



December 2021

Crowdfunding Update

Following on from our [November 2020 briefing](#) on crowdfunding and our [subsequent update](#), the purpose of this briefing is to provide an overview of the latest developments in this newly regulated sector.

Secondary legislation finalised

On 10 November 2021, ESMA published a [final report](#) on draft technical standards (the **Final Report**) developed under [Regulation \(EU\) 2020/1503](#) on European crowdfunding service providers for business (the **Crowdfunding Regulation**).

ESMA were required to submit 8 technical standard mandates to the European Commission for adoption by 10 November 2021 with the remaining 4 technical standard mandates required by 10 May 2022. However, the Final Report covers all 12 of ESMA's mandates, following a decision to develop all technical standards simultaneously to provide indicative guidance to competent authorities and stakeholders.

The Final Report contains feedback statements relating to 9 draft technical standards for which ESMA conducted a public consultation together with an analysis of the 3 draft technical standards for which ESMA did not conduct a public consultation.

The topics covered by the 12 draft technical standards are as follows:

- ❑ Complaints handling: the requirements, standard formats and procedures for complaints handling;
- ❑ Conflicts of interests: internal rules on conflicts of interest and the steps to prevent, identify, manage and disclose conflicts of interest;
- ❑ Business continuity plan: the measures and procedures for the business continuity plan;
- ❑ Application for authorisation: the requirements and arrangements for the application for authorisation, including the standard forms, templates and procedures for the application;

For further information on any of the issues discussed in this article please contact:



Keith Waine
DD: +353 1 673 1822
keith.waine@dilloneustace.ie



Karen Jennings
DD: +353 1 673 1810
karen.jennings@dilloneustace.ie

- ❑ Default rates: in relation to loan-based crowdfunding platforms, the methodology for calculating the default rates of the crowdfunding loans offered on the platforms, including the actual and expected default rates of the loans facilitated by the CSP by risk category;
- ❑ Entry knowledge test and simulation of ability to bear loss: in relation to non-sophisticated investors, the arrangements relating to the assessment of whether and which crowdfunding services offered are appropriate for the prospective non-sophisticated investors, and the simulation of non-sophisticated investors' ability to bear loss;
- ❑ Key Investment Information Sheet (**KIIS**): further requirements in relation to the Key Investment Information Sheet;
- ❑ Reporting by Crowdfunding Service Providers (**CSPs**): data standards and formats, templates and procedures for the information to be reported by CSPs to competent authorities;
- ❑ Notification of national provisions: standard forms, templates and procedures for the competent authorities' notifications to ESMA of national provisions concerning marketing requirement;
- ❑ Cooperation between competent authorities (i.e. national regulators); and
- ❑ Cooperation between competent authorities and ESMA.

The draft technical standards have been submitted to the European Commission for adoption. The European Commission must decide whether to adopt the technical standards by 10 February 2022.

Individual portfolio management of loans

On 9 November 2021, the EBA published its [final report](#), dated 12 October 2021, containing draft regulatory technical standards (**RTS**) on the individual portfolio management of loans offered by CSPs under Article 6(7) of the Crowdfunding Regulation. EBA consulted on the draft RTS in June 2021.

The draft RTS specify the information that CSPs offering individual portfolio management of loans must provide to investors. CSPs are required to evidence that measurement techniques used for credit risk assessments are based on a sufficient number of elements and are appropriate to the complexity and level of the risks underlying the individual project, the portfolio and the project owner.

In addition, the draft RTS specify the policies, procedures, and governance arrangements that CSPs should have in place when managing contingency funds.

The draft RTS will be submitted to the European Commission for endorsement, following which they will be subject to scrutiny by the European Parliament and the Council of the EU before being published in the OJ.

Credit scoring, pricing and risk assessment

On 8 December 2021, the EBA published a [consultation paper](#) on draft RTS under Article 19(7) of the Crowdfunding Regulation relating to credit scoring and loan pricing disclosure, credit risk assessment and risk management requirements.

The draft RTS contain provisions relating to:

- ▣ The elements to be included in the information provided to investors regarding the method to calculate credit scores and pricing assigned to crowdfunding projects;
- ▣ The information and factors that CSPs shall consider when carrying out credit risk assessment and when conducting a loan valuation;
- ▣ The factors that a CSP shall take into account to ensure that the price of loans facilitated on its platform are fair and appropriate;
- ▣ The minimum contents and governance of the policies and procedures required for information disclosure and of the risk-management framework for credit risk assessment and loan valuation.

The deadline for responses is 8 March 2022. The EBA intends to submit the final draft RTS to the European Commission in May 2022.

Updated Q&As

On 19 November 2021, ESMA published an [updated version](#) of its Q&As relating to the Crowdfunding Regulation.

The updated version contains guidance relating to a number of matters, including the following:

- ▣ The investor protection provisions contained within Article 21 of the Crowdfunding Regulation;
- ▣ The responsibility of CSPs in providing KIIS;
- ▣ The interpretation of the term 'routing of orders'; and
- ▣ The applicability of transitional periods provided for within Article 48(1) of the Crowdfunding Regulation.

Contact us

If you have any queries about the information contained in this article, please contact Keith Waine, Karen Jennings or your usual Dillon Eustace LLP contact.

DILLON EUSTACE

Dublin

33 Sir John Rogerson's Quay, Dublin 2, Ireland. Tel: +353 1 667 0022

Cayman Islands

Landmark Square, West Bay Road, PO Box 775, Grand Cayman KY1-9006, Cayman Islands. Tel: +1 345 949 0022

New York

Tower 49, 12 East 49th Street, New York, NY10017, U.S.A. Tel: +1 646 770 6080

Tokyo

12th Floor, Yurakucho Itocia Building, 2-7-1 Yurakucho, Chiyoda-ku, Tokyo 100-0006, Japan. Tel: +813 6860 4885

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