

Basic information	
2018/0048(COD)	Procedure completed
COD - Ordinary legislative procedure (ex-codecision procedure) Regulation	
European crowdfunding service providers (ECSP) for business	
See also 2018/0047(COD)	
<b>Subject</b>	
2.50.03 Securities and financial markets, stock exchange, CIUTS, investments	
2.50.08 Financial services, financial reporting and auditing	
3.45.03 Financial management of undertakings, business loans, accounting	

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	<b>ECON</b> Economic and Monetary Affairs	JURZYCA Eugen (ECR)	18/07/2019
		Shadow rapporteur  MAYDELL Eva (PPE)  HEINÄLUOMA Eero (S&D)  GUSMÃO José (GUE/NGL)  GIEGOLD Sven (Verts/ALE)	
	Former committee responsible	Former rapporteur	Appointed
	<b>ECON</b> Economic and Monetary Affairs	FOX Ashley (ECR)	31/05/2018
	Former committee for opinion	Former rapporteur for opinion	Appointed
	<b>ITRE</b> Industry, Research and Energy	The committee decided not to give an opinion.	
	<b>IMCO</b> Internal Market and Consumer Protection	The committee decided not to give an opinion.	
	<b>JURI</b> Legal Affairs	The committee decided not to give an opinion.	

Council of the European Union	Council configuration	Meetings	Date
	Agriculture and Fisheries	3766	2020-07-20
European Commission	Commission DG	Commissioner	
	Financial Stability, Financial Services and Capital Markets Union	DOMBROVSKIS Valdis	
European Economic and Social Committee			

Key events			
Date	Event	Reference	Summary
08/03/2018	Legislative proposal published	COM(2018)0113	 Summary
16/04/2018	Committee referral announced in Parliament, 1st reading		
05/11/2018	Vote in committee, 1st reading		
05/11/2018	Committee decision to open interinstitutional negotiations with report adopted in committee		
09/11/2018	Committee report tabled for plenary, 1st reading	A8-0364/2018	Summary
12/11/2018	Committee decision to enter into interinstitutional negotiations announced in plenary (Rule 71)		
14/11/2018	Committee decision to enter into interinstitutional negotiations confirmed by plenary (Rule 71)		
27/03/2019	Decision by Parliament, 1st reading	T8-0301/2019	Summary
27/03/2019	Results of vote in Parliament		
23/09/2019	Committee decision to open interinstitutional negotiations after 1st reading in Parliament		
09/10/2019	Committee decision to enter into interinstitutional negotiations announced in plenary (Rule 72)		
07/05/2020	Approval in committee of the text agreed at early 2nd reading interinstitutional negotiations	PE650.346	
11/09/2020	Council position published	06800/1/2020	Summary
17/09/2020	Committee referral announced in Parliament, 2nd reading		
28/09/2020	Vote in committee, 2nd reading		
29/09/2020	Committee recommendation tabled for plenary, 2nd reading	A9-0168/2020	
05/10/2020	Decision by Parliament, 2nd reading	T9-0243/2020	Summary
07/10/2020	Final act signed		
07/10/2020	End of procedure in Parliament		
20/10/2020	Final act published in Official Journal		

Technical information

Procedure reference	2018/0048(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Regulation
Amendments and repeals	See also <a href="#">2018/0047(COD)</a>
Legal basis	Treaty on the Functioning of the EU TFEU 113
Other legal basis	Rules of Procedure EP 165
Mandatory consultation of other institutions	<a href="#">European Economic and Social Committee</a>
Stage reached in procedure	Procedure completed
Committee dossier	ECON/9/01324

<a href="#">Documentation gateway</a>				
<b>European Parliament</b>				
Document type	Committee	Reference	Date	Summary
Committee draft report		PE626.662	10/08/2018	
Amendments tabled in committee		PE627.793	13/09/2018	
Committee report tabled for plenary, 1st reading/single reading		A8-0364/2018	09/11/2018	<a href="#">Summary</a>
Text adopted by Parliament, 1st reading/single reading		T8-0301/2019	27/03/2019	<a href="#">Summary</a>
Text agreed during interinstitutional negotiations		PE650.346	13/03/2020	
Committee draft report		PE655.757	23/09/2020	
Committee recommendation tabled for plenary, 2nd reading		A9-0168/2020	29/09/2020	
Text adopted by Parliament, 2nd reading		T9-0243/2020	05/10/2020	<a href="#">Summary</a>
<b>Council of the EU</b>				
Document type		Reference	Date	Summary
Council position		06800/1/2020	11/09/2020	<a href="#">Summary</a>
Council statement on its position		09425/2020	11/09/2020	
Draft final act		00037/2020/LEX	07/10/2020	
<b>European Commission</b>				
Document type		Reference	Date	Summary
Legislative proposal		COM(2018)0113	08/03/2018	<a href="#">Summary</a>
Document attached to the procedure		SWD(2018)0056	08/03/2018	
Document attached to the procedure		SWD(2018)0057	08/03/2018	

Commission response to text adopted in plenary	SP(2019)437	30/07/2019	
Commission communication on Council's position	COM(2020)0356 	29/07/2020	

#### National parliaments

Document type	Parliament /Chamber	Reference	Date	Summary
Contribution	ES_CONGRESS	COM(2018)0113	14/05/2018	
Contribution	PT_PARLIAMENT	COM(2018)0113	14/05/2018	

#### Final act

Regulation 2020/1503  
OJ L 347 20.10.2020, p. 0001

#### Delegated acts

Reference	Subject
2022/2772(DEA)	Examination of delegated act
2023/2889(DEA)	Examination of delegated act
2022/2778(DEA)	Examination of delegated act
2022/2777(DEA)	Examination of delegated act
2022/2774(DEA)	Examination of delegated act
2022/2769(DEA)	Examination of delegated act
2022/2776(DEA)	Examination of delegated act
2022/2771(DEA)	Examination of delegated act
2022/2773(DEA)	Examination of delegated act
2022/2770(DEA)	Examination of delegated act
2022/2779(DEA)	Examination of delegated act

## European crowdfunding service providers (ECSP) for business

2018/0048(COD) - 05/10/2020 - Text adopted by Parliament, 2nd reading

The European Parliament approved, in accordance with the ordinary legislative procedure, the Council's position at first reading with a view to the adoption of a Regulation of the European Parliament and of the Council on European crowdfunding service providers for business, and amending Regulation (EU) 2017/1129 and Directive (EU) 2019/1937.

The Council's position at first reading reflects the agreement reached between Parliament and the Council in the framework of inter-institutional negotiations at the early second reading stage.

The proposed Regulation is aimed at improving crowdfunding throughout the EU. It is part of the EU Capital Markets Union project to facilitate access to new sources of finance. It aims to remove obstacles for crowdfunding platforms to provide their services across borders by harmonising minimum requirements when operating in their home market and in other EU countries.

The proposed new rules:

- cover crowdfunding campaigns of up to EUR 5 million over a 12-month period. Large farms shall be regulated by MiFID and prospectus regulations;
- offer a high level of investor protection by establishing common prudential, information and transparency requirements and including specific requirements for non-sophisticated investors;
- provide for the establishment of a harmonised framework at EU level entrusting national competent authorities with authorisation and supervision. The European Securities and Markets Authority (ESMA) would have an enhanced role in facilitating coordination and cooperation, through a binding dispute mediation mechanism and the development of technical standards;
- provide for minimum sanctions and administrative measures in the event of infringements of the regulation;
- provide for a transition period of up to 24 months after its entry into force, during which participatory finance service providers may, under certain conditions, continue to offer participatory finance services falling within the scope of the Regulation, in accordance with applicable national law.

## European crowdfunding service providers (ECSP) for business

2018/0048(COD) - 11/09/2020 - Council position

The Council adopted its position at first reading with a view to the adoption of a regulation of the European Parliament and of the Council on European crowdfunding service providers for business.

The proposed regulation is part of a package of measures aimed at completing the Capital Markets Union (CMU), which also includes a [proposal for a directive](#) of the European Parliament and of the Council amending directive 2014/65/EU on markets in financial instruments.

The objective of the proposed Regulation and Directive is to reduce 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 CMU.

### ***Subject matter and scope of the application***

The Council's position creates a single harmonised regime applicable to all crowdfunding service providers falling within the scope of this Regulation. It 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.

The Regulation shall not apply to project owners that are consumers or to offers of crowdfunding whose amount, calculated over a period of 12 months, exceeds EUR 5 million. In addition, a temporary derogation of 24 months would be introduced for those Member States where the threshold for drawing up a prospectus is below EUR 5 million.

The Council's position also provides for a transitional period of up to 24 months after its entry into force, during which crowdfunding services may (unless and until they are granted an authorisation under this Regulation) continue, in accordance with the applicable national law, to provide crowdfunding services which are included within the scope of this Regulation.

The scope of the application shall be extended to include admitted instruments for crowdfunding purposes (shares of limited liability companies). The scope of the services shall also be extended to include individual portfolio management of loans.

### ***Organisational and operational requirements***

The proposed Regulation includes a number of investor protection measures, including governance, risk assessment, duty of care, the extent of discretion available to providers of crowdfunding services when offering individual loan portfolio management, complaint handling, conflicts of interest, outsourcing, client asset safekeeping and provision of payment services, and prudential safeguards.

### ***Accreditation***

The Council's position provides for the establishment of a harmonised EU-wide framework entrusting the competent national authorities with the granting of licensing and supervision. The competent authorities granting authorisation shall also supervise crowdfunding service providers and may withdraw authorisation under certain specific conditions.

Certain tasks shall remain with the European Securities and Markets Authority (ESMA), including the preparation of implementing measures, binding mediation and data collection. ESMA shall keep a register of all authorised crowdfunding service providers and may request information to ensure that authorisations are granted in a consistent manner.

The proposed regulation defines the investigative and supervisory powers that shall be given to the competent authorities. It includes measures on professional secrecy and data protection.

### ***Investor protection***

Crowdfunding service providers shall provide their clients with information that is fair, clear and not misleading. The Regulation includes measures on disclosure of credit scores, testing of entry knowledge and simulation of loss-bearing capacity, pre-contractual cooling-off period, key investment information sheet, bulletin boards and access to records.

To ensure adequate investor protection of different categories of investors participating in crowdfunding projects while facilitating investment flows, the Council position distinguishes between sophisticated and non-sophisticated investors, and introduces different levels of investor protection safeguards appropriate for each of those categories.

#### **Sanctions**

The Council's position provides for minimum penalties and administrative measures in the event of infringement of the Regulation. It also includes provisions on the right of appeal, the publication of decisions and the reporting of penalties and administrative measures to ESMA.

Lastly, it requires the Commission to submit a report to the European Parliament and the Council within 36 months of its entry into force.

## **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 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 crowd funding 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.

## **European crowdfunding service providers (ECSP) for business**

2018/0048(COD) - 08/03/2018 - Legislative proposal

PURPOSE: to establish common rules at Union level on crowdfunding.

PROPOSED ACT: Regulation of the European Parliament and of the Council.

ROLE OF THE EUROPEAN PARLIAMENT: the European Parliament decides in accordance with the ordinary legislative procedure on an equal footing with the Council.

BACKGROUND: 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. Crowdfunding can thus provide **an alternative to unsecured bank lending**, which are currently the main sources of external finance for SMEs.

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.

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 **national rules diverge** as regards the conditions of operation of crowdfunding platforms, the scope of permitted activities and the licencing requirements.

The differences between the existing national rules are such as to **obstruct the cross border provision of crowdfunding services**. It is therefore necessary to address the existing obstacles to the proper functioning of the internal market in crowdfunding services.

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

IMPACT ASSESSMENT: the impact assessment concluded that EU crowdfunding markets for business finance are largely underdeveloped compared to other major economies but - and most importantly - unable to properly operate cross-border.

Amongst the options studied, the preferred option consists of introducing an **EU-label** for crowdfunding service providers, which would be authorised and supervised at EU level under an EU regime.

CONTENT: the Commission's proposal introduces an **optional EU scheme** that allows crowdfunding platforms to easily deliver their services across the EU single market. It establishes a **one-stop-shop** access to the EU market and therefore helps crowdfunding platforms in overcoming the barriers they face operating cross-border.

The proposal does not intend to interfere with national bespoke regimes or existing licenses, including those under the Markets in Financial Instruments Directive (**MiFID II**), the Payment Services Directive (**PSD**) and the Alternative Investment Fund Managers Directive (**AIFMD**), but rather to provide crowdfunding service providers with the possibility to apply for an EU label that empowers them to scale up their operations throughout the Union under certain conditions.

**Scope:** the proposal applies to crowdfunding services involving financial remuneration for investors. Donation and reward-based crowdfunding are excluded from the scope of this initiative, as they cannot be considered financial services. The proposal does not include in its scope consumers lending for consumption purposes.

**Effective and prudent management:** crowdfunding service providers must at all times comply with the organisational requirements, while natural persons having the power to manage a crowdfunding service provider should have **appropriate skills and professional experience**. A crowdfunding service provider must maintain and operate effective organisational and administrative arrangements with a view to taking all reasonable steps designed to prevent conflicts of interest from adversely affecting the interests of its clients.

**Authorisation and monitoring:** the proposal provides **uniform, proportionate and directly applicable requirements** for authorisation and a single point of supervision. Crowdfunding service providers will provide their services under the supervision of the European Securities and Markets Authority (ESMA).

**Investor protection and transparency:** the proposal also aims to provide investors with the necessary information on crowdfunding, including the underlying risks. Accordingly, all information, including marketing communications, from crowdfunding service providers to clients must be complete, clear and correct. The proposal sets out **an initial assessment of the appropriateness of a potential client** and provides that platforms shall offer investors the possibility to simulate their ability to bear losses.

The proposed regulation also provides for adequate safeguards to minimize the risk of money laundering and terrorist financing.

**BUDGETARY IMPLICATIONS:** the preferred option holds implications in terms of costs and administrative burden for ESMA.

Assuming that ESMA will be in charge of authorising and supervising 25 providers in the first full year of implementation (2020), there will be a cost impact (net of fees charged on the industry) of approximately **EUR 1 637 000** in that year. This estimate also includes half of EUR 500 000 in one-off costs to be split over the first two years, used to setup the necessary IT systems.

**DELEGATED ACTS:** the proposal contains provisions empowering the Commission to adopt delegated acts in accordance with Article 290 of the Treaty on the Functioning of the European Union.

## European crowdfunding service providers (ECSP) for business

2018/0048(COD) - 09/11/2018 - Committee report tabled for plenary, 1st reading/single reading

The Committee on Economic and Monetary Affairs adopted the report by Ashley FOX (ECR, UK) on the proposal for a regulation of the European Parliament and of the Council on European Crowdfunding Service Providers (ECSP) for Business.

The committee recommended that the European Parliament's position adopted at first reading under the ordinary legislative procedure should amend the Commission's proposal.

The proposed Regulation seeks to establish uniform requirements for the operation, organisation, authorisation and supervision of crowdfunding service providers as well as transparency and marketing communications in relation to the provision of crowdfunding services in the Union.

The Regulation shall apply 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 application for authorisation shall include, *inter alia*:

- a **programme of operations** setting out the types of crowdfunding services that the prospective crowd funding 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.

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;
- 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 designation of each Member State of the national competent authority responsible for carrying out the duties under this Regulation for the authorisation and supervision of crowdfunding services providers and shall inform 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 definition of the content of a **key investment information sheet** to be supplied to potential investors for every crowdfunding offer;
- the obligation for Member States to 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.

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.

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.