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Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on European Crowdfunding Service Providers (ECSP) for Business

(Text with EEA relevance)

{SWD(2018) 56 final} - {SWD(2018) 57 final}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

The Commission has today adopted a package of measures to deepen the Capital Markets Union, together with the Communication "Completing Capital Markets Union by 2019 – time to accelerate delivery". The package includes this proposal, as well as a proposal for an enabling EU framework on covered bonds, a proposal to facilitate the cross-border distribution of investment funds, a proposal on the law applicable to the third-party effects of assignments of claims and a Communication on the applicable law to the proprietary effects of transactions in securities.

This initiative is part of the Commission's priority of establishing a Capital Market Union (CMU), which aims to broaden access to finance for innovative companies, start-ups and other unlisted firms.¹

Today, access to finance remains difficult for these firms, particularly when they move from a start-up into the expansion phase, due to structural information asymmetries. Over-reliance on short-term unsecured bank lending is often expensive. In addition, bank lending volumes to both start-ups and SMEs have been severely affected by the 2008 financial crisis and still struggle to reach pre-crisis levels, making the lack of funds an important contribution to start-ups' failures. These issues are significantly enhanced in Member States with less developed capital markets and banking system.

As a new form of technology-enabled financial service, crowdfunding carries the potential to help better match investors with business projects in need of funding. Crowdfunding platforms act as intermediaries between investors and businesses, allowing investors to more easily identify and support projects they are interested in. Crowdfunding can become an important source of non-bank financing and thus further the CMU overarching goals of supporting a more sustainable financial integration and private investments for the benefit of job creation and economic growth. Crowdfunding is increasingly establishing itself as an important part of the funding escalator for start-ups and early stage companies, usually financed by family, friends and own funds up to later development rounds where venture capital or even private equity funds start taking interest. Crowdfunding can thus provide an alternative to unsecured bank lending, which are currently the main sources of external finance for SMEs, especially during the initial period of activity.

The Commission Services have been monitoring crowdfunding market developments for some years. A Communication published in 2014² and a staff working document published in May 2016³ concluded that there was no strong case for EU level policy intervention at that juncture. Meanwhile, the Commission Services committed to monitor this market and, since

¹ The European Parliament resolution of 9 July 2015 on Building a Capital Markets Union also states that "the CMU should create an appropriate regulatory environment that enhances cross-border access to information on the companies looking for credit, quasi-equity and equity structures, in order to promote growth of non-bank financing models, including crowdfunding and peer-to-peer lending". European Parliament resolution of 9 July 2015 on Building a Capital Markets Union (2015/2634(RSP)), par. 47. Available at <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+TA+P8-TA-2015-0268+0+DOC+PDF+V0//E>

² Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Unleashing the potential of Crowdfunding in the European Union, COM(2014) 172 final, 27.3.2014.

³ SWD(2016) 154 final, available here: <https://ec.europa.eu/transparency/regdoc/rep/10102/2016/EN/10102-2016-154-EN-F1-1.PDF>

then, have gathered significant evidence on barriers to cross-border activity and the development of the internal market through stakeholder consultations and external studies. Moreover, the continued concentration of the European crowdfunding sector in a few Member States has underlined the need to make this funding method available more widely for the benefit of fund seekers and investors in all Member States.

This proposal establishes a European label for investment- and lending-based crowdfunding platforms that enables cross-border activity and seeks to address risks in a proportionate manner. The proposal seeks to facilitate the scaling up of crowdfunding services across the internal market thereby increasing access to finance for entrepreneurs, start-ups, scale-ups and SMEs in general. This is why donation and reward based crowdfunding are excluded from the scope of this initiative. The inclusion of those business models would be disproportionate as they do not deal with financial products and the information asymmetries that these products create. Moreover, EU consumer protection legislation already applies to reward-based crowdfunding with strict rules to safeguard consumers.

This proposal does not apply to those services provided to project owners qualifying as consumers as defined in Article 3(a) of Directive 2008/48/EC. Therefore, the proposal does not include consumers lending for consumption purposes as this is not business lending and it partially fall within to the scope of existing EU legislations, specifically: (i) when a consumer is receiving a loan for personal consumption and operating outside of professional capacity this activity falls within the remit of the Consumer Credit Directive; and (ii) in case of a consumer receiving a loan to purchase an immovable property, this activity falls within the remit of the Mortgage Credit Directive.

This proposal also seeks to empower investors with the necessary information on crowdfunding, including the information on the underlying risks. To support investors' trust in these innovative services, this proposal also requires crowdfunding service providers to have the necessary safeguards in place to minimise the likelihood of risks materialising.

- **Consistency with existing policy provisions in the policy area**

Provision of crowdfunding services has not been subject so far to a targeted EU action. Crowdfunding service providers have been adapting their business models to very different national frameworks and are subject to the implementation of existing EU and national regimes by national competent authorities. The dynamic nature of business models and different interpretations across Member States of existing EU legislation has led to a large variety of regulatory frameworks for crowdfunding service providers ranging from no regulation to strict application of investor protection rules. Some Member States have to date introduced national bespoke regimes for crowdfunding, while others require crowdfunding platforms to get licensed and operate under existing EU frameworks, such as the Markets in Financial Instruments Directive (MiFID II), the Payment Services Directive (PSD) and the Alternative Investment Fund Managers Directive (AIFMD).

This proposal for a European crowdfunding legal framework does not intend to interfere with national bespoke regimes or existing licenses, including those under the MiFID II, the PSD or the AIFMD, but rather to provide crowdfunding service providers with the possibility to apply for an EU label that empowers them to scale up their operations throughout the Union under certain conditions.

- **Consistency with other Union policies**

The proposal aims to broaden access to finance for innovative companies, SMEs and other unlisted firms, in line with the Commission's priority of establishing a CMU. By allowing platforms to scale up their operations across the European market the proposal seeks to

provide start-ups and SMEs with access to alternative sources of capital in line with other initiatives that have sought to facilitate access to finance for these entities, such as the framework for European Venture Capital Funds.

The initiative is also part of the European Commission's FinTech Action Plan, designed to better understand and enable technology to support the financial services sector. In effect, the financial services sector is the largest user of digital technologies and represents a major driver in the digital transformation of our society. These new technologies are changing the way consumers and firms access services, as well as improving the ability to understand and measure risks. The Commission aims to opt for a more innovation-oriented approach to FinTech by facilitating a regulatory environment where innovative financial services, products and solutions can be rolled out across the EU in a safe, financially stable environment for investors and firms alike.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

• Legal basis

The legal basis for this proposal is Article 114 of the Treaty on the Functioning of the European Union (TFEU), which allows the adoption of measures for the approximation of national provisions having as their object the establishment and functioning of the internal market.

Currently crowdfunding cannot reap the benefit of the internal market due to the absence of a dedicated and coherent regulatory and supervisory regime. While some Member States apply the current financial services framework to crowdfunding service providers, others allow them to stay outside the regulatory regime whilst operating under exemptions, as relevant to the specific business model. Meanwhile, an increasing number of Member States are implementing bespoke national frameworks to cater specifically for crowdfunding activities.

The divergent frameworks, rules and interpretations of business models applied to crowdfunding service providers throughout the Union thus hinders the potential scaling up of crowdfunding activity at EU level. Large differences in regulatory standards and divergent legislative scopes adopted by Member States pose a barrier for crowdfunding platforms scaling their operations across the EU as their business models would have to be adjusted according to each jurisdiction, frequently require multiple national authorisations or registrations and compliance with divergent national laws, among others in the field of marketing and consumer protection. This results in high costs, legal complexity and uncertainty for crowdfunding service providers is responsible for causing unnecessary market fragmentation as well as a lack of economies of scale and inconsistent approaches to transparency and financial risks. These divergences represent an obstacle to the establishment and smooth functioning of the internal market.

This situation restricts crowdfunding platforms' capacity to penetrate other EU markets beyond the national market and limits crowdfunding service providers' financial incentives only to larger EU countries with sufficient market size. This, in turn, restricts the capacity to develop an integrated EU internal market for crowdfunding services.

At the same time, investors have limited accessibility and ability to diversify risk in the same way due to the lack of a internal market. There are important and innovative sectors, like technology, whereby the geographical proximity is not a key factor to invest, hence the reliance on an international investor base. International investors struggle to emerge on European crowdfunding platforms due to the cross-border barriers highlighted above, despite

the fast growth of domestic markets. As a result, the difficulty for investors to engage cross-border generates additional search costs and restricts the free flow of capital within the Union.

It has been observed that a number of firms resort to incorporating a legal entity and raising funds in countries with developed crowdfunding markets. While this could also be influenced by other factors, such as the local financial ecosystem, it means that small businesses in sectors with low mobility of production factors would not be able to access these funding opportunities, unless an efficient domestic crowdfunding market already exists. Hence, the inability of platforms and investors to move cross-border may inhibit access to finance for companies in a large set of sectors.

These divergences also create an uneven playing field for platform providers depending on their location, by fragmenting funding models along national lines, thus erecting additional barriers to a internal market in crowdfunding services. Key drivers include different interpretations and treatment of crowdfunding service providers, as well as the additional mistrust that this creates for investors in a cross-border setting as regards uncertainty and high search costs. More importantly, such divergent interpretations and treatment of the crowdfunding services create substantial legal uncertainty for retail investors, who remain discouraged from crowdfunding services in the light of weak or uncertain protection of their rights, legal recourse and lack of transparency in terms of pricing and charges associated to investments in the projects.

Through the introduction of uniform conditions of operation for firms within the EU, the proposal overcomes the differences in national legal frameworks which led to market fragmentation at EU level, reducing significantly the complexity, financial and administrative burdens for all key stakeholders, i.e. crowdfunding platforms, project owners and investors. At the same, it ensures a level playing field among all the service providers using the same EU label.

- **Subsidiarity**

Under Article 4 TFEU, EU action for completing the internal market must be appraised in the light of the subsidiarity principle set out in Article 5(3) of the Treaty on European Union (TEU). It must be assessed whether the objectives of the proposal could not be achieved by the Member States in the framework of their national legal systems and, by reason of their scale and effects, are better achieved at EU level.

The varying approaches taken by the Member States and their different interpretations of crowdfunding activity have been increasingly amplifying the outlined issues. As bespoke national regimes are the major hurdle for platforms and result in further market fragmentation, the objectives cannot be reached through individual action by the Member States.

The Commission Services have been monitoring the market for a number of years and have recognised increasing divergence and amplification of problems that warrant EU-level intervention. Evidence collection through studies and public consultations has shown strong support for action. There is no coordination effort undertaken so far among Member States on rules for lending services by non-deposit-taking institutions and the application of MiFID rules to investment-based crowdfunding platforms remains insufficiently uniform to enable cross-border activity. Action taken by the Member States can only remedy their own market, which would not be sufficient to reduce the negative impact on the functioning of the internal market.

This situation restricts access to early stage capital markets financing only to bigger EU countries and investors have limited accessibility and ability to diversify risk in the same way

irrespective of where they are geographically located. Providing an EU-level framework would ensure the possibility to passport crowdfunding activities throughout the internal market. This would result in more competition between crowdfunding service providers and would allow Member States with small internal markets to develop alternative funding sources. It would also provide start-ups and SMEs with more capital and allow investors access to an alternative asset-class.

- **Proportionality**

Under the principle of proportionality, the content and form of EU action should not exceed what is necessary to achieve the objectives of the Treaties.

Today, crowdfunding service providers wishing to offer their services in other Member States are allowed to do so, in so far as they obtain a local license and comply with that Member State's national crowdfunding regime. In practice, this means that a crowdfunding service provider has to comply simultaneously with several national regimes as well as adapt its business model if it wishes to offer services cross-border. This significantly hinders crowdfunding service providers' ability to scale their offering at EU level.

Provision of crowdfunding services focuses on smaller capital raising activities for projects, early stage start-ups and SMEs. However, in some Member States, providers have to apply the existing sectorial legislation, such as MiFID II and MiFIR. Those rules might be disproportionate for small activities. Furthermore, these rules may not be fit for purpose. Crowdfunding encompasses many different business models, which might not all be addressed, and could therefore have unpredictable regulatory spill-over effects. As a result, it may not be possible to capture, in a proportionate way, a growing number of platforms mixing different business models, which may involve lending and investment-based dealings.

A stand-alone voluntary European crowdfunding regime under the label of a European Crowdfunding Service Provider, which platforms would choose when wishing to conduct cross-border business would leave the tailored national crowdfunding frameworks unchanged, whilst providing an opportunity for platforms that want to scale their operations at a European level and wishing to conduct cross-border business. This would determine a rather swift and sizeable reduction of market entry costs (regulatory and supervisory costs) for crowdfunding platforms operating (or intending to operate) cross-border, since they would only be authorised once. At the same time, the regime would be more proportionate than in the case of the MiFID rules. The proposed regime oriented towards the provision of services would also allow for flexibility in capturing platform activities combining multiple business models, as it provides a single regime that applies to both investment-based and lending-based models (reducing regulatory uncertainty). The approach would also ensure that the regime is future-proof in light of rapid development within the sector and the use of different instruments.

The preferred option would be also coherent with the legislative framework, as it allows coexistence of established financial frameworks with this regime, with a carve out in line with the parameter of EUR 1 million set in another key piece of EU law, and notably Regulation (EU) No 2017/1129 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market.⁴ This approach would minimise risks of regulatory arbitrage, while enabling cross-border activities in line with a solid investor protection and financial stability framework.

⁴ OJ L 168, 30.6.2017, p. 12.

- **Choice of the instrument**

Article 114 TFEU allows the adoption of acts in the form of a regulation or directive. A regulation was selected here as an "EU label" must be directly applicable in all Member States in order to be effective.

Second, as the proposed Regulation establishes harmonised requirements for crowdfunding platforms wishing to apply for a respective authorisation, it must not be subject to specific national rules. Therefore, in this case a Regulation is more appropriate than a Directive. However, any features that fall outside the scope of the proposal would be subject to national rules, including those transposing the provisions of the applicable EU Directives.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Stakeholder consultations**

Responses to the Commission's public consultations on Crowdfunding in 2013, the CMU Green Paper in 2014, the CMU Mid-Term Review in 2017 and the FinTech consultation in 2017 have provided qualitative evidence to support development of an impact assessment. Respondents to the CMU Green Paper consultation identified a number of barriers to the development of appropriately regulated crowdfunding platforms: regulatory barriers, poor availability and quality of information, and other barriers such as a lack of secondary markets and taxation barriers. Some respondents considered that EU intervention would facilitate cross-border transactions at lower costs. Many respondents to the CMU Mid-Term Review consultation made similar statements arguing in favour of the development of a proper legal framework for crowdfunding across the EU to ensure appropriate investor and consumer protection, so as to create a market of sufficient size.

The Commission carried out a public consultation on 'Fintech: a more competitive and innovative European financial sector'. The public consultation received a total of 226 responses covering individuals, industry (from a significant variety of market participants), national and European regulators and supervisors, users and trade unions. A summary of the contributions together with a detailed summary of individual responses to the public consultation were published on 12 September 2017. Respondents generally considered that national regulatory regimes for crowdfunding in Europe have a direct impact on the development of the crowdfunding sector. This belief was shared across the board by all types of respondents (private individuals, private organisations, public authorities and international organisations). Almost half of the respondents who expressed an opinion on the matter believed that national regulatory regimes hindered cross-border crowdfunding activity and that harmonisation at the EU level was required. These also pointed out that the European market was fragmented due to divergences in the regimes adopted by different Member States. Furthermore, some argued that hindering cross-border activity by juxtaposing national regulations impeded real competition, and made it difficult and more costly for platforms to scale up and reach the necessary size to be profitable in the longer term.

In addition, the Commission services have conducted a series of workshops consulting with Member States, trade bodies and their members. Three regulatory workshops on crowdfunding with Member States were held in December 2014, February 2016 and November 2017, in the framework of the Expert Group of the European Securities Committee (EGESC). Experts pointed to a number of issues that could be addressed in order to avoid legal barriers and promote crowdfunding activity in the EU, such as information sharing, data gathering, establishing a common taxonomy, supporting passporting, and more convergent

information disclosure requirements for securities issues below the prospectus threshold. The Commission services have also set up a European Crowdfunding Stakeholder Forum (ECSF) in 2015 as the expert group of representatives of associations of concerned stakeholder groups and national authorities. Finally, a workshop was held on cross-border crowdfunding in June 2017 on the study "Identifying market and regulatory obstacles to the cross-border development of crowdfunding in the EU".

- **Collection and use of expertise**

The proposal draws on an extensive amount of desk research, external studies, targeted consultations, interviews, focus groups, workshops and other. The material used had been gathered since the Commission Services started monitoring the market in 2013. This includes meetings with stakeholders, studies carried out on behalf of the Commission and by industry stakeholders, staff working documents, opinions and advice by the supervising authorities, studies as well as academic research papers. A study was commissioned that focused on identifying the barriers to the cross-border provision of crowdfunding services.

- **Impact assessment**

This proposal is accompanied by an impact assessment that was submitted on 18th November 2017 and approved by the Regulatory Scrutiny Board (RSB) on 15th December 2017.

The RSB requested to amend the draft impact assessment to clarify (i) the rationale and urgency of the initiative and how the Commission position has evolved in recent years, together with explaining more the focus on the very early financing needs of innovative entrepreneurs, small businesses and start-up; (ii) the extent to which the proposal is forward-looking and capable of integrating future developments (iii) the importance of regulatory fragmentation in comparison to the barriers not addressed by the proposal; (iv) additional evidence on the demand for cross-border activity; (v) the interaction between the proposal and the existing EU sectorial and national legislation, and (vi) the justification for the choice of the relevant supervisor and the impact of the proposal on the European Securities and Markets Authority. The Impact Assessment has been amended accordingly.

The impact assessment concluded that EU crowdfunding markets for business finance are largely underdeveloped compared to other major economies but - and most importantly - unable to properly operate cross-border. Due to fragmented and conflicting regulatory regimes, crowdfunding platforms are unable to scale and freely provide their services on a pan-European level. Likewise, investors refrain from engaging cross-border due to a lack of trust in those platforms and their fragmented regulatory frameworks applicable to the service provision. In order to address these problems, the impact assessment identified and examined four policy options:

- (1) Baseline - No EU action.
- (2) Option 1 - Building on reputational capital: minimum standards with best practices
- (3) Option 2 - A product-based approach: bringing crowdfunding within the existing EU single rulebook
- (4) Option 3 - A complementary service-based solution: a regime for 'European Crowdfunding Service Providers'

The first, baseline option analysed market developments in the case that no-EU action was taken. Without action, crowdfunding platforms will be even less able to scale up cross-border and the increasing conflicts between national regimes could create loopholes for investor protection and the integrity of the market.

The second option developed on the possibility of introducing minimum-harmonisation elements across the EU, to combine with best practices. This option was also not retained, as it would create undue regulatory uncertainty due to the self-regulatory enforcement mechanism and its interaction with national regimes already in place.

The third option looked into the case for introducing provisions for crowdfunding services under the current EU legislative framework, such as MiFID, and creating a stand-alone regime for lending-based crowdfunding service activities that currently do not have a European framework in place. This carving-in of the crowdfunding regime into the EU Single Rulebook was not retained because it is not as cost effective as other options, while achieving similar results in terms of integrity and transparency.

The fourth and preferred option considered the possibility of introducing an EU-label for crowdfunding service providers, which would be authorised and supervised at EU level under an EU regime. This option combines flexibility towards business models (that can freely choose either to opt for the EU label or to stay with the national regime) with proportionate investor protection and organisational rules. In addition, the comprehensive passporting regime also provides for a cost effective tool to scale up under a common framework, reducing regulatory uncertainty and lowering administrative burdens.

- **Fundamental rights**

The EU is committed to high standards of protection of fundamental rights and is signatory to a broad set of conventions on human rights. In this context, the proposal is not likely to have a direct impact on these rights, as listed in the main UN conventions on human rights, the Charter of Fundamental Rights of the European Union, which is an integral part of the EU Treaties, and the European Convention on Human Rights (ECHR).

4. BUDGETARY IMPLICATIONS

The preferred option holds implications in terms of costs and administrative burden for ESMA. The magnitude and distribution of these costs will depend on the precise requirements placed on ECSPs and the related supervisory and monitoring tasks.

Assuming that ESMA will be in charge of authorising and supervising 25 ECSPs in the first full year of implementation (2020), there will be a cost impact (net of fees charged on the industry) of approximately EUR 1 637 000 in that year. This estimate also includes half of EUR 500 000 in one-off costs to be split over the first two years, used to setup the necessary IT systems. Given that the European crowdfunding sector is still young and characterised mainly by small platforms with limited revenues, ECSPs' fees are capped to an appropriate threshold.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

Not applicable.

- **Detailed explanation of the specific provisions of the proposal**

The proposal seeks to establish uniform rules on crowdfunding at EU level. It does not replace national rules on crowdfunding where they exist. Under the proposal, a crowdfunding service provider can choose to either provide or continue providing services on domestic basis under applicable national law (including where a Member State chooses to apply MiFID II to

crowdfunding activities) or seek authorisation to provide crowdfunding services under the proposed Regulation. In the case of authorisation under EU rules, authorisation covers both the provision of services in a single Member State and on a cross-border basis. If the provider chooses to apply the EU rules, authorisation under the applicable national rules is withdrawn. Authorisation granted under this Regulation would allow crowdfunding service providers to provide crowdfunding services under a passport across all Member States.

Article 1 defines the subject matter; in particular, Article 1 sets out that the Regulation applies to crowdfunding service providers and establishes uniform requirements in relation to their operations, organisation, authorisation and ongoing supervision. Article 2 defines the scope of application, which is limited to those legal persons who choose to seek authorisation pursuant to Article 11 and to those who are authorised in accordance with that Article. It also provides for exemptions by virtue of which this Regulation should not apply to crowdfunding services that are provided to consumers, as defined in Article 3(a) of Directive 2008/48/EC, to crowdfunding services that are provided by legal persons that have been authorised as investment firms in accordance with Article 7 of Directive 2014/65/EU, or to crowdfunding service provided by natural or legal persons that have been authorised for that purpose by national law. It follows from this provision that persons authorised as crowdfunding service providers who wish to continue providing services beyond the scope of this Regulation, should no longer be able to operate under the authorisation granted pursuant to this Regulation. Such persons that provide investment-based cross-border crowdfunding services should seek an authorisation under Directive 2014/65/EU while their authorisation as a crowdfunding service provider under this Regulation should be withdrawn.

Article 3 sets out terms and definitions that are used for the purposes of this Regulation, in particular, "crowdfunding services", "crowdfunding platform", "crowdfunding service provider", "crowdfunding offer" and others. Importantly, the Commission may adopt delegated acts to specify further technical elements of the definitions laid down in Article 2 to take into account market developments, technological developments and experience.

Chapter II sets forth the provision of crowdfunding services (Article 4), effective and prudent management (Articles 5) and complaints handling (Article 6). By virtue of those provisions, crowdfunding service providers must at all times comply with the organisational requirements, while natural persons having the power to manage a crowdfunding service provider should have appropriate skills and professional experience. With respect to conflicts of interest (Article 7), a crowdfunding service provider must maintain and operate effective organisational and administrative arrangements with a view to taking all reasonable steps designed to prevent conflicts of interest from adversely affecting the interests of its clients. Crowdfunding service providers are also required to take all appropriate steps to identify and to prevent or manage conflicts of interest between themselves, including their managers and employees, or any person directly or indirectly linked to them by control and their clients or between one client and another that arise in the course of providing any services. Rules regarding outsourcing and client asset safekeeping are set out in Articles 8 and 9.

Chapter III sets out provisions on authorisation and ongoing supervision requirements. More specifically, Article 10 provides for a requirement for authorisation and sets the authorisation conditions for crowdfunding service providers. In particular, crowdfunding service providers must satisfy a number of criteria in order to be authorised by ESMA. Article 10 also sets forth the procedures for granting and refusing applications for authorisation. Article 11 requires ESMA to establish a publicly available and up-to-date register of all crowdfunding service providers. Article 12 specifies that crowdfunding services must be provided under supervision by ESMA. Article 13 sets out provisions pertaining to the withdrawal of authorisation.

Chapter IV sets out provisions on investor protection and transparency. Pursuant to Article 14, all information, including marketing communications, from crowdfunding service providers to clients must be complete, clear and correct. Article 15 sets out an initial assessment of appropriateness of a potential client and provides that platforms shall offer investors the possibility to simulate their ability to bear losses. Article 16 elaborates on details and content, as well as form and other requirements of the Key Investment Information Sheet (KIIS). Article 17 and 18 deal, respectively, with the bulletin board and the right for the investor to access the records.

Chapter V sets out provisions regarding marketing communications. More specifically, Article 19 sets detailed requirements for marketing communications and Article 20 requires national competent authorities to publish and maintain on their websites national laws, regulations and administrative provisions applicable to marketing communications of crowdfunding service providers.

Chapter VI sets out detailed provisions on ESMA's powers and competences, legal privilege (Article 21), request for information (Article 22), general investigations (Article 23), on-site inspections (Article 24), exchange of information (Article 25), professional secrecy (Article 26), supervisory measures by ESMA (Article 27), as well as administrative sanctions and other measures, in particular, fines (Article 28), periodic penalty payments (Article 29), the disclosure, nature and enforcement of fines (Article 30) and the corresponding procedural rules for taking supervisory measures and imposing fines (Article 31).

Articles 32 and 33 set out requirements, respectively, with respect to hearing of persons concerned and the unlimited jurisdiction of the Court of Justice over ESMA's decisions. In accordance with Article 34, ESMA should be able to charge fees to the crowdfunding service providers in accordance with the Regulation and the delegated act adopted pursuant to the Regulation. Article 35 sets out the possibility for ESMA to delegate specific supervisory tasks to the competent authorities of Member States in accordance with the ESMA guidelines.

Crowdfunding, as any other financial service, may be exposed to money laundering and terrorism financing practices. Therefore, the Regulation provides for appropriate safeguards to minimise the risks that such practices are carried out. In particular, Article 9 requires that payments for crowdfunding transactions must take place via entities that are authorised under the Payment Service Directive (PSD) and, therefore, subject to the 4th Anti-Money Laundering Directive (AMLD), whether the payment is provided by the platform itself or by a third party. Article 9 also sets out that crowdfunding service providers must ensure that project owners accept funding of crowdfunding offers or any payment only via an entity authorised under the PSD. Article 10 introduces requirements for the 'good repute' of managers, which include the absence of any criminal record under anti-money laundering legislation. Article 13 requires National Competent Authorities (NCAs), including national competent authorities designated under the provisions of Directive (EU) 2015/849, to notify ESMA of any issue that is relevant under the AMLD and involving a crowdfunding platform. ESMA may subsequently withdraw the license based on this information. Article 38 provides that with a view to further ensuring financial stability by preventing risks of money laundering and terrorism financing, the Commission should assess the necessity and proportionality of subjecting crowdfunding service providers to obligations for compliance with the national provisions implementing Directive (EU) 2015/849 in respect of money laundering or terrorism financing and adding such crowdfunding service providers to the list of obliged entities for the purposes of Directive (EU) 2015/849.

The exercise of the delegation with a view to adopt Commission's delegated acts is covered in Chapter VII. The proposal for a Regulation contains empowerments for the Commission to adopt delegated acts specifying certain details, requirements and arrangements as set out in the Regulation.

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on European Crowdfunding Service Providers (ECSP) for Business

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Central Bank,⁵

Having regard to the opinion of the European Economic and Social Committee,⁶

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Crowdfunding is increasingly an established form of alternative finance for small and medium enterprises (SMEs) at an early stage of company growth, typically relying on small investments. Crowdfunding represents a new type of intermediation where a crowdfunding service provider interacts with its clients through a digital platform without taking on own risk in order to match prospective investors with businesses that seek funding, irrespective of whether that funding leads to a loan agreement, to an equity stake or to another transferable security based stake. It is therefore appropriate to include in the scope of this Regulation both lending-based crowdfunding and investment-based crowdfunding, since they are comparable business funding alternatives.
- (2) Obtaining finance is challenging for small and nascent firms, particularly when they move from a start-up into the expansion phase. Crowdfunding can contribute to provide access to finance for such firms and so to complete the Capital Markets Union (CMU). Lack of access to finance for such firms constitutes a problem even in Member States where access to bank finance has remained stable throughout the financial crisis. Crowdfunding has emerged as an established practice of funding a project or a venture, typically by a large number of people or organisations, through online platforms on which citizens, organisations and businesses, including business start-ups, raise relatively small amounts of money.
- (3) The provision of crowdfunding services generally relies on three types of actors: the project owner that proposes the project to be funded, investors who fund the proposed project, generally by limited investments, and an intermediating organisation in the

⁵ OJ C , , p. .

⁶ OJ C , , p. .

form of a service provider that brings together project owners and investors through an online platform.

- (4) In addition to providing an alternative source of financing, including venture capital, crowdfunding can offer other benefits to firms. It can provide concept and idea validation to the project owner, give access to a large number of people providing the entrepreneur with insights and information and be a marketing tool if a crowdfunding campaign is successful.
- (5) Several Member States have already introduced domestic bespoke regimes on crowdfunding. Those regimes are tailored to the characteristics and needs of local markets and investors. As a result, the existing national rules diverge as regards the conditions of operation of crowdfunding platforms, the scope of permitted activities and the licencing requirements.
- (6) The differences between the existing national rules are such as to obstruct the cross-border provision of crowdfunding services and thus have a direct effect on the functioning of the internal market in such services. In particular, the fact that the legal framework is fragmented along national borders creates substantial legal compliance costs for retail investors who often face difficulties which are disproportional to the size of their investment in determining the rules applicable to cross-border crowdfunding services. Therefore, such investors are often discouraged from investing cross-border via crowdfunding platforms. For the same reasons crowdfunding service providers operating such platforms are discouraged from offering their services in a Member State other than the one in which they are established. As a result, crowdfunding activities have remained hitherto largely national to the detriment of a Union-wide crowdfunding market, thus depriving businesses of access to crowdfunding services.
- (7) In order to foster cross border crowdfunding activities and to facilitate the exercise of the freedom to provide and receive such services in the internal market for crowdfunding providers it is therefore necessary to address the existing obstacles to the proper functioning of the internal market in crowdfunding services., Providing for a single set of rules on the provision of crowdfunding services giving crowdfunding service providers the option to apply for a single Union-wide authorisation to exercise their activity under those rules is a suitable first step for fostering cross border crowdfunding activities and thus enhance the operation of the Single Market.
- (8) By addressing the obstacles to the functioning of the internal market in crowdfunding services, this Regulation aims to foster cross-border business funding. Crowdfunding services in relation to lending to consumers, as defined in Article 3(a) of Directive 2008/48/EC of the European Parliament and of the Council⁷, should therefore not fall within the scope of this Regulation.
- (9) In order to avoid that the same activity is subject to different authorisations within the Union, crowdfunding service provided by persons that have been authorised under Directive 2014/65/EU of the European Parliament and of the Council⁸ or provided in accordance with national law should be excluded from the scope of this Regulation.

⁷ 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).

⁸ 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).

- (10) In relation to lending-based crowdfunding, the facilitation of granting of loans, including services such as presenting crowdfunding offers to clients or rating the creditworthiness of project owners, should accommodate different business models enabling a loan agreement to be concluded through a crowdfunding platform between one or more clients and one or more project owners.
- (11) In relation to investment-based crowdfunding, the transferability of a security is an important safeguard for investors to be able to exit their investment since it provides them with the legal possibility to dispose of their interest on the capital markets. This Regulation therefore only covers and permits investment-based crowdfunding services in relation to transferable securities. Financial instruments other than transferable securities should however be excluded from the scope of this Regulation because those securities entail risks for investors that cannot be properly managed within this legal framework.
- (12) Given the risks associated with crowdfunding investments, it is appropriate, in the interest of the effective protection of investors, to impose a threshold for a maximum consideration for each crowdfunding offer. That threshold should be set at EUR 1 000 000, because that threshold corresponds to the threshold set out in Regulation (EU) 2017/1129 of the European Parliament and of the Council⁹ for the mandatory drawing up and approval of a prospectus above that threshold.
- (13) To avoid regulatory arbitrage and to ensure the effective supervision of crowdfunding service providers, crowdfunding service providers should be prohibited from accepting deposits or other repayable funds from the public, unless they are authorised as a credit institution in accordance with Article 8 of Directive 2013/36/EU of the European Parliament and of the Council¹⁰.
- (14) In order to achieve that purpose, crowdfunding service providers should be given the option to apply for a single Union-wide authorisation and to exercise their activity in accordance with those uniform requirements. However, to preserve the broad availability of crowdfunding offers targeted solely at national markets, where crowdfunding service providers choose to provide their services under the applicable national law, they should remain able to do so. Accordingly, the uniform requirements laid down in this Regulation should be optional and therefore not apply to such crowdfunding service providers choosing to remain active on national basis only.
- (15) In order to maintain a high standard of investor protection, to reduce the risks associated with crowdfunding and to ensure fair treatment of all clients, crowdfunding service providers should have in place a policy designed to ensure that projects are selected in a professional, fair and transparent way and that crowdfunding services are provided in the same manner.
- (16) In order to improve the service to their clients, crowdfunding service providers should be able to exercise discretion on behalf of clients with respect to the parameters of the clients' orders, provided that they take all necessary steps to obtain the best possible result for their clients and that they disclose the exact method and parameters of the

⁹ 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).

¹⁰ 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).

discretion. In order to ensure that prospective investors are offered investment opportunities on a neutral basis, crowdfunding service providers should not pay or accept any remuneration, discount or non-monetary benefit for routing investors' orders to a particular offer provided on their platform or to a particular offer provided on a third party platform.

- (17) This Regulation aims to facilitate direct investment and to avoid creating regulatory arbitrage opportunities for financial intermediaries regulated under other Union legislation, in particular Union rules governing asset managers. The use of legal structures, including special purpose vehicles, to interpose between the crowdfunding project and investors, should therefore be strictly regulated and permitted only where it is justified.
- (18) Ensuring an effective system of governance is essential for the proper management of risk and for preventing any conflict of interest. Crowdfunding service providers should therefore have governance arrangements that ensure effective and prudent management and their management should be of good repute and have adequate knowledge and experience. Crowdfunding service providers should also establish procedures to receive and handle complaints from clients.
- (19) Crowdfunding service providers should operate as neutral intermediaries between clients on their crowdfunding platform. In order to prevent conflicts of interests, certain requirements should be laid down with respect to crowdfunding service providers and managers and employees, or any person directly or indirectly controlling them. In particular, crowdfunding service providers should be prevented from having any financial participation in the crowdfunding offers on their crowdfunding platforms. Furthermore, shareholders holding 20 % or more of share capital or voting rights, managers and employees, or any person directly or indirectly controlling crowdfunding platforms, should not act as clients, in relation to the crowdfunding services offered on that crowdfunding platform.
- (20) In the interest of an efficient and smooth provision of crowdfunding services, crowdfunding service providers should be allowed to entrust any operational function, in whole or in part, to service providers provided that the outsourcing does not impair materially the quality of crowdfunding services providers' internal controls and effective supervision.. Crowdfunding service providers should however remain fully responsible for compliance with this Regulation.
- (21) The holding of clients' funds and the provision of payment services require an authorisation as a payment service provider in accordance with Directive (EU) 2015/2366 of the European Parliament and of the Council¹¹. That mandatory authorisation requirement cannot be satisfied by an authorisation as a crowdfunding service provider. Therefore, it is appropriate to clarify that where a crowdfunding service provider carries out such payment services in connection with its crowdfunding services, it needs to be authorised also as a payment institution in accordance with Directive (EU) 2015/2366. In order to enable a proper supervision of such activities, the European Securities and Markets Authority (ESMA) should be informed about whether the crowdfunding service provider intends to carry out

¹¹ 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).

payment services itself with the appropriate authorisation, or whether such services will be outsourced to an authorised third party.

- (22) The growth and smooth functioning of cross-border crowdfunding services requires a sufficient scale and public confidence in those services. It is therefore necessary to lay down uniform, proportionate and directly applicable requirements for authorisation and a single point of supervision.
- (23) A high level of investor confidence contributes to the growth of crowdfunding services. Requirements for crowdfunding services should therefore facilitate cross-border provision of those services, reduce operational risks and ensure a high degree of transparency and investor protection.
- (24) Crowdfunding services can be exposed to money laundering and terrorist financing risks, as underlined in the Commission's Report on the assessment of the risks of money laundering and terrorist financing affecting the internal market and relating to cross-border situations¹². Safeguards should therefore be envisaged when meeting conditions for authorisation, assessing the good repute of the management, providing payment services only through licensed entities subject to anti-money laundering and terrorist financing requirements. With a view to further ensuring financial stability by preventing risks of money laundering and terrorism financing, the Commission should assess the necessity and proportionality of subjecting crowdfunding service providers to obligations for compliance with the national provisions implementing Directive (EU) 2015/849 in respect of money laundering or terrorism financing and adding such crowdfunding service providers to the list of obliged entities for the purposes of Directive (EU) 2015/849.
- (25) To enable crowdfunding service providers to operate cross-border without facing divergent rules and thereby facilitating the funding of projects across the Union by investors from different Member States, Member States should not be allowed to impose additional requirements on crowdfunding service providers that are authorised by ESMA.
- (26) The authorisation process should enable ESMA to be informed about the services that the prospective crowdfunding service providers intend to provide, to assess the quality of their management, and to assess the internal organisation and procedures set up by the prospective crowdfunding service providers to ensure compliance with the requirements set out in this Regulation.
- (27) To facilitate transparency for retail investors as regards the provision of crowdfunding services, ESMA should establish a public and up-to-date register of all crowdfunding services operating in the Union in accordance with this Regulation.
- (28) The authorisation should be withdrawn where the conditions for its issuance are no longer met. In particular, ESMA should be able to assess whether the good repute of the management has been affected or whether the internal procedures and systems have seriously failed. To enable ESMA to assess whether the authorisation as a crowdfunding service provider should be withdrawn, national competent authorities should inform ESMA whenever a crowdfunding service provider, or a third party acting on its behalf, has lost its authorisation as a payment institution, or has been

¹² COM(2017) 340 final, Report from the Commission to the European Parliament and the Council on the assessment of the risks of money laundering and terrorist financing affecting the internal market and relating to cross-border activities.

found to be in breach of Directive (EU) 2015/849 of the European Parliament and of the Council¹³.

- (29) In order for prospective investors to have a clear understanding of the nature, risks, costs and charges of crowdfunding services, crowdfunding service providers should provide their clients with appropriate information.
- (30) Investments in products marketed on crowdfunding platforms are not comparable to traditional investments products or savings products and should not be marketed as such. However, to ensure that prospective investors understand the level of risk associated with crowdfunding investments, crowdfunding service providers should run an entry knowledge test of their prospective investors to establish their knowledge of investment. Crowdfunding service providers should explicitly warn prospective investors whenever the crowdfunding services provided are deemed as inappropriate for them.
- (31) In order to enable investors to make an informed investment decision, crowdfunding service providers should provide prospective investors with a key investment information sheet. The key investment information sheet should warn prospective investors that the investing environment they have entered into entails risks and is covered neither by the deposit compensation scheme, nor by the investor compensation guarantees.
- (32) The key investment information sheet should also take into account the specific features and risks associated with early stage companies, and focus on material information about the project owners, the investors' rights and fees, and the type of securities offered and loan agreements. Because the project owner concerned is in the best position to provide that information, the key investment information sheet should be drawn up by that project owner. However, since crowdfunding service providers are responsible for informing their prospective investors, they should ensure that the key investment information sheet is complete.
- (33) To ensure seamless and expedient access to capital markets for start-ups and SMEs, to reduce their costs of financing and to avoid delays and costs for crowdfunding service providers, the key investment information document should not be approved by a competent authority.
- (34) To avoid unnecessary costs and administrative burden on the cross-border provision of crowdfunding services, marketing communications should not be subject to translation requirements where they are provided in a language customary in the sphere of finance.
- (35) Crowdfunding service providers should not be able to provide any discretionary or non-discretionary matching of buying and selling interest, because that activity requires an authorisation as an investment firm in accordance with Article 5 of Directive 2014/65/EU, or as a regulated market in accordance with Article 44 of that Directive. Crowdfunding service providers should, in the interest of transparency and flow of information, be able to allow investors who have made investments through their platform to contact, and transact with, each other over their platforms in relation

¹³ 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).

to investments originally made on their platform. Crowdfunding service provider should however inform their clients that they does not operate a trading system and that any buying and selling activity on their platforms is at the client's discretion and responsibility.

- (36) To facilitate transparency and to ensure proper documentation of communications with the client, crowdfunding service providers should keep all appropriate records related to their services and transactions.
- (37) To ensure fair and non-discriminatory treatment of investors, crowdfunding service providers that are promoting their services through marketing communications should not treat any particular project more favourably by singling it out from other projects offered on their platform. Any open or planned projects should therefore not feature in marketing communications of a crowdfunding platform. Crowdfunding service providers should however not be prevented from mentioning successfully closed offers in which investments through the platform are no longer possible.
- (38) To provide for more legal certainty to crowdfunding service providers operating across the Union and to ensure easier market access, complete information about the laws, regulations and administrative provisions applicable in the Member States, and summaries thereof, which specifically govern marketing communications of crowdfunding service providers, should be published electronically in a language customary in the sphere of international finance. For that purpose, competent authorities and ESMA should maintain central databases.
- (39) To develop a better understanding of the extent of regulatory divergences existing among the Member States regarding the requirements applicable to marketing communications, competent authorities should provide ESMA annually with a detailed report on their enforcement activities in this area.
- (40) It is important to effectively and efficiently ensure compliance with the requirements for authorisation and for the provision of crowdfunding services, in accordance with this Regulation. ESMA should therefore be conferred competences to grant authorisation and exercise oversight. To enable ESMA to fulfil that supervisory mandate, it should be given the power to request information, carry out general investigations and on-site inspections, issue public notices and warnings and impose sanctions. ESMA should make use of its oversight and sanctioning competences in a proportionate manner.
- (41) Granting those competences to ESMA allows for a more efficient and centrally managed authorisation and oversight, generating economies of scale. Such a central supervisory regime is beneficial to the market participants in terms of greater transparency, investor protection and market efficiency.
- (42) ESMA should charge fees on directly supervised entities to cover its costs, including overheads. The level of the fee should be proportionate to the size of a directly supervised entity, having regard to the early stage of development of the crowdfunding industry.
- (43) Since the objectives of this Regulation, namely to address the fragmentation of the legal framework applicable to crowdfunding services in order to ensure the proper functioning of the internal market in such services while enhancing investor protection as well as market efficiency and contributing to establishing the Capital Markets Union, cannot be sufficiently achieved by the Member States but can rather be better achieved at Union level, the Union may adopt measures in accordance with the

principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.

- (44) The application of this Regulation should be deferred to align it with the application of the national rules transposing Directive XXX/XXXX/EU (Directive (EU) .../... of of the European Parliament and of the Council), which exempts crowdfunding service providers falling under the scope of this Regulation from the application of Directive 2014/65/EU.
- (45) This Regulation respects the fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union. Therefore, this Regulation should be interpreted and applied in accordance with those rights and principles.
- (46) The European Data Protection Supervisor was consulted in accordance with Article 28(2) of Regulation (EC) No 45/2001 of the European Parliament and of the Council¹⁴,

HAVE ADOPTED THIS REGULATION:

Chapter I

Subject matter, scope and definitions

Article 1

Subject matter

This Regulation establishes uniform requirements for the following:

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

Article 2

Scope

1. This Regulation shall apply to legal persons who choose to seek authorisation in accordance with Article 10 and to crowdfunding service providers authorised in accordance with that Article, in relation to the provision of crowdfunding services.
2. This Regulation shall not apply to:
 - (a) crowdfunding services that are provided to project owners that are consumers, as defined in Article 3(a) of Directive 2008/48/EC;
 - (b) crowdfunding services that are provided by natural or legal persons that have been authorised as an investment firm in accordance with Article 7 of Directive 2014/65/EU;
 - (c) crowdfunding services that are provided by natural or legal persons in accordance with national law;

¹⁴ Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).

- (d) crowdfunding offers with a consideration of more than EUR 1 000 000 per crowdfunding offer, which shall be calculated over a period of 12 months with in regard to a particular crowdfunding project.

Article 3

Definitions

1. For the purposes of this Regulation, the following definitions shall apply:
 - (a) ‘crowdfunding service’ means the matching of business funding interest of investors and project owners through the use of a crowdfunding platform and which consist of any of the following:
 - (i) the facilitation of granting of loans;
 - (ii) the placing without firm commitment, as referred to in point 7 of Section A of Annex I to Directive 2014/65/EU, of transferable securities issued by project owners and the reception and transmission of client orders, as referred to in point 1 of Section A to Annex I to Directive 2014/65, with regard to those transferable securities;
 - (b) ‘crowdfunding platform’ means an electronic information system operated or managed by a crowdfunding service provider;
 - (c) ‘crowdfunding service provider’ means a legal person who provides crowdfunding services and has been authorised for that purpose by the European Securities and Markets Authority (ESMA) in accordance with Article 11 of this Regulation;
 - (d) ‘crowdfunding offer’ means any communication by crowdfunding service providers that contains information which enables prospective investors to decide on the merits of entering into a crowdfunding transaction;
 - (e) ‘client’ means any prospective or actual investor or project owner to whom a crowdfunding service provider provides or may provide crowdfunding services;
 - (f) ‘project owner’ means any person that seeks to fund its crowdfunding project through a crowdfunding platform;
 - (g) ‘investor’ means any person that, through a crowdfunding platform, grants loans or acquires transferable securities;
 - (h) ‘crowdfunding project’ means the business activity or activities that a project owner funds or seeks to fund through the crowdfunding offer;
 - (i) ‘transferable securities’ means transferable securities as defined in Article 4(1)(44) of Directive 2014/65/EU;
 - (j) ‘marketing communications’ means any information or communication from a crowdfunding service provider to a prospective investor or prospective project owner about the services of the crowdfunding service provider, other than investor disclosures required under this Regulation;
 - (k) ‘durable medium’ means an instrument which enables the storage of information in a way that is accessible for future reference and for a period of time adequate for the purposes of the information and which allows for the unchanged reproduction of the information stored;

- (l) ‘special purpose vehicle’ or ‘SPV’ means entities whose sole purpose is to carry on a securitisation within the meaning of Article 1(2) of Regulation (EU) No 1075/2013 of the European Central Bank¹⁵.
2. The Commission shall be empowered to adopt delegated acts in accordance with Article 38 to specify further technical elements of the definitions laid down in paragraph 1 to take into account market developments, technological developments and experience in the operation of crowdfunding platforms and provision of crowdfunding services.

Chapter II

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

Article 4

Provision of crowdfunding services

1. Crowdfunding services shall only be provided by legal persons that have an effective and stable establishment in a Member State of the Union and that have been authorised as crowdfunding service providers in accordance with Article 11 of this Regulation.
2. Crowdfunding service providers shall act honestly, fairly and professionally in accordance with the best interests of their clients and prospective clients.
3. Crowdfunding service providers shall not pay or accept any remuneration, discount or non-monetary benefit for routing investors' orders to a particular crowdfunding offer made on their platform or to a particular crowdfunding offer provided on a third party platform.
4. Crowdfunding service providers may exercise discretion on behalf of their clients with respect to the parameters of the clients' orders, in which case they shall disclose to their clients the exact method and parameters of that discretion and take all necessary steps to obtain the best possible result for their clients.
5. As regards the use of special purpose vehicles for the provision of crowdfunding services, crowdfunding service providers shall only have the right to transfer one asset to the special purpose vehicle to enable investors to take exposure to that asset by means of acquiring securities. The decision to take exposure to that underlying asset shall exclusively lie with investors.

Article 5

Effective and prudent management

The management of crowdfunding service providers shall establish, and oversee the implementation of, adequate policies and procedures to ensure effective and prudent management, including the segregation of duties, business continuity and the prevention of conflicts of interest, in a manner that promotes the integrity of the market and the interest of their clients.

¹⁵ OJ L 297, 7.11.2013, p. 107.

Article 6
Complaints handling

1. Crowdfunding service providers shall establish and maintain effective and transparent procedures for the prompt, fair and consistent handling of complaints received from clients.
2. Clients shall be able to file complaints with crowdfunding service providers free of charge.
3. Crowdfunding service providers shall keep a record of all complaints received and the measures taken.
4. The Commission may adopt delegated acts in accordance with Article 37 to specify the requirements, standard formats and procedures for complaint handling.

Article 7
Conflicts of interest

1. Crowdfunding service providers shall not have any financial participation in any crowdfunding offer on their crowdfunding platforms.
2. Crowdfunding service providers shall not accept as their clients any of their shareholders holding 20% or more of share capital or voting rights, any of their managers or employees, or any person directly or indirectly linked to those shareholders, managers and employees by control as defined in Article 4(1)(35)(b) of Directive 2014/65/EU.
3. Crowdfunding service providers shall maintain and operate effective internal rules to prevent conflicts of interest.
4. Crowdfunding service providers shall take all appropriate steps to prevent, identify, manage and disclose conflicts of interest between the crowdfunding service providers themselves, their shareholders, their managers and employees, or any person directly or indirectly linked to them by control, as defined in Article 4(1)(35)(b) of Directive 2014/65/EU, and their clients, or between one client and another client.
5. Crowdfunding service providers shall disclose to their clients and potential clients the general nature and sources of conflicts of interest and the steps taken to mitigate those risks when they consider that this is necessary for the measures taken in accordance with the internal rules referred to in paragraph 3 to be effective.
6. The disclosure referred to in paragraph 5 shall:
 - (a) be made in a durable medium;
 - (b) include sufficient detail, taking into account the nature of each client, to enable each client to take an informed decision about the service in the context of which the conflict of interest arises.
7. The Commission shall be empowered to adopt delegated acts in accordance with Article 37 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.

Article 8
Outsourcing

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

Article 9
Client asset safekeeping, holding of funds and providing payment services

1. Crowdfunding service providers shall inform their clients of the following:
 - (a) whether, and on which terms and conditions they provide asset safekeeping services, including references to applicable national law;
 - (b) whether asset safekeeping services are provided by them or by a third party;
 - (c) whether payment services and the holding and safeguarding of funds are provided by the crowdfunding service provider or through a third party provider acting on their behalf.
2. Crowdfunding service providers or third party providers acting on their behalf shall not hold clients' funds or provide payment services unless those funds are intended for the provision of payment services related to the crowdfunding services and the crowdfunding service provider or the third party provider acting on its behalf is a payment service provider as defined in Article 4(11) of Directive (EU) 2015/2366.
3. The funds referred to in paragraph 2 shall be safeguarded in accordance with the national provisions transposing Directive (EU) 2015/2366.
4. Where crowdfunding service providers do not provide payment services or the holding and safeguarding of funds in relation to the crowdfunding services either themselves or through a third party, such crowdfunding service providers shall put in place and maintain arrangements to ensure that project owners accept funding of crowdfunding offers or any payment only by means of a payment service provider as defined in Article 4(11) of Directive (EU) 2015/2366.

Chapter II
Authorisation and supervision of crowdfunding service providers

Article 10
Authorisation as a crowdfunding service provider

1. A legal person that intends to provide crowdfunding services shall apply to ESMA for authorisation as a crowd funding service provider.

2. The application referred to in paragraph 1 shall contain all of the following:
 - (a) the address of the prospective crowdfunding service provider;
 - (b) the legal status of the prospective crowdfunding service provider;
 - (c) the articles of association of the prospective crowdfunding service provider;
 - (d) a programme of operations setting out the types of crowdfunding services that the prospective crowd funding service provider wishes to provide;
 - (e) a description of the prospective crowdfunding service provider's governance arrangements and internal control mechanisms to ensure compliance with this Regulation, including risk management and accounting procedures;
 - (f) a description of the prospective crowdfunding service provider's systems, resources and procedures for the control and safeguarding of the data processing systems;
 - (g) a description of the prospective crowdfunding service provider's business continuity arrangements;
 - (h) the identity of the persons responsible for the management of the prospective crowdfunding service provider;
 - (i) proof that the persons referred to in point (h) are of good repute and possess appropriate knowledge and experience to manage the prospective crowdfunding service provider;
 - (j) a description of the internal rules of the prospective crowdfunding service provider to prevent that its shareholders who hold 20% or more of the share capital or voting rights, its managers or its employees or any person directly or indirectly linked to them by control engage in crowdfunding transactions offered by the prospective crowdfunding service provider;
 - (k) a description of the prospective crowdfunding service provider's outsourcing arrangements;
 - (l) a description of the prospective crowdfunding service provider's procedures to deal with complaints from clients;
 - (m) where applicable, a description of the payment services that the prospective crowdfunding service provider intends to provide under Directive (EU) 2015/2366.
3. For the purposes of paragraph 2(i), prospective crowdfunding service providers shall provide proof of the following:
 - (a) absence of criminal record in respect of convictions or penalties of national rules in force in the fields of commercial law, insolvency law, financial services legislation, anti-money laundering legislation, fraud or professional liability for all the persons involved in the management of the prospective crowd funding service provider;
 - (b) proof that the persons involved in the management of the crowdfunding service provider collectively possess sufficient knowledge, skills and experience to manage the crowdfunding service provider and that those persons are required to commit sufficient time to perform their duties.

4. ESMA shall, within 20 working days of receipt of the application referred to in paragraph 1, assess whether that application is complete. Where the application is not complete, ESMA shall set a deadline by which the prospective crowdfunding service provider is to provide the missing information.
5. Where an application as referred to in paragraph 1 is complete, ESMA shall immediately notify the prospective crowdfunding service provider thereof.
6. ESMA shall, within two months from the receipt of a complete application, assess whether the prospective crowdfunding service provider complies with the requirements set out in this Regulation and shall adopt a fully reasoned decision granting or refusing authorisation as a crowdfunding service provider. ESMA shall have the right to refuse authorisation if there are objective and demonstrable grounds for believing that the management of the crowdfunding service provider may pose a threat to its effective, sound and prudent management and business continuity and to the adequate consideration of the interest of its clients and the integrity of the market.
7. ESMA shall notify the prospective crowdfunding service provider of its decision within five working days after having taken that decision.
8. The authorisation referred to in paragraph 1 shall be effective and valid for the entire territory of the Union.
9. Member States shall not require crowdfunding service providers to have physical presence in the territory of a Member State other than the Member State in which those crowdfunding service providers are established in order to provide crowdfunding services on a cross-border basis.
10. The Commission shall adopt delegated acts in accordance with Article 37 to specify further the requirements and arrangements for the application referred to in paragraph 1.

Article 11

Register of crowdfunding service providers

1. ESMA shall establish a register of all crowdfunding service providers. That register shall be publicly available on its website and shall be updated on a regular basis.
2. The register referred to in paragraph 1 shall contain the following data:
 - (a) the name and legal form of the crowdfunding service provider;
 - (b) the commercial name and internet address of the crowdfunding platform operated by the crowdfunding service provider;
 - (c) information on the services for which the crowdfunding service provider is authorised;
 - (d) sanctions imposed on the crowdfunding service provider or its managers.
3. Any withdrawal of an authorisation in accordance with Article 13 shall be published in the register for five years.

Article 12

Supervision

1. Crowdfunding service providers shall provide their services under the supervision of ESMA.

2. Crowdfunding service providers shall comply at all times with the conditions for authorisation.
3. ESMA shall assess compliance of crowdfunding service providers with the obligations provided for in this Regulation.
4. Crowdfunding service providers shall notify ESMA of any material changes to the conditions for authorisation without undue delay and, upon request, shall provide the information needed to assess their compliance with this Regulation.

Article 13

Withdrawal of authorisation

1. ESMA shall have the power to withdraw the authorisation of a crowdfunding service provider in any of the following situations where the crowdfunding service provider:
 - (a) has not used its authorisation within 18 months after the authorisation has been granted;
 - (b) has expressly renounced its authorisation;
 - (c) has not provided crowdfunding services for six successive months;
 - (d) has obtained its authorisation by irregular means, including making false statements in its application for authorisation;
 - (e) no longer meets the conditions under which the authorisation was granted;
 - (f) has seriously infringed the provisions of this Regulation.
2. National competent authorities shall notify ESMA of the following without delay:
 - (a) the fact that a crowdfunding service provider, or a third party provider acting on behalf of that crowdfunding service provider, has lost its authorisation as a payment institution in accordance with Article 13 of Directive 2015/2366/EU;
 - (b) the fact that a crowdfunding service provider, or its managers, employees or third parties acting on its behalf, have breached national provisions implementing Directive (EU) 2015/849 in respect of money laundering or terrorism financing.

Subparagraph 2(b) shall also apply to national competent authorities designated under the provisions of Directive (EU) 2015/849.
3. ESMA shall withdraw the authorisation as a crowdfunding service provider where ESMA is of the opinion that the facts referred to in points (a) and (b) of paragraph 2 affect the good repute of the management of the crowdfunding service provider, or indicate a failure of the governance arrangements, internal control mechanisms or procedures referred to in Article 5.
4. ESMA shall notify, without undue delay, the national competent authority of the Member State where the crowdfunding service provider is established of its decision to withdraw the authorisation of a crowdfunding service provider.

Chapter IV

Transparency and entry knowledge test by crowdfunding service providers

Article 14

Information to clients

1. All information, including marketing communications as referred to in Article 19, from crowdfunding service providers to clients or potential clients about themselves, about the costs and charges related to crowdfunding services or investments, about the crowdfunding conditions, including crowdfunding project selection criteria, or about the nature of and risks associated with their crowdfunding services shall be clear, comprehensible, complete and correct.
2. The information referred to in paragraph 1 shall be provided to potential clients before they enter into a crowdfunding transaction.
3. The information referred to in paragraph 1 shall be available to all clients and potential clients on a clearly identified section of the website of the crowdfunding platform and in a non-discriminatory manner.

Article 15

Entry knowledge test and simulation of the ability to bear loss

1. Crowdfunding service providers shall, before giving prospective investors full access to their crowdfunding offers, assess whether and which crowdfunding services offered are appropriate for the prospective investors.
2. For the purposes of the assessment pursuant to the first paragraph 1, crowdfunding service providers shall request information about the prospective investor's basic knowledge and understanding of risk in investing in general and in the types of investments offered on the crowdfunding platform, including information about:
 - (a) the prospective investor's past investments in transferable securities or loan agreements, including in early or expansion stage businesses;
 - (b) any relevant knowledge or professional experience in relation to crowdfunding investments.
3. Crowdfunding service providers shall take the measures necessary to comply with paragraph 1 for each investor every two years.
4. Where prospective investors do not provide the information required pursuant to paragraph 1, or where crowdfunding service providers consider, on the basis of the information received under paragraph 1 that the prospective investors have insufficient knowledge, crowdfunding service providers shall inform those prospective investors that the services offered on their platforms may be inappropriate for them and give them a risk warning. That information or risk warning shall not prevent prospective investors from investing in crowdfunding projects.
5. Crowdfunding service providers shall at all times offer prospective investors and investors the possibility to simulate their ability to bear loss, calculated as 10% of their net worth, based on the following information:

- (a) regular income and total income, and whether the income is earned on a permanent or temporary basis;
- (b) assets, including financial investments, personal and investment property, pension funds and any cash deposits;
- (c) financial commitments, including regular, existing or future.

Irrespective of the results of the simulation, prospective investors and investors shall not be prevented from investing in crowdfunding projects.

6. The Commission may adopt delegated acts in accordance with Article 37 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 3;
 - (c) provide the information referred to in paragraphs 2 and 4.

Article 16

Key investment information sheet

1. Crowdfunding service providers shall provide prospective investors with a key investment information sheet drawn up by the project owner for each crowdfunding offer. The key investment information sheet shall be drafted in at least one of the official languages of the Member State concerned or in a language customary in the sphere of international finance.
2. The key investment information sheet referred to in paragraph 1 shall contain all of the following information:
 - (a) the information set out in the Annex;
 - (b) the following explanatory statement, appearing directly underneath the title of the key investment information sheet:

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

The appropriateness of your education and knowledge have not been assessed before you were granted access to this investment. By making this investment, you assume full risk of taking this investment, including the risk of partial or entire loss of the money invested.”;
 - (c) a risk warning, which shall read as follows:

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

You may not receive any return on your investment.

This is not a saving product and you should not invest more than 10% of your net wealth in crowdfunding projects.

You may not be able to sell the investment instruments when you wish.

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

** Directive 97/9/EC of the European Parliament and of the Council of 3 March 1997 on investor-compensation schemes (OJ L 084, 26.3.1997, p. 22)."

3. The key investment information sheet shall be clear, comprehensible, complete and correct and shall not contain any footnotes, other than those with references to applicable law. It shall be presented in a stand-alone, durable medium which is clearly distinguishable from marketing communications and consist of maximum 6 sides of A4-sized paper format if printed.
4. The crowdfunding service provider shall keep the key investment information sheet updated at all times and for the whole period of validity of the crowdfunding offer.
5. Crowdfunding service providers shall have in place and apply adequate procedures to verify the completeness and the clarity of information contained in the key investment information sheet.
6. When a crowdfunding service provider identifies a material omission, a material mistake or a material inaccuracy in the key investment information sheet, the project owner shall complement or amend that information. Where such complement or amendment is not possible, the crowdfunding service provider shall not make the crowdfunding offer or cancel the existing offer until the key investment information sheet complies with the requirements of this Article.
7. An investor may request a crowdfunding service provider to arrange for a translation of the key investment information sheet into a language of the investor's choice. The translation shall accurately reflect the content of the original key investment information sheet.

Where the crowdfunding service provider does not provide the requested translation of the key investment information sheet, the crowdfunding service provider shall clearly advise the investor to refrain from making the investment.
8. National competent authorities shall not require an ex ante notification and approval of a key investment information sheet.
9. The Commission may adopt delegated acts in accordance with Article 37 specifying:
 - (a) the requirements for and content of the model for presenting the information referred to in paragraph 2 and the Annex;
 - (b) the types of risks that are material to the crowdfunding offer and therefore must be disclosed in accordance with Part C of the Annex;
 - (c) the fees and costs referred to in point (a) of Part H of the Annex, including a detailed breakdown of direct and indirect costs to be borne by the investor.

Article 17

Bulletin board

1. Crowdfunding service providers that allow their investors to interact directly with each other to buy and sell loan agreements or transferable securities which were originally crowdfunded on their platforms, shall inform their clients that they do not operate a trading system and that such buying and selling activity on their platforms is at the client's own discretion and responsibility.

2. Crowdfunding service providers that suggest a reference price for the buying and selling referred to in paragraph 1 shall inform their clients that suggested reference price is non-binding and substantiate the suggested reference price.

Article 18

Access to records

Crowdfunding service providers shall:

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

Chapter V

Marketing communications

Article 19

Requirements regarding marketing communications

1. Crowdfunding service providers shall ensure that all marketing communications to investors are clearly identifiable as such.
2. No marketing communication shall comprise marketing of individual planned or pending crowdfunding projects or offers. Marketing communications may only indicate where and in which language clients can obtain information about individual projects or offers.
3. For their marketing communications, crowdfunding service providers shall use one or more of the official languages of the Member State in which the crowdfunding service provider is active or a language customary in the sphere of international finance.
4. National competent authorities shall not require an ex ante notification and approval of marketing communications.

Article 20

Publication of national provisions concerning marketing requirements

1. National competent authorities shall publish and keep updated on their websites national laws, regulations and administrative provisions applicable to marketing communications of crowdfunding service providers.
2. Competent authorities shall notify ESMA of the laws, regulations and administrative provisions referred to in paragraph 1 and the hyperlinks to the websites of competent authorities where that information is published. Competent authorities shall provide ESMA with a summary of those relevant national provisions in a language customary in the sphere of international finance.

3. Competent authorities shall notify ESMA of any change in the information provided pursuant to paragraph 2 and submit an updated summary of the relevant national provisions without delay.
4. ESMA shall publish and maintain on its website a summary of the relevant national provisions in a language customary in the sphere of international finance and the hyperlinks to the websites of competent authorities referred to in paragraph 1. ESMA shall not be held liable for the information presented in the summary.
5. National competent authorities shall be the single points of contact responsible for providing information on marketing rules in their respective Member States.
6. ESMA may issue guidelines or recommendations addressed to national competent authorities specifying the best practices of marketing communications and verifying marketing communications of crowdfunding service providers.
7. Competent authorities shall regularly, and at least on a yearly basis, report to ESMA on their enforcement actions taken during the previous year on the basis of their national laws, regulations and administrative provisions applicable to marketing communications of crowdfunding service providers. In particular; the report shall include:
 - (a) the total number of enforcement actions taken by type of misconduct, where applicable;
 - (b) where available, the outcomes of the enforcement actions, including types of sanctions imposed by type of sanction or remedies provided by crowdfunding service providers;
 - (c) where available, examples of how competent authorities have dealt with the failure of crowdfunding service providers to comply with the national provisions.

Chapter VI

ESMA powers and competences

SECTION I

COMPETENCES AND PROCEDURES

Article 21

Legal privilege

The powers conferred on ESMA by Articles 22 to 25, or on any official or other person authorised by ESMA, shall not be used to require the disclosure of information which is subject to legal privilege.

Article 22

Request for information

1. ESMA may by simple request or by decision require the following persons to provide all information necessary to enable ESMA to carry out its duties under this Regulation:
 - (a) a crowdfunding service provider or a person controlling or being directly or indirectly controlled by a crowdfunding service provider;

- (b) project owners formerly or currently having made an offer on a crowdfunding platform ;
 - (c) third parties designated to perform functions in relation to the provision of the crowdfunding service in accordance with Article 8;
 - (d) the managers of the persons referred to in point (a) to (c);
 - (e) the auditors and advisors of the persons referred to in point (a) to (c);
2. Any simple request for information as referred to in paragraph 1 shall:
- (a) refer to this Article as the legal basis of that request;
 - (b) state the purpose of the request;
 - (c) specify the information required;
 - (d) include a time limit within which the information is to be provided;
 - (e) indicate the amount of the fine to be issued in accordance with Article 28 where the information provided is incorrect or misleading.
3. When requiring to supply information under paragraph 1 by decision, ESMA shall:
- (a) refer to this Article as the legal basis of that request;
 - (b) state the purpose of the request;
 - (c) specify the information required;
 - (d) set a time limit within which the information is to be provided;
 - (e) indicate the periodic penalty payments provided for in Article 29 where the production of the required information is incomplete;
 - (f) indicate the fine provided for in Article 28, where the answers to questions asked are incorrect or misleading;
 - (g) indicate the right to appeal the decision before ESMA's Board of Appeal and to have the decision reviewed by the Court of Justice of the European Union ('Court of Justice') in accordance with Articles 60 and 61 of Regulation (EU) No 1095/2010.
4. The persons referred to in paragraph 1 or their representatives and, in the case of legal persons or associations having no legal personality, the persons authorised to represent them by law or by their constitution shall supply the information requested. Lawyers duly authorised to act may supply the information on behalf of their clients. The latter shall remain fully responsible if the information supplied is incomplete, incorrect or misleading.
5. ESMA shall without delay send a copy of the simple request or of its decision to the competent authority of the Member State where the persons referred to in paragraph 1 concerned by the request for information are domiciled or established.

Article 23

General investigations

1. ESMA may conduct investigations of persons referred to in Article 22(1). To that end, the officials and other persons authorised by ESMA shall be empowered to:

- (a) examine any records, data, procedures and any other material relevant to the execution of its tasks irrespective of the medium on which they are stored;
 - (b) take or obtain certified copies of or extracts from such records, data, procedures and other material;
 - (c) summon and ask any person referred to in Article 22(1) or their representatives or staff for oral or written explanations on facts or documents relating to the subject matter and purpose of the inspection and to record the answers;
 - (d) interview any other natural or legal person who consents to be interviewed for the purpose of collecting information relating to the subject matter of an investigation;
 - (e) request records of telephone and data traffic.
2. The officials and other persons authorised by ESMA for the purposes of the investigations referred to in paragraph 1 shall exercise their powers upon production of a written authorisation specifying the subject matter and purpose of the investigation. That authorisation shall also indicate the periodic penalty payments provided for in Article 29 where the production of the required records, data, procedures or any other material, or the answers to questions asked to persons referred to in Article 22(1) are not provided or are incomplete, and the fines provided for in Article 28, where the answers to questions asked to persons referred to in Article 22(1) are incorrect or misleading.
 3. The persons referred to in Article 22(1) are required to submit to investigations launched on the basis of a decision of ESMA. The decision shall specify the subject matter and purpose of the investigation, the periodic penalty payments provided for in Article 29, the legal remedies available under Regulation (EU) No 1095/2010 and the right to have the decision reviewed by the Court of Justice.
 4. In good time before an investigation referred to in paragraph 1, ESMA shall inform the competent authority of the Member State where the investigation is to be carried out of the investigation and of the identity of the authorised persons. Officials of the competent authority concerned shall, upon the request of ESMA, assist those authorised persons in carrying out their duties. Officials of the competent authority concerned may also attend the investigations upon request.
 5. If a request for records of telephone or data traffic referred to in point (e) of paragraph 1 requires authorisation from a judicial authority according to applicable national law, such authorisation shall be applied for. Such authorisation may also be applied for as a precautionary measure.
 6. Where a national judicial authority receives an application for the authorisation of a request for records of telephone or data traffic referred to in point (e) of paragraph 1, that authority shall verify the following:
 - (a) the decision adopted by ESMA referred to in paragraph 3 is authentic;
 - (b) any measures to be taken are proportionate and not arbitrary or excessive.
 7. For the purposes of point (b) paragraph 6, the national judicial authority may ask ESMA for detailed explanations, in particular relating to the grounds ESMA has for suspecting that an infringement of this Regulation has taken place and the seriousness of the suspected infringement and the nature of the involvement of the person subject to the coercive measures. However, the national judicial authority

shall not review the necessity for the investigation or demand that it be provided with the information on ESMA's file. The lawfulness of ESMA's decision shall be subject to review only by the Court of Justice following the procedure set out in Regulation (EU) No 1095/2010.

Article 24

On-site inspections

1. In order to carry out its duties under this Regulation, ESMA may conduct all necessary on-site inspections at any business premises of the persons referred to in Article 22(1).
2. The officials and other persons authorised by ESMA to conduct an on-site inspection may enter any business premises of the persons subject to an investigation decision adopted by ESMA and shall have all the powers stipulated in Article 23(1). They shall also have the power to seal any business premises and books or records for the period of, and to the extent necessary for, the inspection.
3. In sufficient time before the inspection, ESMA shall give notice of the inspection to the competent authority of the Member State where the inspection is to be conducted. Where the proper conduct and efficiency of the inspection so require, ESMA, after informing the relevant competent authority, may carry out the on-site inspection without prior notice. Inspections in accordance with this Article shall be conducted provided that the relevant authority has confirmed that it does not object to those inspections.
4. The officials and other persons authorised by ESMA to conduct an on-site inspection shall exercise their powers upon production of a written authorisation specifying the subject matter and purpose of the inspection and the periodic penalty payments provided for in Article 33 where the persons concerned do not submit to the inspection.
5. The persons referred to in Article 23(1) shall submit to on-site inspections ordered by decision of ESMA. The decision shall specify the subject matter and purpose of the inspection, appoint the date on which it is to begin and indicate the periodic penalty payments provided for in Article 29, the legal remedies available under Regulation (EU) No 1095/2010 as well as the right to have the decision reviewed by the Court of Justice
6. Officials of, as well as those authorised or appointed by, the competent authority of the Member State where the inspection is to be conducted shall, at the request of ESMA, actively assist the officials and other persons authorised by ESMA. Officials of the competent authority of the Member State concerned may also attend the on-site inspections.
7. ESMA may also require competent authorities to carry out specific investigatory tasks and on-site inspections as provided for in this Article and in Article 23(1) on its behalf.
8. Where the officials and other accompanying persons authorised by ESMA find that a person opposes an inspection ordered pursuant to this Article, the competent authority of the Member State concerned shall afford them the necessary assistance, requesting, where appropriate, the assistance of the police or of an equivalent enforcement authority, so as to enable them to conduct their on-site inspection.

9. If the on-site inspection provided for in paragraph 1 or the assistance provided for in paragraph 7 requires authorisation by a judicial authority according to national law, such authorisation shall be applied for. Such authorisation may also be applied for as a precautionary measure.
10. Where a national judicial authority receives an application for the authorisation of an on-site inspection provided for in paragraph 1 or the assistance provided for in paragraph 7, that authority shall verify the following:
 - (a) the decision adopted by ESMA referred to in paragraph 4 is authentic;
 - (b) any measures to be taken are proportionate and not arbitrary or excessive.
11. For the purposes of paragraph 10(b), the national judicial authority may ask ESMA for detailed explanations, in particular relating to the grounds ESMA has for suspecting that an infringement of this Regulation has taken place and the seriousness of the suspected infringement and the nature of the involvement of the person subject to the coercive measures. However, the national judicial authority shall not review the necessity for the investigation or demand that it be provided with the information on ESMA's file. The lawfulness of ESMA's decision shall be subject to review only by the Court of Justice following the procedure set out in Regulation (EU) No 1095/2010.

Article 25

Exchange of information

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

Article 26

Professional secrecy

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

Article 27

Supervisory measures by ESMA

1. Where ESMA finds that a person listed in Article 22(1)(a) has committed one of the infringements listed in Chapter I to V, it may take one or more of the following actions:
 - (a) adopt a decision requiring the person to bring the infringement to an end;
 - (b) adopt a decision imposing fines or periodic penalty payments pursuant to Articles 28 and 29;
 - (c) issue public notices;
 - (d) issue warnings.
2. When taking the actions referred to in paragraph 1, ESMA shall take into account the nature and seriousness of the infringement, having regard to the following criteria:
 - (a) the duration and frequency of the infringement;

- (b) whether financial crime has been occasioned, facilitated or otherwise attributable to the infringement;
 - (c) whether the infringement has been committed intentionally or negligently;
 - (d) the degree of responsibility of the person responsible for the infringement;
 - (e) the financial strength of the 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;
 - (f) the impact of the infringement on investors' interests;
 - (g) the importance of the profits gained, losses avoided by the person responsible for the infringement or the losses for third parties derived from the infringement, insofar as they can be determined;
 - (h) the level of cooperation of the person responsible for the infringement with ESMA, without prejudice to the need to ensure disgorgement of profits gained or losses avoided by that person;
 - (i) previous infringements by the person responsible for the infringement;
 - (j) measures taken after the infringement by the person responsible for the infringement to prevent its repetition.
3. ESMA shall notify any action taken pursuant to paragraph 1 to the person responsible for the infringement without undue delay and shall communicate that action to the competent authorities of the Member States concerned and to the Commission. ESMA shall publicly disclose any such decision on its website within 10 working days from the date when that decision was adopted.
4. The disclosure to the public referred to in paragraph 3 shall include the following:
- (a) a statement affirming the right of the person responsible for the infringement to appeal the decision;
 - (b) where relevant, a statement affirming that an appeal has been lodged and specifying that such an appeal does not have suspensive effect;
 - (c) a statement asserting that it is possible for ESMA's Board of Appeal to suspend the application of the contested decision in accordance with Article 60(3) of Regulation (EU) No 1095/2010.

SECTION II

ADMINISTRATIVE SANCTIONS AND OTHER MEASURES

Article 28

Fines

1. Where in accordance with Article 31(5), ESMA finds that a person has, intentionally or negligently, committed one of the infringements listed in Chapter I to V, it shall adopt a decision imposing a fine in accordance with paragraph 3.
2. An infringement shall be considered to have been committed intentionally if ESMA finds objective factors which demonstrate that a person acted deliberately to commit the infringement.
3. The maximum amount of the fine referred to in paragraph 1 shall be maximum 5% of the annual turnover of the crowdfunding service provider during a calendar year.

4. When determining the level of a fine pursuant to paragraph 1, ESMA shall take into account the criteria set out in Article 27(2).

Article 29

Periodic penalty payments

1. ESMA shall, by decision, impose periodic penalty payments in order to compel:
 - (a) a person to put an end to an infringement in accordance with a decision taken pursuant to Article 23;
 - (b) a person referred to in Article 22(1):
 - (i) to supply complete information which has been requested by a decision pursuant to Article 22;
 - (ii) to submit to an investigation and in particular to produce complete records, data, procedures or any other material required and to complete and correct other information provided in an investigation launched by a decision pursuant to Article 23;
 - (iii) to submit to an on-site inspection ordered by a decision taken pursuant to Article 24.
2. A periodic penalty payment shall be effective and proportionate. The periodic penalty payment shall be imposed for each day of delay.
3. Notwithstanding paragraph 2, the amount of the periodic penalty payments shall be 3 % of the average daily turnover in the preceding business year, or, in the case of natural persons, 2 % of the average daily income in the preceding calendar year. It shall be calculated from the date stipulated in the decision imposing the periodic penalty payment.
4. A periodic penalty payment shall be imposed for a maximum period of six months following the notification of ESMA's decision. Following the end of the period, ESMA shall review the measure.

Article 30

Disclosure, nature, enforcement and allocation of fines and periodic penalty payments

1. ESMA shall disclose to the public every fine and periodic penalty payment that has been imposed pursuant to Articles 28 and 29 unless such disclosure to the public would seriously jeopardise the financial markets or cause disproportionate damage to the parties involved. Such disclosure shall not contain personal data within the meaning of Regulation (EU) 2016/679¹⁶.
2. Fines and periodic penalty payments imposed pursuant to Articles 34 and 35 shall be of an administrative nature.
3. Where ESMA decides to impose no fines or penalty payments, it shall inform the European Parliament, the Council, the Commission, and the competent authorities of

¹⁶ 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).

the Member State concerned accordingly and shall set out the reasons for its decision.

4. Fines and periodic penalty payments imposed pursuant to Articles 28 and 29 shall be enforceable.
5. Enforcement shall be governed by the rules of civil procedure in force in the State in the territory of which it is carried out.
6. The amounts of the fines and periodic penalty payments shall be allocated to the general budget of the European Union.

Article 31

Procedural rules for taking supervisory measures and imposing fines

1. Where, in carrying out its duties under this Regulation, ESMA finds that there are serious indications of the possible existence of facts liable to constitute one or more of the infringements listed in Chapters I to V, ESMA shall appoint an independent investigation officer within ESMA to investigate the matter. The appointed officer shall not be involved or have been directly or indirectly involved in the supervision or the authorisation process of the crowdfunding service provider concerned and shall perform its functions independently from ESMA.
2. The investigation officer referred to in paragraph 1 shall investigate the alleged infringements, taking into account any comments submitted by the persons who are subject to the investigations, and shall submit a complete file with his findings to ESMA.
3. In order to carry out its tasks, the investigation officer may exercise the power to request information in accordance with Article 22 and to conduct investigations and on-site inspections in accordance with Articles 23 and 24.
4. Where carrying out his tasks, the investigation officer shall have access to all documents and information gathered by ESMA in its supervisory activities.
5. Upon completion of his investigation and before submitting the file with his findings to ESMA, the investigation officer shall give the persons subject to the investigations the opportunity to be heard on the matters being investigated. The investigation officer shall base his findings only on facts on which the persons concerned have had the opportunity to comment.
6. The rights of the defence of the persons concerned shall be fully respected during investigations under this Article.
7. When submitting the file with his findings to ESMA, the investigation officer shall notify the persons who are subject to the investigations. The persons subject to the investigations shall be entitled to have access to the file, subject to the legitimate interest of other persons in the protection of their business secrets. The right of access to the file shall not extend to confidential information affecting third parties.
8. On the basis of the file containing the investigation officer's findings and, when requested by the persons subject to the investigations, after having heard those persons in accordance with Article 32, ESMA shall decide if one or more of the infringements listed in Chapters I to V have been committed by the persons subject to the investigations and, in such a case, shall take a supervisory measure in accordance with Article 31.

9. The investigation officer shall not participate in ESMA's deliberations or in any other way intervene in ESMA's decision-making process.
10. The Commission may adopt delegated acts in accordance with Article 37 by [please insert date 24 months after entry into force] specifying further the rules of procedure for the exercise of the power to impose fines or periodic penalty payments, including provisions on the rights of the defence, temporal provisions, and the collection of fines or periodic penalty payments, and the limitation periods for the imposition and enforcement of fines and periodic penalty payments.
11. ESMA shall refer matters for criminal prosecution to the relevant national authorities where, in carrying out its duties under this Regulation, it finds that there are serious indications of the possible existence of facts liable to constitute criminal offences. In addition, ESMA shall refrain from imposing fines or periodic penalty payments where a prior acquittal or conviction arising from identical fact or facts which are substantially the same has already acquired the force of *res judicata* as the result of criminal proceedings under national law.

Article 32

Hearing of persons concerned

1. Before taking any decision pursuant to Articles 27, 28 and 29, ESMA shall give the persons subject to the proceedings the opportunity to be heard on its findings. ESMA shall base its decisions only on findings on which the persons subject to the proceedings have had an opportunity to comment.
2. The first subparagraph shall not apply if urgent action is needed in order to prevent significant and imminent damage to the financial system. In such a case ESMA may adopt an interim decision and shall give the persons concerned the opportunity to be heard as soon as possible after taking its decision.
3. The rights of the defence of the persons subject to investigations shall be fully respected in the proceedings. They shall be entitled to have access to ESMA's file, subject to the legitimate interest of other persons in the protection of their business secrets. The right of access to the file shall not extend to confidential information or ESMA's internal preparatory documents.

Article 33

Review by the Court of Justice

The Court of Justice shall have unlimited jurisdiction to review decisions whereby ESMA has imposed a fine or a periodic penalty payment or imposed any other sanction or administrative measure in accordance with this Regulation. It may annul, reduce or increase the fine or periodic penalty payment imposed.

Article 34

Authorisation and supervisory fees

1. ESMA shall charge fees to the crowdfunding service providers in accordance with this Regulation and in accordance with the delegated acts adopted pursuant to paragraph 3. Those fees shall cover ESMA's expenditure relating to the authorisation and supervision of crowdfunding service providers and the reimbursement of costs that the competent authorities may incur carrying out work pursuant to this

Regulation, in particular as a result of any delegation of tasks in accordance with Article 35.

2. The amount of the fee charged to an individual crowdfunding service provider shall be capped to an amount proportionate to the size of the crowdfunding service provider's activities.
3. The Commission shall adopt a delegated act in accordance with Article 37 by [Publications Office: please insert date 24 months after entry into force] to specify the type of fees, the matters for which fees are due, the amount of the fees and the manner in which they are to be paid and the methodology to calculate the maximum amount per entity under paragraph 2 that can be charged by ESMA.

Article 35

Delegation of tasks by ESMA to competent authorities

1. Where necessary for the proper performance of a supervisory task, ESMA may delegate specific supervisory tasks to the competent authority of a Member State in accordance with the guidelines issued by ESMA pursuant to Article 16 of Regulation (EU) No 1095/2010. Such specific supervisory tasks may, in particular, include the power to carry out requests for information in accordance with Article 22 and to conduct investigations and on-site inspections in accordance with Article 23 and Article 24.
2. Prior to delegation of a task, ESMA shall consult the relevant competent authority about:
 - (a) the scope of the task to be delegated;
 - (b) the timetable for the performance of the task; and
 - (c) the transmission of necessary information by and to ESMA.
3. In accordance with the regulation on fees adopted by the Commission pursuant to Article 34(3), ESMA shall reimburse a competent authority for costs incurred as a result of carrying out delegated tasks.
4. ESMA shall review the decision referred to in paragraph 1 at appropriate intervals. A delegation may be revoked at any time.

Article 36

Data protection

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

Chapter VII

Delegated acts

Article 37

Exercise of the delegation

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

Chapter VIII

Final provisions

Article 38

Report

1. Before [publications office please insert 24 months of entry into application of this Regulation] the Commission shall, after consulting ESMA, present a report to the European Parliament and the Council on the application of this Regulation, accompanied where appropriate by a legislative proposal.
2. The report shall assess the following:
 - (a) the functioning of the market for crowdfunding service providers in the Union, including market development and trends, taking into account supervisory experience acquired by ESMA, the number of crowdfunding service providers

- authorised by ESMA and their market share and in particular examining whether any adjustments are needed to the definitions set out in this Regulation and whether the scope of services covered by this Regulation remains appropriate;
- (b) the impact of this Regulation on the proper functioning of the internal market of crowdfunding services, including the impact on access to financing by SMEs and on investors and other categories of persons affected by those services;
 - (c) the implementation of the technological innovation in the crowdfunding sector, including the application of the new innovative business models and technologies;
 - (d) whether the threshold set out in Article 2(2)(d) remains appropriate to pursue the objectives set out in this Regulation;
 - (e) the effects that national laws, regulations and administrative provisions governing marketing communications of crowdfunding service providers have on the freedom to provide services, competition and investor protection;
 - (f) the application of the administrative sanctions and in particular any need to further harmonise the administrative sanctions set out for the infringement of this Regulation.
 - (g) the necessity and proportionality of subjecting crowdfunding service providers to obligations for compliance with the national provisions implementing Directive (EU) 2015/849 in respect of money laundering or terrorism financing and adding such crowdfunding service providers to the list of obliged entities for the purposes of Directive (EU) 2015/849.

Article 39

Entry into force and application

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

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

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

Done at Brussels,

For the European Parliament
The President

For the Council
The President

LEGISLATIVE FINANCIAL STATEMENT

1. FRAMEWORK OF THE PROPOSAL/INITIATIVE

- 1.1. Title of the proposal/initiative
- 1.2. Policy area(s) concerned in the ABM/ABB structure
- 1.3. Nature of the proposal/initiative
- 1.4. Objective(s)
- 1.5. Grounds for the proposal/initiative
- 1.6. Duration and financial impact
- 1.7. Management mode(s) planned

2. MANAGEMENT MEASURES

- 2.1. Monitoring and reporting rules
- 2.2. Management and control system
- 2.3. Measures to prevent fraud and irregularities

3. ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL/INITIATIVE

- 3.1. Heading(s) of the multiannual financial framework and expenditure budget line(s) affected
- 3.2. Estimated impact on expenditure
 - 3.2.1. *Summary of estimated impact on expenditure*
 - 3.2.2. *Estimated impact on operational appropriations*
 - 3.2.3. *Estimated impact on appropriations of an administrative nature*
 - 3.2.4. *Compatibility with the current multiannual financial framework*
 - 3.2.5. *Third-party contributions*
- 3.3. Estimated impact on revenue

LEGISLATIVE FINANCIAL STATEMENT

1. FRAMEWORK OF THE PROPOSAL/INITIATIVE

1.1. Title of the proposal/initiative

| |
|---|
| Proposal for a Regulation of the European Parliament and of the Council on European Crowdfunding Service Providers for Business |
|---|

1.2. Policy area(s) concerned

| |
|---|
| Policy area: Financial Stability, Financial Services and Capital Market Union Activity: Capital Market Union |
|---|

1.3. Nature of the proposal/initiative

- The proposal/initiative relates to **a new action**
- The proposal/initiative relates to **a new action following a pilot project/preparatory action**¹⁷
- The proposal/initiative relates to **the extension of an existing action**
- The proposal/initiative relates to **an action redirected towards a new action**

1.4. Objective(s)

1.4.1. *The Commission's multiannual strategic objective(s) targeted by the proposal/initiative*

| |
|---|
| Contribute to a deeper and fairer internal market with strengthened industrial base |
|---|

1.4.2. *Specific objective(s)*

| |
|------------------------------|
| <u>Specific objective No</u> |
|------------------------------|

- | |
|---|
| 1. Enabling platforms to scale up; 2. Strengthening platforms integrity; 3. Strengthening platforms' transparency for investors |
|---|

¹⁷ As referred to in Article 54(2)(a) or (b) of the Financial Regulation.

1.4.3. *Expected result(s) and impact*

Specify the effects which the proposal/initiative should have on the beneficiaries/groups targeted.

1. ECSPs are able to carry out their core activities across all Member States and intermediate projects from across the EU.
2. Investors trust is enhanced, particularly when accessing platforms and investing on a cross-border basis.

1.4.4. *Indicators of results and impact*

Specify the indicators for monitoring implementation of the proposal/initiative.

The Commission services would monitor the effects of the retained policy option on the basis of the following non-exhaustive list of indicators:

1. Impacts on the platforms:
 - a. Number of countries where platforms opt-in
 - b. Annual volumes of crowdfunding transactions in EU countries
 - c. Investor base by type of investors
 - d. Number, volume and type of projects funded cross border
 - e. Volume of cross border investment flows
2. Direct Costs
 - a. licensing fees
 - b. Supervisory and regulatory fees
 - c. Enforcement costs
3. Indirect costs/benefits
 - a. Evolution of fees paid to finance projects / to invest
 - b. Evolution of average ticket size

1.5. Grounds for the proposal/initiative

1.5.1. *Requirement(s) to be met in the short or long term*

The proposal should address the following challenges:

1) Single Market: crowdfunding platforms are highly dependent on network effects. Scale not only increases the viability of business models, but also provides greater benefits for platform users – investors and project owners. Currently crowdfunding platforms face substantial difficulties when attempting to expand into other EU Member States and are thus mostly confined within their national borders. This initiative will provide platforms that wish to operate at an EU-level the possibility to apply for a European Crowdfunding Service Provider (ECSP) license through the European Securities Markets Authority that will allow them to seamlessly provide services across the Single Market.

2) Sectoral Integrity and Safety: crowdfunding has yet to establish itself as a reliable and mature sector and investors are particularly cautious about making investments on a cross-border basis. This is in part due to diverging sets of rules adopted by different Member States that create uncertainty as regards the applicability of safeguards, due diligence treatment as

well as the level of scrutiny. This initiative will provide a recognisable European label that will ensure a transparent and safe environment for fund intermediation, allowing investors to focus on the viability of projects they wish to support.

- 1.5.2. *Added value of Union involvement (it may result from different factors, e.g. coordination gains, legal certainty, greater effectiveness or complementarities). For the purposes of this point 'added value of Union involvement' is the value resulting from Union intervention which is additional to the value that would have been otherwise created by Member States alone.*

EU action would reduce significantly the complexity, financial and administrative burdens for all key stakeholders, i.e. crowdfunding platforms, project owners and investors at the same time ensuring a level playing field among all the service providers using the same EU label. Furthermore, harmonising prudential rules, operational conditions and rules on transparency for all the relevant players would bring clear benefits to investor protection and financial stability. By harmonizing the essential features that constitute a crowdfunding platform, the proposal aims at establishing a uniform framework in relation to the definition of such crowdfunding activity, clearly setting common rules in specific areas.

Newly emerging evidence in stakeholders' consultations and external studies call for action at this point in time. The purpose of the action at EU level is to contribute to the effective and efficient development of the crowdfunding services in the EU, protection of investors, stability and effectiveness of the financial system, for the Union economy, its citizens and businesses. The impact assessment accompanying the Commission's proposal contributes to greater understanding of why these objectives are better achieved at Union level.

- 1.5.3. *Lessons learned from similar experiences in the past*

New initiative

- 1.5.4. *Compatibility and possible synergy with other appropriate instruments*

The objectives of this proposal are consistent with a number of other key EU policies and ongoing initiatives, notably the Capital Markets Union, the FinTech initiative and the Digital Single Market.

1.6. Duration and financial impact

- Proposal/initiative of **limited duration**
 - Proposal/initiative in effect from [DD/MM]YYYY to [DD/MM]YYYY
 - Financial impact from YYYY to YYYY
- Proposal/initiative of **unlimited duration**
 - Implementation with a start-up period from YYYY to YYYY,
 - followed by full-scale operation.

1.7. Management mode(s) planned¹⁸

- Direct management** by the Commission through
 - executive agencies
- Shared management** with the Member States
- Indirect management** by entrusting budget implementation tasks to:
 - international organisations and their agencies (to be specified);
 - the EIB and the European Investment Fund;
 - bodies referred to in Articles 208 and 209;
 - public law bodies;
 - bodies governed by private law with a public service mission to the extent that they provide adequate financial guarantees;
 - bodies governed by the private law of a Member State that are entrusted with the implementation of a public-private partnership and that provide adequate financial guarantees;
 - persons entrusted with the implementation of specific actions in the CFSP pursuant to Title V of the TEU, and identified in the relevant basic act.

Comments

| |
|-----|
| N/A |
|-----|

¹⁸ Details of management modes and references to the Financial Regulation may be found on the BudgWeb site: <https://myintracomm.ec.europa.eu/budgweb/EN/man/budgmanag/Pages/budgmanag.aspx>.

2. MANAGEMENT MEASURES

2.1. Monitoring and reporting rules

Specify frequency and conditions.

In line with already existing arrangements, the ESAs prepare regular reports on their activity (including internal reporting to Senior Management, reporting to Boards and the production of the annual report), and are subject to audits by the Court of Auditors and the Commission's Internal Audit Service on their use of resources and performance. Monitoring and reporting of the actions included in the proposal will comply with the already existing requirements as well as with any new requirements resulting from this proposal.

2.2. Management and control system

2.2.1. Risk(s) identified

Given the modest size of the market, targeted at early stage financial support for small companies, no significant economic, financial stability or other risks have been identified. It is noted that projects intermediated on crowdfunding platforms bear very high risk, however this is reflected in risk warnings to investors and through other safeguards, thus ensuring investor familiarity with their chosen environment which is not comparable to a space for savings products, but provides a space to support ventures. Platforms themselves are not allowed to participate by investing or underwriting these offerings and only help facilitate transactions between the parties.

2.2.2. Control method(s) envisaged

Management and control systems as provided for in the ESAs Regulations are already implemented. ESAs work closely together with the Internal Audit Service of the Commission to ensure that the appropriate standards are met in all areas of internal control framework. These arrangements will apply also with regard to the role of ESA according to the present proposal.

In addition, every financial year, the European Parliament, following a recommendation from the Council, grants discharge to each ESA for the implementation of their budget.

2.3. Measures to prevent fraud and irregularities

Specify existing or envisaged prevention and protection measures.

For the purposes of combating fraud, corruption and any other illegal activity, the provisions of Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) apply to the ESAs without any restriction.

The ESAs have a dedicated anti-fraud strategy and resulting action plan. The ESAs' strengthened actions in the area of anti-fraud will be compliant with the rules and guidance provided by the Financial Regulation (anti-fraud measures as part of sound financial management), OLAF's fraud prevention policies, the provisions provided by the Commission Anti-Fraud Strategy (COM(2011)376) as well as set out by the Common Approach on EU decentralised agencies (July 2012) and the related roadmap.

In addition, the Regulations establishing the ESAs as well as the ESAs Financial Regulations set out the provisions on implementation and control of the ESAs budget and applicable financial rules, including those aimed at preventing fraud and irregularities.

3. ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL/INITIATIVE

3.1. Heading(s) of the multiannual financial framework and expenditure budget line(s) affected

- Existing budget lines

In order of multiannual financial framework headings and budget lines.

| Heading of multiannual financial framework | Budget line | Type of expenditure | Contribution | | | |
|--|--------------------------|-------------------------------|-----------------------------------|--|----------------------|--|
| | Number [Heading.....] | Diff./Non-diff. ¹⁹ | from EFTA countries ²⁰ | from candidate countries ²¹ | from third countries | within the meaning of Article 21(2)(b) of the Financial Regulation |
| 1a | 12 02 06 ESMA | Diff./Non-diff. | NO | NO | NO | NO |

- New budget lines requested

In order of multiannual financial framework headings and budget lines.

| Heading of multiannual financial framework | Budget line | Type of expenditure | Contribution | | | |
|--|---------------------------------|---------------------|---------------------|--------------------------|----------------------|--|
| | Number [Heading..... ...] | Diff./non-diff. | from EFTA countries | from candidate countries | from third countries | within the meaning of Article 21(2)(b) of the Financial Regulation |
| [...] | [XX.YY.YY.YY] [...] | [...] | YES/N O | YES/N O | YES/N O | YES/NO |

¹⁹ Diff. = Differentiated appropriations / Non-diff. = Non-differentiated appropriations.

²⁰ EFTA: European Free Trade Association.

²¹ Candidate countries and, where applicable, potential candidates from the Western Balkans.

3.2. Estimated impact on expenditure

3.2.1. Summary of estimated impact on expenditure

EUR million (to three decimal places)

| Heading of multiannual financial framework | Number | [Heading.....] |
|--|--------|----------------|
| [Heading.....] | | |

| DG: <.....> | | Year 2019 | Year 2020 | Year N+2 | Year N+3 | Enter as many years as necessary to show the duration of the impact (see point 1.6) | | TOTAL |
|--------------------------------------|-------------|-----------|-----------|----------|----------|---|-----|-------|
| | | | | | | (1) | (2) | |
| Title 1: Operational appropriations | Commitments | 0.764 | 1.637 | | | | | 2.401 |
| | Payments | 0.764 | 1.637 | | | | | 2.401 |
| Title 2: | Commitments | | | | | | | |
| | Payments | | | | | | | |
| Title 3: | Commitments | | | | | | | |
| | Payments | | | | | | | |
| TOTAL appropriations for ESMA | Commitments | 0.764 | 1.637 | | | | | 2.401 |
| | Payments | 0.764 | 1.637 | | | | | 2.401 |

| | | |
|---|----------|-------------------------------------|
| Heading of multiannual financial framework | 5 | ‘Administrative expenditure’ |
|---|----------|-------------------------------------|

| | | EUR million (to three decimal places) | | | | | |
|-------------------------------|----------------------------------|---------------------------------------|-----------|----------|----------|---|-------|
| DG: <.....> | | Year 2019 | Year 2020 | Year N+2 | Year N+3 | Enter as many years as necessary to show the duration of the impact (see point 1.6) | TOTAL |
| • | Human Resources | 0.401 | 0.995 | | | | 1.396 |
| • | Other administrative expenditure | 0.091 | 0.236 | | | | 0.327 |
| TOTAL DG <.....> | | | | | | | |

| | | | | | | | |
|---|---|---------------------|------------------|--|--|--|--|
| TOTAL appropriations under HEADING 5 | = | | | | | | |
| of the multiannual financial framework | | (Total commitments) | (Total payments) | | | | |

| | | EUR million (to three decimal places) | | | | | |
|--|--|---------------------------------------|-----------|----------|----------|---|-------|
| TOTAL appropriations under HEADINGS 1 to 5 | | Year 2019 | Year 2020 | Year N+2 | Year N+3 | Enter as many years as necessary to show the duration of the impact (see point 1.6) | TOTAL |
| of the multiannual financial framework | | 0.764 | 1.637 | | | | 2.401 |
| | | 0.764 | 1.637 | | | | 2.401 |

3.2.2. Estimated impact on [body]'s appropriations

- The proposal/initiative does not require the use of operational appropriations
- The proposal/initiative requires the use of operational appropriations, as explained below:

Commitment appropriations in EUR million (to three decimal places)

| Indicate objectives and outputs | Type ²² | Year | | | | Year N+3 | | | | Enter as many years as necessary to show the duration of the impact (see point 1.6) | | | | TOTAL | | | | |
|---|--------------------|--------|---|----------|---|----------|---|----------|---|---|---|----------|---|----------|---|----------|------------|--|
| | | Year N | | Year N+1 | | Year N+2 | | Year N+3 | | Year N+4 | | Year N+5 | | Year N+6 | | Total No | Total cost | |
| | | Cost | € | Cost | € | Cost | € | Cost | € | Cost | € | Cost | € | Cost | € | | | |
| OUTPUTS | | | | | | | | | | | | | | | | | | |
| SPECIFIC OBJECTIVE No 1 ²³ ... | | | | | | | | | | | | | | | | | | |
| - Output | | | | | | | | | | | | | | | | | | |
| - Output | | | | | | | | | | | | | | | | | | |
| - Output | | | | | | | | | | | | | | | | | | |
| Subtotal for specific objective No 1 | | | | | | | | | | | | | | | | | | |
| SPECIFIC OBJECTIVE No 2 ... | | | | | | | | | | | | | | | | | | |
| - Output | | | | | | | | | | | | | | | | | | |
| Subtotal for specific objective No 2 | | | | | | | | | | | | | | | | | | |
| TOTAL COST | | | | | | | | | | | | | | | | | | |

²² Outputs are products and services to be supplied (e.g.: number of student exchanges financed, number of km of roads built, etc.).
²³ As described in point 1.4.2. 'Specific objective(s)...'

3.2.3. *Estimated impact on [body]'s human resources*

3.2.3.1. Summary

- The proposal/initiative does not require the use of appropriations of an administrative nature
- The proposal/initiative requires the use of appropriations of an administrative nature, as explained below:

EUR million (to three decimal places)

| | Year 2019 | Year 2020 | Year N+2 | Year N+3 | Enter as many years as necessary to show the duration of the impact (see point 1.6) | TOTAL |
|--|-----------|-----------|----------|----------|---|-------|
|--|-----------|-----------|----------|----------|---|-------|

| | | | | | | | | |
|---------------------------|---|---|--|--|--|--|--|---|
| Officials (AD Grades) | 2 | 6 | | | | | | 8 |
| Officials (AST grades) | | | | | | | | |
| Contract staff | 1 | 1 | | | | | | 2 |
| Temporary staff | | | | | | | | |
| Seconded National Experts | | | | | | | | |

| | | | | | | | | |
|--------------|----------|----------|--|--|--|--|--|--|
| TOTAL | 3 | 7 | | | | | | |
|--------------|----------|----------|--|--|--|--|--|--|

Estimated impact on the staff (additional FTE) – establishment plan

| Function group and grade | Year N | Year N+1 | Year N+2 | Enter as many years as necessary to show the duration of the impact (see point 1.6) |
|--------------------------|--------|----------|----------|---|
| AD16 | | | | |
| AD15 | | | | |
| AD14 | | | | |
| AD13 | | | | |
| AD12 | | | | |
| AD11 | | | | |
| AD10 | | | | |
| AD9 | | | | |

| | | | | |
|--------------|--|--|--|--|
| AD8 | | | | |
| AD7 | | | | |
| AD6 | | | | |
| AD5 | | | | |
| AD Total | | | | |
| AST11 | | | | |
| AST10 | | | | |
| AST9 | | | | |
| AST8 | | | | |
| AST7 | | | | |
| AST6 | | | | |
| AST5 | | | | |
| AST4 | | | | |
| AST3 | | | | |
| AST2 | | | | |
| AST1 | | | | |
| AST Total | | | | |
| AST/SC 6 | | | | |
| AST/SC 5 | | | | |
| AST/SC 4 | | | | |
| AST/SC 3 | | | | |
| AST/SC 2 | | | | |
| AST/SC 1 | | | | |
| AST/SC Total | | | | |
| GRAND TOTAL | | | | |

Estimated impact on the staff (additional) – external personnel

| Contract agents | Year N | Year N+1 | Year N+2 | Enter as many years as necessary to show the duration of the impact (see point 1.6) |
|--------------------|--------|----------|----------|---|
| Function group IV | | | | |
| Function group III | | | | |
| Function group II | | | | |
| Function group I | | | | |
| Total | | | | |

| Seconded National Experts | Year N | Year N+1 | Year N+2 | Enter as many years as necessary to show the duration of the impact (see point 1.6) |
|---------------------------|--------|----------|----------|---|
| Total | | | | |

Please indicate the planned recruitment date and adapt the amount accordingly (if recruitment occurs in July, only 50 % of the average cost is taken into account) and provide further explanations in an annex.

3.2.3.2. Estimated requirements of human resources for the parent DG

- The proposal/initiative does not require the use of human resources.
- The proposal/initiative requires the use of human resources, as explained below:

Estimate to be expressed in full amounts (or at most to one decimal place)

| | Year 2020 | Year N+1 | Year N+2 | Year N+3 | Enter as many years as necessary to show the duration of the impact (see point 1.6) |
|--|---------------------------------|-------------|-------------|-------------|--|
| • Establishment plan posts (officials and temporary staff) | | | | | |
| XX 01 01 01 (Headquarters and Commission's Representation Offices) | | | | | |
| XX 01 01 02 (Delegations) | | | | | |
| XX 01 05 01 (Indirect research) | | | | | |
| 10 01 05 01 (Direct research) | | | | | |
| • External staff (in Full Time Equivalent unit: FTE)²⁴ | | | | | |
| XX 01 02 01 (AC, END, INT from the 'global envelope') | | | | | |
| XX 01 02 02 (AC, AL, END, INT and JED in the Delegations) | | | | | |
| XX 01 04 yy ²⁵ | - at Headquarters ²⁶ | | | | |
| | - in Delegations | | | | |
| XX 01 05 02 (AC, END, INT – Indirect research) | | | | | |
| 10 01 05 02 (AC, END, INT – Direct research) | | | | | |

²⁴

AC = Contract Staff; AL = Local Staff; END = Seconded National Expert; INT = agency staff; JED = Junior Experts in Delegations.

²⁵

Sub-ceiling for external staff covered by operational appropriations (former 'BA' lines).

²⁶

Mainly for the Structural Funds, the European Agricultural Fund for Rural Development (EAFRD) and the European Fisheries Fund (EFF).

3.2.4. *Compatibility with the current multiannual financial framework*

- The proposal/initiative is compatible the current multiannual financial framework.
- The proposal/initiative will entail reprogramming of the relevant heading in the multiannual financial framework.

Explain what reprogramming is required, specifying the budget lines concerned and the corresponding amounts.

- The proposal/initiative requires application of the flexibility instrument or revision of the multiannual financial framework²⁷.

Explain what is required, specifying the headings and budget lines concerned and the corresponding amounts.

²⁷ See Articles 11 and 17 of Council Regulation (EU, Euratom) No 1311/2013 laying down the multiannual financial framework for the years 2014-2020.

3.3. Estimated impact on revenue

- The proposal/initiative has no financial impact on revenue.
- The proposal/initiative has the following financial impact:
 - on own resources
 - on miscellaneous revenue

EUR million (to three decimal places)

| Budget revenue line: | Appropriations available for the current financial year | Impact of the proposal/initiative ²⁸ | | | | |
|----------------------|---|---|----------|----------|----------|---|
| | | Year N | Year N+1 | Year N+2 | Year N+3 | Enter as many years as necessary to show the duration of the impact (see point 1.6) |
| Article | | | | | | |

For miscellaneous 'assigned' revenue, specify the budget expenditure line(s) affected.

[...]

ANNEX to Legislative Financial Statement for Proposal for Regulation on European Crowdfunding Service Providers (ECSP) for business

Applied methodology and main underlying assumptions

The costs related to the authorisation and supervision of European Crowdfunding Service Providers (ECSP) by ESMA have been estimated according to three cost categories: the staff costs, administrative costs and operational costs²⁹.

According to preliminary current estimations by the Commission, the ECSP authorisation and supervisory tasks will require 4 new staff members in 2019 and 9 additional staff members for the year 2020. This would be in addition to the staff that are currently working in ESMA and that are covered under the current budget for ESMA. The costs would be financed by EU budget in order not to burden a nascent industry with disproportionate fees. Contributions will be collected from ECSP authorised under this regime, however a cap will be applied, as detailed in the text of the proposal.

The need for increased staff numbers reflect the additional tasks entrusted by the Regulation to ESMA and related to the coordination and supervision of ECSPs:

- Prepare for and manage authorisation processes;
- Set up and maintain a central registry;
- Develop technical standards foreseen in the Regulation;
- Review Key Investment Information Sheets (KIIS)
- Prepare the take up of coordination and of ongoing supervision of ECSPs
- Annually, monitor and report KPIs

These new tasks are set out in the proposed Regulation and further spelled out in the explanatory memorandum. They include, but are not limited to, the authorisation and

²⁸ As regards traditional own resources (customs duties, sugar levies), the amounts indicated must be net amounts, i.e. gross amounts after deduction of 25 % for collection costs.

²⁹ Operational costs include also translation and IT costs.

registration of ECSPs, supervision of registered ECSPs, requiring periodic contacts with the management/ staff of the supervised entities, responding to questions, complaints or requests by national competent authorities or consumers, monitoring of the compliance with ESCP requirements as set out in the ESCP Regulation, requesting information from ECSPs or persons involved in the management of the entities, conducting onsite inspections, examining records and hearing of persons on alleged breaches of the Regulation, examining the Key Investment Information Sheet in accordance to the requirements set out in the Regulation as well as translating necessary documents. ESMA could also fulfil a role to withdraw authorisation of ECSP and take other supervisory measures as listed in the ECSP Regulation.

The following section reviews the general assumptions for the calculation of additional resources, the cost of new headcount and the additional IT infrastructure.

General assumptions made when calculating additional resources

When calculating additional resources the following assumptions have been made.

It is assumed that the Regulation shall enter into application at the start of 2019 and the year will be used for preparations by ESMA to draft RTS and technical advices as well as to draft processes and procedures. In 2020, based on the number of crowdfunding platforms currently in the market, their size, activity, general market conditions and the number of platforms that have already been attempting to expand cross-border, it is estimated that approximately 25 entities will be supervised by ESMA.

Additional posts are assumed to be either permanent staff or contract agent. Average annual total cost³⁰ for permanent staff assumed at EUR173 000 and for contract agents at EUR86 000. If pension and recruitment costs are included, while staff-related administrative and operational costs go in a separate category, the table below summarises the total yearly average cost per category of staff.

Table 1 Staff Costs

| Category of Staff | 2019 Total yearly average staff cost (*) | 2020 Total yearly average staff cost (*) |
|--------------------------|---|---|
| Official | EUR 158 020 | EUR 153 687 |
| Contract Agent | EUR 85 640 | EUR 72 640 |

(*) Includes: recruitment expenses, salaries & allowances, pension contributions, other costs (training, medical, school, staff management). Staff-related administrative (e.g. mission expenses) and operational expenses (e.g. databases, meetings, legal) are not included.

Calculation of additional headcount

Table 2 illustrates the foreseen staffing resources that ESMA will require to carry out the functions as set out in the Regulation.

Table 2 Total FTE per annum

³⁰ Excluding pension and recruitment costs, but including staff-related operational (e.g. mission expenses) and administrative costs (e.g. databases, meetings, legal).

| | 2019 | 2020 |
|--------------|-------------|-------------|
| AD | 2 | 6 |
| CA | 1 | 1 |
| Total | 3 | 7 |

Future needs post-2020 will be calculated and allocated in the context of the future Multi Annual Financial Framework.

Other Expenditure

Other expenditures such as the setting up of the registry, databases and other have been included within Operational expenses in Table 3. IT costs are assumed to be EUR 250,000 for both years 2019 and 2020 after which they will decrease to 50. Translation costs are also included within the row on operational costs and consist of EUR 350,000 yearly.

Total amounts of expenditure 2019-2020

Taken into account the above assumptions, total amounts estimated for the setup and supervisory and authorising tasks to be performed by ESMA for the period 2019-2020 are represented in the table below.

Table 3 Total ESMA -related expenditures for ESMA in ECSP in the years 2019-2020, in EUR

| | 2019 | 2020 |
|---|--------------------|----------------------|
| Staff expenditure | EUR 401 680 | EUR 994 760 |
| Administrative expenditure | EUR 90 720 | EUR 236 040 |
| Operational expenditure | EUR 271 600 | EUR 656 200 |
| Total Expenditure | EUR 764 000 | EUR 1 887 000 |
| Fees collected from licensed entities(*) | 0 | 25 x EUR 10 000 |
| Total budget from industry | 0 | EUR 250 000 |
| Total impact on EU budget | EUR 764 000 | EUR 1 637 000 |