



Banc Ceannais na hÉireann
Central Bank of Ireland

Eurosystem

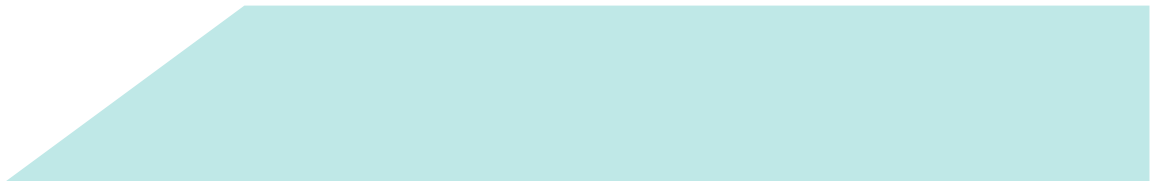
Consultation Paper **141**

Crowdfunding Marketing Requirements

April 2021

Contents

Section 1: Introduction and Background	2
Section 2: Marketing Communications	2
Section 3: Code Addendum.....	6
Section 4: Your Views.....	6
Section 5: Making a Submission	7
Appendix	9



Section 1: Introduction and Background

Regulation (EU) 2020/1503 of the European Parliament and of the Council of 7 October 2020 on European crowdfunding service providers for business (the Regulation) was published in the Official Journal of the European Union on 20 October 2020¹. The Regulation establishes an EU regulatory regime for Crowdfunding Service Providers (CSPs) and the Regulation will apply from 10 November 2021.

The Central Bank of Ireland (Central Bank) will be designated as the competent authority in Ireland for the supervision of CSPs in Ireland.

The Regulation permits competent authorities to publish national marketing requirements that will apply to crowdfunding marketing communications in that Member State. The purpose of this Consultation Paper is to set out the advertising rules that the Central Bank proposes to apply to crowdfunding services provided by CSPs to Irish consumers and to receive feedback with regard to these proposals.

Questions are included in this Consultation Paper. We welcome views and questions from all parties with an interest in this Consultation.

Section 2: Marketing Communications

The Regulation provides that the Central Bank will be responsible for overseeing compliance with national rules applicable to marketing communications and will, as required under the Regulation, publish the marketing requirements that will apply to crowdfunding marketing communications in Ireland.

The Regulation sets out a number of marketing requirements applicable to CSPs, including requirements to ensure that information contained in any

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.

marketing communication must be fair, clear and not misleading and consistent with the information contained in the Key Investment Information Sheet (KIIS). All marketing communications about their services must be clearly identifiable as marketing communications. In addition, CSPs must ensure that marketing communications do not disproportionately encourage investment in any one crowdfunding project.

Assessment of application of Consumer Protection Code advertising requirements to CSPs

The Central Bank's Consumer Protection Code 2012 (the Code) includes advertising requirements that must be complied with by relevant financial services providers. Under the Regulation, competent authorities may set additional national marketing requirements, over and above those included in the Regulation. Consequently, it is proposed to apply certain advertising requirements contained in the Code, which are relevant to the crowdfunding business model, so that Irish consumers receive the same protections as regards advertising communications as is required for other financial services.

A summary of the main advertising requirements from the Code that is proposed will apply to CSPs are as follows:

- CSPs must include a regulatory disclosure statement in advertisements relating to regulated activities (Code Provision 9.1).
- CSPs will be required to ensure that an advertisement's design, presentation and content is clear, fair, accurate and not misleading and does not influence a consumer's attitude to the advertised product by ambiguity, exaggeration or omission (Code Provision 9.2). More detailed requirements on advertisements to ensure they are not misleading will apply and are set out in Code Provision 9.3.
- CSPs must ensure that an advertisement is designed so it can be reasonably understood to be an advertisement, the CSP's name is shown and key information is prominent and not disguised (Code Provisions 9.4, 9.5 and 9.6).
- CSPs must ensure that warning statements meet certain criteria

relating to presentation and should appear simultaneously with any benefits advertised (Code Provision 9.8). Warnings are not required if the advertisement does not refer to the benefits of a product or service but only names the product or service and/or invites a consumer to discuss the product or service in more detail with the regulated entity (Code Provision 9.9).

- CSPs will be subject to specific requirements to ensure that any recommendations or commendations quoted within an advertisement are fair, accurate and not misleading and attributed to its source (Code Provision 9.13). CSPs must also seek the consent of the author of any recommendation or commendation and state if the author is in any way connected or has received reward in relation to the recommendation or commendation (Code Provision 9.14).
- CSPs using comparisons or contrasts in advertisements must use verified facts, or use reasonable assumptions, and be presented in a clear, fair and balanced way and not omit anything material to the comparison or contrast (Code Provision 9.16).
- CSPs must ensure that an advertisement which contains any acronyms states what the letters stand for (Code Provision 9.17).
- CSPs will also be subject to specific requirements where an advertisement provides certain information, such as where:
 - a. an advertisement refers to impact of taxation (Code Provision 9.41);
 - b. an advertised product or service is denominated or priced in a foreign currency (Code Provision 9.46);
 - c. past performance or simulated future performance details are disclosed in an advertisement (warnings are required) (Code Provisions 9.36 and 9.39);
 - d. a statement, promise or forecast is contained in an advertisement (Code Provision 9.11);
 - e. an advertisement describes a product or service as free (Code Provision 9.18);

- f. qualifying criteria for pricing or benefiting from savings is included in the advertisement (Code Provision 9.7); and
- g. promotional or introductory interest rates are referred to (Code Provision 9.10).

CSP warning in advertisements

In addition to the above, it is also proposed that the Central Bank will require a specific warning in CSP advertisements (proposed as a new Provision 9.53 of the Code). Under existing Code provisions, a warning is required in advertisements for investment products that “*The value of your investment may go down as well as up*”. It is not proposed to require this warning for CSP advertisements, as it is not consistent with the investor warning to be contained in the crowdfunding Key Investment Information Sheet (KIIS), which states:

WARNING "Investment in this crowdfunding project entails risks, including the risk of partial or entire loss of the money invested. Your investment is not covered by the deposit guarantee schemes established in accordance with Directive 2014/49/EU of the European Parliament and of the Council (*). Nor is your investment covered by the investor compensation schemes established in accordance with 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 savings product and we advise you not to invest more than 10 % of your net worth in crowdfunding projects.

You may not be able to sell the investment instruments when you wish. If you are able to sell them, you may nonetheless incur losses.”

It is proposed to require CSP advertisements to include a shortened version of the warning in the KIIS. We are seeking views on two alternative risk warnings:

Option A:

<p>WARNING "Investment in crowdfunding projects entails risks, including the risk of partial or entire loss of the money invested.”</p>
--

or

Option B:

WARNING "Investment in crowdfunding projects entails risks, including the risk of partial or entire loss of the money invested. Your investment is not covered by a deposit guarantee scheme or by an investor compensation scheme."

The lengthier, more detailed warning outlined above will be required in the KIIS, and should reinforce the shorter version proposed for advertisements.

Intended Outcomes for Consumers

The proposal to apply certain advertising requirements in the Code to CSPs aims to create an environment where investors:

- have clear and consistent presentation of information in advertisements;
- receive an equivalent level of protection in relation to marketing communications for crowdfunding as are in place for other regulated financial services; and
- understand the risk of potential loss of some or all money invested in relation to their crowdfunding investments.

Section 3: Code Addendum

It is proposed to introduce the additional advertising requirements outlined in section 2 of this Consultation Paper, which will apply to CSPs operating in Ireland, through an Addendum to the Code. The draft Addendum to the Code is attached in the Appendix to this Consultation Paper.

Section 4: Your Views

We would welcome your responses to the questions detailed below and any other views on the proposed requirements you feel are relevant to this Consultation Paper.

Question 1:

Do you support the proposal to apply national marketing requirements to CSPs, as foreseen by the Crowdfunding Regulation?

Question 2:

Do you consider all of the proposed advertising requirements for CSPs are appropriate to the business model of CSPs. If not, please specify:

1. which provision is not appropriate and why; and
2. whether the entire provision should not apply, or whether it could be amended to fit with the CSP business model.

Question 3:

Do you consider that there should be additional advertising requirements for CSPs, appropriate to their business model, in addition to those proposed here? If so, please provide details.

Question 4:

Do you prefer Option A or Option B as the proposed warning to be required in advertisements? Please explain your reasons for this preference.

Section 5: Making a Submission

The closing date for submissions in respect of this Consultation Paper is 13 July 2021. Comments and views are welcome from all interested parties on the questions highlighted in this paper.

The Central Bank requests that reasons are given for the responses to all questions answered and that submissions which put forward arguments for changes to the proposals set out in this Consultation Paper be supported, where possible, by evidence which will aid our consideration of the issues.

Please make your submissions by e-mail (see details below). If you are raising an issue that is not referred to in this paper, please indicate this in your submission.

The Central Bank intends to make submissions available on its website after the deadline for receiving submissions has passed. Please do not include commercially sensitive material in your submission, unless you consider it essential. If you do include such material, please highlight it clearly so that reasonable steps may be taken to avoid publishing that material. This may involve publishing submissions with the sensitive material deleted and indicating the deletions.

While as indicated above, the Central Bank will take reasonable steps to avoid publishing confidential or commercially sensitive material, the Central Bank makes no guarantee that it will not publish any such information and accepts no liability whatsoever for the stakeholders' consultation responses that are subsequently published by the Central Bank. Please be aware that you are making a submission on the basis that you consent to us publishing it in full.

Submissions should be marked "Crowdfunding Regulation" and sent by email to consumerprotectionpolicy@centralbank.ie.

Appendix

Consumer Protection Code Addendum

Consumer Protection Code 2012

- Addendum to Consumer Protection Code 2012 arising from the introduction of the Crowdfunding Regulation 2020/1503/EU.

ADDENDUM FOR CONSEQUENTIAL AMENDMENTS TO THE CONSUMER PROTECTION CODE 2012 ARISING FROM THE APPLICATION OF REGULATION (EU) NO 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

Introduction

Regulation 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, came into force from 10 November 2020 and applies from 10 November 2021. Certain aspects are given national effect into Irish law by the European Union (Crowdfunding) Regulations 2021. Article 28 of the Regulation permits additional national marketing requirements, and these are made by way of amendments to the Consumer Protection Code 2012 (the 2012 Code).

The Central Bank will apply a number of provisions to crowdfunding service providers and introduce one new provision into Chapter 9 of the 2012 Code. The purpose of this Addendum is to explicitly apply national advertising requirements in the 2012 Code and to add one specific warning in all crowdfunding service provider advertisements. For the purposes of giving effect to the required protections, the following parts of the 2012 Code are now updated and amended:

- Chapter 1 - Scope

- Chapter 9 – Advertising Requirements
- Chapter 12 – Definitions

LEGAL BASIS

Pursuant to Section 117 of the Central Bank Act 1989, the 2012 Code is hereby amended as set out below. These amendments take effect as of the publication of this amendment.

CHAPTER 1 – SCOPE

Under the **Application** section of Chapter 1, the following bullet point is added to the list detailed below the second paragraph in this section:

- Crowdfunding Service Providers

The following new paragraph is inserted after the 6th paragraph in the Application section:

"Where *regulated entities* are providing Crowdfunding Services only the following sections of the Code apply:

Chapter 9, Advertising Requirements 9.1 to 9.11, 9.13, 9.14, 9.16 to 9.18, 9.36, 9.39, 9.41, 9.46 and 9.53"

CHAPTER 9 – ADVERTISING REQUIREMENTS

The following paragraph in **bold** is inserted into the box headed "**Clarification of Scope**" in Chapter 9 as follows:

CLARIFICATION OF SCOPE

Consumer Credit, Payment Services, Electronic Money and Crowdfunding

- Where *regulated entities* are providing credit under credit agreements which fall within the scope of the European Communities (Consumer Credit Agreements) Regulations 2010 (S.I. No. 281 of 2010), the Provisions in this Chapter do not apply.
- Where regulated entities are providing payment services and/or issuing electronic money, only Provisions 9.1 to 9.18, 9.30 and 9.31 apply.
- Where regulated entities are providing crowdfunding services which fall within the scope of the Crowdfunding Regulations, EU 1503/2020 and Provisions 9.1 to 9.11, 9.13, 9.14, 9.16 to 9.18, 9.36, 9.39, 9.41, 9.46 and 9.53".**

New Provision 9.53:

A new Provision is added in Chapter 9 of the 2012 Code and will contain the following paragraph and warning:

9.53 A Crowdfunding Service Provider must ensure that advertisements shall carry the following risk warning:

[WARNING "Investment in crowdfunding projects entails risks, including the risk of partial or entire loss of the money invested."]

Or

[WARNING "Investment in crowdfunding projects entails risks, including the risk of partial or entire loss of the money invested. Your investment is not covered by a deposit guarantee scheme or by an investor compensation scheme."]

CHAPTER 12 - DEFINITIONS

The following definition is added to the definitions section in Chapter 12 and will follow immediately after the definition for Credit Institutions:

"Crowdfunding Service Providers" has the meaning given to it in Article 2 of Regulation 2020/1503/EU."



T: +353 (0)1 224 6000
www.centralbank.ie



Banc Ceannais na hÉireann
Central Bank of Ireland

Eurosystem