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## I

*(Legislative acts)*

## REGULATIONS

**REGULATION (EU) 2020/1503 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL****of 7 October 2020****on European crowdfunding service providers for business, and amending Regulation (EU) 2017/1129 and Directive (EU) 2019/1937****(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,

After consulting the European Central Bank,

Having regard to the opinion of the European Economic and Social Committee <sup>(1)</sup>,

Acting in accordance with the ordinary legislative procedure <sup>(2)</sup>,

Whereas:

- (1) Crowdfunding is increasingly an established form of alternative finance for start-ups and small and medium-sized enterprises (SMEs), typically relying on small investments. Crowdfunding represents an increasingly important type of intermediation where a crowdfunding service provider, without taking on own risk, 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. Such funding could take the form of loans or the acquisition of transferable securities or of other admitted instruments for crowdfunding purposes. It is therefore appropriate to include within the scope of this Regulation both lending-based crowdfunding and investment-based crowdfunding, since those types of crowdfunding can be structured as comparable funding alternatives.
- (2) 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 crowdfunding service provider that brings together project owners and investors through an online platform.
- (3) Crowdfunding can contribute to providing access to finance for SMEs and completing the Capital Markets Union (CMU). Lack of access to finance for SMEs constitutes a problem even in those Member States where access to bank finance has remained stable throughout the financial crisis. Crowdfunding has emerged and become an established practice of funding business activities of natural and legal persons. Such funding takes place through online platforms; the business activities are typically funded by a large number of people or organisations; and the businesses, including business start-ups, raise relatively small amounts of money.

<sup>(1)</sup> OJ C 367, 10.10.2018, p. 65.

<sup>(2)</sup> Position of the European Parliament of 27 March 2019 (not yet published in the Official Journal) and position of the Council at first reading of 20 July 2020 (not yet published in the Official Journal). Position of the European Parliament of 5 October 2020 (not yet published in the Official Journal).

- (4) In addition to providing an alternative source of financing, including venture capital, crowdfunding can offer other benefits to businesses. It can validate a business idea, 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 across the Union as regards the conditions of operation of crowdfunding platforms, the scope of permitted activities and the authorisation 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 costs for retail investors who often face difficulties in determining the rules applicable to cross-border crowdfunding services. Therefore, such investors are often discouraged from investing cross-border by means of crowdfunding platforms. For the same reasons, crowdfunding service providers operating such platforms are discouraged from offering their services in Member States other than the one in which they are established. As a result, crowdfunding services 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 services and to facilitate the exercise of the freedom to provide and receive such services in the internal market, 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 funding of businesses. Crowdfunding services in relation to lending to consumers, as defined in point (a) of Article 3 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.
- (9) To avoid regulatory arbitrage and to ensure their effective supervision, crowdfunding service providers should be prohibited from taking 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 of the European Parliament and of the Council <sup>(4)</sup>. However, Member States should ensure that national law does not require an authorisation as a credit institution or any other individual authorisation, exemption or dispensation for project owners or investors where they accept funds or grant loans for the purposes of offering or investing in crowdfunding projects.
- (10) 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. This Regulation should apply to crowdfunding services that consist of the joint provision of reception and transmission of client orders and the placement of transferable securities or admitted instruments for crowdfunding purposes without a firm commitment basis on a public platform that provides unrestricted access to investors. The joint provision of those services is the key feature of crowdfunding services compared to certain investment services provided under Directive 2014/65/EU of the European Parliament and of the Council <sup>(5)</sup>, even though individually those services match those covered by that Directive.

<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).

<sup>(5)</sup> Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).

- (11) In relation to lending-based crowdfunding, this Regulation should apply to crowdfunding services that consist of the facilitation of granting of loans, including services such as presenting crowdfunding offers to clients and pricing or assessing the credit risk of crowdfunding projects or project owners. The definition of crowdfunding services should accommodate different business models enabling a loan agreement between one or more investors and one or more project owners to be concluded through a crowdfunding platform. Loans included within the scope of this Regulation should be loans with unconditional obligations to repay an agreed amount of money to the investor, whereby lending-based crowdfunding platforms merely facilitate the conclusion by investors and project owner of loan agreements without the crowdfunding service provider at any moment acting as a creditor of the project owner. The facilitation of granting of loans that falls 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.
- (12) In order to deliver their services, crowdfunding service providers operate publicly accessible internet-based information systems, including those systems that require user registration.
- (13) For investment-based crowdfunding, transferability is an important safeguard in order for investors to be able to exit their investment since it provides the possibility for them 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 national law of Member States are also freely transferable on the capital markets and should therefore not be prevented from being included within the scope of this Regulation.
- (14) Certain admitted instruments for crowdfunding purposes are in some Member States 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 such instruments.
- (15) Whilst initial coin offerings have the potential to fund SMEs, innovative start-ups and scale-ups, and can accelerate technology transfer, their characteristics differ considerably from crowdfunding services regulated under this Regulation.
- (16) 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>(6)</sup>.
- (17) The overlapping regulatory frameworks established under this Regulation and Regulation (EU) 2017/1129, because of a threshold of EUR 5 000 000, 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, to date, only a limited number of Member States have put in place a specific legal framework regulating crowdfunding platforms and services. Taking into account the fact that, in implementing Regulation (EU) 2017/1129, some Member States have set the threshold to exempt offers of securities to the public from the obligation to publish a prospectus at below EUR 5 000 000 and taking into account the special effort that might be sustained by those Member States in terms of adjusting their national law and ensuring the application of the single threshold under this Regulation, this Regulation should provide for a non-renewable temporary derogation in order to enable those Member States to make that significant effort. That temporary derogation should apply for the shortest possible period of time, in order to cause the least possible disturbance to the functioning of the internal market.
- (18) 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 on their platforms are selected in a professional, fair and transparent way, and that crowdfunding services are provided in the same manner.

<sup>(6)</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).

- (19) 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 parameters or risk indicators, such as the type or sector of business activity or a credit rating, which have been communicated in advance to the crowdfunding service provider by the investor. However, the authorisation obtained under this Regulation should not grant crowdfunding service providers the right to provide 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 or on a third-party platform.
- (20) 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.
- (21) The existence of filtering tools on a crowdfunding platform under this Regulation should not be regarded as investment advice under Directive 2014/65/EU as long as those tools provide information to clients in a neutral manner that does not constitute a recommendation. Such tools should include those 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 the economic sector, the instrument used and the interest rate, or the 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 to be objective criteria.
- (22) This Regulation aims to facilitate direct investment and to avoid creating regulatory arbitrage opportunities for financial intermediaries regulated under other legal acts of the Union, in particular Union legal acts governing asset managers. The use of legal structures, including special purpose vehicles, that 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 in, for example, an illiquid or indivisible asset through issuance of transferable securities by a special purpose vehicle.
- (23) 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 natural persons responsible for their management should be of good repute and have sufficient knowledge, skills and experience. Crowdfunding service providers should also establish procedures to receive and handle complaints from clients.
- (24) Clients are exposed to potential risks related to the crowdfunding service providers, in particular operational risks. In order to protect clients against such risks, crowdfunding service providers should be subject to prudential requirements.
- (25) Crowdfunding service providers should be required to develop business continuity plans addressing the risks associated with failure of a crowdfunding service provider. Such business 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.
- (26) Crowdfunding service providers should operate as neutral intermediaries between clients on their crowdfunding platform. In order to prevent conflicts of interest, certain requirements should be laid down with respect to crowdfunding service providers, their shareholders, managers and employees, and any natural or legal 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. Major shareholders, managers and employees, and any natural or legal person closely linked to them by way of control, should not act as project owners in relation to the crowdfunding services offered on their crowdfunding platform. However, those major shareholders, managers, employees, and natural or legal 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.

- (27) 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 a third party 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 with respect to the outsourced activities.
- (28) 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 2013/36/EU or 2014/65/EU. Depending on the type of assets to be safe-kept, assets are either 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 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 depository, is considered equivalent to asset safekeeping by qualified custodians.
- (29) Since only payment service providers are permitted to provide payment services as defined in Directive (EU) 2015/2366 of the European Parliament and of the Council<sup>(7)</sup>, an authorisation to provide crowdfunding services does not equate to an authorisation also to provide payment services. It is therefore appropriate to clarify that, where a crowdfunding service provider provides such payment services in connection with its crowdfunding services, it also needs to be a payment service 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 Directive (EU) 2015/2366. In order to enable proper supervision of such activities, the crowdfunding service provider should inform the competent authorities whether it intends to provide payment services itself with the appropriate authorisation or whether such services will be outsourced to an authorised third party.
- (30) 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 the authorisation of crowdfunding service providers. 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.
- (31) In order to ensure effective supervision of the crowdfunding service providers, only legal persons that have an effective and stable establishment in the Union, including the necessary resources, should be able to apply for authorisation as crowdfunding service providers under this Regulation.
- (32) Crowdfunding services can be exposed to money laundering and terrorist financing risks, as underlined in the Report from the Commission to the European Parliament and the Council of 26 June 2017 on the assessment of the risks of money laundering and terrorist financing affecting the internal market and relating to cross-border activities. Safeguards should therefore be provided when setting out the conditions for authorisation of crowdfunding service providers and for assessing the good repute of the natural persons responsible for 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 to comply with national law implementing Directive (EU) 2015/849 of the European Parliament and of the Council<sup>(8)</sup> in respect of money laundering or terrorist financing and of adding such crowdfunding service providers to the list of obliged entities for the purposes of that Directive.

<sup>(7)</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).

<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).

- (33) 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 those crowdfunding service providers that are authorised under this Regulation.
- (34) The authorisation process should enable competent authorities to be informed of 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 their internal organisation and procedures set up to ensure compliance with this Regulation.
- (35) In order to ensure proper supervision and to avoid disproportionate administrative burdens, it should be possible for entities that have been authorised under Directive 2009/110/EC of the European Parliament and of the Council<sup>(9)</sup>, or Directive 2013/36/EU, 2014/65/EU or (EU) 2015/2366, and that intend to provide crowdfunding services, to hold an authorisation both under one of those Directives and under this Regulation. In such cases, a simplified authorisation procedure should apply and the competent authorities should not require submission of documents or proof that are already at their disposal.
- (36) To facilitate transparency for investors as regards the provision of crowdfunding services, the European Supervisory Authority (European Securities and Markets Authority) established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council<sup>(10)</sup> (ESMA) should establish a public and up-to-date register of all crowdfunding service providers authorised in accordance with this Regulation. That register should include information on all operating crowdfunding platforms in the Union.
- (37) An authorisation under this Regulation should be withdrawn where the crowdfunding service provider no longer meets the conditions under which the authorisation was granted. Competent authorities should also have the power to withdraw an authorisation under this Regulation whenever a crowdfunding service provider, or a third party acting on its behalf, has lost its authorisation allowing for the provision of payment services under Directive (EU) 2015/2366 or investment services under Directive 2014/65/EU, or whenever a crowdfunding service provider that is also a payment service provider, or its managers, employees or a third party acting on its behalf, has infringed national law implementing Directive (EU) 2015/849.
- (38) 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 activities other than the provision of crowdfunding services covered by an authorisation under this Regulation.
- (39) In order to ensure a clear understanding of the nature of crowdfunding services and the risks, costs and charges related to such services, crowdfunding service providers should provide their clients with information that is fair, clear and not misleading.
- (40) 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.
- (41) Crowdfunding service providers that apply credit scores to crowdfunding projects or suggest the pricing of crowdfunding offers should disclose key elements of their methodology. The requirement concerning disclosure of methods to calculate credit scores, or to determine the price or the interest rate, should not be construed as requiring the disclosure of sensitive business information or in a manner that impedes innovation.
- (42) 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 appropriate for each of those categories. 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, that distinction should also take into account the characteristics of the crowdfunding market. In particular, the distinction between sophisticated and non-sophisticated investors in this Regulation should also consider the prospective investors' experience in and knowledge of crowdfunding, which should be re-assessed every two years.

<sup>(9)</sup> Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC (OJ L 267, 10.10.2009, p. 7).

<sup>(10)</sup> Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).



- (43) Financial products marketed on crowdfunding platforms are not the same as traditional investment 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 prospective non-sophisticated investors in order to ascertain their understanding of such investments. Crowdfunding service providers should explicitly warn prospective non-sophisticated investors that have insufficient knowledge, skills and experience that the crowdfunding services provided might be inappropriate for them.
- (44) Given that sophisticated investors are, by definition, 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.
- (45) 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 acknowledge the risks that they are taking when they invest in a crowdfunding project. In order to maintain a high level of investor protection and 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 that have expressly acknowledged that they have received and understood those warnings.
- (46) Given the risk associated with crowdfunding projects, non-sophisticated investors should avoid overexposure to them. There is a significant risk of losing large amounts of the initially invested sums or even of experiencing total loss. It is therefore appropriate to set out a maximum amount that non-sophisticated investors can, without further safeguards, invest in an individual project. By way of contrast, sophisticated investors who have the necessary experience, knowledge or financial capacity, or a combination thereof, should not be limited by such a maximum amount.
- (47) In order to strengthen the protection for non-sophisticated investors, it is necessary to make provisions for a reflection period during which a prospective non-sophisticated investor can revoke an offer to invest or an expression of interest in a particular crowdfunding offer without giving a reason and without incurring a penalty. That is necessary to avoid a situation where a prospective non-sophisticated investor, by accepting a crowdfunding offer, thereby also accepts an offer to enter into a legally binding contract without any possibility of retraction within an adequate period of time. The period of reflection is not necessary when a prospective non-sophisticated investor can express an interest in a particular crowdfunding offer without also thereby binding him or herself to a contract, except in the situation when such an offer to invest is made or such an expression of interest is expressed at a moment close to the scheduled expiry date of the offer or to the date of reaching the target funding goal. Crowdfunding service providers should ensure that no money is collected from the investor or transferred to the project owner before the reflection period has expired.
- (48) Considering the potential effects of the right to revoke an offer to invest or an expression of interest during a reflection period on the costs of raising capital through crowdfunding platforms, the Commission should assess, as a part of its report under this Regulation, whether the reflection period should be shortened to allow for a more efficient capital raising process without harming investor protection.
- (49) Directive 97/9/EC of the European Parliament and of the Council<sup>(11)</sup> covers claims arising out of an investment firm's inability to repay money owed to or belonging to investors and held on their behalf in connection with investment business, or its inability to 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 that is also authorised pursuant to Directive 2014/65/EU does not involve the provision of investment services within the meaning of point (2) of Article 4(1) of that Directive, non-sophisticated investors should be informed in the key investment information sheet that the investor compensation scheme protection does not apply to transferable securities or admitted instruments for crowdfunding purposes acquired through the crowdfunding platform. Moreover, the provision of crowdfunding services by such crowdfunding service provider should not be considered to be the taking of deposits within the meaning of point (3) of Article 2(1) of Directive 2014/49/EU of the European Parliament and of the Council<sup>(12)</sup>.

<sup>(11)</sup> Directive 97/9/EC of the European Parliament and of the Council of 3 March 1997 on investor-compensation schemes (OJ L 84, 26.3.1997, p. 22).

<sup>(12)</sup> Directive 2014/49/EU of the European Parliament and of the Council of 16 April 2014 on deposit guarantee schemes (OJ L 173, 12.6.2014, p. 149).

- (50) This Regulation lays down the content of a key investment information sheet to be provided by crowdfunding service providers to prospective investors for every crowdfunding offer in order to enable them to make an informed investment decision. 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.
- (51) The key investment information sheet should reflect the specific features of lending-based and investment-based crowdfunding. To that end, 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 should 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 loans offered. The key investment information sheet should be drawn up by the project owners, because the project owners are in the best position to provide the information required to be included therein. However, since it is the crowdfunding service providers that are responsible for providing the key investment information sheet to prospective investors, it is the crowdfunding service providers that should ensure that the key investment information sheet is clear, correct and complete.
- (52) 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 other information provided in the key investment information sheet.
- (53) If a crowdfunding service provider identifies an omission, mistake or inaccuracy in the key investment information sheet which could have a material impact on the expected return of the investment, that crowdfunding service provider should signal such an omission, mistake or inaccuracy promptly to the project owner, who should complete or correct that information. Where such completion or correction is not made, the crowdfunding service provider should, under certain conditions, suspend or even cancel the crowdfunding offer.
- (54) 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, there should be no requirement for the key investment information sheet to be approved by a competent authority.
- (55) Where so permitted by national law, a crowdfunding service provider should be able to transfer the ownership of shares in an investment-based crowdfunding project by updating its information system. A crowdfunding service provider should also, in the interests of transparency and flow of information, be able to allow clients who have made investments through its crowdfunding platform to advertise on a bulletin board on its crowdfunding platform their interest in buying or selling loans, transferable securities or admitted instruments for crowdfunding purposes which were originally offered on that crowdfunding platform, provided that the bulletin board does not bring together multiple third-party buying and selling interests 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. Crowdfunding service providers that do not hold such an authorisation in relation to transferable securities should 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 crowdfunding 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.
- (56) 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.
- (57) To ensure fair and non-discriminatory treatment of clients, crowdfunding service providers that are promoting their services through marketing communications should provide information that is fair, clear and not misleading.

- (58) 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 Member States should be published electronically, as well as summaries thereof in a language customary in the sphere of international finance. For that purpose, ESMA and the competent authorities should keep their websites up-to-date.
- (59) To allow for a better understanding of the extent of regulatory divergences between Member States regarding the requirements applicable to marketing communications, competent authorities should provide ESMA annually with a detailed report on their enforcement actions in that area.
- (60) 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.
- (61) To ensure an efficient supervision and authorisation procedure, Member States should delineate the duties and functions to be carried out by the competent authorities pursuant to this Regulation. In order to facilitate effective cross-border administrative cooperation, each Member State should designate a single point of contact to manage communication with ESMA and competent authorities across the Union.
- (62) 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 national law so requires, by application to the competent judicial authorities. When exercising their powers under this Regulation, ESMA and the competent authorities should act objectively and impartially and remain autonomous in their decision-making.
- (63) For the purpose of detecting infringements of this Regulation, it is necessary for competent authorities to be able to access premises 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 natural or legal 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.
- (64) In order to ensure that the requirements set out in this Regulation are fulfilled, it is important that Member States take the 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' ability to provide for higher levels of administrative penalties.
- (65) 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, to delay the publication, or not to publish at all.
- (66) 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.
- (67) 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.

- (68) Whistleblowers can bring new information to the attention of competent authorities which helps them in detecting infringements of this Regulation and imposing penalties. 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. That should be done by amending Directive (EU) 2019/1937 of the European Parliament and of the Council<sup>(13)</sup> in order to make it applicable to breaches of this Regulation.
- (69) 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 extending the transitional period with respect to crowdfunding services provided in accordance with national law. 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>(14)</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.
- (70) 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 the European Supervisory Authority (European Banking Authority) established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council<sup>(15)</sup> (EBA) with the development of draft regulatory technical standards which do not involve policy choices, for submission to the Commission.
- (71) 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, authorisation as crowdfunding service provider, 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 Regulations (EU) No 1093/2010 and (EU) No 1095/2010.
- (72) 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.
- (73) 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 of the European Parliament and of the Council<sup>(16)</sup> and any exchange or transmission of information by ESMA should be undertaken in accordance with Regulation (EU) 2018/1725 of the European Parliament and of the Council<sup>(17)</sup>.
- (74) 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.

<sup>(13)</sup> Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law (OJ L 305, 26.11.2019, p. 17).

<sup>(14)</sup> OJ L 123, 12.5.2016, p. 1.

<sup>(15)</sup> Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p. 12).

<sup>(16)</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

<sup>(17)</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).

- (75) The date of application of this Regulation should be deferred to align it with the date of application of the national rules transposing Directive (EU) 2020/1504 of the European Parliament and of the Council<sup>(18)</sup>, which exempts crowdfunding service providers falling under the scope of this Regulation from the application of Directive 2014/65/EU.
- (76) In the interest of legal certainty and in view of the replacement of national rules by the rules set out in 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 law preceding this Regulation to adapt their business activities to this Regulation and to have sufficient time to apply for an authorisation thereunder. Such persons should therefore be able to continue to provide crowdfunding services that are included within the scope of this Regulation in accordance with the applicable national law until 10 November 2022. During that transitional period, Member States can put in place special procedures to enable legal persons, which have been authorised under national law to provide crowdfunding services 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 set out in this Regulation.
- (77) Crowdfunding service providers who have failed to obtain authorisation in accordance with this Regulation by 10 November 2022 should not issue any new crowdfunding offers after that date. To avoid a situation whereby the raising of target capital in relation to a particular crowdfunding project is not completed by 10 November 2022, the calls for funding should be closed by that date. However, after 10 November 2022 servicing of the existing contracts, including collecting and transferring receivables, providing asset safekeeping services or processing corporate actions, can continue in accordance with the applicable national law.
- (78) 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.
- (79) The European Data Protection Supervisor was consulted in accordance with Article 42(1) of Regulation (EU) 2018/1725,

HAVE ADOPTED THIS REGULATION:

#### CHAPTER I

### *General provisions*

#### *Article 1*

### **Subject matter, scope and exemptions**

1. This Regulation lays down uniform requirements for the provision of crowdfunding services, for the organisation, authorisation and supervision of crowdfunding service providers, for the operation of crowdfunding platforms as well as for transparency and marketing communications in relation to the provision of crowdfunding services in the Union.
2. This Regulation does not apply to:
  - (a) crowdfunding services that are provided to project owners that are consumers, as defined in point (a) of Article 3 of Directive 2008/48/EC;
  - (b) other services related to those defined in point (a) of Article 2(1) and that are provided in accordance with national law;
  - (c) crowdfunding offers with a consideration of more than EUR 5 000 000, which are to 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 defined in points (m) and (n) of Article 2(1) of this Regulation and amounts raised by means of loans through a crowdfunding platform by a particular project owner; and

<sup>(18)</sup> Directive (EU) 2020/1504 of the European Parliament and of the Council of 7 October 2020 amending Directive 2014/65/EU on markets in financial instruments (see page 50 of this Official Journal).

- (ii) the total consideration of offers to the public of transferable securities made by the project owner referred to in point (i) of this point 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 that Directive and shall ensure that national law does not require an authorisation as credit institution or any other individual authorisation, exemption or dispensation in connection with the provision of crowdfunding services in the following situations:

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

#### Article 2

#### Definitions

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

- (a) 'crowdfunding service' means the matching of business funding interests of investors and project owners through the use of a crowdfunding platform and which consists of any of the following activities:
  - (i) the facilitation of granting of loans;
  - (ii) the placing without a firm commitment basis, as referred to in point (7) of Section A of Annex I to Directive 2014/65/EU, of transferable securities and admitted instruments for crowdfunding purposes issued by project owners or a special purpose vehicle, and the reception and transmission of client orders, as referred to in point (1) of that Section, in relation to those transferable securities and admitted instruments for crowdfunding purposes;
- (b) '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;
- (c) '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;
- (d) 'crowdfunding platform' means a publicly accessible internet-based information system operated or managed by a crowdfunding service provider;
- (e) 'crowdfunding service provider' means a legal person who provides crowdfunding services;
- (f) '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;
- (g) 'client' means any prospective or actual investor or project owner to whom a crowdfunding service provider provides, or intends to provide, crowdfunding services;
- (h) 'project owner' means any natural or legal person who seeks funding through a crowdfunding platform;
- (i) 'investor' means any natural or legal person who, through a crowdfunding platform, grants loans or acquires transferable securities or admitted instruments for crowdfunding purposes;
- (j) 'sophisticated investor' means any natural or legal person who is a professional client by virtue of point (1), (2), (3) or (4) of Section I of Annex II to Directive 2014/65/EU or any natural or legal person who has the approval of the crowdfunding service provider to be treated as a sophisticated investor in accordance with the criteria and the procedure laid down in Annex II to this Regulation;
- (k) 'non-sophisticated investor' means an investor who is not a sophisticated investor;

- (l) 'crowdfunding project' means the business activity or activities for which a project owner seeks funding through the crowdfunding offer;
- (m) 'transferable securities' means transferable securities as defined in point (44) of Article 4(1) of Directive 2014/65/EU;
- (n) 'admitted instruments for crowdfunding purposes' means, in respect of each Member State, shares of a private limited liability company that 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;
- (o) '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;
- (p) '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 that is adequate for the purposes of the information, and which allows for the unchanged reproduction of the information stored;
- (q) 'special purpose vehicle' or 'SPV' means an entity created solely for, or which solely serves the purpose of, a securitisation within the meaning of point (2) of Article 1 of Regulation (EU) No 1075/2013 of the European Central Bank <sup>(19)</sup>;
- (r) 'competent authority' means the authority, or authorities, designated by a Member State in accordance with Article 29.

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

3. Competent authorities shall, on an annual basis, inform ESMA about the types of private limited liability companies and their shares that are offered and which fall within the scope of this Regulation, with reference to the applicable national law.

ESMA shall make the information referred to in the first subparagraph publicly accessible on its website without undue delay.

4. On an annual basis, for the first two years of the application of this Regulation, ESMA shall collect the key investment information sheets drawn up by project owners that have issued admitted instruments for crowdfunding purposes. ESMA shall compare the information referred to in points (b) and (c) of part F of Annex I as provided in the key investment information sheets with the information provided by Member States under paragraph 3 of this Article. ESMA shall submit that comparison to the Commission, which shall include it in the report referred to in Article 45.

## CHAPTER II

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

#### *Article 3*

#### **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 12.
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 crowdfunding platform or to a particular crowdfunding offer made on a third-party crowdfunding platform.
4. Crowdfunding service providers may propose to individual investors specific crowdfunding projects that 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.

<sup>(19)</sup> Regulation (EU) No 1075/2013 of the European Central Bank of 18 October 2013 concerning statistics on the assets and liabilities of financial vehicle corporations engaged in securitisation transactions (OJ L 297, 7.11.2013, p. 107).

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

5. By way of derogation from the first subparagraph of paragraph 4, crowdfunding service providers providing 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.

6. Where a special purpose vehicle is used for the provision of crowdfunding services, only one illiquid or indivisible asset shall be offered through such a special purpose vehicle. That 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 that underlying asset shall exclusively lie with investors.

#### Article 4

##### Effective and prudent management

1. The management body of a crowdfunding service provider 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 interests of its clients.

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

A crowdfunding service provider that provides individual portfolio management of loans shall ensure that it has in place adequate systems and controls for the management of risk and financial modelling for that provision of services and that it complies with the requirements set out in Article 6(1) to (3).

3. The management body of a crowdfunding service provider shall review, at least once every two years, taking into account the nature, scale and complexity of the crowdfunding services provided, the prudential safeguards referred to in point (h) of Article 12(2) and the business continuity plan referred to in point (j) of Article 12(2).

4. Where a crowdfunding service provider determines the price of a crowdfunding offer, it shall:

- (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 project owner will not make, in the case of a loan, bond or other form of securitised debt, one or more repayments by the due date;
- (b) base the credit risk assessment referred to in point (a) on sufficient information, including the following:
  - (i) where available, audited accounts covering the two latest financial years;
  - (ii) information of which it is aware at the time the credit risk assessment is carried out;
  - (iii) information which has been obtained, where appropriate, from the project owner; and
  - (iv) information 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;
- (e) 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 project owner is unlikely to fulfil its obligations to repay 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;
- (f) have and use a risk-management framework that is designed to achieve compliance with the requirements set out in points (a) to (e) of this paragraph;
- (g) 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 5

##### **Due diligence requirements**

1. A crowdfunding service provider shall undertake at least a minimum level of due diligence in respect of project owners that propose their projects to be funded through the crowdfunding platform of the crowdfunding service provider.
2. The minimum level of due diligence referred to in paragraph 1 shall include obtaining all of the following evidence:
  - (a) that the project owner has no criminal record in respect of infringements of national rules in fields of commercial law, insolvency law, financial services law, anti-money laundering law, fraud law or professional liability obligations;
  - (b) that the project owner 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 6

##### **Individual portfolio management of loans**

1. Where a crowdfunding service provider offers individual portfolio management of loans, an investor shall give the mandate specifying the parameters for providing the service, 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 payable under any loan facilitated for the investor;
  - (b) the minimum and maximum maturity date of any loan facilitated for the investor;
  - (c) the range and distribution of any risk categories applicable to the loans; and
  - (d) if an annual target rate of return on investment is offered, the likelihood that the selected loans will enable the investor to achieve the target rate with reasonable certainty.
2. In order to comply with paragraph 1, a crowdfunding service provider shall have in place robust internal processes and methodologies and use appropriate data. The crowdfunding service provider may use its own data or data sourced from third parties.

On the basis of sound and well-defined criteria, and taking into account all the relevant factors that may have unfavourable effects on the performance of the loans, the 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 credit risk of the project owners selected for the investor's portfolio by verifying the prospect of the project owners meeting their obligations under the loan.

The crowdfunding service provider shall also provide a description of the method used for the assessments referred to in points (a), (b) and (c) of the second subparagraph to the investor.

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

4. A crowdfunding service provider shall, on a continuous basis and upon the request of 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) for every loan of which a portfolio is composed, key information, including at least an interest rate or other compensation to the investor, maturity date, risk category, schedule for the repayment of the principal and payment of interest, compliance of the project owner with that instalment payment schedule;
- (e) for every loan of which a portfolio is composed, risk mitigation measures including collateral providers or guarantors 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 the loan by the investor, the crowdfunding service provider or the project owner;
- (h) if the crowdfunding service provider has carried out a valuation of the loan:
  - (i) the most recent valuation;
  - (ii) the valuation date;
  - (iii) an explanation as to why the crowdfunding service provider conducted the valuation; and
  - (iv) a fair description of the likely actual return, taking into account fees and default rates.

5. 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 it may happen that you do not receive a pay-out even if you suffer loss. The contingency fund operator 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 the policy of the contingency fund, including:
  - (i) an explanation of the source of the money paid into the fund;
  - (ii) an explanation of how the fund is governed;
  - (iii) an explanation concerning whom the money belongs to;
  - (iv) the considerations the contingency fund operator takes into account when deciding whether or how to exercise its discretion to pay out from the fund, including:
    - whether or not the fund has sufficient money to pay; and
    - that the contingency fund operator has absolute discretion in any event not to pay or to decide the amount of the payment;
  - (v) an explanation of the process for considering whether to make a discretionary payment from the fund; and
  - (vi) a description of how the money paid into the fund will be treated in the event of insolvency of the contingency fund operator.

6. A crowdfunding service provider that has established and operates a contingency fund as referred to in paragraph 5 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 the total amounts outstanding on loans relevant to the contingency fund; and
- (b) the ratio between payments made out of the contingency fund to the total amounts outstanding on loans relevant to the contingency fund.

7. EBA shall, in close cooperation with ESMA, develop draft regulatory technical standards to specify:
  - (a) the elements, including the format, that are to be included in the description of the method referred to in the third subparagraph of paragraph 2;
  - (b) the information referred to in paragraph 4; and
  - (c) the policies, procedures and organisational arrangements that crowdfunding service providers are to have in place as regards any contingency funds they might offer as referred to in paragraphs 5 and 6.

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

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 Articles 10 to 14 of Regulation (EU) No 1093/2010.

#### *Article 7*

##### **Complaints handling**

1. Crowdfunding service providers shall have in place effective and transparent procedures for the prompt, fair and consistent handling of complaints received from clients and shall publish descriptions of those procedures.
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.
4. 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.
5. 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 10 November 2021.

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 Articles 10 to 14 of Regulation (EU) No 1095/2010.

#### *Article 8*

##### **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 as project owners in relation to the crowdfunding services offered on their crowdfunding platform any of the following:
  - (a) their shareholders holding 20 %, or more, of share capital or voting rights;
  - (b) their managers or employees;
  - (c) any natural or legal person linked to those shareholders, managers or employees by control as defined in point (35)(b) of Article 4(1) of Directive 2014/65/EU.

Crowdfunding service providers that accept as investors in the crowdfunding projects offered on their crowdfunding platform any of the persons referred to in points (a), (b) and (c) of the first subparagraph shall fully disclose on their website the fact that they accept such persons as investors, including information on the specific crowdfunding projects invested in, and shall ensure that such investments are made under the same conditions as those of other investors and that those persons 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 or employees, or any natural or legal person linked to them by control, as defined in point (35)(b) of Article 4(1) 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 them.

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 on 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:

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

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

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

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 Articles 10 to 14 of Regulation (EU) No 1095/2010.

#### *Article 9*

### **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 referred to in paragraph 1 shall not impair the quality of the crowdfunding service providers' internal control and the ability of the competent authority to monitor the crowdfunding service providers' compliance with this Regulation.

3. Crowdfunding service providers shall remain fully responsible for compliance with this Regulation with respect to the outsourced activities.

#### *Article 10*

### **Provision of asset safekeeping services and payment services**

1. Where asset safekeeping services and payment services are provided, crowdfunding service providers shall inform their clients of all of the following:

- (a) the nature and terms and conditions of those services, including references to the applicable national law;
- (b) whether those services are provided by them directly or by a third party.

2. Where crowdfunding service providers carry out payment transactions related to transferable securities and admitted instruments for crowdfunding purposes, they shall deposit the funds with one of the following entities:

- (a) a central bank; or
- (b) a credit institution authorised in accordance with Directive 2013/36/EU.

3. 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 hold an authorisation in accordance with Directive 2013/36/EU or 2014/65/EU.

4. 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, is a payment service provider in accordance with Directive (EU) 2015/2366.

5. 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 projects, or any other payment, only by means of a payment service provider in accordance with Directive (EU) 2015/2366.

#### Article 11

#### Prudential requirements

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

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

2. The prudential safeguards referred to in paragraph 1 of this Article 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 of the European Parliament and of the Council<sup>(20)</sup> after the deductions in full, pursuant to Article 36 of that Regulation, without the application of threshold exemptions pursuant to Articles 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).

3. Paragraph 1 of this Article does not apply to crowdfunding service providers that are undertakings subject, on an individual basis or on the basis of their consolidated situation, to Title III of Part Three of Regulation (EU) No 575/2013 or to Regulation (EU) 2019/2033 of the European Parliament and of the Council<sup>(21)</sup>.

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

5. 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 becomes available.

6. The insurance policy referred to in point (b) of paragraph 2 shall have at least all of the following characteristics:

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

<sup>(20)</sup> Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).

<sup>(21)</sup> Regulation (EU) 2019/2033 of the European Parliament and of the Council of 27 November 2019 on the prudential requirements of investment firms and amending Regulations (EU) No 1093/2010, (EU) No 575/2013, (EU) No 600/2014 and (EU) No 806/2014 (OJ L 314, 5.12.2019, p. 1).

7. The insurance policy referred to in point (b) of paragraph 2 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.

8. For the purposes of point (b) of paragraph 1, crowdfunding service providers shall calculate their fixed overheads for 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 recently 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 relevant 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.

9. Where fixed expenses have been incurred on behalf of the crowdfunding service providers by third parties, and those fixed expenses are not already included within the total expenses referred to in paragraph 8, crowdfunding service providers shall take either of the following actions:

- (a) where a break-down of the expenses of those third parties is available, determine the amount of fixed expenses that those third parties have incurred on their behalf and add that amount to the figure resulting from paragraph 8;
- (b) where the break-down of the expenses of those third parties is not available, determine the amount of expenses incurred on their behalf by those third parties according to the crowdfunding service providers' business plans and add that amount to the figure resulting from paragraph 8.

### CHAPTER III

#### ***Authorisation and supervision of crowdfunding service providers***

##### *Article 12*

#### **Authorisation as a crowdfunding service provider**

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

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) of the prospective crowdfunding service provider, the internet address of the website operated by that provider, and its physical address;

- (b) the legal form 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 intends to provide and the crowdfunding platform that it intends to operate, including where and how crowdfunding offers are to be marketed;
- (e) a description of the prospective crowdfunding service provider's governance arrangements and internal control mechanisms to ensure compliance with this Regulation, including risk-management and accounting procedures;
- (f) a description of the prospective crowdfunding service provider's systems, resources and procedures for the control and safeguarding of the data processing systems;
- (g) a description of the prospective crowdfunding service provider's operational risks;
- (h) a description of the prospective crowdfunding service provider's prudential safeguards in accordance with Article 11;
- (i) proof that the prospective crowdfunding service provider meets the prudential safeguards in accordance with Article 11;
- (j) a description of the prospective crowdfunding service provider's business continuity plan which, taking into account the nature, scale and complexity of the crowdfunding services that the prospective crowdfunding service provider intends to provide, establishes measures and procedures that ensure, in the event of failure of the prospective crowdfunding service provider, the continuity of the provision of critical services related to existing investments and sound administration of agreements between the prospective crowdfunding service provider and its clients;
- (k) the identity of the natural persons responsible for the management of the prospective crowdfunding service provider;
- (l) proof that the natural persons referred to in point (k) are of good repute and possess sufficient knowledge, skills and experience to manage the prospective crowdfunding service provider;
- (m) a description of the prospective crowdfunding service provider's internal rules to prevent persons referred to in the first subparagraph of Article 8(2) from engaging, as project owners, in crowdfunding services offered by the prospective crowdfunding service provider;
- (n) a description of the prospective crowdfunding service provider's outsourcing arrangements;
- (o) a description of the prospective crowdfunding service provider's procedures to handle complaints from clients;
- (p) 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 10(5) of this Regulation;
- (q) a description of the prospective crowdfunding service provider's procedures to verify the completeness, correctness and clarity of the information contained in the key investment information sheet;
- (r) a description of the prospective crowdfunding service provider's procedures in relation to investment limits for non-sophisticated investors referred to in Article 21(7).

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

- (a) absence of a criminal record in respect of infringements of national rules in the fields of commercial law, insolvency law, financial services law, anti-money laundering law, fraud law or professional liability obligations for all the natural 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 natural persons involved in the management of the prospective crowdfunding service provider collectively possess sufficient knowledge, skills and experience to manage the prospective crowdfunding service provider and that those natural 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 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.

5. Where an application 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.

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

7. Before adopting a decision granting or refusing to grant authorisation as a crowdfunding service provider, the competent authority shall consult the competent authority of another 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; or
- (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.

8. The competent authority shall, within three months from the date of 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 to grant authorisation as a crowdfunding service provider. That assessment shall take into account the nature, scale and complexity of the crowdfunding services that the prospective crowdfunding service provider intends to provide. The competent authority may refuse authorisation if there are objective and demonstrable grounds for believing that the management body of the prospective crowdfunding service provider could pose a threat to its effective, sound and prudent management and business continuity, and to the adequate consideration of the interest of its clients and the integrity of the market.

9. The competent authority shall inform ESMA of all authorisations granted under this Article. ESMA shall add information on the successful applications to the register of authorised crowdfunding service providers in accordance with Article 14. ESMA may request information in order to ensure that competent authorities grant authorisations under this Article in a consistent manner.

10. The competent authority shall notify the prospective crowdfunding service provider of its decision within three working days of the date of that decision.

11. A crowdfunding service provider authorised in accordance with this Article shall, at all times, meet the conditions for its authorisation.

12. Member States shall not require crowdfunding service providers that provide 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.

13. 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 relevant applicable Union or national law.

14. Where an entity authorised pursuant to Directive 2009/110/EC, 2013/36/EU, 2014/65/EU or (EU) 2015/2366, 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 pursuant to those Directives or national law, provided that such information or documents remain up-to-date and are accessible to the competent authority.

15. 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 under Directive (EU) 2015/2366, the competent authorities shall require that the information and documents to be submitted under each application are submitted only once.

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

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



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

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

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

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 Articles 10 to 14 of Regulation (EU) No 1095/2010.

#### Article 13

##### Scope of authorisation

1. The competent authorities that granted an authorisation notified under Article 12(10) shall ensure that such authorisation specifies the crowdfunding services which the crowdfunding service provider is authorised to provide.
2. A crowdfunding service provider seeking authorisation to extend its business to additional crowdfunding services not foreseen at the time of the authorisation granted under Article 12 shall submit a request for extension of its authorisation to the competent authorities that granted the crowdfunding service provider its authorisation under Article 12 by complementing and updating the information referred to in Article 12(2). The request for extension shall be processed in accordance with Article 12(4) to (11).

#### Article 14

##### 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;
  - (c) the name and address of the competent authority which granted authorisation and its contact details;
  - (d) information on the crowdfunding service for which the crowdfunding service provider is authorised;
  - (e) a list of the Member States in which the crowdfunding service provider has notified its intention to provide crowdfunding services in accordance with Article 18;
  - (f) any other services provided by the crowdfunding service provider not covered by this Regulation with a reference to the relevant Union or national law;
  - (g) 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 17 shall be published, and remain published, in the register for five years.

#### Article 15

##### Supervision

1. Crowdfunding service providers shall provide their services under the supervision of the competent authorities that granted authorisation.
2. The relevant competent authority shall assess the 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 nature, scale 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.
3. Crowdfunding service providers shall notify the relevant competent authority of any material changes to the conditions for authorisation without undue delay and shall, upon request, provide the information needed to assess their compliance with this Regulation.

*Article 16***Reporting by crowdfunding service providers**

1. A crowdfunding service provider shall annually and on a confidential basis provide a list of projects funded through its crowdfunding platform to the competent authority that granted authorisation, specifying for each project:

- (a) the project owner and the amount raised;
- (b) the instrument issued, as defined in points (b), (m) and (n) of Article 2(1);
- (c) aggregated information about the investors and invested amount broken down by fiscal residency of the investors, distinguishing 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 of the date of receipt of that information. ESMA shall develop and publish aggregated annual statistics relating to the crowdfunding market in the Union on its website.

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

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

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

*Article 17***Withdrawal of authorisation**

1. The competent authorities 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 of the date of granting of the authorisation;
- (b) has expressly renounced its authorisation;
- (c) has not provided crowdfunding services for nine successive months and is also no longer involved in the administration of existing contracts that are the result of initial matching of business funding interests 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 this Regulation.

The competent authorities that granted authorisation shall also have the power to withdraw the authorisation in any of the following situations:

- (a) where the crowdfunding service provider is also a payment service provider in accordance with Directive (EU) 2015/2366 and it, or its managers, employees or third parties acting on its behalf, have infringed national law implementing Directive (EU) 2015/849 in respect of money laundering or terrorist financing; or
- (b) where the crowdfunding service provider or a third party acting on its behalf has lost the authorisation allowing the provision of payment services in accordance with Directive (EU) 2015/2366 or investment services under Directive 2014/65/EU, and that crowdfunding service provider or third party has failed to remedy the situation within 40 calendar days.

2. Where a competent authority in a Member State withdraws an authorisation, the competent authority designated as a single point of contact in that Member State in accordance with Article 29(2) shall without undue delay notify ESMA and the competent authorities of the other Member States in which the crowdfunding service provider provides crowdfunding services in accordance with Article 18. ESMA shall introduce information on the withdrawal of the authorisation in the register referred to in Article 14.

3. Before making a decision to withdraw the authorisation, the competent authority that granted authorisation shall consult the competent authority of another Member State in cases where the crowdfunding service provider is:

- (a) a subsidiary of a crowdfunding service provider authorised in that other Member State;

- (b) a subsidiary of the parent undertaking of a crowdfunding service provider authorised in that other Member State; or
- (c) controlled by the same natural or legal persons who control a crowdfunding service provider authorised in that other Member State.

#### Article 18

##### **Cross-border provision of crowdfunding services**

1. Where a crowdfunding service provider authorised in accordance with Article 12 intends to provide crowdfunding services in a Member State other than the Member State whose competent authority granted authorisation in accordance with Article 12, it shall submit to the competent authority designated as a single point of contact in accordance with Article 29(2), by the Member State where authorisation was granted, the following information:

- (a) a list of the Member States in which the crowdfunding service provider intends to provide crowdfunding services;
- (b) the identity of the natural and legal 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) a list of any other activities provided by the crowdfunding service provider not covered by this Regulation.

2. The single point of contact of the Member State where authorisation was granted shall, within 10 working days of receipt of the information referred to in paragraph 1 of this Article, 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 of this Article and to ESMA. ESMA shall introduce that information in the register referred to in Article 14.

3. The single point of contact of the Member State where authorisation was granted shall thereafter inform without delay the crowdfunding service provider of the communication referred to in paragraph 2.

4. The crowdfunding service provider may start to provide crowdfunding services in a Member State other than the one whose competent authority granted authorisation 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

##### **Investor protection**

#### Article 19

##### **Information to clients**

1. All information, including marketing communications as referred to in Article 27, from crowdfunding service providers to clients about themselves, about the costs, financial risks and charges related to crowdfunding services or investments, about the crowdfunding project selection criteria, and about the nature of, and risks associated with, their crowdfunding services shall be fair, clear and not misleading.

2. Crowdfunding service providers shall inform their 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.

3. Crowdfunding service providers shall inform their clients about the reflection period for non-sophisticated investors referred to in Article 22. Whenever a crowdfunding offer is made, the crowdfunding service provider shall provide that information in a prominent place of the medium, including on every mobile application and webpage where such an offer is made.

4. 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.

5. The information referred to in paragraphs 1, 2 and 6 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.

6. If crowdfunding service providers apply credit scores to crowdfunding projects or suggest the 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 calculation is based on accounts that are not audited, that shall be clearly disclosed in the description of the method.

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

- (a) the elements, including the format, that are to be included in the description of the method referred to in paragraph 6;
- (b) the information and factors that crowdfunding service providers are to consider when carrying out a credit risk assessment referred to in points (a) and (b) of Article 4(4) and conducting a valuation of a loan referred to in point (e) of Article 4(4);
- (c) the factors that a crowdfunding service provider is to take into account when ensuring that the price of a loan it facilitates is fair and appropriate as referred to in point (d) of Article 4(4);
- (d) the minimum contents and governance of the policies and procedures required under this Article and of the risk-management framework referred to in point (f) of Article 4(4).

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

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 Articles 10 to 14 of Regulation (EU) No 1093/2010.

#### Article 20

##### 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 outcome statement within four months of the end of each financial year indicating, as applicable:
  - (i) the expected and actual default rate of all loans the crowdfunding service provider has facilitated, by risk category and by reference to the risk categories set out in the risk-management framework;
  - (ii) a summary of the assumptions used in determining expected default rates; and
  - (iii) where the crowdfunding service provider 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 in a prominent place on the website of the crowdfunding service provider.

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

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

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 Articles 10 to 14 of Regulation (EU) No 1095/2010.

*Article 21***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 crowdfunding projects on their crowdfunding platform, assess whether and which crowdfunding services offered are appropriate for the prospective non-sophisticated investors.

2. For the purposes of the assessment referred to in paragraph 1, crowdfunding service providers shall request information about the prospective non-sophisticated investor's experience, investment objectives, financial situation and basic understanding of risks involved in investing in general and in investing in the types of investments offered on the crowdfunding platform, including information about:

- (a) the prospective non-sophisticated investor's past investments in transferable securities or past acquisitions of admitted instruments for crowdfunding purposes or loans, including in early or expansion stage businesses;
- (b) the prospective non-sophisticated investor's understanding of the risks involved in granting loans, investing in 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 for each non-sophisticated investor review the assessment referred to in paragraph 1 every two years after the initial assessment made in accordance with that paragraph.

4. Where prospective non-sophisticated investors do not provide the information required pursuant to paragraph 2, or where crowdfunding service providers consider, on the basis of the information received under that paragraph, that the prospective non-sophisticated investors have insufficient knowledge, skills or experience, crowdfunding service providers shall inform those prospective non-sophisticated investors that the services offered on their crowdfunding platforms may be inappropriate for them and issue 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 referred to in paragraph 1, crowdfunding service providers shall also require prospective 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 commitments.

6. Crowdfunding service providers shall, for each non-sophisticated investor, review the simulation referred to in paragraph 5 every year after the initial simulation made in accordance with that paragraph.

Prospective non-sophisticated investors and non-sophisticated investors shall not be prevented from investing in crowdfunding projects. The non-sophisticated investors shall acknowledge that they have received the results of the simulation referred to in paragraph 5.

7. Each time before a prospective non-sophisticated investor or non-sophisticated investor accepts an individual crowdfunding offer thereby investing an amount that exceeds the higher of either EUR 1 000 or 5 % of that investor's net worth as calculated in accordance with paragraph 5, the crowdfunding service provider shall ensure that such investor:

- (a) receives a risk warning;
- (b) provides explicit consent to the crowdfunding service provider; and
- (c) proves to the crowdfunding service provider that the investor understands the investment and its risks.

For the purposes of point (c) of the first subparagraph of this paragraph, the assessment referred to in paragraph 1 may be used as proof that the prospective non-sophisticated investor or non-sophisticated investor understands the investment and its risks.

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

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

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

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

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 Articles 10 to 14 of Regulation (EU) No 1095/2010.

#### Article 22

##### **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 until 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 giving a reason and without incurring a penalty.

3. The reflection period referred to in paragraph 2 shall start at the moment of the offer to invest or the expression of interest by the prospective non-sophisticated investor, and shall expire after four calendar days.

4. The crowdfunding service provider shall keep a record of the offers to invest and the expressions of interest it receives, and of the point in time when they are received.

5. The modalities to revoke an offer to invest or an expression of interest shall include at least the same modalities by which the prospective non-sophisticated investor is able to make an offer to invest or express an interest in a crowdfunding offer.

6. The crowdfunding service provider shall provide accurate, clear and timely information to the prospective non-sophisticated investor about the reflection period and the modalities to revoke an offer to invest or an expression of interest, including at least the following:

- (a) immediately before the prospective non-sophisticated investor can communicate his or her offer to invest or expression of interest, the crowdfunding service provider is to inform the prospective non-sophisticated investor of:
  - (i) the fact that the offer to invest or the expression of interest is subject to a reflection period;
  - (ii) the duration of the reflection period;
  - (iii) the modalities to revoke the offer to invest or the expression of interest;
- (b) immediately after receipt of the offer to invest or of the expression of interest, the crowdfunding service provider, through its crowdfunding platform, is to inform the prospective non-sophisticated investor that the reflection period has started.

7. In the case of individual portfolio management of loans, this Article shall apply only to the initial investment mandate given by the non-sophisticated investor and not to the investments in specific loans made under that mandate.

## Article 23

**Key investment information sheet**

1. Crowdfunding service providers shall provide prospective investors with all of the information referred to in this Article.
2. 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 competent authorities granted the authorisation in accordance with Article 12 or in another language accepted by those authorities.
3. Where a crowdfunding service provider promotes a crowdfunding offer through marketing communication in another Member State, 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.
4. Crowdfunding service providers shall not be prevented from arranging for a translation of the key investment information sheet into any language or languages other than those referred to in paragraph 2 or 3. Those translations shall accurately reflect the content of the original key investment information sheet.
5. 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 2 and 3. ESMA shall make that information available on its website.
6. The key investment information sheet referred to in paragraph 2 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 the European Securities and Markets Authority (ESMA).

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

- (c) the following risk warning:

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

You may not receive any return on your investment.

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

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

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

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

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

8. The crowdfunding service provider shall request the project owner to notify it of any change of information in order to keep the key investment information sheet updated at all times and for the duration of the crowdfunding offer. The crowdfunding service provider shall immediately inform investors who have made an offer to invest or expressed an interest in the crowdfunding offer about any material change to the information in the key investment information sheet that was notified to it.

9. Member States shall ensure the responsibility of at least the project owner or its administrative, management or supervisory bodies for the information given in a key investment information sheet. Those responsible for the key investment information sheet shall be clearly identified in the key investment information sheet by, in the case of natural persons, 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 and that the key investment information sheet makes no omission likely to affect its import.

10. Member States shall ensure that their laws, regulations and administrative provisions on civil liability apply to natural and legal persons responsible for the information given in a key investment information sheet, including any translation thereof, 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.

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

12. When a crowdfunding service provider identifies an omission, mistake or inaccuracy in the key investment information sheet that could have a material impact on the expected return of the investment, that crowdfunding service provider shall signal such an omission, mistake or inaccuracy promptly to the project owner, who shall promptly complete or correct that information.

Where such completion or correction is not made promptly, the crowdfunding service provider shall suspend the crowdfunding offer until the key investment information sheet has been completed or corrected, but for a period of no longer than 30 calendar days.

The crowdfunding service provider shall immediately inform investors who have made an offer to invest or expressed an interest in the crowdfunding offer about such identified irregularities, the steps taken and further to be taken by the crowdfunding service provider and the option to revoke their offer to invest or their expression of interest in the crowdfunding offer.

If, after 30 calendar days, the key investment information sheet has not been completed or corrected to rectify all identified irregularities, the crowdfunding offer shall be cancelled.

13. 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.

14. Competent authorities of the Member State where the authorisation was granted to 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.

15. 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 to have satisfied the obligation to draw up a key information document in accordance with Regulation (EU) No 1286/2014 of the European Parliament and of the Council<sup>(22)</sup>.

The first subparagraph shall apply *mutatis mutandis* to natural or legal persons advising on, or marketing, a crowdfunding offer.

<sup>(22)</sup> Regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs) (OJ L 352, 9.12.2014, p. 1).



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

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

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

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

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 Articles 10 to 14 of Regulation (EU) No 1095/2010.

#### Article 24

##### **Key investment information sheet at platform level**

1. By way of derogation from the first sentence of Article 23(2) and from point (a) of Article 23(6), crowdfunding service providers providing individual portfolio management of loans shall draw up in accordance with this Article, and make available to prospective investors, a key investment information sheet at platform level containing all of the following information:

- (a) the information provided in Parts H and I of Annex I;
- (b) information about the natural or legal 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 natural person; in the 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 or 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 at platform level updated at all times and for the duration of the crowdfunding offer. The crowdfunding service provider shall immediately inform the investors who have made an offer to invest or expressed an interest in the crowdfunding offer about any material change to the information in the key investment information sheet.

3. The key investment information sheet at platform level shall be fair, clear and not misleading and shall not contain any footnotes, other than those with references, including quotations where appropriate, to the applicable law. It shall be presented on a stand-alone, durable medium that is clearly distinguishable from marketing communications and consist of a maximum of six sides of A4-sized paper format if printed.

4. Member States shall ensure the responsibility of at least the crowdfunding service provider for the information given in a key investment information sheet at platform level. Those responsible for the key investment information sheet shall be clearly identified in the key investment information sheet at platform level by, in the case of natural persons, 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 and 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 natural and legal persons responsible for the information given in a key investment information sheet at platform level, including any translation thereof, in at least the following situations:

- (a) the information is misleading or inaccurate; or

(b) the key investment information sheet at platform level omits key information needed to aid investors when considering whether to invest through individual portfolio management of loans.

6. Crowdfunding service providers shall have in place and apply adequate procedures to verify the completeness, correctness and clarity of the information contained in the key investment information sheet at platform level.

7. When a crowdfunding service provider identifies an omission, mistake or inaccuracy in the key investment information sheet at platform level that could have a material impact on the expected return of the individual portfolio management of loans, that crowdfunding service provider shall itself rectify the omission, mistake or inaccuracy in the key investment information sheet.

8. Where prospective investors are provided with a key investment information sheet at platform level drawn up in accordance with this Article, the crowdfunding service providers shall be considered to have satisfied the obligation to draw up a key information document in accordance with Regulation (EU) No 1286/2014.

The first subparagraph shall apply *mutatis mutandis* to natural and legal persons advising on, or marketing, a crowdfunding offer.

#### Article 25

##### **Bulletin board**

1. Crowdfunding service providers may operate a bulletin board on which they allow their clients to advertise interest in buying and selling loans, transferable securities or admitted instruments for crowdfunding purposes that were originally offered on their crowdfunding platforms.

2. The bulletin board referred to in paragraph 1 shall not be used to bring together buying and selling interests 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 that executes client orders on a multilateral basis.

3. Crowdfunding service providers that allow the advertisement of interest referred to in paragraph 1 of this Article shall comply with the following requirements:

(a) they are to inform their clients about the nature of the bulletin board in accordance with paragraphs 1 and 2;

(b) they are to require their clients advertising a sale of a loan, security or instrument referred to in paragraph 1 to make available the key investment information sheet;

(c) they are to provide clients intending to buy loans advertised on the bulletin board with information on the performance of loans facilitated by the crowdfunding service provider;

(d) they are to ensure that their clients advertising an interest to purchase a loan, security or instrument referred to in paragraph 1 of this Article and qualifying as non-sophisticated investors receive the information referred to in Article 19(2) and the risk warning referred to in Article 21(4).

4. Crowdfunding service providers that allow the advertisement of interest referred to in paragraph 1 of this Article and that provide asset safekeeping services in accordance with Article 10(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.

5. Crowdfunding service providers that suggest a reference price for the buying and selling referred to in paragraph 1 of this Article 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 19(6).

#### Article 26

##### **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 27

#### **Requirements regarding marketing communications**

1. Crowdfunding service providers shall ensure that all marketing communications about their services, including those outsourced to third parties, are clearly identifiable as such.
2. Prior to the closure of raising funds for a project, no marketing communication shall disproportionately target planned, pending or current individual 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, if the key investment information sheet is already available, or with the information required to be in the key investment information sheet, if the key investment information sheet is not yet 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 a language accepted by the competent authorities of that Member State.
4. The competent authorities of the Member State in which 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 communications.
5. Competent authorities shall not require an *ex ante* notification and approval of marketing communications.

#### Article 28

#### **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 administrative provisions referred to in paragraph 1 and provide ESMA with a summary of those laws, regulations and administrative provisions in a language customary in the sphere of international finance.
3. Competent authorities shall notify ESMA of any change in the information provided pursuant to paragraph 2 and provide ESMA without delay with an updated summary of the relevant laws, regulations and administrative provisions referred to in paragraph 1.
4. Where the competent authorities are not responsible for overseeing compliance with and enforcing the laws, regulations and administrative provisions referred to in paragraph 1, they shall publish on their websites the contact information regarding where information about the laws, regulations and administrative provisions referred to in paragraph 1 can be obtained.
5. 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 technical standards to the Commission by 10 November 2021.

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

6. ESMA shall publish and maintain on its website the summary referred to in paragraph 2 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.
7. Competent authorities shall be the single points of contact responsible for providing information on marketing rules in their respective Member States.

8. Competent authorities shall regularly, and at least on an annual basis, report to ESMA on their enforcement actions taken during the preceding year on the basis of national laws, regulations and administrative provisions applicable to marketing communications of crowdfunding service providers. In particular, the report shall include:

- (a) where applicable, the total number of enforcement actions taken by type of misconduct;
- (b) where available, the outcomes of the enforcement actions, including the types of penalties imposed or the 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 national laws, regulations and administrative provisions.

#### CHAPTER VI

### **Competent authorities and esma**

#### *Article 29*

#### **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.
3. ESMA shall publish on its website a list of the competent authorities designated in accordance with paragraph 1.

#### *Article 30*

#### **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:
  - (a) to require crowdfunding service providers and third parties designated to perform functions in relation to the provision of crowdfunding services, and the natural or legal persons that control them or are controlled by them, to provide information and documents;
  - (b) to require auditors and managers of the crowdfunding service providers, and of third parties designated to perform functions in relation to the provision of crowdfunding services, to provide information;
  - (c) 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:
  - (a) 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;
  - (b) to prohibit or suspend marketing communications, or to require a crowdfunding service provider or a third party designated to perform functions in relation to the provision of crowdfunding services to cease or suspend marketing communications, 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;
  - (c) 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;
  - (d) to suspend, or to require a crowdfunding service provider 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;

- (e) to prohibit the provision of crowdfunding services where they find that this Regulation has been infringed;
- (f) 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;
- (g) to disclose, or to require a crowdfunding service provider or a 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;
- (h) to suspend, or to require a 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 the competent authorities consider that the crowdfunding service provider's situation is such that the provision of the crowdfunding service would be detrimental to investors' interests;
- (i) to transfer existing contracts to another crowdfunding service provider in cases where a crowdfunding service provider's authorisation is withdrawn in accordance with point (c) of the first subparagraph of Article 17(1), subject to the agreement of the clients and the receiving crowdfunding service provider.

Any measures adopted in exercise of the powers under this paragraph shall be proportionate, duly justified and taken in accordance with Article 40.

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 (i) of the first subparagraph of paragraph 2 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.

6. 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.

7. A natural or legal 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 31

##### **Cooperation between competent authorities**

1. Competent authorities shall cooperate with each other 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 39(1), to lay down criminal penalties for an infringement of 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 infringements of 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 natural or legal persons before the authorities of the Member State addressed;
- (c) where a final judgment has already been delivered in relation to such natural or legal 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. A 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. 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 take any of the following actions:

- (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 such situations, act in accordance with the power conferred on it under Article 19 of Regulation (EU) No 1095/2010.

6. 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.

7. 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.

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

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

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 Articles 10 to 14 of Regulation (EU) No 1095/2010.

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

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

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

#### Article 32

#### **Cooperation between competent authorities and ESMA**

1. The competent authorities and ESMA shall cooperate closely with each other for the purposes of this Regulation and in accordance with Regulation (EU) No 1095/2010. They shall exchange information in order to carry out their duties under this Chapter.

2. 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.
3. 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.
4. In order to ensure uniform conditions of application of this Article, ESMA shall develop draft implementing technical standards to establish standard forms, templates and procedures for the cooperation and exchange of information between competent authorities and ESMA.

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

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

#### *Article 33*

### **Cooperation with other authorities**

Where a crowdfunding service provider engages in activities other than those covered by the authorisation referred to in Article 12, the competent authorities shall cooperate with the authorities responsible for the oversight of such other activities as provided for in the relevant Union or national law.

#### *Article 34*

### **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 to ESMA by 10 November 2021. Member States shall notify the Commission and ESMA without undue delay of any subsequent amendments thereto.

#### *Article 35*

### **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 is permitted to be disclosed or such disclosure is necessary for legal proceedings.
2. The obligation of professional secrecy shall apply to all natural or legal persons who work or who have worked for the competent authority or for any third party to whom the competent authority has delegated its powers. Information covered by professional secrecy may not be disclosed to any other natural or legal person or authority except by virtue of provisions laid down by Union or national law.

#### *Article 36*

### **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 37*

### **Precautionary measures**

1. Where the competent authority of a 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 by third parties designated to perform functions in relation to the provision of crowdfunding services or that the crowdfunding service provider or third parties have infringed their obligations under this Regulation, it shall notify the competent authority which granted authorisation and ESMA thereof.

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 of this Article, 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 38

##### **Complaint handling by competent authorities**

1. Competent authorities shall set up procedures which allow clients and other interested parties, including consumer 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 the Member State in which the complaint is submitted 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 VII

##### **Administrative penalties and other administrative measures**

#### Article 39

##### **Administrative penalties and other administrative measures**

1. Without prejudice to the supervisory and investigatory powers of competent authorities under Article 30, 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 Articles 3, 4 and 5, Article 6(1) to (6), Article 7(1) to (4), Article 8(1) to (6), Article 9(1) and (2), Article 10, Article 11, Article 12(1), Article 13(2), Article 15(2) and (3), Article 16(1), Article 18(1) and (4), Article 19(1) to (6), Article 20(1) and (2), Article 21(1) to (7), Article 22, Article 23(2) to (13), Articles 24, 25, 26 and Article 27(1) to (3);
- (b) failure to cooperate or comply in an investigation or with an inspection or request covered by Article 30(1).

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

By 10 November 2021, Member States shall notify, in detail, the rules referred to in the first and second subparagraphs to the Commission and to ESMA. They shall notify the Commission and ESMA without delay of any subsequent amendments thereto.

2. Member States shall, in accordance with their 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 the first subparagraph 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 conduct constituting the infringement and to desist from a repetition of that conduct;
- (c) 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 crowdfunding service providers;



- (d) maximum administrative fines of at least twice the amount of the benefit derived from the infringement where that benefit can be determined, even if it exceeds the maximum amounts set out in point (e);
  - (e) 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 9 November 2020 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 statements in accordance with Directive 2013/34/EU of the European Parliament and of the Council<sup>(23)</sup>, 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 financial statements approved by the management body of the ultimate parent undertaking;
  - (f) 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 9 November 2020.
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 40

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

1. Competent authorities, when determining the type and level of an administrative penalty or other administrative measure to be imposed in accordance with Article 39, 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.
2. Competent authorities shall exercise their functions and powers referred to in Article 39 in accordance with the second subparagraph of Article 30(2).
3. In the exercise of their powers to impose administrative penalties and other administrative measures under Article 39, 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.

<sup>(23)</sup> Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19).

*Article 41***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 six months of its submission.

*Article 42***Publication of decisions**

1. A decision imposing administrative penalties or other administrative measures for infringement of this Regulation shall be published by competent authorities on their official websites immediately after the natural or legal 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 natural or legal 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 ongoing investigation, competent authorities shall take one of the following actions:

- (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 a decision 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 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 remains 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 43***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 39. ESMA shall publish that information in an annual report.

Where Member States have chosen, in accordance with Article 39(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, EBA and the competent authorities and it shall be updated on the basis of the information provided by the competent authorities.

#### CHAPTER VIII

#### **Delegated acts**

##### Article 44

#### **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 48(3) shall be conferred on the Commission for a period of 36 months from 9 November 2020.
3. The delegation of powers referred to in Article 48(3) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.
5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
6. A delegated act adopted pursuant to Article 48(3) shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of three months of notification of that act to the European Parliament and to 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 IX

#### **Final provisions**

##### Article 45

#### **Report**

1. Before 10 November 2023 the Commission shall, after consulting ESMA and 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 Union law, including Directive 97/9/EC, Directive 2011/61/EU of the European Parliament and of the Council <sup>(24)</sup>, Directive 2014/65/EU and Regulation (EU) 2017/1129;
  - (b) whether the scope of services covered by this Regulation remains appropriate, in relation to the threshold amount set out in point (c) of Article 1(2);
  - (c) the use of admitted instruments for crowdfunding purposes in the cross-border provision of crowdfunding services;

<sup>(24)</sup> Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 (OJ L 174, 1.7.2011, p. 1).

- (d) 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 by means of crowdfunding platforms;
- (e) whether any adjustments are needed to the definitions set out in this Regulation, including the definition of a sophisticated investor set out in point (j) of Article 2(1) and the criteria in Annex II in the light of their effectiveness in ensuring investor protection;
- (f) whether the requirements set out in Article 4(1), Article 6 and Article 24 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;
- (g) the impact of this Regulation on the proper functioning of the Union's internal market for crowdfunding services, including the impact on access to finance by SMEs and on investors and other categories of natural or legal persons affected by those services;
- (h) the implementation of technological innovation in the crowdfunding sector, including the application of new innovative business models and technologies;
- (i) whether the prudential requirements set out in Article 11 remain appropriate to pursue the objectives of 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;
- (j) whether any changes are needed to the requirements on information to clients set out in Article 19 or to the investor protection safeguards set out in Article 21;
- (k) whether the amount set out in Article 21(7) remains appropriate to pursue the objectives of this Regulation;
- (l) the effect of the languages accepted by the competent authorities in accordance with Article 23(2) and (3);
- (m) the use of bulletin boards referred to in Article 25, including the impact on the secondary market for loans, transferable securities and admitted instruments for crowdfunding purposes;
- (n) 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;
- (o) the application of administrative penalties and other administrative measures and, in particular, any need to further harmonise the administrative penalties provided for infringements of this Regulation;
- (p) the necessity and proportionality of subjecting crowdfunding service providers to obligations for compliance with national law 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;
- (q) the appropriateness of allowing entities established in third countries to be authorised as crowdfunding service providers under this Regulation;
- (r) the cooperation between competent authorities and ESMA, and the appropriateness of competent authorities as the supervisors of this Regulation;
- (s) the possibility of introducing specific measures in this Regulation to promote sustainable and innovative crowdfunding projects, as well as the use of Union funds.
- (t) the total number and the market share of crowdfunding service providers authorised under this Regulation in the period from 10 November 2021 to 10 November 2022, classified by small, medium-sized and large enterprises;
- (u) volumes, number of projects and trends of the cross-border provision of crowdfunding services per Member State;
- (v) the share of the crowdfunding services provided under this Regulation in the global crowdfunding market and the Union financial market;

- (w) the costs of complying with this Regulation for crowdfunding service providers as a percentage of operational costs;
- (x) the volume of investments withdrawn by investors within the reflection period, its share of the total volume of investments and, based on those data, assess whether the duration and the nature of the reflection period set out in Article 22 is appropriate and does not harm the efficiency of the capital raising process or investor protection;
- (y) the number and amount of administrative fines and criminal penalties imposed according to or in relation with this Regulation classified by Member States;
- (z) types and trends of fraudulent behaviour of investors, crowdfunding service providers and third parties occurring in relation to this Regulation.

#### Article 46

### **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) 2020/1503 of the European Parliament and of the Council (\*), provided that it does not exceed the threshold laid down in point (c) of Article 1(2) of that Regulation.

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(\*) Regulation (EU) 2020/1503 of the European Parliament and of the Council of 7 October 2020 on European crowdfunding service providers for business and amending Regulation (EU) 2017/1129 and Directive (EU) 2019/1937 (OJ L 347, 20.10.2020, p. 1).'

#### Article 47

### **Amendment of Directive (EU) 2019/1937**

In Part I.B of the Annex to Directive (EU) 2019/1937, the following point is added:

- '(xxi) Regulation (EU) 2020/1503 of the European Parliament and of the Council of 7 October 2020 on European crowdfunding service providers for business and amending Regulation (EU) 2017/1129 and Directive (EU) 2019/1937 (OJ L 347, 20.10.2020, p. 1).'

#### Article 48

### **Transitional period with respect to crowdfunding services provided in accordance with national law**

1. Crowdfunding service providers may continue in accordance with the applicable national law to provide crowdfunding services that are included within the scope of this Regulation until 10 November 2022 or until they are granted an authorisation referred to in Article 12, whichever is sooner.
2. For the duration of the transitional period referred to in paragraph 1 of this Article, 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 law to provide crowdfunding services. The competent authorities shall ensure that the requirements laid down in Article 12 are complied with before granting authorisation pursuant to such simplified procedures.
3. By 10 May 2022, 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 on the impact of this Regulation on the development of national crowdfunding markets and on access to finance. On the basis of that assessment, the Commission shall be empowered to adopt delegated acts in accordance with Article 44 to extend the period referred to in paragraph 1 of this Article once by a 12-month period.

#### Article 49

### **Temporary derogation with respect to the threshold set out in point (c) of Article 1(2)**

By way of derogation from point (c) of Article 1(2) of this Regulation, for a period of 24 months from 10 November 2021, where in a Member State the threshold of total consideration for the publication of a prospectus in accordance with Regulation (EU) 2017/1129 is below EUR 5 000 000, this Regulation shall apply in that Member State only to crowdfunding offers with a total consideration up to the amount of that threshold.

*Article 50***Transposition of amendment of Directive (EU) 2019/1937**

1. Member States shall adopt, publish and apply, by 10 November 2021, the laws, regulations and administrative provisions necessary to comply with Article 47. However, if that date precedes the date of transposition referred to in Article 26(1) of Directive (EU) 2019/1937, the adoption, publication and application of such laws, regulations and administrative provisions shall be postponed until the date of transposition referred to in Article 26(1) of Directive (EU) 2019/1937.

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 47.

*Article 51***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 10 November 2021.

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

Done at Brussels, 7 October 2020.

*For the European Parliament*

*The President*

D.M. SASSOLI

*For the Council*

*The President*

M. ROTH

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## ANNEX I

**KEY INVESTMENT INFORMATION SHEET**

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

- (a) Identity, legal form, ownership, management and contact details;
- (b) All natural and legal persons responsible for the information given in the key investment information sheet. 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 natural person; in the 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 or is materially misleading or inaccurate. The project owner is responsible for the preparation of this key investment information sheet.'

- (c) Principal activities of the project owner; products or services offered by the project owner;
- (d) A hyperlink to the most recent financial statements of the project owner, if available;
- (e) Key annual financial figures and ratios for the project owner for the last three years, if available;
- (f) Description of the crowdfunding project, including its purpose and main features.

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

- (a) Minimum target capital to be raised or target funds to be borrowed in a single crowdfunding offer and the number of offers that have been completed by the project owner or crowdfunding service provider for the crowdfunding project;
- (b) Deadline for reaching the target capital to be raised or the target funds to be borrowed;
- (c) Information on the consequences if the target capital is not raised or the target funds are not borrowed by the deadline;
- (d) The maximum offer amount when different from the target capital or the target funds referred to 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, where relevant, geographic risks.

Part D: Information related to the offer 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 guarantee or a collateral:
  - (i) whether the guarantor or the collateral provider is a legal person;
  - (ii) the identity, legal form and contact details of the guarantor or the collateral provider;
  - (iii) information on the nature and the terms of the guarantee or the 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: Information on special purpose vehicles (SPV)

- (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 the investor to exit the investment;
- (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: Disclosures related to loans

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 of this Annex, contain information on the following:

- (a) The nature, duration and terms of the loan;
- (b) The 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) The schedule for the repayment of the principal and payment of interest;
- (e) Any default on credit agreements by the project owner within the past five years;
- (f) The servicing of the loan, including in 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 the crowdfunding service provider.



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

- (a) Identity, legal form, 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;
  - (g) Procedures, internal methodologies and criteria for selection of the crowdfunding projects to the individual portfolio of loans for the investor;
  - (h) Coverage and conditions of any applicable capital guarantees;
  - (i) The servicing of portfolio loans, including in situations where a project owner does not meet its obligations;
  - (j) Risk diversification strategies;
  - (k) Fees to be paid by the project owner or the investor, including any deduction from the interest to be paid by the project owner.
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## 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 excessive financial consequences. Sophisticated investors may be categorised as such if they meet the identification criteria set out in this Section, and if the procedure set out in Section II is followed.

The following natural and legal persons shall be regarded as sophisticated investors in all services offered by crowdfunding service providers in accordance with this Regulation:

(1) Legal persons meeting at least one of the following criteria:

- (a) own funds of at least EUR 100 000;
- (b) net turnover of at least EUR 2 000 000;
- (c) balance sheet of at least EUR 1 000 000.

(2) Natural persons meeting at least two of the following criteria:

- (a) 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;
- (b) 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 12 months in a legal person as referred to in point (1);
- (c) the investor has carried out transactions of a 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 their investors a template that they may use to submit a 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.

A request to be treated as a sophisticated investor shall contain the following items:

- (1) An attestation specifying the identification criteria set out in Section I that the requesting investor meets;
- (2) A statement that the requesting investor is aware of the consequences of losing the investor protection attached to the status of non-sophisticated investors;
- (3) A 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 doubts that the information provided in the request is correct. The crowdfunding service provider shall explicitly notify investors when their status is confirmed.

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

Sophisticated investors shall be responsible for keeping the crowdfunding service provider informed of any change which could affect their categorisation. Where the crowdfunding service provider becomes aware that the investor no longer fulfils the initial conditions which made the investor eligible for being treated as a sophisticated investor, the crowdfunding service provider shall inform the investor that he or she will be treated as a non-sophisticated investor.

III. Sophisticated investors that are professional clients

By way of derogation from the procedure set out in Section II of this Annex, entities referred to in points (1) to (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 of professionals to the crowdfunding service provider.

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# DIRECTIVES

## DIRECTIVE (EU) 2020/1504 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 7 October 2020

amending Directive 2014/65/EU on markets in financial instruments

(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 53(1) thereof,

Having regard to the proposal from the European Commission,

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

After consulting the European Central Bank,

Having regard to the opinion of the European Economic and Social Committee <sup>(1)</sup>,

Acting in accordance with the ordinary legislative procedure <sup>(2)</sup>,

Whereas:

- (1) Crowdfunding is a financial technology solution that provides small and medium-sized enterprises (SMEs) and, in particular, start-ups and scale-ups, with alternative access to finance in order to promote innovative entrepreneurship in the Union, thereby strengthening the Capital Markets Union. That in turn contributes to a more diversified financial system that is less dependent on bank finance, therefore limiting systemic and concentration risks. Other benefits of promoting innovative entrepreneurship through crowdfunding are the unlocking of frozen capital for investment in new and innovative projects, the acceleration of efficient allocation of resources and a diversification of assets.
- (2) Regulation (EU) 2020/1503 of the European Parliament and of the Council <sup>(3)</sup> lays down uniform, proportionate and directly applicable requirements for the provision of crowdfunding services, for the organisation, authorisation and supervision of crowdfunding service providers, for the operation of crowdfunding platforms as well as for transparency and marketing communications in relation to the provision of crowdfunding services in the Union.
- (3) To provide legal certainty as to the persons and activities falling within the scope of Regulation (EU) 2020/1503 and of Directive 2014/65/EU of the European Parliament and of the Council <sup>(4)</sup>, respectively, and in order to avoid a situation where the same activity is subject to multiple authorisations within the Union, legal persons authorised as crowdfunding service providers under Regulation (EU) 2020/1503 should be excluded from the scope of Directive 2014/65/EU.

<sup>(1)</sup> OJ C 367, 10.10.2018, p. 65.

<sup>(2)</sup> Position of the European Parliament of 27 March 2019 (not yet published in the Official Journal) and position of the Council at first reading of 20 July 2020 (not yet published in the Official Journal). Position of the European Parliament of 5 October 2020 (not yet published in the Official Journal).

<sup>(3)</sup> Regulation (EU) 2020/1503 of the European Parliament and of the Council of 7 October 2020 on European crowdfunding service providers for business, and amending Regulation (EU) 2017/1129 and Directive (EU) 2019/1937 (See page 1 of this Official Journal).

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

- (4) As the amendment provided for in this Directive is directly linked to Regulation (EU) 2020/1503, the date from which Member States are to apply the national measures transposing this Directive should be deferred in order to coincide with the date of application set out in that Regulation,

HAVE ADOPTED THIS DIRECTIVE:

*Article 1*

In Article 2(1) of Directive 2014/65/EU, the following point is added:

- (p) crowdfunding service providers as defined in point (e) of Article 2(1) of Regulation (EU) 2020/1503 of the European Parliament and of the Council (\*).

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(\*) Regulation (EU) 2020/1503 of the European Parliament and of the Council of 7 October 2020 on European crowdfunding service providers for business and amending Regulation (EU) 2017/1129 and Directive (EU) 2019/1937 (OJ L 347, 20.10.2020, p. 1).

*Article 2*

1. Member States shall adopt and publish, by 10 May 2021, the laws, regulations and administrative provisions necessary to comply with Article 1 of this Directive.

They shall apply those measures from 10 November 2021.

2. Member States shall communicate to the Commission and to the European Securities and Markets Authority (ESMA) the text of the main provisions of national law which they adopt in the field covered by this Directive.

*Article 3*

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

*Article 4*

This Directive is addressed to the Member States.

Done at Brussels, 7 October 2020.

*For the European Parliament*

*The President*

D.M. SASSOLI

*For the Council*

*The President*

M. ROTH

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