



Banc Ceannais na hÉireann
Central Bank of Ireland

Eurosystem

Feedback Statement CP141 Crowdfunding Marketing Requirements

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Section 1: Introduction

Regulation (EU) 2020/1503 (the Regulation) was published in the Official Journal of the European Union on 20 October 2020. The Regulation establishes an EU regulatory regime for Crowdfunding Service Providers (CSPs) and applied from 10 November 2021. The aim of the Regulation is to ensure that CSPs are subject to consistent rules across the EU in order to foster cross-border crowdfunding services.

The Central Bank of Ireland (Central Bank) is designated as the competent authority in Ireland in respect of the Regulation. 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 domestic 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 marketing communication must be fair, clear and not misleading and consistent with the information contained in the Key Investment Information Sheet (KIIS).¹ All marketing communications about CSP's 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.

The purpose of the Consultation Paper on crowdfunding marketing requirements (CP141) was to set out the advertising rules that the Central Bank propose to apply to crowdfunding services provided by CSPs to Irish consumers and to receive feedback with regard to these proposals.

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, we proposed in the Consultation Paper 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.

¹ It is for this reason that certain Code advertising requirements, e.g. on disclosure of particular fees, are not proposed to be contained in the marketing requirements, as the KIIS prescribes this information.

CSP warning in advertisements

In addition to the above, we 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 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. The Central Bank sought views on two alternative risk warnings in CP141 (see at page 8), the shorter warning and a longer warning which outlined that the investment is not covered by a deposit guarantee scheme or by an investor compensation scheme.

CP141 was published on 13 April 2021 and the consultation period closed on 13 July 2021. Following this, the Central Bank met with a number of respondents to further understand the issues raised.

Section 2: Feedback on measures proposed in CP141

2.1 Crowdfunding Marketing requirements

2.1.1 Measures consulted on in CP141

CP141 proposed to introduce additional marketing requirements for crowdfunding service providers in Ireland.

2.1.2

Submissions

We received six responses to CP141, the detail of which is set out here:

- Two responses from existing crowdfunding entities in the Irish market.
- Two responses were from potential new entrants to the crowdfunding market.
- One response was from the Fintech & Payments Association of Ireland.
- One from an individual who does not appear to be connected to a crowdfunding entity. This response raised one specific issue on taxation disclosure.

Proposals in CP141

Each of the four questions contained in CP141 are outlined below, together with an outline of our consideration of each question and the proposed conclusion.

Question 1:

Question 1 asked whether respondents support the proposal to apply national marketing requirements to CSPs, as foreseen by the Regulation.

Submissions to Question 1:

All respondents that answered this question were supportive of this approach.

Question 2:

Question 2 asked whether respondents considered that all of the proposed advertising requirements for CSPs are appropriate to the business model of CSPs. If not, they were asked to 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.

Submissions to Question 2:

Respondents consider that the proposed advertising requirements are generally appropriate to the business model of CSPs however some respondents raised some issues for further consideration, as follows:

1. Past performance of a portfolio

Regarding the past performance of a portfolio, one respondent considered that calculating past performance on a loan book can be onerous and suggested a measured approach would have to be taken.

The Central Bank is proposing a proportionate approach to the advertising requirements on past performance, including taking into account the requirements in the Regulation. The proposed requirements will include that where past performance is disclosed in an advertisement, it must be accompanied by a warning statement that past performance is not a reliable guide to future performance (Provision 9.36). In addition, the KIIS sets out some requirements on disclosure of financial information, and the requirement in the Regulation that all advertising must be consistent with the information contained in the KIIS will apply.

2. Online advertisements

Two respondents raised the issue of the limitations of space on certain advertising media. They suggested that there should be some consideration for the limited space available in contemporary advertising channels such as Facebook and Google advertisements. They suggested that it may not be possible to show the warnings upfront in the advertisements but to show immediately after a user clicks on the advertisement and before they see the detail of the CSP's investment offering.

One respondent considered that a provision of the Code which it considers to be particularly useful for marketing of crowdfunding activities is the Code Provision 9.13, which states that any recommendations or commendations quoted within an advertisement are fair, accurate and not misleading and attributed to its source. This respondent was of the view that this is important due to the nature of crowdfunding platforms, where numerous campaigns may run simultaneously, and the need to provide verifiable information to investors in relation to their potential investments.

Response

The Central Bank's [Guidance on the Advertising Requirements of the Consumer Protection Code 2012](#) (dated October 2013) (Advertising Guidance) reminds firms that the requirements of the Code apply in their entirety to online and social media advertisements. The Advertising Guidance states that should a regulated entity advertise through an online communication, the communication should contain the characters #ad (in line with provision 9.5 of the Code) and a direct link to a product specific webpage on the regulated entity's website where all the advertising requirements of the Code are included. This additional guidance also refers to the [Consumer Protection Code 2012 Guidance](#) (updated in May 2021), and in particular the provision that "where a web banner advertisement or Google Ad is of a size that renders the inclusion of a regulatory disclosure statement impractical, it is acceptable to link the web advertisement to a page on the regulated entity's website on which the regulatory disclosure statement is clearly displayed." (paragraph 7.3 of the Guidance).

3. Tax implications

One respondent suggested that advertising of crowdfunding platforms should specifically call out that there is no loss relief allowed by the Revenue Commissioners, meaning it is possible to make a net loss and owe additional tax to the Revenue Commissioners. Another respondent suggested that there should be some scope to discuss the taxation of these products for educational purposes.

Response

The Code does not prescribe which specific tax implications should be disclosed. However, the Code requirements are intended to ensure that advertising is fair, clear and not misleading. This should mean that where taxation implications are included in advertising, it should not omit key information.

In addition, the Code Addendum sets out requirements applicable to 'advertisements', as defined in the Code. Firms will need to assess and ensure that they comply with the Code requirements for each advertisement.

Question 3:

Question 3 asked whether respondents considered that there should be additional advertising requirements for CSPs, appropriate to their business model, in addition to those proposed in CP141. If so, respondents were asked to provide details.

Submissions to Question 3:

No additional advertising requirements were proposed in any of the responses other than the specific issue raised in relation to including in the advertising requirements that no loss relief is allowed by the Revenue Commissioners, as set out above. One respondent who did not consider that there should be any additional advertising requirements for CSPs also stated that the challenge of implementing marketing requirements for CSPs is to strike the correct balance between creating minimum thresholds for investors and to maintain a standardised level of protection across all regulated financial services in Ireland. This respondent considered that the proposed marketing requirements in the Code are reasonably sufficient to protect investors from potential harm, which are bolstered by the additional non-marketing protections included in the Regulation. Another respondent stated that it supported the requirements as set out in the Regulation and did not foresee additional requirements as being required.

One of the respondents raised concerns on the timing of the finalisation of the delegated acts (which supplements the Regulation and provides the more detailed rules) for the adoption of regulatory technical standards, which will set out more detailed disclosure requirements.

Response

The European Securities and Markets Authority (ESMA) final report on draft technical standards under the European crowdfunding service providers for business Regulation² and the European Banking Authority (EBA) final report on draft regulatory technical standards on individual portfolio management of loans offered by crowdfunding service providers under Article 6(7) Regulation (EU) 2020/1503³, were delivered to the European Commission on 10 November 2021 and 9 November 2021 respectively. The final technical standards are expected to be adopted in the forthcoming months.

In addition, ESMA publishes Q&As from time to time on the Regulation which are available on the ESMA website at www.esma.europa.eu.

Question 4:

Investor warning

In relation to the content of an appropriate warning, CP141 proposed that CSP advertising must contain a warning, the wording which is taken from the warning required in the KIIS⁴ and Question 4 asked whether respondents preferred Option A or Option B (set out below) as the proposed warning to be required in advertisements. Respondents were asked to explain their reasons for this preference.

Option A:

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

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."

² https://www.esma.europa.eu/sites/default/files/library/esma35-42-1183_final_report_-_ecspr_technical_standards.pdf

³ https://www.eba.europa.eu/sites/default/documents/files/document_library/Publications/Draft%20Technical%20Standards/2021/1023768/Draft%20RTS%20on%20individual%20portfolio%20management%20of%20loans%20offered%20by%20crowdfunding%20service%20providers.pdf

⁴ Article 23(6)(c) of the Regulation

Submissions to Question 4:

- Two respondents preferred option A
- Three respondents preferred option B
- One respondent indicated no preference for either option

Many respondents did not provide rationales, but where they did, they included:

- The Fintech & Payments Association of Ireland stated that its members are of the view that Option A adequately discloses the risk of the potential for partial or entire loss of the money invested. The additional language in Option B does not add anything further. They considered Option A more succinct and easier for people to understand.
- One respondent also preferred Option A and pointed to other required warnings in the Code, which are brief (e.g. “the value of your investment may go down as well as up”). The respondent was of the view that a shorter warning ensures that the risks will effectively be brought to the attention of the investor.
- A crowdfunding platform that preferred Option B considered that it is a more comprehensive warning and provides a potential investor with a clearer picture of the potential risks to the investor’s capital. Their experience has been that smaller investors require repeated and clear warnings to ensure that they fully understand the risks to their capital.
- A further respondent considered that investors need to know that the investment is not covered by the deposit guarantee scheme. This should be absolutely clear when dealing with retail investors to avoid any confusion in the event of a capital loss.

Response

On balance, the Central Bank consider that the warning in Option B should apply, taking into account the views of all respondents. Option B brings home the risks to potential investors in stark terms. The Code Addendum reflects this and has also been amended so that it is clear that the investor warning will apply in relation to all advertisements by a CSP to prospective investors, with the definition of “investors” in the Regulation applying.

Taking into account the overall support for these proposals from all the respondents, it is proposed to proceed with the amendments to the Consumer Protection Code 2012 proposed in CP 141, subject to the clarification of scope of the warning at Provision 9.53 of the Code, as outlined above.

Section 3: Amendments to Part 9 of the Code

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 (new Code Provision 9.1a).
- 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);
- g. promotional or introductory interest rates are referred to (Code Provision 9.10).

New provisions to Chapter 9

New Provisions are added in Chapter 9 of the 2012 Code and will contain the following paragraphs:

9.1a A **crowdfunding service provider** must include a regulatory disclosure statement in all advertisements, which meets the requirements set out in (a) or (b) below, depending on the Member State where it has been authorised:

a) "[Full legal name of the **crowdfunding service provider**, trading as (*insert all trading names used by the crowdfunding service provider*)] is regulated by the Central Bank of Ireland"; or

b) "[Full legal name of the **crowdfunding service provider**, trading as (*insert all trading names used by that crowdfunding service provider*), is regulated by [*insert name of the competent authority from which it received its authorisation*] in [*insert name of the Member State where that competent authority resides*] under the Crowdfunding Regulation, and is subject to regulation by the Central Bank Ireland in respect of [*conduct of business rules*] relating to advertising."

CSP warning in advertisements

In addition to the above, a new Provision will be added (Code Provision 9.53) to require a warning that a CSP must ensure that all advertisements to prospective investors 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. Your investment is not covered by a deposit guarantee scheme or by an investor compensation scheme."

Section 4: Date of effect of Code Addendum

The Central Bank has produced an Addendum to the Code to give effect to the amendments outlined in this Feedback Statement. These amendments will apply from 13 January 2022.



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