

Delegations will find in the below a compromise text for the Crowdfunding Proposal, prepared by the Presidency.

Changes to the Commission Proposal (7049/18+ADD 1) are marked in **bold underlined** and ~~strikethrough~~.

2018/0048 (COD)

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,¹

Having regard to the opinion of the European Economic and Social Committee,²

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

¹ OJ C **195, 2.6.2016**, p. **1**.

² OJ C **177, 18.5.2016**, p. **2**.

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 agreements, to an equity stake or to another the acquisition of transferable securities based stake or of other admitted instruments for crowdfunding purposes. It is therefore appropriate to include in the scope of this Regulation both lending-based crowdfunding and investment-based crowdfunding, 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 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~~ **and to ensure a high level of investor protection by laying down a regulatory framework at Union level.**
- (8) By addressing the obstacles to the functioning of the internal market in crowdfunding services, this Regulation aims to foster cross-border business funding. Crowdfunding services in relation to lending to consumers, as defined in Article 3(a) of Directive 2008/48/EC of the European Parliament and of the Council³, 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 services~~u~~ provided by persons that have been authorised under

³ 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).

Directive 2014/65/EU of the European Parliament and of the Council⁴ ~~or provided in accordance with national law~~ should be excluded from the scope of this Regulation.

- (10) In relation to lending-based crowdfunding, the facilitation of granting of loans, including services such as presenting crowdfunding offers to clients or rating the creditworthiness of **crowdfunding projects or** project owners, should accommodate different business models enabling a loan agreement to be concluded through a crowdfunding platform between one or more ~~clients~~**investors** and one or more project owners. **The facilitation of granting of loans within the scope of this Regulation is to be distinguished from the activity of a credit institution, which grants credits for its own account.**
- (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~~**related** to transferable securities **and admitted instruments for crowdfunding purposes.** ~~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~~ **by Member States in accordance with** in Regulation (EU) 2017/1129 of the European Parliament and of the Council⁵ 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

⁴ 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).

⁵ 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).

credit institution in accordance with Article 8 of Directive 2013/36/EU of the European Parliament and of the Council⁶.

- (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~~**investors**, crowdfunding service providers should be able to ~~exercise discretion on behalf of clients with respect to the parameters of the clients' orders, provided that they take all necessary steps to obtain the best possible result for their clients and that they disclose the exact method and parameters of the discretion~~**propose specific crowdfunding projects to individual investors which shall correspond to parameters set by the investor. This parameters shall be communicated to the crowdfunding service provider in advance. The investor, however, should be required to explicitly approve each project.** 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.~~

⁶ 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).

- (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.

(18a) Clients are exposed to potential risks related to the crowdfunding service providers, in particular operational risks. In order to protect clients against these risks, crowdfunding service providers should be subject to prudential requirements. Such requirements should however not act as entry barriers to the crowdfunding market.

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

- (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~~ **shareholders**, 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~~**Shareholders, managers and employees, or any person directly or indirectly controlling them, should not act as project owners in relation to the crowdfunding services offered on their crowdfunding platform. However, these persons should not be prohibited from acting as investors in the projects offered on their crowdfunding platform, provided that appropriate safeguards against conflicts of interest are in place.**

- (20) In the interest of 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~~**Only** ~~payment service providers in accordance with~~**are permitted to provide payment services as defined in** Directive (EU) 2015/2366 ~~of the European Parliament and of the Council~~⁷. 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)~~**competent authorities** should be informed about whether the crowdfunding service provider intends to carry out payment services itself with the appropriate authorisation, or whether such services will be outsourced to an authorised third party.

⁷ 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).

- (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~~ **harmonised**, 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 situations⁸. 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~~ **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~~ **competent authorities** 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

⁸ 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.

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 providers 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 reputation 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 e~~Competent authorities should inform ESMA **also have the power to withdraw the authorisation under this Regulation** whenever a crowdfunding service provider, or a third party acting on its behalf, has lost its authorisation as a payment institution, or **whenever a crowdfunding service provider that is authorised as a payment institution, or its managers, employees or a third party acting on its behalf**, has been found to be in breach of Directive (EU) 2015/849 of the European Parliament and of the Council⁹.
- (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.

(29a) Crowdfunding service providers who provide crowdfunding services consisting of the facilitation of granting of loans should make available to all clients and potential clients certain relevant information, such as default rates of loans and the credit score methodology. The level of detail concerning methods to calculate credit scores should not reveal sensitive business information or impede innovation.

(29b) To ensure adequate investor protection of different categories of investors participating in crowdfunding projects while facilitating investment flows, this Regulation distinguishes between sophisticated and non-sophisticated investors

⁹ 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).

and introduces different levels of investor protection safeguards adapted to each of these categories of investors.

- (30) Investments in products marketed on crowdfunding platforms are not comparable to traditional investments products or savings products and should not be marketed as such. However, to ensure that prospective **non-sophisticated** investors understand the level of risk associated with crowdfunding investments, crowdfunding service providers should run an entry knowledge test of their prospective **non-sophisticated** investors to establish their knowledge of investment. Crowdfunding service providers should explicitly warn prospective **non-sophisticated** investors whenever the crowdfunding services provided are deemed as inappropriate for them.

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

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

(30c) Given the riskiness of crowdfunding projects, non-sophisticated investors should avoid overexposure to them. There is a significant risk to lose large amounts of the initially invested sums or even experience a total loss. It is therefore appropriate to impose investment restrictions for non-sophisticated investors both with regards to their exposure to crowdfunding projects listed on a particular crowdfunding platform and exposure to individual projects.

- (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. **The harmonisation of the information contained in the key investment information sheet should provide investor protection at Union level.**
- (32) **The key investment information sheet should reflect the specific features of lending-based and investment-based crowdfunding. In order to ensure this, specific and relevant indicators should be required.** The key investment information sheet should also take into account the specific features and risks associated with ~~early stage companies~~ **project owners**, and focus on material information about the project owners, the investors' rights and fees, and the type of **transferable** securities, **admitted instruments for crowdfunding purposes** ~~offered~~ and loan agreements **offered**. Because the project owner concerned is in the best position to provide that information, the key investment information sheet should be drawn up by that project owner. However, since crowdfunding service providers are responsible for informing their prospective investors, they should ensure that the key investment information sheet is **clear and** complete. **If whilst verifying the completeness and clarity of the key investment information sheet, or in different circumstances, crowdfunding service providers identify gross omissions, mistakes or inaccuracies, they shall contact the project owners and request rectification.** **Crowdfunding service providers should suspend or even cancel crowdfunding offers until the project owners introduce the necessary amendments to the key investment information sheets.**
- (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 ~~documents~~ **sheet** 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 English.

- (35) Crowdfunding service providers should not be able to ~~provide any discretionary or non-discretionary matching of~~ **bring together multiple third-party** buying and selling interests **in financial instruments in a way that results in a contract in relation to such advertisements**, 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~~ **a** platform to ~~contact, and transact with, each other over~~ **advertise on a bulletin board on their** **at** platforms **interest to buy or sell contracts** in relation to investments originally made on ~~their~~ **that** platform. Crowdfunding service providers ~~should~~ however inform ~~their clients~~ **investors** that they does not operate a trading system **venue in accordance with Directive 2014/65/EU** and that any buying and selling activity on their platforms is at the ~~client~~ **investor**'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~~ **shall provide fair, clear and not misleading information**.
- (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~~English~~. 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.~~

(42a) A variety of competent authorities in Member States, with different responsibilities, might create unnecessary costs and overlapping of responsibilities without providing any additional benefit. In each Member State, a single competent authority should be designated for carrying out the duties resulting from this Regulation and for ensuring that the provisions of this Regulation are applied. That competent authority should be established as an administrative authority and in such a form that their independence from economic actors is guaranteed and conflicts of interest are avoided.

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

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

(42d) In line with the Communication of the Commission of 8 December 2010 on Reinforcing sanctioning regimes in the financial services sector and in order to ensure that the requirements of this Regulation are fulfilled, it is important that Member States take necessary steps to ensure that infringements of this Regulation are subject to appropriate administrative sanctions and other administrative measures. Those sanctions and measures should be effective, proportionate and dissuasive and ensure a common approach in Member States and a deterrent effect. This Regulation should not limit Member States in their ability to provide for higher levels of administrative sanctions.

(42e) In order to ensure that decisions imposing administrative sanctions or other administrative measures taken by competent authorities have a deterrent effect on the public at large, they should normally be published unless the competent

authority in accordance with this Regulation deems it necessary to opt for a publication on an anonymous basis, to delay the publication or not to publish.

(42f) Although Member States should be able to lay down rules for administrative and criminal sanctions for the same infringements, Member States should not be required to lay down rules for administrative sanctions for the infringements of this Regulation which are subject to criminal sanctions in their national law. In accordance with national law, Member States are not obliged to impose both administrative and criminal sanctions for the same offence, but they should be able to do so if their national law so permits. However, the maintenance of criminal sanctions instead of administrative sanctions for infringements of this Regulation should not reduce or otherwise affect the ability of competent authorities to cooperate, access and exchange information in a timely way with competent authorities in other Member States for the purposes of this Regulation, including after any referral of the relevant infringements to the competent judicial authorities for criminal prosecution.

(42g) Whistleblowers might bring new information to the attention of competent authorities which assists them in detecting and imposing sanctions in cases of infringements of this Regulation. This Regulation should therefore ensure that adequate arrangements are in place to enable whistleblowers to alert competent authorities to actual or potential infringements of this Regulation and to protect them from retaliation.

(42h) In order to specify the requirements set out in this Regulation, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union (TFEU) should be delegated to the Commission with regard to specific provisions of this Regulation. It is of particular importance that the Commission carries out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making¹⁰. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts

systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

(42i) Technical standards in financial services should ensure adequate protection of investors and consumers across the Union. As bodies with highly specialised expertise, it would be efficient and appropriate to entrust ESMA and EBA with the elaboration of draft regulatory technical standards which do not involve policy choices, for submission to the Commission.

(42j) The Commission should be empowered to adopt regulatory technical standards developed by ESMA and EBA with regard to specific provisions of this Regulation. The Commission should adopt those regulatory technical standards by means of delegated acts pursuant to Article 290 TFEU and in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

(42k) The Commission should also be empowered to adopt implementing technical standards developed by ESMA with regard to specific provisions of this Regulation. The Commission should adopt those implementing technical standards by means of implementing acts pursuant to Article 291 TFEU and in accordance with Article 15 of Regulation (EU) No 1095/2010.

(42l) Any processing of personal data carried out within the framework of this Regulation, such as the exchange or transmission of personal data by the competent authorities, should be undertaken in accordance with Regulation (EU) 2016/679 and any exchange or transmission of information by ESMA should be undertaken in accordance with Regulation (EC) No 45/2001.

(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 Council¹¹,

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.

¹¹ 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).

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~~ **shall apply to crowdfunding service providers providing crowdfunding services in the Union.**
2. This Regulation shall not apply to:
 - (a) crowdfunding services that are provided to project owners that are consumers, as defined in Article 3(a) of Directive 2008/48/EC;
 - (b) 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;
 - ~~(a) crowdfunding services that are provided by natural or legal persons in accordance with national law;~~
 - (d) crowdfunding offers with a consideration of more than EUR 1 000 000 ~~per crowdfunding offer~~, which shall be calculated over a period of 12 months with ~~in~~ regard to a particular crowdfunding project.

Where a Member State has decided to exempt offers of securities to the public from the obligation to publish a prospectus in accordance with Article 3(2) of Regulation (EU) 2017/1129, Member States may decide to allow crowdfunding offers under this Regulation up to the monetary amount chosen in accordance with Article 3(2) of Regulation (EU) 2017/1129.

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 **and admitted instruments for crowdfunding purposes** issued by project owners and the reception and transmission of client orders, as referred to in point 1 of Section A ~~to~~**of** Annex I to Directive 2014/65/**EU**, with regard to those transferable securities **and admitted instruments for crowdfunding purposes**;
- (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)~~ **a competent authority** in accordance with Article ~~11~~**10** of this Regulation;
- (d) 'crowdfunding offer' means any communication by crowdfunding service providers that contains information which enables prospective investors to decide on the merits of ~~entering~~**investing** into a crowdfunding ~~transaction~~**project**;
- (e) 'client' means any prospective or actual investor or project owner to whom a crowdfunding service provider provides or may provide crowdfunding services;
- (f) 'project owner' means any person that seeks 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 **or admitted instruments for crowdfunding purposes**;

(ga) ‘sophisticated investor’ means an investor meeting the criteria laid down in Annex II and entities referred to in points (1), (3) and (4) of Section I of Annex II to Directive 2014/65/EU;

(gb) ‘non-sophisticated investor’ means an investor who is not a sophisticated investor;

(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;

(ia) ‘admitted instruments for crowdfunding purposes’ means instruments, other than transferable securities as defined in Article 4(1)(44) of Directive 2014/65/EU, listed in Annex III;

(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~~ **an entity created solely for, or which solely serves the purpose of,** a securitisation within the meaning of Article 1(2) of Regulation (EU) No 1075/2013 of the European Central Bank¹²;

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

2. The Commission shall be empowered to adopt delegated acts in accordance with Article 387 to specify further technical elements of the definitions laid down in

¹² OJ L 297, 7.11.2013, p. 107.

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~~**10** 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~~**propose to individual investors specific crowdfunding projects which shall correspond to specific parameters or risk indicators chosen by the investor. Where the investor wishes to make an investment in the suggested crowdfunding projects, the investor shall review and expressly take an investment decision in relation to each individual crowdfunding offer.**
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 **transferable securities, admitted instruments for crowdfunding purposes or underwriting a loan agreement**. The decision to take exposure to that underlying asset shall exclusively lie with investors.

Article 5

Effective and prudent management

1. The management of crowdfunding service providers shall establish, and oversee the implementation of, adequate policies and procedures to ensure effective and prudent management, including the segregation of duties, business continuity and the prevention of conflicts of interest, in a manner that promotes the integrity of the market and the interest of their clients.
2. **The management of crowdfunding service providers shall review periodically, at least annually, the prudential safeguards referred to in Article 10(2)(fa) and the business continuity plan referred to in Article 10(2)(g).**

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 **acting as project owners in relation to the crowdfunding services offered on their crowdfunding platform.**

Crowdfunding service providers that accept as investors in the projects offered on their crowdfunding platform any of their shareholders holding 20% or more of share capital or voting rights, any of their managers or employees, or any person directly or indirectly linked to those shareholders, managers or employees by control as defined in Article 4(1)(35)(b) of Directive 2014/65/EU shall fully disclose this on their website and shall ensure that these investments are made under the same conditions as those of other investors and that these investors do not enjoy any preferential treatment or privileged access to information.

3. Crowdfunding service providers shall maintain and operate effective internal rules to prevent conflicts of interest.
4. Crowdfunding service providers shall take all appropriate steps to prevent, identify, manage and disclose conflicts of interest between the crowdfunding service providers themselves, their shareholders, their managers ~~and/or~~ 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~~ **where the measures taken in accordance with the internal rules referred to in paragraph 3 are not sufficient to ensure, with reasonable confidence, that the risk of damage to the interests of the client is effectively prevented or managed.**
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~~ the competent authority to monitor the crowdfunding service provider's compliance with all obligations laid down in this Regulation.
3. Crowdfunding service providers shall remain fully responsible for compliance with this Regulation with respect to the outsourced activities.

Article 9

Client asset safekeeping, holding of funds and providing payment services

1. Crowdfunding service providers shall inform their clients of the following:
 - (a) whether, and on which terms and conditions they provide asset safekeeping services, including references to applicable national law;

- (b) whether asset safekeeping services are provided by them or by a third party;
- (c) whether payment services and the holding and safeguarding of funds are provided by the crowdfunding service provider or through a third party provider acting on their behalf.
2. Crowdfunding service providers ~~or third party providers acting on their behalf shall not~~**that intend to** 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~~**shall obtain an authorisation as a payment institution in accordance with the national provisions transposing** 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~~**according to** Article ~~4(11)~~**1(1)** of Directive (EU) 2015/2366.

CHAPTER III

AUTHORISATION AND SUPERVISION OF CROWDFUNDING SERVICE PROVIDERS

Article 10

Authorisation as a crowdfunding service provider

1. A legal person that intends to provide crowdfunding services shall apply to ~~ESMA~~**the competent authority of the Member State of establishment** for authorisation as a crowdfunding service provider.
2. The application referred to in paragraph 1 shall contain all of the following:
- (a) the 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;

(fa) a description of the prospective crowdfunding service provider's operational risks and prudential safeguards against these risks;

- (g) a description of the prospective crowdfunding service provider's business continuity arrangements **plan which establishes measures and procedures that ensure, in the event of failure of the crowdfunding service provider, the continuity of the provision of critical services related to existing investments and sound administration of agreements between the crowdfunding service provider and its clients;**
- (h) the identity of the persons responsible for the management of the prospective crowdfunding service provider;
- (i) proof that the persons referred to in point (h) are of good repute and possess appropriate knowledge and experience to manage the prospective crowdfunding service provider;
- (j) a description of ~~the internal rules of~~ the prospective crowdfunding service provider's **internal rules** 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~~ **those shareholders, managers or employees by control as defined in Article 4(1)(35)(b) of**

Directive 2014/65/EU engage as project owners in crowdfunding transactions projects 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;

(ma) a description of the prospective crowdfunding service provider's steps and measures to ensure that non-sophisticated investors comply with investment limits.

(mb) a description of the prospective crowdfunding service provider's procedures to verify the completeness and the clarity of information contained in the key investment information sheet.

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 **and for shareholders who hold 20% or more of the share capital or voting rights;**
 - (b) proof that the persons involved in the management of the crowdfunding service provider collectively possess sufficient knowledge, skills and experience to manage the crowdfunding service provider and that those persons are required to commit sufficient time to perform their duties.
4. ~~ESMA~~ **The competent authority** 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~~**the competent authority** shall set a deadline by which the prospective crowdfunding service provider is to provide the missing information.

5. Where an application as referred to in paragraph 1 is complete, ~~ESMA~~**the competent authority** shall immediately notify the prospective crowdfunding service provider thereof.
6. ~~ESMA~~**The competent authority** shall, within ~~two~~**three** months from the receipt of a complete application, assess whether the prospective crowdfunding service provider complies with the requirements set out in this Regulation and shall adopt a fully reasoned decision granting or refusing authorisation as a crowdfunding service provider. ~~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~~**The competent authority** shall, **within five working days after having taken that decision,** notify the prospective crowdfunding service provider of its decision **and, if authorisation is granted, shall submit to ESMA the data referred to in Article 11(2)** ~~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;

(ba) the competent authority which granted authorisation and its contact details;

- (c) information on the services for which the crowdfunding service provider is authorised;

(ca) the Member States in which the crowdfunding service provider is providing services;

- (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. ~~The c~~Crowdfunding service providers shall provide ~~their~~its services under the supervision of ~~ESMA~~the competent authority which granted authorisation.
2. ~~The c~~Crowdfunding service providers shall comply at all times with the conditions for authorisation.
3. ~~ESMA~~The competent authority shall assess the compliance of the crowdfunding service providers with the obligations provided for in this Regulation.

4. ~~The c~~Crowdfunding service providers shall notify ~~ESMA~~the competent authority of any material changes to the conditions for authorisation without undue delay and, upon request, shall provide the information needed to assess their compliance with this Regulation.

Article 13

Withdrawal of authorisation

1. ~~ESMA~~The competent authority which granted authorisation 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;

(fa) or a third party provider acting on its behalf has lost its authorisation as a payment institution in accordance with Article 13 of Directive (EU) 2015/2366 and such a crowdfunding service provider has failed to remedy the situation within a reasonable time;

(fb) which is also authorised as a payment institution in accordance with Directive (EU) 2015/2366, or its managers, employees or third parties acting on its behalf, have breached national legislation transposing Directive (EU) 2015/849 in respect of money laundering or terrorism financing.

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 (EU) 2015/2366;~~

~~(a) — 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~~ **The competent authority which withdrew the authorisation** shall notify, without undue delay, the ~~national competent authorities~~ **ies** of the Member States where the crowdfunding service provider is established of its decision to withdraw the authorisation of a crowdfunding service provider **provides crowdfunding services in accordance with Article 13a and ESMA, which shall introduce this information in the register referred to in Article 11.**

Article 13a

Cross-border provision of crowdfunding services

1. Where the crowdfunding service provider authorised in accordance with Article 10 intends to provide crowdfunding services in a Member State other than the Member State whose competent authority granted authorisation in accordance with Article 10, it shall submit to the competent authority which granted authorisation the following information:

(a) the Member States in which the crowdfunding service provider intends to provide crowdfunding services;

(b) the identity of the persons responsible for the provision of the crowdfunding services in those Member States;

(c) the starting date and the duration of the intended provision of the crowdfunding services by the crowdfunding service provider.

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

3. The competent authority which granted authorisation shall thereafter inform without delay the crowdfunding service provider of such communication.

4. The crowdfunding service provider may start to provide crowdfunding services in the Member States referred to in paragraph 1 from the date of the receipt of the communication referred to in paragraph 3.

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 transaction with the crowdfunding service provider.

3. The information referred to in paragraph 1 **and 4** 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.

4. Crowdfunding service providers which provide crowdfunding services consisting of the facilitation of granting of loans shall, in addition to the information referred to in paragraph 1, make available and periodically update the following information:

- (a) default rates of loans granted through their crowdfunding platform. The default rates shall cover a minimum period of five years from the date the default rates are made available;**
- (b) if the crowdfunding service providers apply credit scores to crowdfunding projects on their crowdfunding platform, a description of the method used to calculate such credit scores.**

5. EBA shall develop draft regulatory technical standards to specify the elements that shall be included in the description of the method referred to in point (b) to calculate credit scores.

EBA shall submit those draft regulatory technical standards to the Commission by [Publications Office please insert date 24 months from entry into force].

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

Article 15

Entry knowledge test and simulation of the ability to bear loss

1. Crowdfunding service providers shall, before giving prospective **non-sophisticated** investors full access to their crowdfunding offers, assess whether and which crowdfunding services offered are appropriate for the prospective **non-sophisticated** investors.
2. For the purposes of the assessment pursuant to ~~the first~~ paragraph 1, crowdfunding service providers shall request information about the prospective **non-sophisticated**

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 **non-sophisticated** investor's past investments in transferable securities, **admitted instruments for crowdfunding purposes** 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 **non-sophisticated** investor every two years.
4. Where prospective **non-sophisticated** investors do not provide the information required pursuant to paragraph 1, or where crowdfunding service providers consider, on the basis of the information received under paragraph 1, that the prospective **non-sophisticated** investors have insufficient knowledge, crowdfunding service providers shall inform those prospective **non-sophisticated** investors that the services offered on their platforms may be inappropriate for them and give them a risk warning. ~~That information or risk warning shall not prevent prospective investors from investing in crowdfunding projects.~~ **Prospective non-sophisticated investors shall expressly acknowledge that they have received and understood the warning issued by the crowdfunding service provider.**
5. Crowdfunding service providers shall at all times offer prospective **non-sophisticated** investors and **non-sophisticated** 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 **non-sophisticated** investors and **non-sophisticated** 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~~**5**;
 - (c) provide the information referred to in paragraphs 2 and 4.

Article 15a

Investment limits for non-sophisticated investors

- 1. Non-sophisticated investors shall not invest more than EUR 10 000 in crowdfunding projects listed on a particular crowdfunding platform over a period of 12 months.**
- 2. Non-sophisticated investors shall not invest more than EUR 5 000 in an individual crowdfunding project.**
- 3. Crowdfunding service providers shall take appropriate steps and measures to ensure that non-sophisticated investors comply with investment limits set out in paragraphs 1 and 2.**

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

- (a) the information set out in ~~the Annex I~~;
- (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 necessarily been assessed before you were granted access to this investment. By making this investment, you assume full risk of taking this investment, including the risk of partial or entire loss of the money invested.”;

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

“Investment in this crowdfunding offer project 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 **request the project owner to notify any change of information in order to be able to** keep the key investment information sheet updated at all times and for the whole period of validity of the crowdfunding offer. **Project owners shall remain fully responsible for the correctness of the information contained in the key investment information sheet.**
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.~~ **The crowdfunding service provider shall suspend the crowdfunding offer relating to that key investment information sheet until it has been complemented or amended for a period of no longer than one month.**

If after one month the key investment information sheet has not been complemented or amended, the crowdfunding offer shall be cancelled.

The investors who have put forward interest for the crowdfunding offer shall be immediately informed about the identified irregularities, the steps taken and further to be taken by the crowdfunding service provider and the option to withdraw their interest for the crowdfunding offer.
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 I~~;
 - (b) the types of risks that are material to the crowdfunding offer and therefore must be disclosed in accordance with Part C of ~~the Annex I~~;
 - (c) the fees and costs referred to in point (a) of Part H of ~~the Annex I~~, 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~~ advertise interest to buy and sell loan agreements, ~~or transferable securities~~ or admitted instruments for crowdfunding purposes which were originally ~~crowdfunded~~ offered on their platforms, shall inform their clients that they do not operate a trading system venue in accordance with Directive 2014/65/EU 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 the 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.~~ **The information contained in a marketing communication shall be fair, clear and not misleading and shall be consistent with the information contained in the key investment information sheet, where already available, or with the information required to be in the key investment information sheet, where the key investment information sheet is yet to be made available.**
3. For their marketing communications, crowdfunding service providers shall use ~~one or more of the official languages of the Member State in which the crowdfunding service provider is active or a language customary in the sphere of international~~ **the same language as is used for the key investment information sheet.**
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~~ English.
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~~ English 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;~~

- (a) ~~where available, the outcomes of the enforcement actions, including types of sanctions imposed by type of sanction or remedies provided by crowdfunding service providers;~~
- (a) ~~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 AND COMPETENT AUTHORITIES

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;~~
 - (a) ~~project owners formerly or currently having made an offer on a crowdfunding platform;~~
 - (a) ~~third parties designated to perform functions in relation to the provision of the crowdfunding service in accordance with Article 8;~~
 - (a) ~~the managers of the persons referred to in point (a) to (c);~~

~~(a) — the auditors and advisors of the persons referred to in point (a) to (e);~~

~~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;~~

~~(a) — state the purpose of the request;~~

~~(a) — specify the information required;~~

~~(a) — include a time limit within which the information is to be provided;~~

~~(a) — 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;~~

~~(a) — state the purpose of the request;~~

~~(a) — specify the information required;~~

~~(a) — set a time limit within which the information is to be provided;~~

~~(a) — indicate the periodic penalty payments provided for in Article 29 where the
production of the required information is incomplete;~~

~~(a) — indicate the fine provided for in Article 28, where the answers to questions
asked are incorrect or misleading;~~

~~(a) — 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;~~
 - ~~(a) take or obtain certified copies of or extracts from such records, data, procedures and other material;~~
 - ~~(a) 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;~~
 - ~~(a) 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;~~
 - ~~(a) 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;~~
- ~~(a) 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;~~
 - ~~(a) 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;~~

~~(a) adopt a decision imposing fines or periodic penalty payments pursuant to Articles 28 and 29;~~

~~(a) issue public notices;~~

~~(a) 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;~~

~~(a) whether financial crime has been occasioned, facilitated or otherwise attributable to the infringement;~~

~~(a) whether the infringement has been committed intentionally or negligently;~~

~~(a) the degree of responsibility of the person responsible for the infringement;~~

- ~~(a) — 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;~~
 - ~~(a) — the impact of the infringement on investors' interests;~~
 - ~~(a) — 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;~~
 - ~~(a) — 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;~~
 - ~~(a) — previous infringements by the person responsible for the infringement;~~
 - ~~(a) — 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;~~
 - ~~(a) — where relevant, a statement affirming that an appeal has been lodged and specifying that such an appeal does not have suspensive effect;~~
 - ~~(a) — 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.~~

Article 27a

Competent authorities

Each Member State shall designate a single competent administrative authority responsible for carrying out the duties resulting from this Regulation and for ensuring that the provisions of this Regulation are applied. Member States shall inform the Commission, ESMA and the competent authorities of other Member States accordingly.

Article 27b

Powers of competent authorities

1. In order to fulfil their duties under this Regulation, competent authorities shall have, in accordance with national law, at least the following supervisory and investigatory powers:
 - (a) to require crowdfunding service providers to request project owners to include in the key investment information sheet supplementary information, where necessary for investor protection;
 - (b) to require crowdfunding service providers and third parties designated to perform functions in relation to the provision of crowdfunding service, and the persons that control them or are controlled by them, to provide information and documents;
 - (c) to require auditors and managers of the crowdfunding service providers and third parties designated to perform functions in relation to the provision of crowdfunding services, to provide information;
 - (d) to suspend a crowdfunding offer for a maximum of 10 consecutive working days on any single occasion where there are reasonable grounds for suspecting that this Regulation has been infringed;
 - (e) to prohibit or suspend advertisements or require crowdfunding service providers or third parties designated to perform functions in relation to the provision of crowdfunding services to cease or suspend advertisements for a maximum of 10 consecutive working days on any single occasion

where there are reasonable grounds for believing that this Regulation has been infringed;

- (f) to prohibit a crowdfunding offer where they find that this Regulation has been infringed or where there are reasonable grounds for suspecting that it would be infringed;
- (g) to suspend or require relevant crowdfunding service providers to suspend the operation of the crowdfunding platform for a maximum of 10 consecutive working days on any single occasion where there are reasonable grounds for believing that this Regulation has been infringed;
- (h) to prohibit the operation of the crowdfunding platform where they find that this Regulation has been infringed;
- (i) to make public the fact that a crowdfunding service provider or a third party designated to perform functions in relation to the provision of crowdfunding services is failing to comply with its obligations;
- (j) to disclose, or to require the crowdfunding service provider or the third party designated to perform functions in relation to the provision of crowdfunding services to disclose all material information which may have an effect on the assessment of the provision of the crowdfunding service in order to ensure investor protection or the smooth operation of the market;
- (k) to suspend or require the crowdfunding service provider or a third party designated to perform functions in relation to the provision of crowdfunding services to suspend the provision of crowdfunding services where it considers that the crowdfunding service provider's situation is such that the provision of the crowdfunding service would be detrimental to investors' interests;
- (l) to carry out on-site inspections or investigations at sites other than the private residences of natural persons, and for that purpose to enter premises in order to access documents and other data in any form, where a reasonable suspicion exists that documents and other data related to the

subject-matter of the inspection or investigation may be relevant to prove an infringement of this Regulation.

Where necessary under national law, the competent authority may ask the relevant judicial authority to decide on the use of the powers referred to in the first subparagraph.

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

(a) directly;

(b) in collaboration with other authorities;

(c) under their responsibility by delegation to such authorities;

(d) by application to the competent judicial authorities.

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

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

Article 27c

Cooperation between competent authorities

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

Where Member States have chosen, in accordance with Article 36a, to lay down criminal sanctions for infringements of this Regulation, they shall ensure that appropriate measures are in place so that the competent authority has all the necessary powers to liaise with judicial authorities within their jurisdiction to

receive specific information related to criminal investigations or proceedings commenced for possible infringements of this Regulation and provide the same to other competent authorities and ESMA to fulfil their obligation to cooperate with each other and ESMA for the purposes of this Regulation.

2. A competent authority may refuse to act on a request for information or a request to cooperate with an investigation only in any of the following exceptional circumstances:

- (a) where complying with the request is likely to adversely affect its own investigation, enforcement activities or a criminal investigation;
- (b) where judicial proceedings have already been initiated in respect of the same actions and against the same persons before the authorities of the Member State addressed;
- (c) where a final judgment has already been delivered in relation to such persons for the same actions in the Member State addressed.

3. Competent authorities shall, on request, immediately supply any information required for the purposes of this Regulation.

4. The competent authority may request assistance from the competent authority of another Member State with regard to on-site inspections or investigations.

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

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

- (a) carry out the on-site inspection or investigation itself;
- (b) allow the competent authority which submitted the request to participate in an on-site inspection or investigation;

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

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

6. ESMA may, or where the Commission so requests shall, develop draft regulatory technical standards to specify the information to be exchanged between competent authorities in accordance with paragraph 1.

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

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

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

Article 27d

Cooperation with ESMA

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

2. The competent authorities shall without delay provide ESMA with all information necessary to carry out its duties, in accordance with Article 35 of Regulation (EU) No 1095/2010.
3. In order to ensure uniform conditions of application of this Article, ESMA may develop draft implementing technical standards to determine the procedures and forms for exchange of information as referred to in paragraph 2.

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

Article 27e

Professional secrecy

1. All information exchanged between the competent authorities under this Regulation that concerns business or operational conditions and other economic or personal affairs shall be considered to be confidential and shall be subject to the requirements of professional secrecy, except where the competent authority states at the time of communication that such information may be disclosed or such disclosure is necessary for legal proceedings.
2. The obligation of professional secrecy shall apply to all persons who work or who have worked for the competent authority. Information covered by professional secrecy may not be disclosed to any other person or authority except by virtue of provisions laid down by Union or national law.

Article 27f

Data protection

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

With regard to the processing of personal data by ESMA within the framework of this Regulation, it shall comply with Regulation (EC) No 45/2001.

Article 27g

Precautionary measures

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

Article 27h

Complaint handling by competent authorities

1. Competent authorities designated according to Article 27a shall set up procedures which allow clients and other interested parties, including consumers associations, to submit complaints to the competent authorities with regard to crowdfunding service providers' alleged infringements of this Regulation. In all cases, complaints should be accepted in written or electronic form and in an official language of that Member State or in English.

2. The information about the complaint procedures shall be made available on the website of each competent authority and communicated to ESMA. ESMA shall publish the references to the complaints procedures related sections of the websites of the competent authorities on its website.

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;~~
 - ~~(a) 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) 2016/679¹³.~~

2. ~~Fines and periodic penalty payments imposed pursuant to Articles 34 and 35 shall be of an administrative nature.~~

¹³ ~~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).~~

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 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;

(a) the timetable for the performance of the task; and

(a) 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 VIa

ADMINISTRATIVE SANCTIONS AND OTHER ADMINISTRATIVE MEASURES

Article 36a

Administrative sanctions and other administrative measures

1. **Without prejudice to the supervisory and investigatory powers of competent authorities under Article 27b, and the right of Member States to provide for and impose criminal sanctions, Member States shall, in accordance with national law, provide for competent authorities to have the power to impose administrative sanctions and take appropriate other administrative measures which shall be effective, proportionate and dissuasive. Those administrative sanctions and other administrative measures shall apply at least to:**
- (a) **infringements of Article 4, Article 5, Article 6(1) and (3), Article 7, Article 8(1) and (2), Article 9, Article 10(1), Article 12(4), Article 14, Article 15(1) to (5), Article 16(1) to (7), Article 17, Article 18 and Article 19(1) to (3);**
- (b) **failure to cooperate or comply in an investigation or with an inspection or request covered by Article 27c.**

Member States may decide not to lay down rules for administrative sanctions as referred to in the first subparagraph where the infringements referred to in

point (a) or point (b) of that subparagraph are already subject to criminal sanctions in their national law by [Publications Office please insert date 6 months from entry into force]. Where they so decide, Member States shall notify, in detail, to the Commission and to ESMA, the relevant parts of their criminal law.

By [Publications office please insert date 6 months from entry into force], Member States shall notify, in detail, the rules referred to in the first and second subparagraph to the Commission and to ESMA. They shall notify the Commission and ESMA without delay of any subsequent amendment thereto.

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

- (a) a public statement indicating the natural person or the legal entity responsible and the nature of the infringement in accordance with Article 36e;
- (b) an order requiring the natural person or legal entity responsible to cease the conduct constituting the infringement;
- (c) maximum administrative pecuniary sanctions of at least twice the amount of the profits gained or losses avoided because of the infringement where those can be determined;
- (d) in the case of a legal person, maximum administrative pecuniary sanctions of at least 5% of the total annual turnover of that legal person according to the last available financial statements approved by the management body.

Where the legal person is a parent undertaking or a subsidiary of a parent undertaking which is required to prepare consolidated financial accounts in accordance with Directive 2013/34/EU, the relevant total annual turnover shall be the total annual turnover or the corresponding type of income in accordance with the relevant Union law in the area of

accounting according to the last available consolidated accounts approved by the management body of the ultimate parent undertaking;

(e) in the case of a natural person, maximum administrative pecuniary sanctions of at least EUR 500 000, or, in the Member States whose currency is not the euro, the corresponding value in the national currency [Publications Office please insert date of entry into force].

3. Member States may provide for additional sanctions or measures and for higher levels of administrative pecuniary sanctions than those provided for in this Regulation.

Article 36b

Exercise of supervisory powers and powers to impose sanctions

1. Competent authorities, when determining the type and level of administrative sanctions and other administrative measures, shall take into account all relevant circumstances including, where appropriate:

(a) the gravity and the duration of the infringement;

(b) the degree of responsibility of the person responsible for the infringement;

(c) 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;

(d) the impact of the infringement on investors' interests;

(e) 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;

(f) the level of cooperation of the person responsible for the infringement with the competent authority, without prejudice to the need to ensure disgorgement of profits gained or losses avoided by that person;

(g) previous infringements by the person responsible for the infringement;

(h) measures taken after the infringement by the person responsible for the infringement to prevent its repetition.

2. In the exercise of their powers to impose administrative sanctions and other administrative measures under Article 29, competent authorities shall cooperate closely to ensure that the exercise of their supervisory and investigative powers and the administrative sanctions and other administrative measures that they impose are effective and appropriate under this Regulation. They shall coordinate their action in order to avoid duplication and overlaps when exercising their supervisory and investigative powers and when imposing administrative sanctions and other administrative measures in cross-border cases.

Article 36c

Right of appeal

Member States shall ensure that decisions taken under this Regulation are properly reasoned and subject to a right of appeal before a tribunal.

Article 36d

Reporting of infringements

1. Competent authorities shall establish effective mechanisms to encourage and enable reporting of actual or potential infringements of this Regulation to them.
2. The mechanisms referred to in paragraph 1 shall include at least:
 - (a) specific procedures for the receipt of reports of actual or potential infringements and their follow-up, including the establishment of secure communication channels for such reports;
 - (b) appropriate protection for employees working under a contract of employment who report infringements at least against retaliation, discrimination and other types of unfair treatment by their employer or third parties;
 - (c) protection of the identity and personal data of both the person who reports the infringements and the natural person who is allegedly

responsible for an infringement, at all stages of the procedure unless such disclosure is required by national law in the context of further investigation or subsequent judicial proceedings.

3. Member States may provide for financial incentives to persons who offer relevant information about actual or potential infringements of this Regulation to be granted in accordance with national law where such persons do not have other pre-existing legal or contractual duties to report such information, and provided that the information is new, and that it results in the imposition of an administrative or criminal sanction, or the taking of another administrative measure, for an infringement of this Regulation.

4. Member States shall require employers engaged in the provision of crowdfunding services to have in place appropriate procedures for their employees to report actual or potential infringements internally through a specific, independent and autonomous channel.

Article 36e

Publication of decisions

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

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

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

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

- 3. Where the decision to impose a sanction or measure is subject to appeal before the relevant judicial or other authorities, competent authorities shall also publish, immediately, on their official website such information and any subsequent information on the outcome of such appeal. Moreover, any decision annulling a previous decision to impose a sanction or a measure shall also be published.
- 4. Competent authorities shall ensure that any publication, in accordance with this Article shall remain on their official website for a period of at least five years after its publication. Personal data contained in the publication shall be kept on the official website of the competent authority only for the period which is necessary in accordance with the applicable data protection rules.

Article 36f

Reporting sanctions to ESMA

- 1. The competent authority shall, on an annual basis, provide ESMA with aggregate information regarding all administrative sanctions and other

administrative measures imposed in accordance with Article 36a. ESMA shall publish that information in an annual report.

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

2. Where the competent authority has disclosed administrative sanctions, other administrative measures or criminal sanctions to the public, it shall simultaneously report them to ESMA.
3. Competent authorities shall inform ESMA of all administrative sanctions or other administrative measures imposed but not published in accordance with point (c) of the first subparagraph of Article 36e(2) including any appeal in relation thereto and the outcome thereof. Member States shall ensure that competent authorities receive information and the final judgment in relation to any criminal sanction imposed and submit it to ESMA. ESMA shall maintain a central database of sanctions communicated to it solely for the purposes of exchanging information between competent authorities. That database shall be accessible only to competent authorities and it shall be updated on the basis of the information provided by the competent authorities.

CHAPTER VII

DELEGATED ACTS

Article 37

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in Article 3(2), Article 6(4), Article 7(7), Article 10(10), Article 15(6), and Article 16(9), ~~Article 31(10) and~~

~~Article 34(3)~~ shall be conferred on the Commission for an indeterminate period from [Publications Office: **please insert** ~~the~~ **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), **and** 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), **and** 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 [~~p~~**Publications e**~~Office~~ **Office** please insert **date** 24 months ~~off~~**from** 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~~ amount 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 38a

Transition period

A crowdfunding service provider that has been authorised in a Member State to provide crowdfunding services in accordance with the national law of that Member State before this Regulation enters into force, shall apply for authorisation under Article 10 until [Publications Office please insert date 18 months from entry into force].

Article 39

Entry into force and application

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

It shall apply from [Publications Office please insert **date** ~~12~~**24** months from entry into force].

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

Done at Brussels,

For the European Parliament

For the Council

The President

The President

ANNEX I

INFORMATION TO BE PROVIDED IN THE KEY INVESTMENT INFORMATION SHEET

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

- ~~(a)~~ **A.** Identity, legal status, ownership, management and contact details;
- ~~(b)~~ **B.** Principle activities; products or services offered;
- ~~(c)~~ **C.** A hyperlink to the most recent financial statement of the project owner, if available;
- ~~(d)~~ **D.** Description of the crowdfunding project, including its ~~the~~ purpose and the main features.

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

- ~~(a)~~ **A.** Minimum target capital to be raised or target funds to be borrowed in a single crowdfunding offering and the number of offerings that have been completed by the project owner or crowdfunding service provider for the crowdfunding project;
- ~~(b)~~ **B.** Deadline for reaching the target to raise capital or borrow funds;
- ~~(c)~~ **C.** Information on the consequences if the target capital is not raised or the targeted funds are not borrowed by the deadline;
- ~~(d)~~ **D.** The maximum offering amount when different from the target capital set out in point **A.**;
- ~~(e)~~ **E.** Amount of own funds committed to the crowdfunding project by the project owner;
- ~~(f)~~ **F.** Change of the composition of the ~~issuer~~ **project owner**'s capital or loans related to the crowdfunding offer.

III. Part C: Risk Factors

Presentation of the main risks associated with ~~financing~~**funding** the crowdfunding project, with the sector, ~~the project,~~ the project owner and the investment instrument **transferable securities, admitted instruments for crowdfunding purposes or loan agreements**, including geographic risks, where relevant.

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

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

V. Part E: Issuer's SPV information, where the issuer is different from the project owner and therefore is an SPV

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

VI. Part F: Investor rights

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

VII. Part G: Disclosure related to the loan agreement

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

- ~~(a)~~**A.** Nature and duration of the credit agreement;
- ~~(b)~~**B.** Applicable interest rates or, where applicable, other compensation to the investor;
- ~~(c)~~**C.** Risk mitigation measures, such as whether credit is secured;

~~(d)~~**D.** Amortisation schedule of the principle and repayment of interest-;

E. Any default on credit agreements by the project owner within the past five years.

VIII. Part H: Fees, information and legal redress

~~(a)~~**A.** Fees charged to, and the costs incurred by, the investor in relation to the investment;

~~(b)~~**B.** Where and how additional information about the crowdfunding project, the project owner and **where applicable the issuer****SPV** can be obtained free of charge;

~~(c)~~**C.** How and to whom the investor may address a complaint about the investment or about the conduct of the project owner or about the crowdfunding service provider.

ANNEX II

SOPHISTICATED INVESTORS FOR THE PURPOSE OF THIS REGULATION

I. Identification criteria

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

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

A. Undertakings meeting at least two of the following criteria:

- own funds of at least EUR 100 000
- net turnover of at least EUR 2 000 000
- balance sheet of at least EUR 1 000 000

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

- personal gross income of at least EUR 70 000 per fiscal year
- financial instrument portfolio, defined as including cash deposits and financial assets, that exceeds EUR 100 000
- the investor works or has worked in the financial sector for at least one year in a professional position, which requires knowledge of the transactions or services envisaged

II. Request for being treated as a sophisticated investor

Crowdfunding service providers shall make available to its investors a template that they may use to submit the request to be treated as a sophisticated investor. The template shall contain the identification criteria set out in Section I and a

clear warning specifying the investor protection that a sophisticated investor will lose as a consequence of being classified as such.

The request referred to above shall contain the following:

A. Attestation specifying the identification criteria set out in Section I that the requesting investor meets;

B. Statement that the requesting investor is aware of the consequences of losing the investor protection attached to the status of non-sophisticated investors.

Before deciding to accept any request for being treated as a sophisticated investor, the crowdfunding service provider must be required to take all reasonable steps to ensure that the investor requesting to be treated as a sophisticated investor meets the relevant requirements stated in Section I.

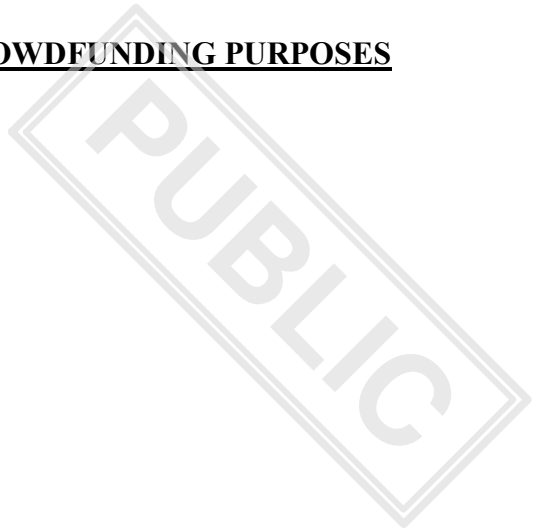
Crowdfunding service providers must implement appropriate written internal policies and procedures to categorise investors. Sophisticated investors are responsible for keeping the crowdfunding service provider informed about any change which could affect their current categorisation. Should the crowdfunding service provider become aware, however, that the investor no longer fulfils the initial conditions which made him eligible for a sophisticated treatment, the crowdfunding service provider shall take appropriate action.

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

ANNEX III

ADMITTED INSTRUMENTS FOR CROWDFUNDING PURPOSES

List to be collected from Member States





Council of the European Union
General Secretariat

**Interinstitutional files:
2018/0048(COD)**

Brussels, 12 December 2018

WK 15494/2018 INIT

LIMITE

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WORKING PAPER

This is a paper intended for a specific community of recipients. Handling and further distribution are under the sole responsibility of community members.

WORKING DOCUMENT

From:	Presidency
To:	Working Party on Financial Services (Crowd-funding) Financial Services - Attachés
N° prev. doc.:	7049/18 + ADD 1
N° Cion doc.:	COM(2018) 113 final
Subject:	Proposal for a Regulation of the European Parliament and of the Council on European Crowdfunding Service Providers (ECSP) for Business - Presidency compromise proposal