 - (b) the legal status of the prospective crowdfunding service provider;
 - (c) the articles of association of the prospective crowdfunding service provider;

- (d) a programme of operations setting out the types of crowdfunding services that the prospective crowd funding service provider wishes to provide ***and the platform that it intends to operate, including where and how offers are to be marketed;***
- (e) a description of the prospective crowdfunding service provider's governance arrangements and internal control mechanisms to ensure compliance with this Regulation, including risk management and accounting procedures;
- (f) a description of the prospective crowdfunding service provider's systems, resources and procedures for the control and safeguarding of the data processing systems;
- (g) a description of the prospective crowdfunding service provider's business continuity arrangements, ***to ensure that any loan repayments and investments will continue to be administered to the investors in the event of insolvency of the prospective crowdfunding service provider;***
- (h) the identity of the persons responsible for the management of the prospective crowdfunding service provider;
- (i) proof that the persons referred to in point (h) are of good repute and possess appropriate knowledge and experience to manage the prospective crowdfunding service provider;
- (j) a description of the internal rules of the prospective crowdfunding service provider to prevent that its shareholders who hold 20% or more of the share capital or voting rights, its managers, or any person directly linked to them by control engage in crowdfunding transactions offered by the prospective crowdfunding service provider, ***and that description should also covering include the internal rules of the prospective crowdfunding service provider on conflicts of interest pertaining to employees' exposure to projects;***
- (k) a description of the prospective crowdfunding service provider's outsourcing arrangements;
- (l) a description of the prospective crowdfunding service provider's procedures to deal with complaints from clients;

(m) where applicable, a description of the payment services that the prospective crowdfunding service provider intends to provide under Directive (EU) 2015/2366;

(ma) proof that the crowdfunding service provider is adequately covered or holds sufficient capital against the financial consequences of its professional liability in the event of a failure to comply with its professional obligations set out in this Regulation.

3. For the purposes of paragraph 2(i), prospective crowdfunding service providers shall provide proof of the following:

(a) absence of criminal record in respect of convictions or penalties of national rules in force in the fields of commercial law, insolvency law, financial services legislation, anti-money laundering legislation, fraud or professional liability for all the persons involved in the management of the prospective crowd funding service provider;

(b) proof that the persons involved in the management of the crowdfunding service provider collectively possess sufficient knowledge, skills and experience to manage the crowdfunding service provider and that those persons are required to commit sufficient time to perform their duties.

4. ***The national competent authority*** shall, within **30** working days of receipt of the application referred to in paragraph 1, assess whether that application is complete. Where the application is not complete, ***the national competent authority*** shall set a deadline by which the prospective crowdfunding service provider is to provide the missing information.

5. Where an application as referred to in paragraph 1 is complete, ***the national competent authority*** shall immediately notify the prospective crowdfunding service provider thereof.

5a. Before making a decision on the granting or refusal of an application for authorisation to provide crowdfunding service, the national competent authority shall consult the national competency authority of any other Member State in the following cases:

(a) the prospective crowdfunding service provider is a subsidiary of a crowdfunding service provider authorised in that other Member State;

- (b) *the prospective crowdfunding service provider is a subsidiary of the parent undertaking of a crowdfunding service provider authorised in that other Member State;*
- (c) *the prospective crowdfunding service provider is controlled by the same natural or legal persons who control a crowdfunding service provider authorised in that other Member State;*
- (d) *the prospective crowdfunding service provider intends to directly market offers in that other Member State.*

5b. *Where either of the national competent authorities referred to in paragraph 5a disagree about the procedure or content of an action or inaction of the other, such disagreement shall be resolved in accordance with Article 13a.*

6. *The national competent authority shall, within three months from the receipt of a complete application, assess whether the prospective crowdfunding service provider complies with the requirements set out in this Regulation and shall adopt a fully reasoned decision granting or refusing authorisation as a crowdfunding service provider. The national competent authority shall have the right to refuse authorisation if there are objective and demonstrable grounds for believing that the management of the crowdfunding service provider may 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.*

6a. *The national competent authority shall inform ESMA of a successful application for authorisation under this Article. ESMA shall add that application to the register of approved platforms provided for in Article 11. ESMA may request information in order to ensure that national competent authorities grant authorisations under this Article in a consistent manner. If ESMA does not agree with a decision of the national competent authority to grant or refuse an application for authorisation under this Article, it shall issue its reasons for such disagreement and shall explain and justify any significant deviation from the decision.*

7. *The national competent authority shall notify the prospective crowdfunding service provider of its decision within two working days after having taken that decision.*

- 7a. *A crowdfunding service provider authorised in accordance with this Article shall meet at all times the conditions for its authorisation.*
8. The authorisation referred to in paragraph 1 shall be effective and valid for the entire territory of the Union.
9. Member States shall not require crowdfunding service providers to have physical presence in the territory of a Member State other than *the facilities in* the Member State in which those crowdfunding service providers are established *and have obtained authorisation* in order to provide crowdfunding services on a cross-border basis.
10. *ESMA shall develop draft implementing technical standards to establish standard forms, templates and procedures for the application for authorisation.*

ESMA shall submit those draft implementing technical standards to the Commission by ... [XX months from the date of entry into force of this Regulation].

Power is delegated to the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with the procedure laid down in Article 15 of Regulation (EU) No 1095/2010.

Article 11

Register of crowdfunding service providers

1. ESMA shall establish a register of all crowdfunding service providers. That register shall be publicly available on its website and shall be updated on a regular basis.
2. The register referred to in paragraph 1 shall contain the following data:
 - (a) the name and legal form of the crowdfunding service provider;
 - (b) the commercial name and internet address of the crowdfunding platform operated by the crowdfunding service provider;
 - (c) information on the services for which the crowdfunding service provider is authorised;
 - (d) sanctions imposed on the crowdfunding service provider or its managers.

3. Any withdrawal of an authorisation in accordance with Article 13 shall be published in the register for five years.

Article 12

Supervision

1. Crowdfunding service providers shall provide their services under the supervision of ***the national competent authority of the Member State where the crowdfunding service provider has been authorised.***
2. Crowdfunding service providers shall comply at all times with the conditions for authorisation ***set out in Article 10 of this Regulation.***
3. ***The national competent authority*** shall assess compliance of crowdfunding service providers with the obligations provided for in this Regulation. ***It shall determine the frequency and depth of that assessment having regard to the size and complexity of the activities of the crowdfunding service provider. For the purpose of that assessment, the national competent authority may subject the crowdfunding service provider to an on-site inspection.***
4. Crowdfunding service providers shall notify ***the national competent authority*** of any material changes to the conditions for authorisation without undue delay and, upon request, shall provide the information needed to assess their compliance with this Regulation.

Article 12 a (new)

Designation of the competent authority

1. ***Each Member State shall designate the national competent authority responsible for carrying out the duties under this Regulation for the authorisation and supervision of crowdfunding services providers and shall inform ESMA thereof.***

Where a Member State designates more than one national competent authority, it shall determine their respective roles and shall designate a single authority to be responsible for cooperation with the national competent authorities of other Member States and with ESMA, where provided for in this Regulation.

2. *ESMA shall publish on its website a list of the competent authorities designated in accordance with the first subparagraph.*
3. *The national competent authorities shall have the supervisory and investigatory powers necessary for the exercise of their functions.*

Article 13

Withdrawal of authorisation

1. *The national competent authorities shall have the power to withdraw the authorisation of a crowdfunding service provider in any of the following situations where the crowdfunding service provider:*
 - (a) has not used its authorisation within 18 months after the authorisation has been granted;
 - (b) has expressly renounced its authorisation;
 - (c) has not provided crowdfunding services for six successive months;
 - (d) has obtained its authorisation by irregular means, including making false statements in its application for authorisation;
 - (e) no longer meets the conditions under which the authorisation was granted;
 - (f) has seriously infringed the provisions of this Regulation.
 - (g) *has lost its authorisation as a payment institution in accordance with pursuant to Article 13 of Directive 2015/2366/EU, or a third party provider acting on its behalf has lost that authorisation;*
 - (h) *has infringed provisions of national law implementing Directive (EU) 2015/849 in respect of money laundering or terrorism financing, or its managers, employees or third parties acting on its behalf have infringed those provisions.*

4. *The national competent authorities shall notify, without undue delay, ESMA of their decision to withdraw the authorisation of a crowdfunding service provider.*
- 4a. *Before making a decision to withdraw the authorisation of a crowdfunding service provider to provide crowdfunding services, the national competent authority shall consult the national competent authority of any other Member State in cases where the crowdfunding service provider:*
- (a) is a subsidiary of a crowdfunding service provider authorised in that other Member State;*
 - (b) is a subsidiary of the parent undertaking of a crowdfunding service provider authorised in that other Member State;*
 - (c) is controlled by the same natural or legal persons who control a crowdfunding service provider authorised in that other Member State;*
 - (d) directly markets offers in that other Member State.*

Article 13a

Settlement of disputes between competent authorities

1. *Where a competent authority disagrees about the procedure or content of an action or inaction of a competent authority of another Member State regarding the application of this Regulation, ESMA, at the request of one or more of the competent authorities concerned, may assist the authorities in reaching an agreement in accordance with the procedure set out in paragraphs 2 to 4.*

Where on the basis of objective criteria disagreement between competent authorities from different Member States can be identified, ESMA may, on its own initiative, assist the competent authorities in reaching an agreement in accordance with the procedure set out in paragraphs 2 to 4.

2. *ESMA shall set a time limit for conciliation between the competent authorities taking into account any relevant time periods, as well as the complexity and urgency of the matter. At that stage ESMA shall act as a mediator.*

If the competent authorities concerned fail to reach an agreement within the conciliation phase referred to in the first subparagraph, ESMA may, in accordance with the procedure set out in the third and fourth subparagraph of Article 44(1) of Regulation (EU) No 1095/2010, take a decision requiring them to take specific action or to refrain from action in order to settle the matter, with binding effects for the competent authorities concerned, in order to ensure compliance with Union law.

3. *Without prejudice to the powers of the Commission under Article 258 TFEU, where a competent authority does not comply with the decision of ESMA, and thereby fails to ensure that a crowdfunding service provider complies with requirements under this Regulation, ESMA may adopt an individual decision addressed to the crowdfunding service provider requiring the necessary action to comply with its obligations under Union law, including the cessation of any practice.*
4. *Decisions adopted under paragraph 3 shall prevail over any previous decision adopted by the competent authorities on the same matter. Any action by the competent authorities in relation to facts which are subject to a decision pursuant to paragraph 2 or 3 shall be compatible with such decision.*
5. *In the report referred to in Article 50(2) of Regulation (EU) No 1095/2010, the Chairperson of ESMA shall set out the nature and type of disagreements between competent authorities, the agreements reached and the decisions taken to settle such disagreements.*

Chapter IV

Transparency and entry knowledge test by crowdfunding service providers

Article 14

Information to clients

1. All information, including marketing communications as referred to in Article 19, from crowdfunding service providers to clients about themselves, about the costs, **financial risks** and charges related to crowdfunding services or investments, **including about**

insolvency risks of the crowdfunding service provider about the crowdfunding conditions, including crowdfunding project selection criteria, or about the nature of and risks associated with their crowdfunding services shall be *fair, clear, and not misleading*.

2. *All information to be provided to clients in accordance with* paragraph 1 shall be provided *in a concise, accurate and easily accessible manner, including on the website of the crowdfunding service provider. The information shall be provided whenever appropriate, including prior to entering* into a crowdfunding transaction.

Article 14 a

Default rate disclosure

1. *Crowdfunding service providers shall disclose annually the default rates of the crowdfunding projects offered on their crowdfunding platform over at least the preceding 24 months.*
2. *The default rates referred to in paragraph 1 shall be published online in a prominent place on the website of the crowdfunding service provider.*
3. *In close cooperation with the EBA, ESMA shall develop draft regulatory technical standards to specify the methodology for calculating the default rate of the projects offered on crowdfunding platform.*

ESMA shall submit those draft regulatory technical standards to the Commission by ... [XX months from the date of entry into force of this Regulation].

Power is delegated to the Commission to supplement this Regulation by adopting the regulatory technical standards referred to in the first subparagraph of this paragraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1095/2010.

Entry knowledge test and simulation of the ability to bear loss

1. Crowdfunding service providers shall assess whether and which crowdfunding services offered are appropriate for the prospective investors.
2. For the purposes of the assessment pursuant to paragraph 1, crowdfunding service providers shall request information about the prospective investor's *experience, investment objectives, financial situation and* basic understanding of risk in investing in general and in the types of investments offered on the crowdfunding platform, including information about:
 - (a) the prospective investor's past investments in transferable securities or loan agreements, including in early or expansion stage businesses;
 - (b) *the understanding of the prospective investor of the risks involved in granting loans or acquiring transferable securities through a crowdfunding platform, and* professional experience in relation to crowdfunding investments.
4. Where crowdfunding service providers consider, on the basis of the information received under paragraph 2, that the prospective investors have insufficient *understanding of the offer or that the offer is not suitable for those prospective investors*, crowdfunding service providers shall inform those prospective investors that the services offered on their platforms may be inappropriate for them and give them a risk warning. That information or risk warning shall not prevent prospective investors from investing in crowdfunding projects. *The information or risk warning shall clearly state the risk of losing the entirety of the money invested.*
5. *All crowdfunding* service providers shall at all times offer prospective investors and investors the possibility to simulate their ability to bear loss, calculated as 10% of their net worth, based on the following information:
 - (a) regular income and total income *and, where appropriate, household income*, and whether the income is earned on a permanent or temporary basis;
 - (b) assets, including financial investments, personal and investment property, pension funds and any cash deposits;

- (c) financial commitments, including regular, existing or future.

On the basis of the results of the simulation, ***crowdfunding service providers may prevent*** prospective investors and investors from investing in crowdfunding projects. ***However, investors shall remain responsible for the full risk of making an investment.***

- 6. ***In close cooperation with the EBA, ESMA shall 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.

ESMA shall submit those draft regulatory technical standards to the Commission by ... [XX months from the date of entry into force of this Regulation].

Power is delegated to the Commission to supplement this Regulation by adopting the regulatory technical standards referred to in the first subparagraph of this paragraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1095/2010.

Article 16

Key investment information sheet

- 1. ***Crowdfunding service providers that offer the services referred to in point (i) of point (a) of Article 3(1) of this Regulation shall provide prospective investors with all of the information referred to in this Article.***
- 1. ***Prospective investors shall be provided*** with a key investment information sheet drawn up by the project owner for each crowdfunding offer. The key investment information sheet shall be drafted in at least one of the official languages of the Member State concerned or in a language customary in ***English***.
- 2. The key investment information sheet referred to in paragraph 1 shall contain all of the following information:

- (a) the information set out in the Annex;
- (b) the following explanatory statement, appearing directly underneath the title of the key investment information sheet:

“This crowdfunding offer has been neither verified nor approved by ESMA or national competent authorities.

The appropriateness of your education and knowledge have not 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.”;

- (c) a risk warning, which shall read as follows:

“Investment in this crowdfunding offer entails risks, including the risk of partial or entire loss of the money invested. Your investment is not covered by the deposit guarantee and investor compensation schemes established in accordance with Directive 2014/49/EU of the European Parliament and of the Council* and 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 saving product and *we advise you not to* invest more than 10% of your net wealth 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 be subject to 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 084, 26.3.1997, p. 22).”

- 3. The key investment information sheet shall be *fair*, clear, *and not misleading* and shall not contain any footnotes, other than those with references to applicable law. It shall be

presented in a stand-alone, durable medium which is clearly distinguishable from marketing communications and consist of *a* maximum *of three* sides of A4-sized paper format if printed.

4. The crowdfunding service provider shall keep the key investment information sheet updated at all times and for the whole period of validity of the crowdfunding offer.

4a. The requirement set out in point (a) of paragraph 3 of this Article shall not apply to crowdfunding service providers that offer services referred to in point (ii) of point (a) of Article 3(1). Such providers shall instead draw up a key investment information sheet regarding the crowdfunding service provider, which shall contain detailed information on the crowdfunding service provider; its systems and controls for the management of risk, financial modelling for the crowdfunding offer and its historic performance.

5. *All crowdfunding* service providers shall have in place and apply adequate procedures to verify the completeness, *the correctness* and the clarity of information contained in the key investment information sheet.

6. When a crowdfunding service provider identifies **an** omission, a mistake or **an** inaccuracy in the key investment information sheet *which could have a material impact on the expected return of the investment, the corrections shall be made in the following manner:*

(a) crowdfunding service providers that offer the services referred to in point (i) of point (a) of Article 3(1) shall signal the omission, mistake or inaccuracy promptly to the project owner, who shall complement or amend that information;

(b) crowdfunding service providers that offer services referred to in point (ii) of point (a) of Article 3(1) shall themselves amend the omission, mistake or inaccuracy in the key information sheet themselves.

Where such complement or amendment is not *made*, the crowdfunding service provider shall not make the crowdfunding offer or cancel the existing offer until the key investment information sheet complies with the requirements of this Article.

7. An investor may request a crowdfunding service provider to arrange for a translation of the key investment information sheet into a language of the investor's choice. The translation

shall *faithfully and* accurately reflect the content of the original key investment information sheet.

Where the crowdfunding service provider does not provide the requested translation of the key investment information sheet, the crowdfunding service provider shall clearly advise the investor to refrain from making the investment.

8. National competent authorities shall not require an ex ante notification and approval of a key investment information sheet.
9. ***ESMA may 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 2 and the Annex;
 - (b) the types of risks that are material to the crowdfunding offer and therefore must be disclosed in accordance with Part C of the Annex;

(ba) the use of certain financial ratios to enhance the clarity of key financial information;
 - (c) the ***commissions and*** fees and ***transaction*** costs referred to in point (a) of Part H of the Annex, including a ***detailed*** breakdown of direct and indirect costs to be borne by the investor.

In drafting the standards, ESMA shall differentiate between the services referred to in point (i) of point (a) of Article 3 (1) and those referred to in point (ii) of point (a) of Article 3(1).

ESMA shall submit those draft regulatory technical standards to the Commission by ... [XXX months from the date of entry into force of this Regulation].

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph of this paragraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1095/2010.

Article 17

Bulletin board

1. Crowdfunding service providers that allow their investors to interact directly with each other to buy and sell loan agreements or transferable securities which were originally crowdfunded on their platforms, shall inform their clients that they do not operate a trading system and that such buying and selling activity on their platforms is at the client's own discretion and responsibility. ***Such crowdfunding service providers shall also inform their clients that the rules applicable under Directive 2014/65/EU to trading venues, as defined in point (24) of Article 4(1) of that Directive, do not apply to their platforms.***
2. Crowdfunding service providers that ***provide*** a reference price for the buying and selling referred to in paragraph 1 shall inform their clients ***whether the*** reference price is ***binding or*** non-binding and ***justify the basis on which*** the reference price ***was calculated.***
- 2a. ***In order to enable investors to buy and sell loans acquired through their platform, crowdfunding service providers shall facilitate transparency to investors about their platforms by providing information on the performance of loans generated.***

Article 18

Access to records

Crowdfunding service providers shall:

- (a) keep all records related to their services and transactions on a durable medium for five years;
- (b) ensure that their clients have immediate access to records of the services provided to them at all times;
- (c) maintain for five years all agreements between the crowdfunding service providers and their clients.

Chapter V

Marketing communications

Article 19

Requirements regarding marketing communications

1. Crowdfunding service providers shall ensure that all *their* marketing communications to investors are clearly identifiable as such.
2. ***Prior to the closure of raising funds for a project, no*** marketing communication shall ***disproportionately target*** individual planned, pending ***or current*** crowdfunding projects or offers. ■
3. For their marketing communications, crowdfunding service providers shall use one or more of the official languages of the Member State in which the crowdfunding service provider is active or ***English***.
4. National competent authorities shall not require an ex ante notification and approval of marketing communications.

Article 20

Publication of national provisions concerning marketing requirements

1. National competent authorities shall publish and keep updated on their websites national laws, regulations and administrative provisions applicable to marketing communications of crowdfunding service providers.
2. Competent authorities shall notify ESMA of the laws, regulations and administrative provisions referred to in paragraph 1 and the hyperlinks to the websites of competent authorities where that information is published. Competent authorities shall provide ESMA with a summary of those relevant national provisions in a language customary in the sphere of international finance.
3. Competent authorities shall notify ESMA of any change in the information provided pursuant to paragraph 2 and submit an updated summary of the relevant national provisions without delay.

4. ESMA shall publish and maintain on its website a summary of the relevant national provisions in a language customary in the sphere of international finance and the hyperlinks to the websites of competent authorities referred to in paragraph 1. ESMA shall not be held liable for the information presented in the summary.
5. National competent authorities shall be the single points of contact responsible for providing information on marketing rules in their respective Member States.
7. Competent authorities shall regularly, and at least on a yearly basis, report to ESMA on their enforcement actions taken during the previous year on the basis of their national laws, regulations and administrative provisions applicable to marketing communications of crowdfunding service providers. In particular; the report shall include:
 - (a) the total number of enforcement actions taken by type of misconduct, where applicable;
 - (b) where available, the outcomes of the enforcement actions, including types of sanctions imposed by type of sanction or remedies provided by crowdfunding service providers;
 - (c) where available, examples of how competent authorities have dealt with the failure of crowdfunding service providers to comply with the national provisions.

Chapter VI

Powers and competences of the relevant national competent authority

SECTION I

COMPETENCES AND PROCEDURES

Article 21

Legal privilege

The powers conferred on *the national competent authority*, or on any official or other person authorised by *the national competent authority*, shall not be used to require the disclosure of information which is subject to legal privilege.

Article 25

Exchange of information

ESMA and the competent authorities shall provide each other with the information required for the purposes of carrying out their duties under this Regulation without undue delay.

Article 26

Professional secrecy

The obligation of professional secrecy referred to in Article 76 of Directive 2014/65/EU shall apply to *the national competent authorities*, ESMA and all persons who work or who have worked for *the national competent authorities or* ESMA or for any other person to whom *tasks were* delegated, including auditors and experts contracted.

SECTION II

ADMINISTRATIVE PENALTIES AND OTHER ADMINISTRATIVE MEASURES

Article 27a

Administrative penalties and other administrative measures

1. *Without prejudice to the right of Member States to provide for and impose criminal penalties pursuant to Article 27c, Member States shall lay down rules establishing appropriate administrative penalties and other administrative measures, applicable at least to situations where a crowdfunding service provider has failed to meet the requirements laid down in Chapters I to V. Such administrative penalties and other administrative measures shall be effective, proportionate and dissuasive.*

Member States shall ensure that the administrative penalties and other administrative measures are effectively implemented.

2. *Member States shall, in accordance with national law, confer on national competent authorities the power to apply at least the following administrative penalties and other*

administrative measures in the event of an infringement of Chapters I to V of this Regulation:

- (a) a public statement indicating the person responsible for, and the nature of, the infringement;*
- (b) an order requiring the person to cease the infringing conduct and to desist from a repetition of that conduct;*
- (c) a temporary or, for repeated serious infringements, permanent ban preventing any member of the management body of the legal person responsible for the infringement, or any other natural person held responsible for the infringement, from exercising management functions in such undertakings;*
- (d) in the case of a natural person, maximum administrative pecuniary fines of 5% of the annual turnover of the crowdfunding service provider during the calendar year in which the infringement took place;*
- (e) maximum administrative pecuniary fines of at least twice the amount of the benefit derived from the infringement where that benefit can be determined, even if that exceeds the maximum amounts in point (d).*

3. Where the provisions referred to in paragraph 1 apply to legal persons, Member States shall confer on competent authorities the power to apply the administrative penalties and other administrative measures set out in paragraph 2, subject to the conditions provided for in national law, to members of the management body, and to other individuals who under national law are responsible for the infringement.

4. Member States shall ensure that any decision or measure imposing administrative penalties or other administrative measures set out in paragraph 2 is properly reasoned and is subject to a right of appeal before a tribunal.

Article 27b

Exercise of the power to impose administrative penalties and other administrative measures

1. Competent authorities shall exercise their powers to impose administrative penalties and other administrative measures referred to in Article 27a in accordance with this Regulation and with their national legal frameworks, as appropriate:

- (a) directly;*
- (b) in collaboration with other authorities;*
- (c) under their responsibility by delegation to other authorities;*
- (d) by application to the competent judicial authorities.*

2. *Competent authorities, when determining the type and level of an administrative penalty or other administrative measure imposed under Article 27a, shall take into account the extent to which the infringement is intentional or results from negligence and all other relevant circumstances, including, where appropriate:*

- (a) the materiality, gravity and the duration of the infringement;*
- (b) the degree of responsibility of the natural or legal person responsible for the infringement;*
- (c) the financial strength of the natural or legal person responsible for the infringement;*
- (d) the importance of profits gained or losses avoided by the natural or legal person responsible for the infringement, insofar as those can be determined;*
- (e) the losses for third parties caused by the infringement, insofar as those can be determined;*
- (f) the level of cooperation of the natural or legal person responsible for the infringement with the competent authority, without prejudice to the need to ensure disgorgement of profits gained or losses avoided by that person;*
- (g) previous infringements by the natural or legal person responsible for the infringement.*

Article 27c

Criminal penalties

1. *Member States may decide not to lay down rules for administrative penalties or other administrative measures for infringements which are subject to criminal penalties under their national law.*

2. *Where Member States have chosen, in accordance with paragraph 1 of this Article, to lay down criminal penalties for an infringement referred to in Article 27a(1), they shall ensure that appropriate measures are in place so that competent authorities have all the necessary powers to liaise with judicial, prosecuting, or criminal justice authorities within their jurisdiction to receive specific information related to criminal investigations or proceedings commenced for the infringements referred to in Article 27a(1), and to provide the same information to other competent authorities as well as to ESMA, in order to fulfil their obligation to cooperate for the purposes of this Regulation.*

Article 27d

Notification duties

Member States shall notify the laws, regulations and administrative provisions implementing this Chapter, including any relevant criminal law provisions, to the Commission and ESMA by... [one year from the date of entry into force of this Regulation]. Member States shall notify the Commission and ESMA without undue delay of any subsequent amendments thereto.

Article 27e

Cooperation between competent authorities and ESMA

1. *The national competent authorities and ESMA shall cooperate closely with each other and exchange information in order to carry out their duties under this Chapter.*
2. *National competent authorities shall closely coordinate their supervision in order to identify and remedy infringements of this Regulation, develop and promote best practices, facilitate collaboration, foster consistency of interpretation and provide cross-jurisdictional assessments in the event of any disagreements.*
3. *Where a national competent authority finds that a requirement of Chapters I to V has not been met or has reason to believe that to be the case, it shall inform the competent authority of the entity or entities suspected of such infringement of its findings in a sufficiently detailed manner. The competent authorities concerned shall closely coordinate their supervision in order to ensure consistent decisions.*

Article 27f

Publication of administrative penalties and other administrative measures

- 1. Subject to paragraph 4, Member States shall ensure that national competent authorities publish on their official websites, without undue delay and as a minimum, any decision imposing an administrative penalty or other administrative measure against which no appeal has been made after the addressee of that penalty or measure has been notified of that decision.*
- 2. The publication referred to in paragraph 1 shall include information on the type and nature of the infringement and the identity of the persons responsible and the administrative penalties or other administrative measures imposed.*
- 3. Where the publication of the identity, in the case of legal persons, or of the identity and personal data, in the case of natural persons is considered by the competent authority to be disproportionate following a case-by-case assessment, or where the competent authority considers that the publication jeopardises the stability of financial markets or an on-going criminal investigation, or where the publication would cause, insofar as it can be determined, disproportionate damages to the person involved, Member States shall ensure that competent authorities do one of the following:*
 - (a) defer publication of the decision imposing the administrative penalty or other administrative measure until the moment where the reasons for that deferral cease to exist;*
 - (b) publish the decision imposing the administrative penalty or other administrative measure on an anonymous basis, in accordance with national law; or*
 - (c) not publish the decision to impose the administrative penalty or other administrative measure in the event that the competent authority is of the opinion that the options set out in points (a) and (b) are considered to be insufficient to ensure:*
 - (i) that the stability of financial markets would not be jeopardised; or*
 - (ii) the proportionality of the publication of such decisions with regard to measures which are deemed to be of a minor nature.*

4. *In the case of a decision to publish an administrative penalty or other administrative measure on an anonymous basis, the publication of the relevant data may be postponed. Where a national competent authority publishes a decision imposing an administrative penalty or other administrative measure against which there is an appeal before the relevant judicial authorities, competent authorities shall also publish immediately on their official website that information and any subsequent information on the outcome of such appeal. Any judicial decision annulling a decision imposing an administrative penalty or other administrative measure shall also be published.*
5. *National competent authorities shall ensure that any decision that is published in accordance with paragraphs 1 to 4 remains accessible on their official website for a period of at least five years after its publication. Personal data contained in those decisions shall only be retained on the official website of the competent authority for the period which is necessary in accordance with the applicable data protection rules.*
6. *National competent authorities shall inform ESMA of all administrative penalties and other administrative measures imposed, including, where appropriate, any appeal in relation thereto and the outcome thereof.*
7. *ESMA shall maintain a central database of administrative penalties and other administrative measures communicated to it. That database shall be only accessible to ESMA, the EBA, EIOPA and the competent authorities and shall be updated on the basis of the information provided by the national competent authorities in accordance with paragraph 6.*

Article 36

Data protection

1. With regard to the processing of personal data within the framework of this Regulation, competent authorities shall carry out their tasks for the purposes of this Regulation in accordance with Regulation (EU) 2016/679 of the European Parliament and of the Council.
2. With regard to the processing of personal data by ESMA within the framework of this Regulation, it shall comply with Regulation (EC) No 45/2001.

Chapter VII

Delegated acts

Article 37

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in Article 3(2), Article 31(10) and Article 34(3) shall be conferred on the Commission for *a period of five years* from... [*date* of entry into force of this Regulation]. *The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five year period. The delegation of power shall be tacitly extended for period of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.*
3. The delegation of powers referred to in Article 3(2), Article 6(4), Article 7(7), Article 10(10), Article 15(6), Article 16(9), Article 31(10) and Article 34(3) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.
5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
6. A delegated act adopted pursuant to Article 3(2), Article 6(4), Article 7(7), Article 10(10), Article 15(6), Article 16(9), Article 31(10) and Article 34(3) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a

period of three months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by three months at the initiative of the European Parliament or of the Council.

Chapter VIII

Final provisions

Article 38

Report

1. Before [publications office please insert 24 months of entry into application of this Regulation] the Commission shall, after consulting ESMA, present a report to the European Parliament and the Council on the application of this Regulation, accompanied where appropriate by a legislative proposal.
2. The report shall assess the following:
 - (a) the functioning of the market for crowdfunding service providers in the Union, including market development and trends, ■ their market share and in particular examining whether any adjustments are needed to the definitions *and thresholds* set out in this Regulation and whether the scope of services covered by this Regulation remains appropriate;
 - (b) the impact of this Regulation on the proper functioning of the internal market of crowdfunding services, including the impact on access to financing by SMEs and on investors and other categories of persons affected by those services;
 - (c) the implementation of the technological innovation in the crowdfunding sector, including the application of *non-bank financing methods (including initial coin offering)*, new innovative business models and technologies;
 - (d) whether the threshold set out in Article 2(2)(d) remains appropriate to pursue the objectives set out in this Regulation;

- (e) the effects that national laws, regulations and administrative provisions governing marketing communications of crowdfunding service providers have on the freedom to provide services, competition and investor protection;
- (f) the application of the administrative sanctions and in particular any need to further harmonise the administrative sanctions set out for the infringement of this Regulation.
- (g) the necessity and proportionality of subjecting crowdfunding service providers to obligations for compliance with the national provisions implementing Directive (EU) 2015/849 in respect of money laundering or terrorism financing and adding such crowdfunding service providers to the list of obliged entities for the purposes of Directive (EU) 2015/849.
- (h) *the appropriateness of expanding the scope of this Regulation to third countries;*
- (i) *the cooperation between national competent authorities and ESMA and the appropriateness of national competent authorities as the supervisor of this Regulation;*
- (j) *the possibility of introducing specific measures in this Regulation to promote sustainable and innovative crowdfunding projects, as well as the use of EU Funds.*

Article 38a

Amendment to Regulation (EU) 2017/1129

In Article 1(4) of Regulation (EU) 2017/1129, the following point is added:

(k) a crowdfunding offer from a European crowdfunding service provider as defined in Article 3(1)(c) of Regulation (EU) No .../...^{}, provided that it does not exceed the threshold laid down in Article 2(2)(d) of that Regulation. ”*

^{*} *OJ: please insert the number and publication details for this Regulation.*

Article 39

Entry into force and application

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

It shall apply from [Publications Office please insert 12 months from entry into force].

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

Done at Brussels,

For the European Parliament

For the Council

The President

The President
