

15 March 2021

The European Crowdfunding Service Providers Regulation

1. Introduction & Background

On 20 November 2020 Regulation (EU) 2020/1503 of the European Parliament and of the Council of 7 October 2020 on European crowdfunding service providers for business, and amending Regulation (EU) 2017/1129 and Directive (EU) 2019/1937¹ (hereinafter referred to as the "Regulation") was published in the Official Journal of the European Union.

Start-ups and innovative companies often have difficulty accessing funds via traditional means such as bank loans. Crowdfunding service providers enable them to connect to and raise funds from multiple small investors, usually via digital platforms.

This Regulation on crowdfunding regulates for the first time at EU level lending-based and equity-based crowdfunding services. It introduces a single set of requirements applicable to crowdfunding service providers across the EU, including strict rules to protect investors.

The EU market for crowdfunding is underdeveloped compared with other major world economies. For many years, one of the biggest hurdles faced by crowdfunding platforms seeking to offer their services across borders has been the lack of common rules and diverging licensing requirements across the EU. This has resulted in high compliance and operational costs, which prevented crowdfunding platforms from efficiently scaling the provision of their services. As a result, small businesses had fewer financing opportunities available to them and investors had less choice and faced more uncertainty when investing cross-border.

The Regulation is accompanied by Directive (EU) 2020/1504² which amends the scope of Directive 2014/65/EU (MIFID II) by adding crowdfunding service providers authorised under the proposed Regulation to the list of exempted entities to which the scope of the Directive does not apply.

¹ Regulation (EU) 2020/1503 of the European Parliament and of the Council of 7 October 2020 on European crowdfunding service providers for business, and amending Regulation (EU) 2017/1129 and Directive (EU) 2019/1937

² Directive (EU) 2020/1504 of the European Parliament and of the Council of 7 October 2020 amending Directive 2014/65/EU on Markets in Financial Instruments

2. Overview of the Regulation

The regulation lays down uniform rules across the EU for the provision of investment-based and lending-based crowdfunding services related to business financing. It allows platforms to apply for an EU passport based on a single set of rules, which makes it easier for them to offer their services across the EU with a single authorisation. Instead of having to comply with different regulatory regimes, platforms will have to comply with only one set of rules, both when operating in their home market and in other EU Member States. This is expected to widen the pool of investors and the number of projects to pick from, as well as provide legal certainty as regards the applicable investor protection rules.

It is anticipated that these new rules shall increase the availability of this innovative form of finance, thereby assisting companies seeking alternatives to bank financing which fall within the thresholds of the Regulation. Conversely investors on crowdfunding platforms shall also benefit as a result of the Regulation, which establishes a harmonised and enhanced investor protection framework, based on:

- clear rules on information disclosures for project owners and crowdfunding platforms;
- rules on governance and risk management for crowdfunding platforms;
- strong and harmonised supervisory powers for national authorities overseeing the functioning of crowdfunding platforms.

The Regulation and abovementioned Directive provide European Crowdfunding Service Providers (“ECSPs”) with a harmonised set of rules applicable when providing crowdfunding services across the EU, including:

- a single set of requirements that will apply to all ECSPs for offers up to EUR 5 million, calculated over a period of 12 months for each crowdfunding project owner. Larger fund raisings will fall into the scope of MiFID II/MiFIR and the Prospectus Regulation. Reward and donation-based crowdfunding are explicitly excluded from the scope of the new rules;
- a harmonized investor disclosure regime whereby crowdfunding project owners provide investors with a key investment information sheet (KIIIS) for each crowdfunding offer or at platform level, in addition to a comprehensive set of disclaimers and recommendations on ECSP websites and communications;
- a suitability and appropriateness testing requirement for investors prior to being able to invest assessing their understanding of financial products and their ability to bear financial losses;
- a uniform authorization and passporting process for ECSPs across the EU-27 whereby the European Securities and Markets Authority (ESMA) has a central role in facilitating coordination and cooperation amongst national competent authorities (NCAs) or otherwise has supervisory powers including developing further technical standards and a binding dispute resolution mechanism; and

- detailed conduct of business obligations for ECSPs including duty to avoid and prevent conflicts of interest, restrictions on inducements to clients and on a ECSP participating in crowdfunding offers hosted on their crowdfunding platform.

The Regulation shall be complemented by 12 technical standards – 8 regulatory technical standards (RTS) and 4 implementing technical standards (ITS) – on a variety of important topics. Reference is made to the MFSA circular dated 1 March 2021 whereby the Authority informed stakeholders of the [Consultation Paper](#)³ being held by ESMA on the draft technical standards developed by it so far and on [Q&A](#)⁴ published by ESMA regarding the Special Purpose Vehicle (SPV) aspects under the Regulation.

3. Request for Feedback

The MFSA is currently in the process of implementing the Regulation into the national legislative framework. In this regard the Authority is kindly requesting that any interested parties and potential stakeholders provide the Authority with their feedback on this Regulation. This feedback would be used by the Authority in its implementation of the Regulation and the complementary framework thereto.

In this respect we encourage interested parties and stakeholders to submit any feedback to us, via email to feedback-crowdfunding@mfsa.mt, by not later than 5 April 2021. Any queries are also to be addressed to the aforementioned email address.

³ Consultation Paper – Draft technical standards under the ECSP Regulation, ESMA35-36-2201, dated 26 February 2021

⁴ Questions and Answers – On the European crowdfunding service providers for business Regulation, ESMA35-42-1088., dated 25 February 2021