

European crowdfunding service providers (ECSP) for business

2018/0048(COD) - 27/03/2019 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 474 votes to 121 with 10 abstentions, a legislative resolution on the proposal for a regulation of the European Parliament and of the Council on European Crowdfunding Service Providers (ECSP) for Business.

Parliament's position adopted at first reading under the ordinary legislative procedure amends the Commission's proposal as follows:

The regulation introduces an optional EU scheme allowing crowdfunding platforms to easily deliver their services across the EU single market. It applies to legal persons who choose to seek authorisation under the Regulation and to crowdfunding service providers authorised under the Regulation, in relation to the provision of crowdfunding services. Those legal persons shall have an effective and stable establishment in a Member State in order to be eligible to apply for authorisation.

The regulation does not apply to crowdfunding offers with a consideration of more than EUR 8 000 000 per crowdfunding offer, which shall be calculated over a period of 12 months with in regard to a particular crowdfunding project.

Application for authorisation

This shall include, *inter alia*:

- a programme of operations setting out the types of crowdfunding services that the prospective crowdfunding service provider wishes to provide and the platform that it intends to operate, including where and how offers are to be marketed;
- a description of the prospective crowdfunding service provider's business continuity arrangements, to ensure that any loan repayments and investments will continue to be administered to the investors in the event of insolvency of the prospective crowdfunding service provider;
- the description of the internal rules of the prospective crowdfunding service provider on conflicts of interest pertaining to employees' exposure to project;
- proof that the crowdfunding service provider is adequately covered or holds sufficient capital against the financial consequences of its professional liability in the event of a failure to comply with its professional obligations set out in this Regulation.

Organisational and operational requirements

The amendments introduced concern in particular:

- the obligation for crowdfunding service providers to undertake at least a minimum level of due diligence in respect of project owners that propose their project to be funded by the crowdfunding platform of a crowdfunding service provider;

- the obligation for crowdfunding service providers to have in place and publish descriptions of effective and transparent procedures for the prompt, fair and consistent handling of complaints received from clients;
- the obligation to clearly inform clients when crowdfunding service providers hold a financial interest in a proposed crowdfunding offer on their platform;
- encouraging the implementation of incentive mechanisms to ensure that crowdfunding platforms align their incentives with those of investors, incentive mechanisms shall be encouraged;
- the obligation for crowdfunding service providers to provide their services under the supervision of the national competent authority of the Member State where the crowdfunding service provider has been authorised;
- the obligation for each Member State to designate the competent national authority responsible for carrying out the tasks provided for in this Regulation as regards the authorisation and supervision of crowdfunding service providers and to inform the European Securities and Markets Authority (ESMA);
- the introduction of a procedure for the settlement of disputes between competent authorities;
- the verification by crowdfunding service providers that the proposed services offered are appropriate for investors (entry knowledge test and simulation of the ability to bear loss);
- the obligation to provide fair, clear and not misleading information to clients and to ask the potential investor for information about his or her experience, investment objectives, financial situation and understanding of the risks associated with granting loans or acquiring securities through a crowdfunding platform;
- the definition of the content of a key investment information sheet to be supplied to potential investors for every crowdfunding offer.

In order to ensure the consistent application of the authorisations of, and requirements for, crowdfunding services providers operating across the Union, regulatory technical standards shall be developed by European Securities and Markets Authority (ESMA) for submission to the Commission.

Penalties

Member States shall confer on the competent authorities the power to apply minimum administrative penalties and other administrative measures in the event of infringements of the Regulation, including a temporary or, for repeated serious infringements, permanent ban preventing any member of the management body of the legal person responsible for the infringement, or any other natural person held responsible for the infringement, from exercising management functions in such undertakings.

Alternative investment instruments

The Commission shall assess the need to propose a separate legislative framework at EU level for alternative investment instruments, such as initial coin offerings (ICOs), which are likely to finance SMEs, start-ups and innovative growth companies, and to accelerate technology transfer, in addition to being an essential part of the capital markets union.