



ESMA Consultation paper on a set of draft technical standards under the Regulation 2020/1503, on European crowdfunding service providers for business

[Link to the paper: *Consultation paper on a set of draft technical standards under the Regulation 2020/1503, on European crowdfunding service providers for business*](#)

1.- Target audience (potential stakeholders):

This consultation is primarily of interest to:

- crowdfunding service providers and potential crowdfunding service providers within the meaning of Article 2(1)(e) of Regulation 2020/1503 on European crowdfunding service providers for business; that is to say, any legal persons providing crowdfunding services;
- National Competent Authorities (NCAs); and
- other entities that are subject to Regulation 2020/1503 (European crowdfunding service providers Regulation, ECSPR).

It is also addressed to:

- trade associations and industry bodies;
- sophisticated and non-sophisticated investors;
- consumer associations; and
- any market participant engaged in the provision of crowdfunding services.

The CNMV would appreciate it if all the above-mentioned potential stakeholders were to send a copy of their responses to the consultation to the following email address: Documentosinternacional@cnmv.es

2.- Information Note

On 26 February, ESMA published a consultation paper on the initial set of draft regulatory technical standards and implementing technical standards for the development of Regulation 2020/1503.

The new Regulation on crowdfunding regulates for the first time the provision of crowdfunding services within the European Union, establishing a series of harmonised requirements and investor protection rules. Crowdfunding services cover both facilitating the granting of loans

(crowdfunding loan) and the placement without being based on a firm commitment of transferable securities and instruments admitted for crowdfunding issued by project owners (crowdfunding investment). Furthermore, crowdfunding service providers can also provide individual portfolio management of loans.

The Regulation, which entered into force on 9 November 2020, requires ESMA to develop 12 technical standards: eight Regulatory Technical Standards (RTS), including two to be developed in close collaboration with the EBA, and four Implementing Technical Standards (ITS) on a variety of important topics.

The consultation paper covers nine of these technical standards which include the eight technical standards to be submitted to the European Commission by 10 November 2021, and another technical standard to be submitted to the European Commission by 10 May 2022, which is the regulatory technical standard on the Key Investment Information Sheet (KIIS). The bringing forward of the deadline to publish the latter technical standard is due to the industry's interest, and it is expected that it will enable better adaptation by market participants to the duty of providing a Key Investment Information Sheet to all potential investors.

Specifically, the nine draft technical standards developed by ESMA (two of which were prepared in close collaboration with the EBA) and on which the opinion of stakeholders is sought in the consultation paper are the following:

- Draft regulatory technical standards to specify the requirements, standard formats and procedures for complaint handling.

(Article 7(5) of Regulation 2020/1503)

- Draft regulatory technical standards to specify:

(a) the requirements for the maintenance or operation of internal rules to avoid conflicts of interest; (b) the appropriate steps to prevent, identify, manage and disclose conflicts of interest among the crowdfunding service providers themselves (or their shareholders, managers, employees or any persons linked to them by control) and their clients or among two clients; and (c) the arrangements for the disclosure of information on conflicts of interest. (Article 8(7) of Regulation 2020/1503)

- Draft regulatory technical standards to specify the measures and procedures for the business continuity plan referred to in Article 12(2)(j). (Article 12(16)(b) of Regulation 2020/1503)
- Draft regulatory technical standards to specify the requirements and arrangements for the application for authorisation to operate as a crowdfunding service provider, including the standard forms, templates and procedures for the application for authorisation. (Article 12(16)(a) of Regulation 2020/1503)
- Draft regulatory technical standards, developed in close collaboration with the EBA, to specify the methodology for calculating the default rates (annual default rate and the expected and actual default rate by risk category) of the projects offered on a crowdfunding platform. (Article 20(3) of Regulation 2020/1503)
- Draft regulatory technical standards, developed in close collaboration with the EBA, to specify the arrangements necessary to: (a) assess whether the services are appropriate for prospective non-sophisticated investors (entry knowledge test);

- (b) simulate the ability of prospective non-sophisticated investors to bear loss; and
- (c) provide the information required by prospective non-sophisticated investors and for crowdfunding service providers to inform investors that the investment may be inappropriate for them and the potential risk. (Article 21(8) of Regulation 2020/1503)
- Draft regulatory technical standards to specify: (a) the requirements for and content of the model for presenting the information to be included in the Key Investment Information Sheet (detailed in Article 23(7) of and Annex I to the Regulation); (b) the types of main risks that are associated with the crowdfunding offer, and therefore, must be disclosed; (c) the use of certain financial ratios to enhance the clarity of key financial information; and (d) the commissions, fees and transaction costs, including a detailed breakdown of direct and indirect costs to be borne by the investor. Article 23(16) of Regulation 2020/1503)
 - Draft implementing technical standards to establish data standards and formats, templates and procedures for the information to be reported annually by crowdfunding service providers to NCAs, and by NCAs to ESMA. (Article 16(3) of Regulation 2020/1503)
 - Draft implementing technical standards to determine standard forms, templates and procedures for the notifications of the publication of national provisions concerning marketing requirements. (Article 28(5) of Regulation 2020/1503).

The consultation paper for each draft technical standard contains, along with the mandate for ESMA, some background information that explains and justifies the proposal submitted to consultation, the text for each draft technical standard (annexes III to IX), as well as one or various specific questions (contained in annex I) for each draft technical standard. Annex II contains the costs/benefit analyses for each draft technical standard.

ESMA will consider the feedback it receives to this consultation to prepare the final report on the draft technical standards to be submitted by 10 November 2021 to the European Commission for endorsement.

3.- Submission of comments

The deadline for submitting comments is **28 May 2021**.

Respondents may send their comments through the online response form available at the following link:

https://www.esma.europa.eu/press-news/consultations/consultation-draft-technical-standards-under-ecsp-regulation#registration-form_consultation

Likewise, as indicated above, the CNMV would also appreciate it if stakeholders could send a copy of their responses to the consultation to the following email address:

Documentosinternacional@cnmv.es

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