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**'I' ITEM NOTE**

From:	General Secretariat of the Council
To:	Permanent Representatives Committee (Part 2)
No. Cion doc.:	COM(2018) 113 final
Subject:	Proposal for a Regulation of the European Parliament and of the Council on European Crowdfunding Service Providers (ECSP) for Business and amending Regulation (EU) No 2017/1129 - Confirmation of the final compromise text with a view to agreement

**Proposal for a Regulation of the European Parliament and of the Council**  
**on European crowdfunding service providers for business and amending Regulation (EU)**  
**No 2017/1129 and amending Directive 2019/1937**  
(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<sup>1</sup>,  
Having regard to the opinion of the European Economic and Social Committee<sup>2</sup>,  
Acting in accordance with the ordinary legislative procedure,

Whereas:

(1) Crowdfunding is increasingly an established form of alternative finance for start-ups, small and medium enterprises (SMEs), 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, without the crowdfunding service provider taking on own risk. Such funding could take the form of loans the acquisition of transferable securities or of other admitted instruments for crowdfunding purposes. It is therefore appropriate to include in the scope of this Regulation both lending-based crowdfunding and investment-based crowdfunding. These types of crowdfunding could be structured by businesses as comparable funding alternatives.

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<sup>1</sup> OJ C [...], [...], p. [...].

<sup>2</sup> OJ C, p. .

(2) Crowdfunding can contribute to providing access to finance for SMEs and completing 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 and become an established practice of funding, through online platforms and typically by a large number of people or organisations, business activities of natural persons, organisations and where businesses, including business start-ups, raise relatively small amounts of money.

(4) In addition to providing an alternative source of financing, including venture capital, crowdfunding can offer other benefits to firms. It can validate the concept and idea of their business activities, give entrepreneurs access to a large number of people providing 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 that they 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 disproportionate 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 those businesses operate in smaller national markets.

(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 service providers, it is necessary to address the existing obstacles to the proper functioning of the internal market in crowdfunding services, and to ensure a high level of investor protection by laying down a regulatory framework at Union level.

(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 Council<sup>3</sup>, should therefore not fall within the scope of this Regulation.

(8c) To avoid regulatory arbitrage and to ensure their effective supervision, crowdfunding service providers should be prohibited from accepting deposits or other repayable funds from the public, unless they are also authorised as a credit institution in accordance with Article 8 of Directive 2013/36/EU<sup>4</sup>. However, Member States should ensure that their national laws do not require a credit institution licence or any other individual exemption, authorisation or dispensation for project owners or investors where they accept funds or grant loans for the purposes of offering or investing into crowdfunding projects.

(9) The provision of crowdfunding services aims to facilitate the funding of a project by raising capital from a large number of people who each contribute relatively small investment amounts through a publicly accessible internet-based information system. Crowdfunding services are thus open to an unrestricted pool of investors who receive investment propositions at the same time and involve the raising of funds predominantly from natural persons, including those that are not high-net worth individuals. The joint provision of reception and transmission of client orders and placement of transferable securities without firm commitment, on a public platform that provides unrestricted access to investors are the key features of crowdfunding services in relation with certain investment services provided under Directive 2014/65/EU, even though individually, the mentioned services match those covered by that directive.

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<sup>3</sup> 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).

<sup>4</sup> 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).

(10) In relation to lending-based crowdfunding, the facilitation of granting of loans, including services such as presenting crowdfunding offers to clients, pricing or assessing the creditworthiness of crowdfunding projects or project owners, should accommodate different business models enabling a loan agreement to be concluded through a crowdfunding platform between one or more investors and one or more project owners. Loans included in the scope of this Regulation should be loans with unconditional obligations to repay that amount to the investor, whereby lending-based crowdfunding platforms merely facilitate investors and project owners to conclude loan agreements without at any moment acting as a creditor of the project owner. The facilitation of granting of loans within the scope of this Regulation is to be distinguished from the activity of a credit institution, which grants credits for its own account and takes deposits or other repayable funds from the public.

(10a) In order to deliver their services, crowdfunding service providers operate publicly accessible internet-based information systems, including those systems that require user registration.

(10b) The provision of crowdfunding services generally involves three types of actors: the project owner that proposes the project to be funded, investors who fund the proposed project, and an intermediating organisation in the form of a service provider that brings together project owners and investors through an online platform.

(11) In relation to investment-based crowdfunding, transferability is an important safeguard for investors to be able to exit their investment since it provides a legal possibility to dispose of their interest on the capital markets. This Regulation therefore covers and permits crowdfunding services related to transferable securities. Shares of certain private limited liability companies incorporated under the law of Member States are also freely transferable on the capital markets and should therefore not be prevented from being included in the scope of this Regulation.

(11a) Whilst initial coin offerings (ICOs) have the potential to fund SMEs, innovative start-ups and scale-ups, and can accelerate technology transfer, the characteristics of ICOs differ considerably from crowdfunding services regulated in this Regulation.

(11b) Certain admitted instruments for crowdfunding purposes may be subject to national law governing their transferability, such as the requirement for the transfer to be authenticated by a notary. This Regulation should apply without prejudice to national law governing the transfer of these instruments.

(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 total consideration for crowdfunding offers made by a particular project owner. Accordingly, that threshold should be set at EUR 5 000 000, which is the threshold used by most Member States 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 Council<sup>5</sup>.

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<sup>5</sup> 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).

(12a) The overlapping regulatory frameworks established under this Regulation and Regulation (EU) 2017/1129, due to a threshold of EUR 5 million, might increase the risk of regulatory arbitrage and have a disruptive effect on access to finance and the development of capital markets in certain Member States. Moreover, only a limited number of Member States have to date put in place a specific legal framework regulating crowdfunding platforms and services. Taking into account the fact that some Member States in implementing Regulation (EU) 2017/1129 have set the threshold to exempt offers of securities to the public from the obligation to publish a prospectus at below EUR 5 million and taking into account the special effort that might be sustained by those Member States in terms of adjusting their national laws and ensuring the application of the single threshold under this Regulation, this Regulation provides for a non-renewable temporary derogation in order to enable those Member States to make this significant effort. The temporary derogation should be envisaged for the shortest possible period of time, in order to cause the least possible disturbance to the functioning of the internal market.

(12b) 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, crowdfunding offers under this Regulation should be exempted from the obligation to publish a prospectus under Regulation (EU) 2017/1129 and that Regulation should be amended accordingly.

(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.

(16) In order to improve the service to their clients, crowdfunding service providers should be able to propose crowdfunding projects to individual investors based on one or more specific parameter, such as the type or sector of business activity or a credit rating which have been communicated to the crowdfunding service provider by the investor in advance. However, the authorisation obtained under this Regulation should not grant crowdfunding service providers the right to carry out individual or collective asset management services. 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.

(16a) Business models using automated processes whereby funds are automatically allocated by the crowdfunding service provider to crowdfunding projects in accordance with parameters and risk indicators predetermined by the investor, so called auto-investing, should be considered individual portfolio management of loans.

(16b) The existence of filtering tools on a crowdfunding platform authorised under this Regulation should not be regarded as investment advice as defined in Directive 2014/65/EU as long as these tools provide information to clients in a neutral manner that does not constitute a recommendation. This should include filtering tools that display results based on criteria relating to purely objective product features. Objective product features in the context of a crowdfunding platform could be pre-defined project criteria such as economic sector, instrument used and the interest rate or risk category where sufficient information regarding the calculation method is disclosed. Similarly, key financial figures calculated without any scope for discretion should also be considered as objective criteria.

(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 and investors should therefore be strictly regulated and permitted only where it is justified by enabling an investor to acquire an interest, for example, in an illiquid or indivisible asset through issuance of transferable securities by a special purpose vehicle.

(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 in place governance arrangements that ensure their effective and prudent management. The persons responsible for their management should be of good repute and have appropriate knowledge and experience. Crowdfunding service providers should also establish procedures to receive and handle complaints from clients.

(18a) Clients are exposed to potential risks related to the crowdfunding service providers, in particular operational risks. In order to protect clients against these risks, crowdfunding service providers should be subject to prudential requirements.

(18b) Crowdfunding service providers should be required to develop business continuity plans addressing the risks associated with platform failure. Such continuity plans should include provisions for the handling of critical functions, which, depending on the business model of the crowdfunding service provider, could include provisions for the continued servicing of outstanding loans, client notification and handover of asset safekeeping arrangements.

(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, shareholders, managers and employees, or any person closely linked to them by way of control. In particular, crowdfunding service providers should be prevented from having any participation in the crowdfunding offers on their crowdfunding platforms. Shareholders, managers and employees, or any person closely linked to them by way of control them, should not act as project owners in relation to the crowdfunding services offered on their crowdfunding platform. However, these persons should not be prohibited from acting as investors in the projects offered on their crowdfunding platform, provided that appropriate safeguards against conflicts of interest are in place.

(20) In the interest of the 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 such outsourcing does not impair the quality of crowdfunding service providers' internal controls or the effective supervision of the crowdfunding service providers. Crowdfunding service providers should however remain fully responsible for compliance with this Regulation.

(20a) The requirements concerning safekeeping of assets are crucial for the protection of investors receiving crowdfunding services. Transferable securities or admitted instruments for crowdfunding purposes which can be registered in a financial instruments account or which can be physically delivered to the custodian should be safe-kept by a qualified custodian, which is authorised in accordance with Directive 2014/65/EC or Directive 2013/36/EU [exact reference to be added]. Depending on the type of assets to be safe-kept, assets are either (i) to be held in custody, as with transferable securities which can be registered in a financial instruments account or which can be physically delivered, or (ii) to be subject to ownership verification and record-keeping. Safekeeping of transferable securities or admitted instruments for crowdfunding purposes that in accordance with national law are only registered with the project owner or its agent, such as investments in non-listed companies, or are held on an individually segregated account that a client could open directly with a central securities depositories, is considered equivalent to asset safekeeping by qualified custodians.

(21) Since only payment service providers are permitted to provide payment services as defined in Directive (EU) 2015/2366,<sup>6</sup> an authorisation to provide crowdfunding services does not equate to an authorisation also to provide payment services. Therefore, it is appropriate to clarify that, where a crowdfunding service provider carries out such payment services in connection with its crowdfunding services, it also needs to be a payment services provider as defined in Directive (EU) 2015/2366. That requirement is without prejudice to entities authorised under Directive 2014/65/EU that carry out an activity referred to in Article 3 of Directive (EU) 2015/2366 and that are also subject to the notification requirement set out in Article 37 of that Directive. In order to enable a proper supervision of such activities, the competent authorities 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 require a sufficient scale and public confidence in those services. It is therefore necessary to lay down uniform, proportionate and directly applicable requirements for authorisation of crowdfunding service providers.

(22a) In order to ensure effective supervision of the crowdfunding service providers, only legal persons that have an effective and stable establishment in the Union, which includes the necessary resources, should be able to apply for authorisation as crowdfunding service providers under this Regulation.

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<sup>6</sup> 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).

(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 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 situations<sup>7</sup>. Safeguards should therefore be envisaged when setting out the conditions for authorisation of crowdfunding services providers and for assessing the good repute of their management as well as by restricting the provision of payment services to licensed entities subject to anti-money laundering and terrorist financing requirements. With a view to further ensuring market integrity by preventing risks of money laundering and terrorist financing, and taking into account the amount 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, to obligations for compliance with the national provisions implementing Directive (EU) 2015/849 in respect of money laundering or terrorist financing and adding such crowdfunding service providers to the list of obliged entities for the purposes of that Directive.

(25) To enable crowdfunding service providers to operate cross-border without facing divergent rules and to thereby facilitate 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.

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<sup>7</sup> 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.

(26) The authorisation process should enable competent authorities to be informed about the services that the prospective crowdfunding service providers intend to provide including 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 this Regulation.

(26a) In order to ensure proper supervision and to avoid disproportionate administrative burdens, it should be possible for entities that have been authorised under Directive 2014/65/EU, Directive 2015/2366/EU, Directive 2009/110/EU or Directive 2013/36/EU and that wish to provide crowdfunding services, to hold an authorisation both under one of those Directives and under this Regulation. In that case, the competent authorities should not require submission of documents or proofs that are already at their disposal, thereby resulting in a simplified authorisation procedure.

(27) To facilitate transparency for investors as regards the provision of crowdfunding services, ESMA should establish a public and up-to-date register of all crowdfunding service providers authorised and of all 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. Competent authorities should also have the power to withdraw the authorisation under this Regulation whenever a crowdfunding service provider, or a third party acting on its behalf, has lost the authorisation allowing for the provision of payment services under Directive (EU) 2015/2366, or whenever a crowdfunding service provider that is also a payment services provider, or its managers, employees or a third party acting on its behalf, has been found to be in breach of Directive (EU) 2015/849<sup>8</sup>.

(28a) In order to provide a broad range of services to their clients, a crowdfunding service provider authorised under this Regulation should be allowed to engage in other activities than those covered by the authorisation referred to in Article 10.

(29) In order to ensure a clear understanding of the nature, risks, costs and charges of crowdfunding services, crowdfunding service providers should provide their clients with information that is fair, clear, and not misleading.

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<sup>8</sup> 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).

(29a) Crowdfunding service providers who provide crowdfunding services consisting of the facilitation of granting of loans should make available to all clients certain relevant information, such as default rates of loans.

(29b) Crowdfunding service providers that determine credit score or pricing shall disclose key elements of their methodology. The level of detail concerning methods to calculate credit scores or to determine the price or the interest rate should not reveal sensitive business information or impede innovation.

(29c) To ensure adequate investor protection of different categories of investors participating in crowdfunding projects while facilitating investment flows, this Regulation distinguishes between sophisticated and non-sophisticated investors and introduces different levels of investor protection safeguards adapted to each of these categories of investors. The distinction between sophisticated and non-sophisticated investors should build on the distinction between professional clients and retail clients established in Directive 2014/65/EU. However, the distinction should take into account the characteristics of the crowdfunding market. Notably, the distinction between sophisticated and non-sophisticated investors in this Regulation should also consider experience and knowledge of potential investors in crowdfunding, which should be re-assessed every two years.

(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 non-sophisticated investors understand the level of risk associated with crowdfunding investments, crowdfunding service providers should be required to run an entry knowledge test of their prospective non-sophisticated investors to establish their understanding of the investment. Crowdfunding service providers should explicitly warn prospective non-sophisticated investors whenever the crowdfunding services provided are deemed as inappropriate for them.

(30a) Given that sophisticated investors, by definition, are aware of the risks associated with investments in crowdfunding projects, there is no merit in applying an entry knowledge test to them. Similarly, crowdfunding service providers should not be required to issue risk warnings to sophisticated investors.

(30b) In order to ensure that non-sophisticated investors have read and understood the explicit risk warnings issued to them by the crowdfunding service provider, they should expressly accept the risks that they engage in when investing in a crowdfunding project. Given that an absence of such acknowledgement indicates a potential lack of understanding of the risks involved, crowdfunding service providers should only accept investments from non-sophisticated investors following the acknowledgement of those warnings, so as to maintain a high level of investor protection.

(30c) Given the riskiness of crowdfunding projects, non-sophisticated investors should avoid overexposure to them. There is a significant risk to lose large amounts of the initially invested sums or even experience a total loss. It is therefore appropriate to restrict non-sophisticated investors on the maximum amount that they can invest in an individual project. Investors who have the necessary experience, knowledge or financial capacity, or a combination thereof, should not be subject to such limits, and the limit should accordingly not apply to sophisticated investors.

(30d) In order to strengthen the protection for non-sophisticated investors, it is necessary to make provisions for a reflection period in which the prospective non-sophisticated investor can revoke an expression of interest to invest in a particular crowdfunding offer without penalty and with no obligation to provide a justification. This is necessary to avoid that a prospective non-sophisticated investor, by accepting a crowdfunding offer, binds him or herself to a contract without any possibility of retraction during an adequate period of time. The period of reflection is not necessary when the prospective non-sophisticated investor can express an interest for a particular crowdfunding offer without binding him or herself to a contract, except in the situation when such expression of interest is effected at a moment close to the scheduled closing date of the offer or to the date of reaching the funding target. Crowdfunding services providers should ensure that no money is collected from the investor or transferred to the project owner before the contract is concluded.

(30e) Considering the potential effects of the right to a reflection period on the costs of raising capital through crowdfunding platforms, the Commission should assess, as a part of its report under Article 38, whether the reflection period should be shortened to allow for a more efficient capital raising process without harming investor protection.

(30e) Directive 97/9/EC covers claims arising out of an investment firm's inability to (a) repay money owed to or belonging to investors and held on their behalf in connection with investment business or (b) return to investors any instruments belonging to them and held, administered or managed on their behalf in connection with investment business. Considering that the safekeeping of assets connected with crowdfunding services provided by an investment firm also authorised pursuant to Directive 2014/65/EU does not involve the provision of investment services in the meaning of Article 4(2) of Directive 2014/65/EU, non-sophisticated investors should be informed in the key investment information sheet that the investor compensation scheme protection does not apply to the transferable securities acquired through their crowdfunding platform. Moreover, the provision of crowdfunding services by the crowdfunding service provider should not be considered to be the taking of deposits in the meaning of Article 2(1)(3) of Directive 2014/49/EU.

(31) In order to enable prospective investors to make an informed investment decision, crowdfunding service providers should provide them 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 that are covered neither by deposit guarantee schemes established in accordance with Directive 2014/49/EU nor by investor compensation schemes established in accordance with Directive 97/9/EC.

(32) The key investment information sheet should reflect the specific features of lending-based and investment-based crowdfunding. In order to ensure this, specific and relevant indicators should be required. The key investment information sheet should also take into account, where available, the specific features and risks associated with project owners, and focus on material information about the project owners, the investors' rights and fees, and the type of transferable securities, admitted instruments for crowdfunding purposes and loan agreements offered. 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 should ensure that the key investment information sheet is clear and complete.

(32a) If the crowdfunding service provider identifies an omission, a mistake or an inaccuracy in the key investment information sheet, that crowdfunding service provider should signal such omission, mistake or inaccuracy promptly to the project owner, who should complement or rectify that information. Under certain conditions, crowdfunding service providers should suspend or even cancel the crowdfunding offer.

(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 sheet should not be required to be approved by a competent authority.

(33a) Crowdfunding service providers should be allowed to present more information than required in the key investment information sheet drawn up by the project owner. Such information should, however, be complementary and consistent with the information provided in the key investment information sheet.

(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 where they are provided in at least one of the official languages of the Member State in which the marketing communications are disseminated or in a language accepted by the competent authorities of that Member State.

(35) Where this is permitted by national law, a crowdfunding service provider should be able to modify the owner of shares in an investment-based crowdfunding project in its information system. A crowdfunding service provider should also, in the interest of transparency and flow of information, be able to allow clients who have made investments through its platform to advertise on a bulletin board on its platform their interest to buy or sell contracts in relation to investments originally made on that platform, without however entering into an activity consisting of bringing together multiple third-party buying and selling interests in financial instruments in a way that results in a contract in relation to such advertisements. The bulletin board provided by a crowdfunding service provider should therefore not consist of an internal matching system which executes client orders on a multilateral basis unless, in relation to transferable securities, the crowdfunding service provider also has a separate 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. Where they do not hold such authorisation in relation to transferable securities, crowdfunding service providers should therefore clearly inform investors that they do not accept the reception of orders for the purposes of buying or selling contracts in relation to investments originally made on the platform, that any buying and selling activity on their crowdfunding platform is at the investor's discretion and responsibility, and that they do not operate a trading venue in accordance with Directive 2014/65/EU.

(36) To facilitate transparency and to ensure proper documentation of communications with clients, crowdfunding service providers should keep all appropriate records related to their services and transactions.

(37) To ensure fair and non-discriminatory treatment of clients crowdfunding service providers that are promoting their services through marketing communications should provide fair, clear and not misleading information.

(38) To provide more legal certainty to crowdfunding service providers operating across the Union and to ensure easier market access, national laws, regulations and administrative provisions which specifically govern marketing communications of crowdfunding service providers and which are applicable in the Member States should be published electronically, as well as summaries thereof in a language customary in the sphere of international finance. For that purpose, competent authorities and ESMA should maintain central databases.

(39) To allow for 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.

(42a) To ensure an efficient supervision and authorisation procedure, Member States should delineate the duties and functions pursuant to this Regulation to be carried out by the competent authorities. Member States should designate a single point of contact to manage communication with ESMA and competent authorities across the Union, which should facilitate effective cross-border administrative cooperation.

(42b) Since effective tools, powers and resources of the competent authorities guarantee supervisory effectiveness, this Regulation should provide for a minimum set of supervisory and investigative powers to be entrusted to competent authorities in accordance with national law. Those powers should be exercised, where the national law so requires, by application to the competent judicial authorities. When exercising their powers under this Regulation, competent authorities and ESMA should act objectively and impartially and remain autonomous in their decision-making.

(42c) For the purpose of detecting infringements of this Regulation, it is necessary for competent authorities to be able to access sites other than the private residences of natural persons in order to seize documents. Access to such premises is necessary when there is reasonable suspicion that documents and other data related to the subject matter of an inspection or investigation exist and might be relevant to prove an infringement of this Regulation. Additionally, access to such premises is necessary where the person to whom a demand for information has already been made fails to comply with it, or where there are reasonable grounds for believing that, if a demand were to be made, it would not be complied with or that the documents or information to which the information requirement relates would be removed, tampered with or destroyed.

(42d) In order to ensure that the requirements of this Regulation are fulfilled, it is important that Member States take necessary steps to ensure that infringements of this Regulation are subject to appropriate administrative penalties and other administrative measures. Those penalties and measures should be effective, proportionate and dissuasive and ensure a common approach in Member States and a deterrent effect. This Regulation should not limit Member States in their ability to provide for higher levels of administrative penalties.

(42e) In order to ensure that decisions imposing administrative penalties or other administrative measures taken by competent authorities have a deterrent effect on the public at large, they should be published unless the competent authority deems it necessary to opt for a publication on an anonymous basis, or to delay the publication or not to publish.

(42f) Although Member States can lay down rules for administrative and criminal penalties for the same infringements, Member States should not be required to lay down rules for administrative penalties for infringements of this Regulation which are subject to national criminal law. However, the maintenance of criminal penalties instead of administrative penalties for infringements of this Regulation should not reduce or otherwise affect the ability of competent authorities to cooperate, access and exchange information in a timely way with competent authorities in other Member States for the purposes of this Regulation, including after any referral of the relevant infringements to the competent judicial authorities for criminal prosecution.

(42g) Whistleblowers might bring new information to the attention of competent authorities which helps them in detecting infringements of this Regulation and imposing penalties thereon. This Regulation should therefore ensure that adequate arrangements are in place to enable whistleblowers to alert competent authorities to actual or potential infringements of this Regulation and to protect them from retaliation by making Directive 2019/1937 applicable to this Regulation.

(42h) In order to specify the requirements set out in this Regulation, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union (TFEU) should be delegated to the Commission in respect of the transition period. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making<sup>9</sup>. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

42i) In order to promote the consistent application of this Regulation, including adequate protection of investors and consumers across the Union, technical standards should be developed. As bodies with highly specialised expertise, it would be efficient and appropriate to entrust ESMA and EBA with the development of draft regulatory technical standards which do not involve policy choices, for submission to the Commission.

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<sup>9</sup> OJ L 123, 12.5.2016, p. 1.

(42j) The Commission should be empowered to adopt regulatory technical standards developed by ESMA and EBA with regard to individual portfolio management of loans, complaints handling, conflicts of interest, information to clients, default rate disclosure, the entry knowledge test and simulation of the ability to bear loss, the Key investment information sheet and cooperation between competent authorities. The Commission should adopt those regulatory technical standards by means of delegated acts pursuant to Article 290 TFEU and in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

(42k) The Commission should also be empowered to adopt implementing technical standards developed by ESMA with regard to reporting by crowdfunding service providers, the publication of national provisions concerning marketing requirements and cooperation between competent authorities and with ESMA. The Commission should adopt those implementing technical standards by means of implementing acts pursuant to Article 291 TFEU and in accordance with Article 15 of Regulation (EU) No 1095/2010.

(42l) Any processing of personal data carried out within the framework of this Regulation, such as the exchange or transmission of personal data by the competent authorities, should be undertaken in accordance with Regulation (EU) 2016/679 and any exchange or transmission of information by ESMA should be undertaken in accordance with Regulation (EU) 2018/1725.

(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 CMU, 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 date of application of this Regulation should be deferred to align it with the date of 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.

(44a) In the interest of legal certainty and in view of the replacement of national rules by the rules of this Regulation insofar as types of crowdfunding services are concerned which are now included within the scope of this Regulation, it is appropriate to make transitional arrangements allowing persons providing such crowdfunding services in accordance with national laws preceding this Regulation to adapt their business operations to the rules provided by this Regulation and to have sufficient time to apply for an authorisation under this Regulation. Therefore, such persons should be able to continue to carry out crowdfunding services which are now included within the scope of this Regulation in accordance with the applicable national law until[X of Month 20xx – insert a date 12 months from the date of application mentioned in paragraph 2 of Article 39]. Member States can during this transitional period put in place special procedures which enable persons authorised under national law to carry out crowdfunding services which are now included within the scope of this Regulation to convert their national authorisations into authorisations under this Regulation, provided that the crowdfunding service providers meet the requirements of this Regulation.

(44b) After[X of Month 20xx – insert a date 12 months from the date of application mentioned in paragraph 2 of Article 39] crowdfunding service providers who have failed to obtain authorisation in accordance with this Regulation, should not issue any new crowdfunding offers. To avoid the situation whereby the raising of target capital in relation to a particular crowdfunding project is not completed by [X of Month 20xx – insert a date 12 months from the date of application mentioned in paragraph 2 of Article 39], the calls for funding should be closed before that date. However, after [X of Month 20xx – insert a date 12 months from the date of application mentioned in paragraph 2 of Article 39] servicing of the existing contracts, including collecting and transferring receivables, providing asset safe-keeping services or processing corporate actions, can continue in accordance with the applicable national laws.

(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 42(1) of Regulation (EU) No 2018/1725<sup>10</sup>,

HAVE ADOPTED THIS REGULATION:

## **CHAPTER I**

### **GENERAL PROVISIONS**

#### Article 1

#### Subject matter, scope and exemptions

1. This Regulation lays down uniform requirements for the operation, organisation, authorisation and supervision of crowdfunding service providers, as well as for transparency and marketing communications in relation to the provision of crowdfunding services in the Union.
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) other services related to those defined in Article 3(1)(a) that are provided in accordance with national law;

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<sup>10</sup> Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

(d) crowdfunding offers with a consideration of more than EUR 5 000 000, which shall be calculated over a period of 12 months as the sum of:

- (i) the total consideration of offers of transferable securities and admitted instruments for crowdfunding purposes as per Article 3(1)(i) and 3(1)(ia) and amounts raised via loan agreements through a crowdfunding platform by a particular project owner; and
- (ii) the total consideration of offers to the public of transferable securities made by the project owner referred to in point (i) in its capacity as an offeror pursuant to the exemption under Article 1(3) or Article 3(2) of Regulation (EU) 2017/1129.

3. Unless a crowdfunding service provider, a project owner or an investor is authorised as a credit institution in accordance with Article 8 of Directive 2013/36/EU, Member States shall not apply national requirements implementing Article 9(1) of Directive 2013/36/EU and shall ensure that their national laws do not require a credit institution licence or any other individual exemption, authorisation or dispensation in connection with the provision of crowdfunding services in the following situations:

- (i) for project owners that in respect of the loans facilitated by the crowdfunding service provider accept funds from investors; or
- (ii) for investors that grant loans to project owners facilitated by the crowdfunding service provider.

## Article 3

### Definitions

1. For the purposes of this Regulation, the following definitions apply:

(a) ‘crowdfunding service’ means the matching of business funding interest of investors and project owners through the use of a crowdfunding platform and which consist of any of the following:

- (i) the facilitation of granting of loans;
- (ii) the placing without firm commitment, as referred to in point 7 of Section A of Annex I to Directive 2014/65/EU, of transferable securities and admitted instruments for crowdfunding purposes issued by project owners or a special purpose vehicle and the reception and transmission client orders, as referred to in point 1 of Section A of Annex I to Directive 2014/65/EU, with regard to those transferable securities and admitted instruments for crowdfunding purposes;

(la) ‘loan’ means an agreement whereby an investor makes available to a project owner an agreed amount of money for an agreed period of time and whereby the project owner assumes an unconditional obligation to repay that amount to the investor, together with the accrued interest, in accordance with the instalment payment schedule;

(aab) ‘individual portfolio management of loans’ means the allocation by the crowdfunding service provider of a pre-determined amount of funds of an investor, which is an original lender, to one or multiple crowdfunding projects on its crowdfunding platform in accordance with an individual mandate given by the investor on a discretionary investor-by-investor basis;

(b) ‘crowdfunding platform’ means a publicly accessible internet-based information system operated or managed by a crowdfunding service provider;

(c) ‘crowdfunding service provider’ means a legal person who provides crowdfunding services;

(d) ‘crowdfunding offer’ means any communication by a crowdfunding service provider, in any form and by any means, presenting sufficient information on the terms of the offer and the crowdfunding project being offered, so as to enable an investor to invest in the crowdfunding project;

(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 funding through a crowdfunding platform;

(g) ‘investor’ means any person that, through a crowdfunding platform, grants loans or acquires transferable securities or admitted instruments for crowdfunding purposes;

- (ga) ‘sophisticated investor’ means any person that is a professional client by virtue of points (1), (2), (3) and (4) of Section I of Annex II to Directive 2014/65/EU or any person that has received the approval of the crowdfunding service provider in accordance with the criteria and the procedure laid down in Annex II;
- (gb) ‘non-sophisticated investor’ means an investor who is not a sophisticated investor;
- (h) ‘crowdfunding project’ means the business activity or activities for which a project owner seeks funding through the crowdfunding offer;
- (i) ‘transferable securities’ means transferable securities as defined in point (44) of Article 4(1) of Directive 2014/65/EU;
- (ia) ‘admitted instruments for crowdfunding purposes’ means, in respect of each Member State, shares of a private limited liability company, which are not subject to restrictions that would effectively prevent them from being transferred, including restrictions to the way in which those shares are offered or advertised to the public;
- (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 Bank<sup>11</sup>.

(la) ‘competent authority’ means the authority, or authorities, designated by a Member State in accordance with Article 27a.

2. Without prejudice to the possibility that shares of a private limited liability company fall under the definition of transferable securities under paragraph 1(i), competent authorities that granted authorisation to the crowdfunding service provider may permit the use of shares of private limited liability companies for the purposes of this Regulation provided that these shares meet the conditions for admitted instruments for crowdfunding purposes under paragraph (1)(ia).

3. Competent authorities shall report on a yearly basis to ESMA the information about the types of private limited liability companies and their shares that are offered under the scope of this Regulation, with reference to the national law.

ESMA shall make this information publicly accessible on its website without undue delay.

4. On a yearly basis, for the first two years of the application of this Regulation, ESMA shall collect the Key Investment Information Sheet from crowdfunding projects that had issued admitted instruments for crowdfunding purposes. It shall compare the information provided in points B and C of part F of the Key Investment Information Sheet with the information provided by the Member States under paragraph 3. ESMA shall submit this comparison to the Commission which shall include it in the Report referred to in Article 38.

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<sup>11</sup> 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 are established in the Union and that have been authorised as crowdfunding service providers in accordance with Article 10.
2. Crowdfunding service providers shall act honestly, fairly and professionally in accordance with the best interests of their 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 propose to individual investors specific crowdfunding projects which shall correspond to one or more specific parameters or risk indicators chosen by the investor. Where the investor wishes to make an investment in the suggested crowdfunding projects, the investor shall review and expressly take an investment decision in relation to each individual crowdfunding offer.

Crowdfunding service providers that provide individual portfolio management of loans must do so in adherence to the parameters provided by the investors and take all necessary steps to obtain the best possible result for these investors. Crowdfunding service providers shall disclose to investors the decision process for executing the received discretionary mandate.

4a. By way of derogation from the second subparagraph of paragraph 4, crowdfunding service providers offering individual portfolio management of loans may exercise discretion on behalf of their investors within the agreed parameters without requiring investors to review and take an investment decision in relation to each individual crowdfunding offer.

5. Where a special purpose vehicle is used for the provision of crowdfunding services, only one illiquid or indivisible asset can be offered through such a special purpose vehicle. This requirement shall apply on a look-through basis to the underlying illiquid or indivisible asset held by financial or legal structures fully or partially owned or controlled by the special purpose vehicle. The decision to take exposure to the underlying illiquid or indivisible asset shall exclusively lie with investors.

## Article 5

### Effective and prudent management

1. 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.

1a. The management of crowdfunding service providers shall establish, and oversee the implementation of, appropriate systems and controls to assess the risks related to the loans intermediated on the platform.

In addition, crowdfunding service providers that offer the services referred to in point (aab) of Article 3(1) shall ensure that they have in place adequate systems and controls for the management of risk and financial modelling for that offer of services and comply with the requirements of Article 5b(1) to (3).

2. The management of crowdfunding service providers shall review, at least once every two years, taking into account the nature, scale and complexity of the crowdfunding services provided by the crowdfunding service provider, the prudential safeguards referred to in Article 10(2)(fb) and the business continuity plan referred to in Article 10(2)(g).

2a. Where a crowdfunding service provider determines the price of a crowdfunding offer, it must:

(a) undertake a reasonable assessment of the credit risk of the crowdfunding project or project owner before the crowdfunding offer is made, including by considering the risk that the crowdfunding project or project owner will not make one or more repayments in case of a loan, bond or other form of securitised debt by the due date;

- (b) base its credit risk assessment on sufficient information, including audited accounts covering the two latest financial years, if available:
- (i) of which it is aware at the time the credit risk assessment is carried out;
  - (ii) obtained, where appropriate, from the crowdfunding project or project owner, and, where necessary, any other relevant sources of information; and
  - (iii) which enables the crowdfunding service provider to carry out a reasonable credit risk assessment.
- (c) establish, implement and maintain clear and effective policies and procedures to enable it to carry out credit risk assessments, and publish those policies and procedures;
- (d) ensure that the price is fair and appropriate, including in situations where a crowdfunding service provider that determines the price of loans is facilitating an exit for a lender before the maturity date of a loan;
- (da) conduct a valuation of each loan in at least the following circumstances:
- (i) at the moment when the loan is originated;
  - (ii) where the crowdfunding service provider considers that the crowdfunding project or project owner is unlikely to pay its obligations under the loan in full, without the crowdfunding service provider enforcing any relevant security interest or taking other steps with analogous effect;
  - (iii) following a default; and
  - (iv) where the crowdfunding service provider is facilitating an exit for a lender before the maturity date of the loan.

- (e) have and use a risk management framework that is designed to achieve compliance with the requirements in points (a) to (da) of this paragraph;
- (f) maintain a record of each facilitated crowdfunding offer sufficient to demonstrate that:
  - (i) a credit risk assessment was carried out when required and in compliance with points (a) and (b) of this paragraph; and
  - (ii) the price of the crowdfunding offer was fair and appropriate in line with the risk management framework.

#### 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 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.

## Article 5b

### Individual portfolio management of loans

1. Where a crowdfunding service provider offers individual portfolio management of loans, an investor shall give the mandate, which shall include at least two of the following criteria that every loan in the portfolio will have to comply with:
  - (a) the minimum and maximum interest rate that will be payable under any loan that may be facilitated for the investor;
  - (b) the minimum and maximum maturity date of any loan that may be facilitated for the investor;
  - (c) the range and distribution of risk categories that the loans may fall into; and
  - (d) if an annual target rate of return on investment is offered, the likelihood that the selected loans will enable with reasonable certainty the investor to achieve the target rate.
  
2. To be able to comply with paragraph (1), a crowdfunding service provider must have in place robust internal processes and methodologies and use appropriate data. The data may be the crowdfunding service provider's own data, or may be sourced from third parties.

On the basis of sound and well-defined criteria and taking into account all the relevant factors, which may have unfavourable effects on the performance of the loans, the crowdfunding service provider shall assess:

  - (a) the credit risk of individual crowdfunding projects selected for the investor's portfolio;
  - (b) the credit risk at the investor's portfolio level; and
  - (c) the creditworthiness of the owners of crowdfunding projects selected for the investor's portfolio verifying the prospect of the obligors' meeting their obligations under the loan.

The crowdfunding service provider shall also provide a description of the method used for the assessments in points (a) to (c) to the investor.

3. Where a crowdfunding service provider offers individual portfolio management of loans, it shall keep records of the given mandate and on every investment in an individual portfolio. The crowdfunding service provider shall keep records on every investment for at least 3 years after its maturity on a durable medium.

4. A crowdfunding service provider shall on a continuous basis, upon the request by an investor, provide via electronic means at least the following information on each individual portfolio:

- (a) the list of individual loans of which a portfolio is composed;
- (b) the weighted average annual interest rate on loans in a portfolio;
- (c) the distribution of loans according to risk category, in percentage and absolute numbers;
- (d) on every loan of which a portfolio is composed, key information, including at least an interest rate or, where applicable, other compensation to the investor, maturity date, risk category, amortisation schedule of the principle and repayment of interest, compliance of a borrower with the loan repayment schedule,
- (e) on every loan of which a portfolio is composed, risk mitigation measures including collateral provider or guarantor or other types of guarantees;
- (f) any default on credit agreements by the project owner within the past five years.
- (g) any fees paid in respect of that loan by the investor, the crowdfunding service provider or project owner;

- (h) if the crowdfunding service provider has carried out a valuation of the loan:
- the most recent valuation;
  - the valuation date;
  - an explanation of why the crowdfunding service provider conducted the valuation; and,
  - a fair description of the likely actual return, taking into account fees and default rates.

4a. Where a crowdfunding service provider has established and operates a contingency fund for its activity related to the individual portfolio management of loans, it shall provide the following information to the investors:

- a) a risk warning specifying: “The contingency fund we offer does not give you a right to a payment so you may not receive a pay-out even if you suffer loss. The fund has absolute discretion as to the amount that may be paid, including making no payment at all. Therefore, investors should not rely on possible pay-outs from the contingency fund when considering whether or how much to invest.”
- b) a description of its policy, including:
- an explanation of the source of the money paid into the fund;
  - an explanation of how the fund is governed;
  - an explanation of who the money belongs to;
  - the considerations the fund operator takes into account when deciding whether or how to exercise its discretion to pay out from the fund, including examples. This should include: a) whether or not the fund has sufficient money to pay and b) that the fund operator has absolute discretion in any event not to pay or to decide the amount of the payment;
  - an explanation of the process for considering whether to make a discretionary payment from the fund; and
  - a description of how that money will be treated in the event of insolvency of the contingency fund operator.

4b. A crowdfunding service provider that established and operates a contingency fund as referred to in paragraph 4a shall provide the following information about the performance of the fund to the public on a quarterly basis:

- a) the size of the contingency fund compared to total amounts outstanding on agreements relevant to the contingency fund; and
- b) what proportion of outstanding borrowing under agreements has been paid using the contingency fund.

5. EBA shall, in cooperation with ESMA, develop draft regulatory technical standards to specify:

- the elements, including the format, that shall be included in the description of the method referred to in the third subparagraph of paragraph 2 of this Article.
- the information referred to in paragraph 4 of this Article; and
- the policies, procedures and organisational arrangements that crowdfunding service providers shall have in place as regards any contingency funds they might offer as referred to in paragraphs 4a and 4b.

EBA shall submit those draft regulatory technical standards to the Commission by [Publications Office please insert date 12 months from entry into force].

6. Power is delegated to the Commission to adopt the regulatory technical standards referred to in subparagraph 4 of this Article in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.

## 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 ... [12 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 participation in any crowdfunding offer on their crowdfunding platforms.
2. Crowdfunding service providers shall not accept any of their shareholders holding 20% or more of share capital or voting rights, any of their managers or employees, or any person linked to those shareholders, managers and employees by control as defined in Article 4(1)(35)(b) of Directive 2014/65/EU acting as project owners in relation to the crowdfunding services offered on their crowdfunding platform. Crowdfunding service providers that accept as investors in the projects offered on their crowdfunding platform any of their shareholders holding 20% or more of share capital or voting rights, any of their managers or employees, or any person linked to those shareholders, managers or employees by control as defined in Article 4(1)(35)(b) of Directive 2014/65/EU shall fully disclose this on their website, including the specific offers invested in, and shall ensure that these investments are made under the same conditions as those of other investors and that these investors do not enjoy any preferential treatment or privileged access to information.
3. Crowdfunding service providers shall maintain and operate effective internal rules to prevent conflicts of interest.
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 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.

Such disclosure shall be made on the website of the crowdfunding service provider in a prominent place.

6. The disclosure referred to in paragraph 5 shall:

- (a) be made in a durable medium;
- (b) 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 internal rules referred to in paragraph 3;
- (b) the steps referred to in paragraph 4;
- (c) the arrangements for the disclosure referred to in paragraphs 5 and 6.

ESMA shall take into account the nature, scale and complexity of the crowdfunding services provided by the crowdfunding service provider.

ESMA shall submit those draft regulatory technical standards to the Commission by ... [12 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 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 competent authority to monitor the crowdfunding service provider's compliance with 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 and providing payment services

1. Where asset safekeeping services and payment services are provided, crowdfunding service providers shall inform their clients about:
  - (a) the nature and terms and conditions of those asset safekeeping services, including references to applicable national law;
  - (b) whether those asset safekeeping services are provided by them directly or by a third party; and
  - (c) whether payment services are provided by the crowdfunding service provider or through a third party provider acting on their behalf.

1a. Where crowdfunding service providers provide payment transactions related to transferable securities and admitted instruments for crowdfunding purposes, they shall deposit the funds with the following:

- (a) a central bank; or
- (b) a credit institution authorised in accordance with Directive 2013/36/EU of the European Parliament and of the Council.

1b. Transferable securities or admitted instruments for crowdfunding purposes offered on a crowdfunding platform, and which can be registered in a financial instruments account opened in the name of an investor or which can be physically delivered to a custodian, shall be held in custody by the crowdfunding service provider or by a third party. An entity providing custody services shall be authorised in accordance with Directive 2014/65/EC or Directive 2013/36/EU [exact reference to be added].

2. A crowdfunding service provider may itself or through a third-party provide payment services provided that the crowdfunding service provider itself or the third-party provider is a payment service provider in accordance with Directive (EU) 2015/2366.

4. Where a crowdfunding service provider does not provide payment services in relation to the crowdfunding services either itself or through a third party, such a crowdfunding service provider 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 in accordance with Directive (EU) 2015/2366.

Article 9a  
Prudential requirements

1. Crowdfunding service providers shall at all times have in place prudential safeguards equal to an amount of at least the highest between:

- (a) EUR 25 000; and
- (b) one quarter of the fixed overheads of the previous year, reviewed annually, which shall include the cost of servicing loans for three months when the crowdfunding service provider also facilitates the granting of loans

1a. The prudential safeguards referred to in paragraph 1 shall take one of the following forms:

- (a) own funds, consisting of Common Equity Tier 1 items referred to in Articles 26 to 30 of Regulation (EU) No 575/2013 after the deductions pursuant to Article 36 in full without the application of threshold exemptions pursuant to Article 46 and 48 of that Regulation;
- (b) an insurance policy covering the territories of the Union where crowdfunding offers are actively marketed or a comparable guarantee; or
- (c) a combination of points (a) and (b).

1b. Paragraph 1 does not apply to crowdfunding service providers that are undertakings subject, on a solo basis or on the basis of their consolidated situation, to the provisions of Title III of Part Three of Regulation (EU) No 575 / 2013 and undertakings which are subject, on a solo basis or on the basis of their consolidated situation, to the provisions of [Investment Firm Regulation (exact reference to be added when available)].

1c. Paragraph 1 does not apply to crowdfunding service providers that are undertakings subject to the provisions of Title II, Articles 7 to 9, of Directive (EU) 2015/2366 or Title II, Article 4 and 5, of Directive 2009/110/EC.

2. Where a crowdfunding service provider has been in operation for less than 12 months it may use forward-looking business estimates in calculating the fixed overheads, provided that it starts using historical data as soon as it is available.

2a. The insurance policy referred to in paragraph 1 shall have at least the following characteristics:

- (a) an initial term of no less than one year;
- (b) a notice period for cancellation of at least 90 days;
- (c) is taken out from an EU or non-EU undertaking authorised to provide insurance, in accordance with Union law or national law;
- (d) is provided by a third party entity.

2b. The insurance policy referred to in paragraph 1 shall include, without being limited to, coverage against the risk of:

- (a) loss of documents;
- (b) misrepresentations or misleading statements made;
- (c) acts, errors or omissions resulting in a breach of:
  - i. legal and regulatory obligations;
  - ii. duty of skill and care towards clients;
  - iii. obligations of confidentiality;

- (d) failure to establish, implement and maintain appropriate procedures to prevent conflicts of interest;
- (e) losses arising from business disruption, system failures or process management.
- (f) where applicable to the business model, gross negligence in carrying out asset valuation or credit pricing and scoring.

2c. For the purposes of paragraph 1(b), crowdfunding service providers shall calculate their fixed overheads of the preceding year, using figures resulting from the applicable accounting framework, by subtracting the following items from the total expenses after distribution of profits to shareholders in their most recent audited annual financial statements, or, where audited statements are not available, in annual financial statements validated by national supervisors:

- (a) staff bonuses and other remuneration, to the extent that they depend on a net profit of the crowdfunding service provider in the respective year;
- (b) employees', directors' and partners' shares in profits;
- (c) other appropriations of profits and other variable remuneration, to the extent that they are fully discretionary;
- (d) shared commission and fees payable which are directly related to commission and fees receivable, which are included within total revenue, and where the payment of the commission and fees payable is contingent upon the actual receipt of the commission and fees receivable; and
- (e) non-recurring expenses from non-ordinary activities.

2d. Where fixed expenses have been incurred on behalf of the crowdfunding service providers by third parties, and these fixed expenses are not already included within the total expenses referred to in paragraph 2c, crowdfunding service providers shall take either of the following actions:

- (a) where a break-down of the expenses of those third parties is available, crowdfunding service providers shall determine the amount of fixed expenses that those third parties have incurred on their behalf and shall add that amount to the figure resulting from paragraph 2c;
- (b) where the break-down referred to in point (a) is not available, crowdfunding service providers shall determine the amount of expenses incurred on their behalf by those third parties according to the crowdfunding service providers' business plans and shall add that amount to the figure resulting from paragraph 2c.

## **CHAPTER III**

### **AUTHORISATION AND SUPERVISION OF CROWDFUNDING SERVICE PROVIDERS**

#### Article 10

##### Authorisation as a crowdfunding service provider

1. A legal person that intends to provide crowdfunding services shall apply to the competent authority of the Member State of establishment for authorisation as a crowdfunding service provider.
  
2. The application referred to in paragraph 1 shall contain all of the following:
  - (a) the name (including the legal name and any other trading name to be used), internet address of the website operated by the prospective crowdfunding service provider, and its physical address,;
  - (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 crowdfunding 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;
- (fa) a description of the prospective crowdfunding service provider's operational risks;
- (fb) a description of the prospective crowdfunding service provider's prudential safeguards in accordance with Article 9a;
- (g) a description of the prospective crowdfunding service provider's business continuity plan which, taking into account the nature, scale and complexity of the crowdfunding services provided by the crowdfunding service provider, establishes measures and procedures that ensure, in the event of failure of the crowdfunding service provider, the continuity of the provision of critical services related to existing investments and sound administration of agreements between the crowdfunding service provider and its clients;
- (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 prospective crowdfunding service provider's internal rules to prevent its shareholders who hold 20% or more of the share capital or voting rights, its managers or its employees or any person linked to those shareholders, managers or employees by control as defined in Article 4(1)(35)(b) of Directive 2014/65/EU from engaging as project owners in crowdfunding services offered by the prospective crowdfunding service provider;
- (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) a confirmation of whether the prospective crowdfunding service provider intends to provide payment services itself or through a third-party under Directive (EU) 2015/2366, or through an arrangement in accordance with Article 9(4) of this Regulation;
- (fba) proof that the prospective crowdfunding service provider meets the prudential safeguards in accordance with Article 9a;
- (mb) a description of the prospective crowdfunding service provider's procedures to verify the completeness and the clarity of information contained in the key investment information sheet;
- (md) a description of the prospective crowdfunding service provider's procedures in relation to investment limits for non-sophisticated investors referred to in Article 15(5).

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 crowdfunding service provider and for shareholders who hold 20% or more of the share capital or voting rights;
- (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 the performance of their duties.

4. The competent authority shall, within 25 working days of receipt of the application referred to in paragraph 1, assess whether that application is complete by checking that the necessary information listed in paragraph 2 has been submitted. Where the application is not complete, the competent authority shall set a deadline by which the prospective crowdfunding service provider is to provide the missing information.

4a. Where an application as referred to in paragraph 1 remains incomplete after the deadline referred to in paragraph 4, the competent authority may refuse to review the application and in the event of such refusal shall return the submitted documents to the prospective crowdfunding service provider.

5. Where an application as referred to in paragraph 1 is complete, the 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 competent authority shall consult the 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;

6. The 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. This assessment shall take into account the nature, scale and complexity of the services intended to be provided by the prospective crowdfunding service provider. The 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 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 competent authorities grant authorisations under this Article in a consistent manner.

7. The competent authority shall notify the prospective crowdfunding service provider of its decision within three 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.

9. Member States shall not require crowdfunding service providers that supply crowdfunding services on a cross-border basis to have a physical presence in the territory of a Member State other than the Member State in which those crowdfunding service providers are authorised.

9a. Crowdfunding service providers authorised under this Regulation may also engage in activities other than those covered by the authorisation referred to in this Article in accordance with the specific provisions of the relevant applicable national or Union legislation.

9ab. Where an entity authorised pursuant to Directive 2014/65/EU, Directive 2015/2366/EU, Directive 2009/110/EU, Directive 2013/36/EU or national law applicable to crowdfunding services prior to the entry into force of this Regulation applies for authorisation as a crowdfunding service provider under this Regulation, the competent authority shall not require that entity to provide information or documents which it has already submitted when applying for authorisation under those Directives or national law, provided that such information or documents remain up-to-date and are accessible to the competent authority.

9aa. Where a prospective crowdfunding service provider also seeks to apply for an authorisation to provide payment services solely in connection with the provision of crowdfunding services, and to the extent that the competent authorities are also responsible for the authorisation pursuant to Directive 2015/2366/EU, the competent authorities shall require that the information and documents to be submitted under each application are submitted only once.

10. ESMA shall develop draft regulatory technical standards to specify further:

- the requirements and arrangements for the application referred to in paragraph 1, including the standard forms, templates and procedures for the application for authorisation; and
- the measures and procedures for the business continuity plan referred to in paragraph 2(g)

ESMA shall take into account the nature, scale and complexity of the crowdfunding services provided by the crowdfunding service provider.

ESMA shall submit those draft regulatory technical standards to the Commission by ... [12 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 Article 15 of Regulation (EU) No 1095/2010.

## Article 10a

### Scope of authorisation

1. The competent authorities that granted an authorisation notified under paragraph 7 of Article 10 shall ensure that such authorisation specifies the crowdfunding services which the crowdfunding service provider is authorised to provide. The authorisation may only cover crowdfunding services as defined in Article 3(1)(a).
2. A crowdfunding service provider seeking authorisation to extend its business to additional crowdfunding services not foreseen at the time of the initial authorisation shall submit a request for extension of its authorisation to the competent authorities that the crowdfunding service provider obtained its initial authorisation from by complementing and updating the information in paragraph 2 of Article 10. The request for extension shall be processed in accordance with the processing of applications referred to in paragraphs 4 to 7a of Article 10.

## 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, legal form and, where applicable, the legal entity identifier of the crowdfunding service provider;
  - (b) the commercial name, physical address and internet address of the crowdfunding platform operated by the crowdfunding service provider;
  - (ba) the name and address of the competent authority which granted authorisation and its contact details;
  - (c) information on the services for which the crowdfunding service provider is authorised;
  - (ca) the Member States in which the crowdfunding service provider has notified its intention to provide services in accordance with Article 13a;
  - (cb) any other services provided by the crowdfunding service provider not covered by this Regulation with a reference to the relevant national or Union law;
  - (d) any penalties imposed on the crowdfunding service provider or its managers.
3. Any withdrawal of authorisation of a crowdfunding service provider 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 competent authorities designated in accordance with Article 27a by the Member State which granted authorisation.
3. The relevant 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 relevant competent authority may subject the crowdfunding service provider to an on-site inspection.
4. Crowdfunding service providers shall notify the relevant 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 12b

### Reporting by crowdfunding service providers

1. Crowdfunding service providers shall report annually on a confidential basis to the competent authority which granted authorisation the list of projects funded through its platform, whereby for each project it shall specify:
  - (i) the project owner and the amount raised;

- (ii) the issued instrument, as defined in article 3 paragraphs 1(la), 1(i) and 1(ia);
- (iii) aggregated information about the investors and invested amount broken down by fiscal residency of the investors, with distinction between sophisticated and non-sophisticated investors.

2. Competent authorities shall provide the information referred to in paragraph 1 to ESMA in anonymised format within one month. ESMA shall develop and publish aggregated annual statistics relating to the crowdfunding market in the Union on its website.

3. ESMA shall develop Implementing Technical Standards to establish data standards and formats, templates and procedures for the information to be reported in accordance with this Article. ESMA shall submit those draft implementing technical standards to the Commission by [Publications Office please insert date 12 months from entry into force].

## Article 13

### Withdrawal of authorisation

1. The competent authorities designated in accordance with Article 27a by the Member State which granted authorisation shall have the power to withdraw the authorisation 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 in the meaning of Article 3(1)(a) for nine successive months and is also no longer involved in the administration of existing contracts that were initially matched through the use of its crowdfunding platform;
- (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.
- (fa) or is also a payment services provider as defined in Directive (EU) 2015/2366 and it, or its managers, employees or third parties acting on its behalf, have breached national legislation transposing Directive (EU) 2015/849 in respect of money laundering or terrorism financing.
- (fb) or a third party provider acting on its behalf has lost the authorisation allowing for the provision of payment services as defined in Directive (EU) 2015/2366 or investment services under Directive 2014/65/EU, and such a crowdfunding service provider has failed to remedy the situation within 40 calendar days;

4. The competent authority designated as a single point of contact in accordance with Article 27a, paragraph 2, by the Member State which withdrew the authorisation shall notify, without undue delay, the competent authorities of the Member States where the crowdfunding service provider provides crowdfunding services in accordance with Article 13a and ESMA, which shall introduce this information in the register referred to in Article 11.

4a. Before making a decision to withdraw the authorisation of a crowdfunding service provider to provide crowdfunding services, the competent authority that granted authorisation shall consult the 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; or
- (c) is controlled by the same natural or legal persons who control a crowdfunding service provider authorised in that other Member State;

## Article 13a

### Cross-border provision of crowdfunding services

1. Where the crowdfunding service provider authorised in accordance with Article 10 intends to provide crowdfunding services in a Member State other than the Member State whose competent authority granted authorisation in accordance with Article 10, it shall submit to the competent authority designated as a single point of contact in accordance with Article 27a, paragraph 2, by the Member State which granted authorisation the following information:

- (a) the Member States in which the crowdfunding service provider intends to provide crowdfunding services;
- (b) the identity of the persons responsible for the provision of the crowdfunding services in those Member States;
- (c) the starting date of the intended provision of the crowdfunding services by the crowdfunding service provider;
- (d) any other activities provided by the crowdfunding service provider not covered by this Regulation.

2. The single point of contact of the Member State which granted authorisation shall, within ten working days of receipt of the information referred to in paragraph 1, communicate that information to the competent authorities of the Member States in which the crowdfunding service provider intends to provide crowdfunding services as referred to in paragraph 1 and to ESMA, which shall introduce this information in the register referred to in Article 11.

3. The single point of contact of the Member State which granted authorisation shall thereafter inform without delay the crowdfunding service provider of such communication.

4. The crowdfunding service provider may start to provide crowdfunding services in the Member State referred to in paragraph 1 from the date of the receipt of the communication referred to in paragraph 3 or at the latest 15 calendar days after submitting the information referred to in paragraph 1.

## **CHAPTER IV**

### **PROVISIONS TO ENSURE INVESTOR PROTECTION**

#### 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, about the crowdfunding conditions, including crowdfunding project selection criteria, and about the nature of and risks associated with their crowdfunding services shall be fair, clear and not misleading

1a. Crowdfunding service providers shall inform clients that their crowdfunding services are not covered by the deposit guarantee scheme established in accordance with Directive 2014/49/EU and that transferable securities or admitted instruments for crowdfunding purposes acquired through their crowdfunding platform are not covered by the investor compensation scheme established in accordance with Directive 97/9/EC.

1b. Crowdfunding service providers shall inform their clients about the reflection period for non-sophisticated investors referred to in Article 15b. Whenever a crowdfunding offer is made, the crowdfunding service provider shall provide the information referred to in the first subparagraph in a prominent place of the medium, including on a mobile application, and on every webpage where such an offer is made.

2. All information to be provided in accordance with paragraph 1 shall be communicated to clients whenever appropriate, at least prior to entering into a crowdfunding transaction.

3. The information referred to in paragraphs 1, 1a, and 4a shall be available to all clients on a clearly identified and easily accessible section of the website of the crowdfunding platform and in a non-discriminatory manner.

4a. If crowdfunding service providers apply credit scores to crowdfunding projects or suggest pricing of crowdfunding offers on their crowdfunding platform, they shall make available a description of the method used to calculate such credit scores or prices. If the estimation is based on accounts that are not audited, this should be clearly disclosed in the description of the method.

5. EBA shall, in cooperation with ESMA, develop draft regulatory technical standards to specify:

(a) the elements, including the format, that shall be included in the description of the method referred to in paragraph 4a of this Article to calculate credit scores or pricing;

(b) the information and factors that crowdfunding service providers must consider when complying with credit risk assessment referred to in points (a) and (b) of paragraph 2a of Article 5 and valuation requirements referred to in point (da) of paragraph 2a of Article 5;

- (c) the factors that a crowdfunding service provider should take into account when ensuring that the price of a loan it facilitates is fair and appropriate as referred to in point (d) of paragraph 2a of Article 5;
- (d) the minimum contents and governance of the policies and procedures required under this article and the risk management framework referred to in point (e) of paragraph 2a of Article 5.

EBA shall submit those draft regulatory technical standards to the Commission by ... [18 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 second subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.

#### Article 14a

##### Default rate disclosure

1. Crowdfunding service providers which provide crowdfunding services consisting of the facilitation of granting of loans shall:
  - a) disclose annually the default rates of the crowdfunding projects offered on their crowdfunding platform over at least the preceding 36 months; and
  - b) publish an outcomes statement within four months of the end of each financial year indicating, as applicable:
    - (i) the expected and actual default rate of all loans the crowdfunding service provider has facilitated by risk category, by reference to the risk categories set out in the risk management framework;
    - (ii) a summary of the assumptions used in determining expected default rates; and
    - (iii) where the firm offered a target rate in relation to individual portfolio management of loans, the actual return achieved.

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 rates referred to in paragraph 1 of the projects offered on crowdfunding platform.

ESMA shall submit those draft regulatory technical standards to the Commission by ... [12 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 15

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

1. Crowdfunding service providers shall, before giving prospective non-sophisticated investors full access to invest in their crowdfunding projects, assess whether and which crowdfunding services offered are appropriate for the prospective non-sophisticated investors.

2. For the purposes of the assessment pursuant to paragraph 1, crowdfunding service providers shall request information about the prospective non-sophisticated 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 non-sophisticated investor's past investments in transferable securities, or acquiring admitted instruments for crowdfunding purposes or loan agreements, including in early or expansion stage businesses;

(b) the understanding of the prospective non-sophisticated investor of the risks involved in granting loans, acquiring transferable securities, or acquiring admitted instruments for crowdfunding purposes through a crowdfunding platform, and professional experience in relation to crowdfunding investments.

3. Crowdfunding service providers shall take the measures necessary to comply with paragraph 1 for each non-sophisticated investor every two years.

4. Where prospective non-sophisticated investors do not provide the information required pursuant to paragraph 1, or where crowdfunding service providers consider, on the basis of the information received under paragraph 1, that the prospective non-sophisticated investors have insufficient knowledge, crowdfunding service providers shall inform those prospective non-sophisticated investors that the services offered on their platforms may be inappropriate for them and give them a risk warning. That risk warning shall clearly state the risk of losing the entirety of the money invested. Prospective non-sophisticated investors shall expressly acknowledge that they have received and understood the warning issued by the crowdfunding service provider.

5. For the purposes of the assessment pursuant to paragraph 1, crowdfunding service providers shall also require prospective non-sophisticated investors and non-sophisticated investors 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 whether the income is earned on a permanent or temporary basis;

(b) assets, including financial investments and any cash deposits, but excluding personal and investment property and pension funds;

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

5a. For the purposes of the simulation in paragraph 5, the crowdfunding service provider shall take the measures necessary to comply with paragraph 1 for each non-sophisticated investor every year.

Prospective non-sophisticated investors and non-sophisticated investors shall not be prevented from investing in crowdfunding projects. The non-sophisticated investor shall acknowledge the results of the simulation.

5b. Before a non-sophisticated investor enters into an investment of an amount that exceeds the higher of either 1000 EUR or 5% of his or her net worth as calculated in accordance with points (a) to (c) of paragraph 5, the crowdfunding service provider shall ensure that such investor: (a) receives a risk warning; (b) provides an explicit consent to the crowdfunding service provider; and (c) proves to the crowdfunding service provider that he or she understands the investment and its risks. For the purposes of point (c) of the first sub-paragraph of this paragraph, non-sophisticated investors may use the assessment referred to in paragraph 1.

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.

The EBA and ESMA shall take into account the nature, scale and complexity of the crowdfunding services provided by the crowdfunding service provider.

ESMA shall submit those draft regulatory technical standards to the Commission by ... [12 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 15b

##### Pre-contractual reflection period

1. The terms and conditions of the crowdfunding offer shall remain binding on the project owner from the moment when the crowdfunding offer is listed on the crowdfunding platform to the earlier of the following dates:

- (a) the expiry date of the crowdfunding offer announced by the crowdfunding service provider at the time of listing the crowdfunding offer on its crowdfunding platform, or
- (b) the date when the target funding goal is reached or, in the case of a funding range, when the maximum target funding goal is reached.

2. The crowdfunding service provider shall provide for a pre-contractual reflection period, during which the prospective non-sophisticated investor may at any time revoke his or her offer to invest or expression of interest in the crowdfunding offer without incurring a penalty and without giving a reason.

3. Crowdfunding service providers shall keep record of the offers to invest and expression of interest to invest it receives and of the point in time that they are received.
4. The reflection period referred to in paragraph 2 shall start at the moment of the offer to invest or expression of interest by the prospective non-sophisticated investor and shall expire 4 calendar days later.
7. The modalities to revoke an offer to invest or an expression of interest shall include at least the same modality by which the prospective non-sophisticated investor is able to make an offer to invest or express interest in a crowdfunding offer.
8. The crowdfunding service provider shall provide accurate, clear and timely information to the prospective non-sophisticated investors about the reflection period or the modalities to revoke an offer to invest or an expression of interest, including at least the following:
- (i) Immediately before the prospective non-sophisticated investor can communicate his or her offer to invest or expression of interest, the crowdfunding service provider shall inform the prospective non-sophisticated investor of:
- a. the fact that the offer to invest or the expression of interest is subject to a reflection period,
  - b. the duration of the reflection period,
  - c. the modalities to revoke the offer to invest or an expression of interest.

(ii) Immediately after the offer to invest or expression of interest, the crowdfunding service provider shall through its crowdfunding platform inform such investor that the reflection period has started.

9. In the case of individual portfolio management of loans, the provisions of the reflection period shall apply only to the initial investment mandate given by the non-sophisticated investor and not to the investments into specific loans made under that mandate.

## Article 16

### Key investment information sheet

-1. Crowdfunding service providers shall provide prospective investors with all of the information referred to in this Article.

1. Crowdfunding service providers shall provide prospective investors 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 whose authorities granted the authorisation in accordance with Article 10 of this Regulation or in another language accepted by those authorities.

1a. Where a crowdfunding service provider promotes a crowdfunding offer through marketing communication in another Member State, one of whose official languages is different from the language used under paragraph 1, the key investment information sheet shall be made available in at least one of the official languages of that Member State or in a language accepted by the competent authorities of that Member State.

1b. Crowdfunding service providers shall not be prevented to arrange for a translation of the key investment information sheet into any language or languages other than referred to in paragraph 1 or 1a.

1c. The translations referred to in paragraph 1 b shall accurately reflect the content of the original key investment information sheet.

1d. The competent authorities shall inform ESMA about the language or languages that they accept for the purposes of this Regulation as referred to in paragraphs 1 and 1a of this article. ESMA shall make this information available on its website.

2. The key investment information sheet referred to in paragraph 1 shall contain all of the following information:

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

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

The appropriateness of your education and knowledge have not necessarily been assessed before you were granted access to this investment. By making this investment, you assume full risk of taking this investment, including the risk of partial or entire loss of the money invested.”;

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

“Investment in this crowdfunding project entails risks, including the risk of partial or entire loss of the money invested. Your investment is not covered by the deposit guarantee established in accordance with Directive 2014/49/EU of the European Parliament and of the Council\*. Your investment is not covered by the investor compensation schemes established in accordance with Directive 97/9/EC of the European Parliament and of the Council.\*\*

You may not receive any return on your investment.

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

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

3. The key investment information sheet shall be fair, clear and not misleading and shall not contain any footnotes, other than those with quotations of the applicable law. It shall be presented in a stand-alone, durable medium which is clearly distinguishable from marketing communications and consist of maximum 6 sides of A4-sized paper format if printed. In case of admitted instruments for crowdfunding purposes, where the information required under Part F of Annex I exceeds 1 side of A4-sized paper format if printed, the remainder shall be produced in an annex attached to the key investment information sheet.

4. The crowdfunding service provider shall request the project owner to notify any change of information in order to be able to keep the key investment information sheet updated at all times and for the duration of the crowdfunding offer. The investors who have put forward interest for the crowdfunding offer shall be immediately informed about any material change to the information in the key investment information sheet.

4a. Member States shall ensure that responsibility for the information given in a key investment information sheet attaches to at least the project owner or its administrative, management or supervisory bodies. The persons responsible for the key investment information sheet shall be clearly identified in the key investment information sheet by their names and functions or, in the case of legal persons, their names and registered offices, as well as declarations by them that, to the best of their knowledge, the information contained in the key investment information sheet is in accordance with the facts that the key investment information sheet makes no omission likely to affect its import.

4b. Member States shall ensure that their laws, regulations and administrative provisions on civil liability apply to the persons responsible for the information given in a key investment information sheet, including any translation thereof, in at least the following situations:

- (a) the information is misleading or inaccurate; or
- (b) the key investment information sheet omits key information needed to aid investors when considering whether to finance the crowdfunding project.

5. Crowdfunding service providers shall have in place and apply adequate procedures to verify the completeness, the correctness and the clarity of the 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, that crowdfunding service provider shall signal such omission, mistake or inaccuracy promptly to the project owner, who shall complement or amend that information. Where such complement or amendment is not made, the crowdfunding service provider shall suspend the crowdfunding offer until the key investor information sheet has been complemented or amended, but for a period no longer than 30 calendar days.

The investors who have put forward interest for the crowdfunding offer shall be immediately informed about the identified irregularities, the steps taken and further to be taken by the crowdfunding service provider and the option to withdraw their interest for the crowdfunding offer. If after 30 calendar days the key investment information sheet has not been complemented or amended to rectify irregularities, the crowdfunding offer shall be cancelled.

7. A prospective 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 prospective investor to refrain from making the investment.

8. Competent authorities of the Member State that authorised the crowdfunding service provider may require an ex ante notification of a key investment information sheet at least seven working days before making it available to prospective investors. Key investment information sheets shall not be subject to ex-ante approval by the competent authorities.

8a. Where prospective investors are provided with a key investment information sheet drawn up in accordance with this article, the crowdfunding service providers and the project owners shall be considered as satisfying the obligation to draw up a key information document in accordance with Regulation 1286/2014.

This shall apply mutatis mutandis to persons advising on, or selling, a crowdfunding offer.

9. ESMA shall develop draft regulatory technical standards to specify the following:
- (a) the requirements for and content of the model for presenting the information referred to in paragraph 2 and the Annex I;
  - (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 I;
  - (ba) the use of certain financial ratios to enhance the clarity of key financial information, including for presenting the information referred to in Annex I part A, point (ca);
  - (c) the commissions and fees and transaction costs referred to in point (a) of Part H of Annex I, including a detailed breakdown of direct and indirect costs to be borne by the investor.

In drafting the standards, ESMA shall take into account the nature, scale and complexity of the crowdfunding services provided by the crowdfunding service provider.

ESMA shall submit those draft regulatory technical standards to the Commission by ... [18 months from the date of entry into force of this Regulation 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 16a  
KIIS at the platform level

1. By way of derogation from the first sentence of paragraph 1 of Article 16 and point (a) of paragraph 2 of Article 16, crowdfunding service providers for the service defined in point (aab) of Article 3(1) of this Regulation shall draw up in accordance with this article and make available to prospective investors a key investment information sheet containing all of the following information:

- (a) the information provided in Parts H and I of Annex I of this Regulation.;
- (b) information about the persons responsible for the information given in the key investment information sheet. In the case of natural persons, including members of the crowdfunding service provider's administrative, management or supervisory bodies, the name and function of the person; in case of legal persons, the name and the registered office;
- (c) the following responsibility statement:  
“The crowdfunding service provider declares that, to the best of its knowledge, no information has been omitted and is materially misleading or inaccurate. The crowdfunding service provider is responsible for the preparation of this key investment information sheet.”

2. The crowdfunding service provider shall keep the key investment information sheet referred to in paragraph 1 updated at all times and for the duration of the crowdfunding offer. The investors who have put forward interest for the crowdfunding offer shall be immediately informed about any material change to the information in the key investment information sheet.

3. The key investment information sheet referred to in paragraph 1 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 six sides of A4-sized paper format if printed.

4. Member States shall ensure that responsibility for the information given in a key investment information sheet referred to in paragraph 1 attaches to at least to the crowdfunding service provider. The persons responsible for the key investment information sheet shall be clearly identified in the key investment information sheet by their names and functions or, in the case of legal persons, their names and registered offices, as well as declarations by them that, to the best of their knowledge, the information contained in the key investment information sheet is in accordance with the facts that the key investment information sheet makes no omission likely to affect its import.

5. Member States shall ensure that their laws, regulations and administrative provisions on civil liability apply to the persons responsible for the information given in a key investment information sheet referred to in paragraph 1, including any translation thereof, in at least the following situations:

- (a) the information is misleading or inaccurate; or
- (b) the key investment information sheet omits key information in order to aid investors when considering whether to finance the service defined in point (aab) of Article 3(1) of this Regulation.

6. 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 referred to in paragraph 1.

7. When a crowdfunding service provider identifies an omission, a mistake or an inaccuracy in the key investment information sheet referred to in paragraph 1 which could have a material impact on the expected return of the service defined in point (aab) of Article 3(1) of this Regulation, the crowdfunding service providers shall themselves amend the omission, mistake or inaccuracy in the key information sheet.

8. Where prospective investors are provided with a key investment information sheet drawn up in accordance with this article, the crowdfunding service providers shall be considered as satisfying the obligation to draw up a key information document in accordance with Regulation 1286/2014. This shall apply mutatis mutandis to persons advising on, or selling, a crowdfunding offer.

## Article 17

### Bulletin board

1. Crowdfunding service providers may operate a bulletin board on which they allow their clients to advertise interest to buy and sell loan agreements, transferable securities or admitted instruments for crowdfunding purposes which were originally offered on their crowdfunding platforms.

1a. The bulletin board referred in paragraph 1 cannot be used to bring together buying and selling interest by means of the crowdfunding service provider's protocols or internal operating procedures in a way that results in a contract. The bulletin board shall therefore not consist of an internal matching system which executes client orders on a multilateral basis.

1aa. Crowdfunding service providers that allow the advertisement referred to in paragraph 1 shall comply with the following requirements:

- (a) they shall inform their clients about the nature of the bulletin board in accordance with paragraphs 1 and 1a of this Article.
- (aa) They shall require their clients advertising a sale of an agreement, security or instrument referred to in paragraph 1 to make available the key investor information sheet;
- (ab) they shall provide clients intending to buy loan agreements advertised on the bulletin board with information on the performance of loans facilitated by the platform
- (b) they shall ensure that their clients advertising an interest to purchase an agreement, security or instrument referred to in paragraph 1 and qualifying as non-sophisticated receive the information referred to in Article 14(1a) and the risk warning referred to Article 15(5a).

1b. Crowdfunding service providers that allow the advertisement of interest referred to in paragraph 1 and that provide asset safekeeping services in accordance with Article 9(1) shall require their investors advertising such interest to notify them of any changes in ownership for the purposes of conducting ownership verification and record-keeping.

2. Crowdfunding service providers that suggest a reference price for the buying and selling referred to in paragraph 1 shall inform their clients that the suggested reference price is non-binding and substantiate the suggested reference price and shall disclose key elements of the methodology in line with Article 14a of this Regulation.

Article 18  
Access to records

Crowdfunding service providers shall:

- (a) keep all records related to their services and transactions on a durable medium for a period of at least five years;
- (b) ensure that their clients have immediate access to records of the services provided to them at all times;
- (c) maintain for a period of at least 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 marketing communications, including those outsourced to third parties, about their services 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. The information contained in a marketing communication shall be fair, clear and not misleading and shall be consistent with the information contained in the key investment information sheet, where already available, or with the information required to be in the key investment information sheet, where the key investment information sheet is yet to be made available.

3. For their marketing communications, crowdfunding service providers shall use one or more of the official languages of the Member State in which the marketing communications are disseminated or in a language accepted by the competent authorities of that Member State.

3a. The competent authorities where the marketing communications are disseminated are responsible for overseeing compliance with and enforcing vis-à-vis crowdfunding service providers their national laws, regulations and administrative provisions applicable to marketing communication.

4. Competent authorities shall not require an ex ante notification and approval of marketing communications.

## Article 20

### Publication of national provisions concerning marketing requirements

1. Competent authorities shall publish and keep up-to-date on their websites those national laws, regulations and administrative provisions applicable to marketing communications of crowdfunding service providers that the competent authorities are responsible for overseeing compliance with and enforcing vis-à-vis crowdfunding service providers.

2. Competent authorities shall notify ESMA of the laws, regulations and provisions referred to in paragraph 1 and provide ESMA with a summary of those laws, regulations and provisions in a language customary in the sphere of international finance. ESMA shall publish the summary and the hyperlinks to the websites of the competent authorities referred to in paragraph 1 on its website.

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 laws, regulations and administrative provisions referred to in paragraph 1 without delay.

3a. Where the competent authorities are not responsible for overseeing and ensuring compliance with the laws, regulations and provisions referred to in paragraph 1, they shall publish on their websites the contact information about where information about the laws, regulations and provisions referred to in paragraph 1 can be obtained.

3b. ESMA shall develop draft implementing technical standards to determine standard forms, templates and procedures for the notifications under this Article.

ESMA shall submit those draft implementing standards to the Commission by ... [12 months after the date of entry into force of this Regulation].

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

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 penalties imposed by type of penalty or remedies provided by crowdfunding service providers; and
- (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**

### **COMPETENT AUTHORITIES AND ESMA**

#### 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 competent authorities and ESMA shall cooperate closely with each other and exchange information in order to carry out their duties under this Chapter.
2. 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 competent authority finds that any of the requirements under this Regulation 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.

## Article 36e

### Publication of decisions

1. A decision imposing administrative penalties and other administrative measures for infringement of this Regulation shall be published by competent authorities on their official websites immediately after the person subject to that decision has been informed of that decision. The publication shall include at least information on the type and nature of the infringement and the identity of the persons responsible. That obligation does not apply to decisions imposing measures that are of an investigatory nature.

2. Where the publication of the identity of the legal entities, or identity or personal data of natural persons, is considered by the competent authority to be disproportionate following a case-by-case assessment conducted on the proportionality of the publication of such data, or where such publication would jeopardise an on-going investigation, competent authorities shall do one of the following:

- (a) defer the publication of the decision to impose a penalty or a measure until the moment where the reasons for non-publication cease to exist;
- (b) publish the decision to impose a penalty or a measure on an anonymous basis in a manner which is in conformity with national law, where such anonymous publication ensures an effective protection of the personal data concerned;
- (c) not publish the decision to impose a penalty or measure in the event that the options laid down in points (a) and (b) are considered to be insufficient to ensure the proportionality of the publication of such decisions with regard to measures which are deemed to be of a minor nature.

In the case of a decision to publish a penalty or measure on an anonymous basis, as referred to in point (b) of the first subparagraph, the publication of the relevant data may be deferred for a reasonable period where it is foreseen that within that period the reasons for anonymous publication shall cease to exist.

3. Where the decision to impose a penalty or measure is subject to appeal before the relevant judicial or other authorities, competent authorities shall also publish, immediately, on their official website such information and any subsequent information on the outcome of such appeal. Moreover, any decision annulling a previous decision to impose a penalty or a measure shall also be published.

4. Competent authorities shall ensure that any publication in accordance with this Article shall remain on their official website for a period of at least five years after its publication. Personal data contained in the publication shall be kept on the official website of the competent authority only for the period which is necessary in accordance with the applicable data protection rules.

#### Article 27a

##### Competent authorities

1. Member States shall designate the competent authorities responsible for carrying out the functions and duties provided for in this Regulation and shall inform ESMA thereof.

2. Where Member States designate more than one competent authority pursuant to paragraph 1, they shall determine their respective tasks and designate one of them as a single point of contact for cross-border administrative cooperation between competent authorities as well as with ESMA.

2a. ESMA shall publish on its website a list of the competent authorities designated in accordance with the first subparagraph.

Article 27b  
Powers of competent authorities

1. In order to fulfil their duties under this Regulation, competent authorities shall have, in accordance with national law, at least the following investigatory powers:
  - (b) to require crowdfunding service providers and third parties designated to perform functions in relation to the provision of crowdfunding services, and the persons that control them or are controlled by them, to provide information and documents;
  - (c) to require auditors and managers of the crowdfunding service providers and third parties designated to perform functions in relation to the provision of crowdfunding services, to provide information;
  - (d) to carry out on-site inspections or investigations at sites other than the private residences of natural persons, and for that purpose to enter premises in order to access documents and other data in any form, where a reasonable suspicion exists that documents and other data related to the subject-matter of the inspection or investigation may be relevant to prove an infringement of this Regulation;
2. In order to fulfil their duties under this Regulation, competent authorities shall have, in accordance with national law, at least the following supervisory powers:
  - (b) to suspend a crowdfunding offer for a maximum of 10 consecutive working days on any single occasion where there are reasonable grounds for suspecting that this Regulation has been infringed;

- (c) to prohibit or suspend advertisements or require crowdfunding service providers or third parties designated to perform functions in relation to the provision of crowdfunding services to cease or suspend advertisements for a maximum of 10 consecutive working days on any single occasion where there are reasonable grounds for believing that this Regulation has been infringed;
- (d) to prohibit a crowdfunding offer where they find that this Regulation has been infringed or where there are reasonable grounds for suspecting that it would be infringed;
- (f) to suspend or require relevant crowdfunding service providers to suspend the provision of crowdfunding services for a maximum of 10 consecutive working days on any single occasion where there are reasonable grounds for believing that this Regulation has been infringed;
- (g) to prohibit the provision of crowdfunding services where they find that this Regulation has been infringed;
- (h) to make public the fact that a crowdfunding service provider or a third party designated to perform functions in relation to the provision of crowdfunding services is failing to comply with its obligations;
- (i) to disclose, or to require the crowdfunding service provider or the third party designated to perform functions in relation to the provision of crowdfunding services to disclose all material information which may have an effect on the provision of the crowdfunding service in order to ensure investor protection or the smooth operation of the market;
- (l) to suspend or require the crowdfunding service provider or a third party designated to perform functions in relation to the provision of crowdfunding services to suspend the provision of crowdfunding services where it considers that the crowdfunding service provider's situation is such that the provision of the crowdfunding service would be detrimental to investors' interests;

(o) to transfer existing contracts to another crowdfunding service provider in case the crowdfunding service provider's authorisation is withdrawn in accordance with Article 13(1)(c), subject to the agreement of the clients and the receiving provider.

Any measures adopted in exercise of the powers under the present paragraph shall be proportionate, duly justified and taken in accordance with Article 36b.

3. Where necessary under national law, the competent authority may ask the relevant judicial authority to decide on the use of the powers referred to in paragraphs 1 and 2.

4. The crowdfunding service provider to which the existing contracts are transferred as referred to in point (o) of paragraph 2 of this Article shall be authorised to provide crowdfunding services in the same Member State where the original crowdfunding service provider was authorised.

5. Competent authorities shall exercise their functions and powers referred to in paragraphs 1 and 2 in any of the following ways:

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

3. Member States shall ensure that appropriate measures are in place so that competent authorities have all the supervisory and investigatory powers that are necessary to fulfil their duties.

4. A person making information available to the competent authority in accordance with this Regulation shall not be considered to be infringing any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision, and shall not be subject to liability of any kind related to such notification.

#### Article 27c

##### Cooperation between competent authorities

1. Competent authorities shall cooperate with each other and with ESMA for the purposes of this Regulation. They shall exchange information without undue delay and cooperate in investigation, supervision and enforcement activities.

Where Member States have chosen, in accordance with Article XX, to lay down criminal penalties for an infringement referred to this Regulation, 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 this Regulation 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.

2. A competent authority may refuse to act on a request for information or a request to cooperate with an investigation only in any of the following exceptional circumstances:
- (a) where complying with the request is likely to adversely affect its own investigation, enforcement activities or a criminal investigation;
  - (b) where judicial proceedings have already been initiated in respect of the same actions and against the same persons before the authorities of the Member State addressed;
  - (c) where a final judgment has already been delivered in relation to such persons for the same actions in the Member State addressed.
3. Competent authorities shall, on request, without undue delay supply any information required for the purposes of this Regulation.
4. The competent authority may request assistance from the competent authority of another Member State with regard to on-site inspections or investigations.

A requesting competent authority shall inform ESMA of any request referred to in the first subparagraph. In the case of an on-site inspection or investigation with cross-border effect, ESMA shall, where requested to do so by one of the competent authorities, coordinate the inspection or investigation.

Where a competent authority receives a request from a competent authority of another Member State to carry out an on-site inspection or an investigation, it may do any of the following:

- (a) carry out the on-site inspection or investigation itself;
- (b) allow the competent authority which submitted the request to participate in an on-site inspection or investigation;
- (c) allow the competent authority which submitted the request to carry out the on-site inspection or investigation itself;
- (d) appoint auditors or experts to carry out the on-site inspection or investigation;
- (e) share specific tasks related to supervisory activities with the other competent authorities.

5. The competent authorities may refer to ESMA in situations where a request for cooperation, in particular to exchange information, has been rejected or has not been acted upon within a reasonable time. Without prejudice to Article 258 TFEU, ESMA may, in the situations referred to in the first sentence of this paragraph, act in accordance with the power conferred on it under Article 19 of Regulation (EU) No 1095/2010.

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

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

ESMA shall submit those draft regulatory technical standards to the Commission by [Publications Office please insert date 18 months from entry into force].

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

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

ESMA shall submit those draft implementing technical standards to the Commission by [Publications Office please insert date 18 months from entry into force].

#### Article 27d

#### Cooperation with ESMA

1. The competent authorities shall cooperate with ESMA for the purposes of this Regulation, in accordance with Regulation (EU) No 1095/2010.

2. The competent authorities shall without delay provide ESMA with all information necessary to carry out its duties, in accordance with Article 35 of Regulation (EU) No 1095/2010.

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

ESMA shall submit those draft implementing technical standards to the Commission by ... [18 months from the date of publication of this Regulation].

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

#### Article 27da

##### Cooperation with other authorities

Where a crowdfunding service provider engages in activities other than those covered by the authorisation referred to in Article 10, the competent authorities shall cooperate with the authorities responsible for the oversight of such other activities as provided for in the relevant national or Union law.

#### Article 27e

##### Professional secrecy

1. All information exchanged between the competent authorities under this Regulation that concerns business or operational conditions and other economic or personal affairs shall be considered to be confidential and shall be subject to the requirements of professional secrecy, except where the competent authority states at the time of communication that such information may be disclosed or such disclosure is necessary for legal proceedings.

2. The obligation of professional secrecy shall apply to all persons who work or who have worked for the competent authority. Information covered by professional secrecy may not be disclosed to any other person or authority except by virtue of provisions laid down by Union or national law.

#### Article 27f

##### Data protection

With regard to the processing of personal data within the scope of this Regulation, competent authorities shall carry out their tasks for the purposes of this Regulation in accordance with Regulation (EU) 2016/679.

With regard to the processing of personal data by ESMA within the scope of this Regulation, it shall comply with Regulation (EU) 2018/1725.

#### Article 27g

##### Precautionary measures

1. Where the competent authority of the Member State where crowdfunding services are provided has clear and demonstrable grounds for believing that irregularities have been committed by the crowdfunding service provider or third parties designated to perform functions in relation to the provision of crowdfunding services or that those persons have infringed their obligations under this Regulation, it shall notify the competent authority which granted authorisation and ESMA.

2. Where, despite the measures taken by the competent authority which granted authorisation, the crowdfunding service provider or third party designated to perform functions in relation to the provision of crowdfunding services persists in infringing this Regulation, the competent authority of the Member State where crowdfunding services are provided, after informing the competent authority which granted the authorisation and ESMA, shall take all appropriate measures in order to protect investors and shall inform the Commission and ESMA thereof without undue delay.
3. Where a competent authority disagrees with any of the measures taken by another competent authority pursuant to paragraph 2, it may bring the matter to the attention of ESMA. ESMA may act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No 1095/2010.

#### Article 27h

##### Complaint handling by competent authorities

1. Competent authorities designated according to Article 27a shall set up procedures which allow clients and other interested parties, including consumers associations, to submit complaints to the competent authorities with regard to crowdfunding service providers' alleged infringements of this Regulation. In all cases, complaints should be accepted in written or electronic form and in an official language of that Member State or in a language accepted by the competent authorities of that Member State.
2. Information on the complaints procedures referred to in paragraph 1 shall be made available on the website of each competent authority and communicated to ESMA. ESMA shall publish the references to the complaints procedures related sections of the websites of the competent authorities on its website.

## CHAPTER VI A

### ADMINISTRATIVE PENALTIES AND OTHER ADMINISTRATIVE MEASURES

#### Article 36a

##### Administrative penalties and other administrative measures

1. Without prejudice to the supervisory and investigatory powers of competent authorities under Article 27b, and the right of Member States to provide for and impose criminal penalties, Member States shall, in accordance with national law, provide for competent authorities to have the power to impose administrative penalties and take appropriate other administrative measures which shall be effective, proportionate and dissuasive. Those administrative penalties and other administrative measures shall apply at least to:

- (a) infringements of Article 4, Article 5, Article 6(1), (2) and (3), Article 7, Article 8(1) and (2), Article 9, Article 9a(1) and (2), Article 10(1), Article 12(2) and (4), Article 13a(1), Article 14(1) to (4), Article 15(1) to (5), Article 15a(2), Article 15b, Article 16(1) to (6), Article 17, Article 18 and Article 19(1) to (3);
- (b) failure to cooperate or comply in an investigation or with an inspection or request covered by Article 27c

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.

By ... [12 months from the date of entry into force of this Regulation], Member States shall notify, in detail, the rules referred to in the first and second subparagraph to the Commission and to ESMA. They shall notify the Commission and ESMA without delay of any subsequent amendment thereto.

2. Member States shall, in accordance with national law, ensure that competent authorities have the power to impose at least the following administrative penalties and other administrative measures in relation to the infringements listed in point (a) of paragraph 1:

(a) a public statement indicating the natural or legal person responsible for, and the nature of, the infringement;

(b) an order requiring the natural or legal person to cease the infringing conduct and to desist from a repetition of that conduct;

(ba) a 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;

(c) maximum administrative 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);

(d) in the case of a legal person, maximum administrative fines of at least EUR 500 000, or in the Member States whose currency is not the euro, the corresponding value in the national currency on ... [date of entry into force of this Regulation] or of up to 5% of the total annual turnover of that legal person according to the last available financial statements approved by the management body. Where the legal person is a parent undertaking or a subsidiary of a parent undertaking which is required to prepare consolidated financial accounts in accordance with Directive 2013/34/EU, the relevant total annual turnover shall be the total annual turnover or the corresponding type of income in accordance with the relevant Union law in the area of accounting according to the last available consolidated accounts approved by the management body of the ultimate parent undertaking;

(e) in the case of a natural person, maximum administrative fines of at least EUR 500 000, or, in the Member States whose currency is not the euro, the corresponding value in the national currency on ... [date of entry into force of this Regulation].

3. Member States may provide for additional penalties or measures and for higher levels of administrative fines than those provided for in this Regulation, in respect of both natural and legal persons responsible for the infringement.

#### Article 36b

##### Exercise of supervisory powers and powers to impose penalties

2. Competent authorities, when determining the type and level of an administrative penalty or other administrative measure to be imposed under Article XX, 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 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, as indicated by the total turnover of the responsible legal person or the annual income and net assets of the responsible natural person;
- (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;
- (h) the impact of the infringement on investors' interests.

1a. Competent authorities shall exercise their functions and powers referred to in Article 36a in accordance with Article 27b(2).

2. In the exercise of their powers to impose administrative penalties and other administrative measures under Article 36a, competent authorities shall cooperate closely to ensure that the exercise of their supervisory and investigative powers and the administrative penalties and other administrative measures that they impose are effective and appropriate under this Regulation. They shall coordinate their action in order to avoid duplication and overlaps when exercising their supervisory and investigative powers and when imposing administrative penalties and other administrative measures in cross-border cases.

Article 36c  
Right of appeal

Member States shall ensure that any decision taken under this Regulation is properly reasoned and is subject to the right of appeal before a tribunal. The right of appeal before a tribunal shall also apply where, in respect of an application for authorisation which provides all the information required, no decision is taken within 6 months of its submission.

Article 36d  
Amendment of Directive (EU) 2019/1937

Directive (EU) 2019/1937 is amended as follows:

Under Part I, Point B, of the Annex, the following is added:

(xxi) Regulation [X] on European crowdfunding service providers for business and amending Regulation (EU) No 2017/1129 and amending Directive 2019/1937.

## Article 36f

### The reporting of penalties and administrative measures to ESMA

1. The competent authority shall, on an annual basis, provide ESMA with aggregate information regarding all administrative penalties and other administrative measures imposed in accordance with Article 36a. ESMA shall publish that information in an annual report.

Where Member States have chosen, in accordance with Article 36a(1), to lay down criminal penalties for the infringements of the provisions referred to in that paragraph, their competent authorities shall provide ESMA annually with anonymised and aggregated data regarding all criminal investigations undertaken and criminal penalties imposed. ESMA shall publish data on criminal penalties imposed in an annual report.

2. Where the competent authority has disclosed administrative penalties, other administrative measures or criminal penalties to the public, it shall simultaneously report them to ESMA.

3. Competent authorities shall inform ESMA of all administrative penalties or other administrative measures imposed but not published, including any appeal in relation thereto and the outcome thereof. Member States shall ensure that competent authorities receive information and the final judgment in relation to any criminal penalty imposed and submit it to ESMA. ESMA shall maintain a central database of penalties and administrative measures communicated to it solely for the purposes of exchanging information between competent authorities. That database shall be only accessible to ESMA, the EBA, and the competent authorities and it shall be updated on the basis of the information provided by the competent authorities.

## **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 38a1(7) shall be conferred on the Commission for a period of 36 months after [date of entry into force of this Regulation].
3. The delegation of powers referred to in Article 38a1(7) 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 38a1(7) 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 date 24 months from entry into application] the Commission shall, after consulting ESMA and the EBA, 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, taking into account supervisory experience, the number of crowdfunding service providers authorised and their market share, as well as the impact of this Regulation in relation to other relevant legislation of the Union, including Directive 2014/65/EU, Regulation (EU) 2017/1129, Directive 97/9/EC and Directive 2011/61/EU;

- (aa) whether the scope of services covered by this Regulation remains appropriate, in relation to the threshold amount set out in Article 1(2)(d);
- (ab) the use of admitted instruments for crowdfunding purposes in cross-border crowdfunding service provision;
- (ac) whether the scope of services covered by this Regulation remains appropriate, taking into account the development of business models involving the intermediation of financial claims, including the assignment or sale to third-party investors of loan claims via the crowdfunding platform;
- (ad) whether any adjustments are needed to the definitions set out in this Regulation, including the definition of a sophisticated investor set out in Article 3(1)(ga) and the criteria in Annex II in the light of their effectiveness in ensuring investor protection;
- (ae) whether the requirements set out in Articles 5(1), 5b and 16(2a) remain appropriate to pursue the objectives of this Regulation as regards the governance, compliance and information disclosures for individual portfolio management of loans and in the light of similar services provided for transferable securities in accordance with Directive 2014/65/EU;
- (b) the impact of this Regulation on the proper functioning of the Union's internal market for 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 new innovative business models and technologies;

- (ca) whether the prudential requirements set out in Article 9a remain appropriate to pursue the objectives set out in this Regulation, in particular as regards the level of the minimum own funds requirements, the definition of own funds, the use of insurance and the combination between own funds and insurance;
- (cb) whether any changes are needed to the requirements on information to clients set out in Article 14 or to the investor protection safeguards set out in Article 15;
- (d) whether the amount set out in Article 15a5a(new) remains appropriate to pursue the objectives set out in this Regulation;
- (d-a) the languages accepted by the competent authorities in accordance with Article 16(1) and (1a);
- (da) the use of bulletin boards referred to in Article 17, including the impact on the secondary market for loans, transferable securities and admitted instruments for crowdfunding purposes;
- (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 penalties and in particular any need to further harmonise the administrative penalties 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 terrorist financing and adding such crowdfunding service providers to the list of obliged entities for the purposes of Directive (EU) 2015/849.

(ga) the appropriateness of expanding the scope of this Regulation to third countries;

(gb) the cooperation between national competent authorities and ESMA and the appropriateness of national competent authorities as the supervisor of this Regulation;

(gc) the possibility of introducing specific measures in this Regulation to promote sustainable and innovative crowdfunding projects, as well as the use of EU Funds.

e) the total volume and share of crowdfunding service providers authorised under this Regulation within first 12 months after the entry into application of this Regulation divided by small, medium and large enterprises;

f) amounts and trends of cross-border volumes of crowdfunding activities per Member State;

g) the share of crowdfunding provided under this Regulation in the global crowdfunding market and the European financial market;

h) the costs of this Regulation for crowdfunding service providers as a percentage of operation costs;

(i) The volume of investments withdrawn by investors within the reflection period, its share of the total volume of investments and, based on these data, assess whether the duration and the nature of the reflection period set out in Article 15b is appropriate and does not harm the efficiency of the capital raising process or investor protection.

j) the number and volume of financial and criminal sanctions imposed according to or in relation with this Regulation divided by Member States;

k) types and trends of fraudulent behaviour, of investors, crowdfunding service providers and third persons occurring in relations with this Regulation.

#### Article 38a

#### Amendment to Regulation (EU) 2017/1129

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

(k) an offer of securities to the public from a crowdfunding service provider authorised under Regulation (EU) No .../..., provided that it does not exceed the threshold laid down in Article 1(2)(d) of that Regulation.”

Article 38a  
Transition period

1. Crowdfunding service providers may continue in accordance with the applicable national law to carry out crowdfunding services which are now included within the scope of this Regulation until [X of Month 20xx – insert a date 12 months from the date of application mentioned in paragraph 2 of Article 39] or until the authorisation mentioned in Article X of this Regulation is granted, whichever is sooner.
2. For the duration of the transition period referred to in paragraph 1, Member States may have in place simplified authorisation procedures for entities that, at the time of entry into force of this Regulation, are authorised under national laws to carry out crowdfunding services. The competent authorities shall ensure that the requirements laid down in Article 10 are complied with before granting authorisation pursuant to such simplified procedures.
7. By [18 months after the entry into force of this Regulation], the Commission shall make an assessment, after consulting ESMA, on the application of this Regulation to crowdfunding service providers that provide crowdfunding services only on a national basis and its impact on the development of national crowdfunding markets and access to finance. On the basis of this assessment, the Commission shall be empowered to adopt delegated acts in accordance with Article 37 to extend the 12 month period referred to in paragraph 1 once by a further 12 month period

## Article 38b

By derogation to Article 1(2)(d), for a period of twenty-four months, where in a Member State the threshold of total consideration for the publication of a prospectus according to Regulation (EU) 2017/1129 is below EUR 5 million, this regulation shall apply in that Member State only to crowdfunding offers with a total consideration up to the amount of that threshold.

## Article 38c

1. Member States shall adopt and publish, by [Publications Office: 12 months from entry into force of the Crowdfunding Regulation], the laws, regulations and administrative provisions necessary to comply with article 36d.

Members States shall apply those measures from [Publications Office: date of entry into application of the Crowdfunding Regulation].

2. Member States shall communicate to the Commission and to ESMA the text of the main provisions of national law which they adopt in the field covered by Article 36d.

## 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 date 12 months from entry into force].

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

Done at ...,

**ANNEX I**  
**KEY INVESTMENT INFORMATION SHEET**

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

(a) Identity, legal status, ownership, management and contact details;

(aa) All persons responsible for the information given in the KIIS. In the case of natural persons, including members of the project owner's administrative, management or supervisory bodies indicate, the name and function of the person; in case of legal persons indicate the name and the registered office

The following responsibility statement:

“The project owner declares that, to the best of its knowledge, no information has been omitted and is materially misleading or inaccurate. The project owner is responsible for the preparation of this KIIS.”

(b) Principal activities; products or services offered;

(c) A hyperlink to the most recent financial statement of the project owner, if available;

(ca) Key annual financial figures and ratios for the project owner for the last three years, if available;

(d) Description of the crowdfunding project, including its the purpose and the main features.

**Part B: Main features of the crowdfunding process and conditions for the capital raising or funds borrowing, as applicable**

- (a) Minimum target capital to be raised or target funds to be borrowed in a single crowdfunding offering and the number of offerings that have been completed by the project owner or crowdfunding service provider for the crowdfunding project;
- (b) Deadline for reaching the target to raise capital or borrow funds;
- (c) Information on the consequences if the target capital is not raised or the targeted funds are not borrowed by the deadline;
- (d) The maximum offering amount when different from the target capital set out in point (a);
- (e) Amount of own funds committed to the crowdfunding project by the project owner;
- (f) Change of the composition of the project owner's capital or loans related to the crowdfunding offer.
- (g) The existence and conditions of a pre-contractual reflection period for non-sophisticated investors.

**Part C: Risk Factors**

Presentation of the main risks associated with funding the crowdfunding project, with the sector, the project, the project owner and the transferable securities, admitted instruments for crowdfunding purposes or loans, including geographic risks, where relevant.

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

- (a) Total amount and type of transferable securities or admitted instruments for crowdfunding purposes to be offered;
- (b) Subscription price;
- (c) Whether oversubscriptions are accepted and how they are allocated;
- (d) Terms of subscription and payment;
- (e) Custody and delivery of transferable securities or admitted instruments for crowdfunding purposes to investors;
- (f) Where the investment is secured by a guarantor or a collateral:
  - (i) whether that guarantor or collateral provider is a legal person;
  - (ii) the identity, legal status and contact details of that guarantor or collateral provider;
  - (iii) information on the nature and the terms of the guarantee or collateral;
- (g) Where applicable, a firm commitment to buy back the transferable securities or admitted instruments for crowdfunding purposes and the time period for such a buy-back;
- (h) For non-equity instruments, the nominal interest rate, the date from which interest becomes payable, the due dates for interest payments, the maturity date and the applicable yield.

**Part E: SPV information**

- (a) Whether there is an SPV interposed between the project owner and the investor;
- (b) Contact details of the SPV.

## **Part F: Investor rights**

- (a) Key rights attached to the transferable securities or admitted instruments for crowdfunding purposes;
- (b) Restrictions to which the transferable securities or admitted instruments for crowdfunding purposes are subject, including shareholder agreements or other arrangements preventing their transferability;
- (c) Description of any restrictions on the transferring of the transferable securities or admitted instruments for crowdfunding purposes;
- (d) Opportunities for exit;
- (e) For equity instruments, distribution of capital and voting rights before and after the capital increase resulting from the offer (assuming that all the transferable securities or admitted instruments for crowdfunding purposes will be subscribed).

## **Part G: Disclosure related to the loan**

Where the crowdfunding offer involves the facilitation of granting loans, the key investment information sheet shall, instead of the information referred to in Parts D, E and F, contain the following information:

- (a) Nature, duration and terms of the loan;
- (b) Applicable interest rates or, where applicable, other compensation to the investor;
- (c) Risk mitigation measures, including the existence of collateral providers or guarantors or other types of guarantees;
- (d) Amortisation schedule of the principal and repayment of interest.
- (e) Any default on credit agreements by the project owner within the past five years.
- (f) Information about the servicing of the loan, including for situations where the project owner does not meet its obligations.

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

- (a) Fees charged to, and the costs incurred by, the investor in relation to the investment, including administrative costs resulting from the sale of admitted instruments for crowdfunding purposes;
- (b) Where and how additional information about the crowdfunding project, the project owner and the SPV can be obtained free of charge;
- (c) How and to whom the investor may address a complaint about the investment or about the conduct of the project owner or about the crowdfunding service provider.

## **Part I: Information on individual portfolio management of loans to be provided by crowdfunding service providers**

- (a) Identity, legal status, ownership, management and contact details of the crowdfunding service provider;
- (b) The minimum and maximum interest rate of loans that may be available to investors' individual portfolios;
- (c) The minimum and maximum maturity date of loans that may be available to investors' individual portfolios;
- (d) Where used, the range and distribution of risk categories that loans fall into, as well as the default rates and a weighted average interest rate per risk category with a further break down by the year in which the loans were granted through the crowdfunding service provider;
- (e) The key elements of the internal methodology for credit risk assessment of the individual crowdfunding projects and for defining the risk categories;
- (f) If a target rate of return on investment is offered, an annualised target rate and the confidence interval of this annualised target rate over the investment period, taking into account fees and default rates;

- (h) Procedures, internal methodologies and criteria for selection of the crowdfunding projects to the individual portfolio of loans for the investor;
- (i) Coverage and conditions of any applicable capital guarantees;
- (j) Information about the servicing of portfolio loans, including in the situation where a project owner does not meet its obligations;
- (k) Risk diversification strategy
- (l) Fees to be paid by the project owner or the investor, including any deduction from the interest to be paid by the project owner.

## ANNEX II

### SOPHISTICATED INVESTORS FOR THE PURPOSE OF THIS REGULATION

#### I. Identification criteria

A sophisticated investor is an investor who possesses the awareness of the risks associated with investing in capital markets and adequate resources to undertake those risks without exposing itself to undue financial consequences. Sophisticated investors may be categorized as such if they meet the identification criteria and the procedure set out in Section II is followed.

The following persons shall be regarded as sophisticated investors in all services offered by crowdfunding service providers according to this Regulation:

A. Legal entities meeting at least one of the following criteria:

- (i) own funds of at least EUR 100 000
- (ii) net turnover of at least EUR 2 000 000
- (iii) balance sheet of at least EUR 1 000 000

B. Natural persons meeting at least two of the following criteria:

- (i) personal gross income of at least EUR 60 000 per fiscal year or a financial instrument portfolio, defined as including cash deposits and financial assets, that exceeds EUR 100 000;
- (ii) the investor works or has worked in the financial sector for at least one year in a professional position, which requires knowledge of the transactions or services envisaged, or the investor has held an executive position for at least twelve months in an undertaking as identified in part A;
- (iii) the investor has carried out transactions, in significant size, on the capital markets at an average frequency of 10 per quarter, over the previous four quarters.

## II. Request for being treated as a sophisticated investor

Crowdfunding service providers shall make available to its investors a template that they may use to submit the request to be treated as a sophisticated investor. The template shall contain the identification criteria set out in Section I and a clear warning specifying the investor protection that a sophisticated investor will lose as a consequence of being classified as such.

The request referred to above shall contain the following:

- A. Attestation specifying the identification criteria set out in Section I that the requesting investor meets;
- B. Statement that the requesting investor is aware of the consequences of losing the investor protection attached to the status of non-sophisticated investors.
- C. Statement that the requesting investor remains liable for the veracity of the information provided in the request.

The crowdfunding service provider shall take reasonable steps to ensure that the investor qualifies as a sophisticated investor and shall implement appropriate written internal policies to categorise investors. The crowdfunding service provider shall approve the request unless it has reasonable doubt that the information provided in the request is correct. Investors shall receive an explicit notification when their status is confirmed.

The approval referred to in the previous paragraph shall have a validity of two years. Investors that wish to maintain their sophisticated investor status must submit a new request to the crowdfunding service provider.

Sophisticated investors are responsible for keeping the crowdfunding service provider informed about any change which could affect their current categorisation. Should the crowdfunding service provider become aware, however, that the investor no longer fulfils the initial conditions, which made him eligible for a sophisticated treatment, the crowdfunding service provider shall inform the investor that he or she will be treated as a non-sophisticated investor.

### III. Sophisticated investor that are professional clients

By derogation from the procedure set out in section II above, entities referred to in points (1), (2), (3) and (4) of Section I of Annex II to Directive 2014/65/EU shall be regarded as sophisticated investors if they provide proof of their status to the crowdfunding service provider.