



Banc Ceannais na hÉireann
Central Bank of Ireland

Eurosystem

Regulation (EU) 2020/1503 on European crowdfunding service providers for business

Questions and Answers

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Crowdfunding Regulations

Questions and Answers

These Questions and Answers are aimed at industry seeking information and guidance in relation to the implementation of Regulation (EU) 2020/1503 on European crowdfunding service providers for business.

This will be posted on the Central Bank of Ireland website and will be updated as required. Check the Central Bank website from time to time in relation to any matter of importance to you to see if the position on a query may have altered. The Central Bank reserves the right to alter its approach to any matter covered in this Question & Answers at any time.

In this document:

'The Regulation' refers to 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.

This Questions and Answers document has no legal status. Interested parties should consult their legal advisers concerning any matter of legal interpretation of the Crowdfunding Regulations and/or the Regulation. In addition, the European Securities and Markets Authority (ESMA) publishes Q&As from time to time on the Regulation which are available on the ESMA website at www.esma.europa.eu.

Who is the National Competent Authority in Ireland in respect of the Regulation?

The Central Bank of Ireland is appointed the competent authority in Ireland for the authorisation and supervision of crowdfunding service providers under Regulation 3 of the European Union (Crowdfunding) Regulations 2021 (S.I. No. 702 of 2021).

What are 'admitted instruments for Crowdfunding Purposes', and are they permissible under Irish law?

Article 2(1)(n) of the Regulation defines 'Admitted instruments for crowdfunding purposes' as meaning "in respect of each Member State, shares of a private limited liability company that are not subject to restrictions that would effectively prevent them from being transferred, including restrictions to the way in which those shares are offered or advertised to the public".

Whether a share in a legal person established under Irish company law could qualify as an 'admitted instrument for crowdfunding purposes' is a question to be determined on a case by case basis, and is a matter on which the proposed project owner should take its own legal advice.

In this context, a project owner refers to any natural or legal person who seeks funding through a crowdfunding platform.

Are crowdfunding service providers required to notify the Central Bank of key investment information sheets at least seven working days before making it available to prospective investors?

Article 23(14) of the Regulation states that "competent authorities of the Member State where the authorisation was granted to the crowdfunding service provider may require an *ex ante* notification of a key investment information sheet (KIIS) at least seven working days before making it available to prospective investors."

The Central Bank will not require *ex ante* notification of all KIIS at this time. However, the Central Bank reserves the right to require notifications of the KIIS at its absolute discretion.

Are crowdfunding service providers required to provide a regulatory disclosure statement and, if so, what should it include?

A crowdfunding service provider must include a regulatory disclosure statement in all advertisements and it must meet the requirements as 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.

This is a binding legal requirement imposed on Crowdfunding Service Providers pursuant to provision 9.1a of the Consumer Protection Code.

Have the transitional arrangements provided for under Article 48 of the Regulation been extended by the European Commission and, if so, what does this mean for crowdfunding service providers? *(Added November 2022)*

The transitional arrangements provided for under Article 48 of the Regulation **only apply** to those existing crowdfunding service providers who were providing a crowdfunding service within the State prior to the Regulation entering into force on 10 November 2021.

The transitional arrangements initially allowed such crowdfunding service providers to continue to provide crowdfunding services included within the scope of the Regulation until the earlier of 10 November 2022 or the date that they were authorised under the Regulation. A Delegated Regulation¹ to extend the transitional

¹ Commission Delegated Regulation 2022/1988 of 12 July 2022 extending the transitional period for continuing to provide crowdfunding services in accordance with national law as referred to in Article 48(1) of Regulation (EU) 2020/1503 of the European Parliament and of the Council

period permitted under Article 48 (1) of the Regulation by 12 months i.e. from 10 November 2022 to **10 November 2023** was adopted on 21 October 2022. Accordingly, crowdfunding service providers availing of the transitional period can continue to do so until 10 November 2023 or until they are authorised, whichever is sooner

To ensure that all existing crowdfunding service providers, availing of the extended transitional arrangements, can complete the authorisation process in time, the Central Bank is advising these firms to engage with it as soon as possible and to submit an application for authorisation as a crowdfunding service provider by 10 May 2023 to allow the application process to be completed in advance of the expiry of the transitional period on 10 November 2023. **An authorisation must be obtained from the Central Bank by the end of the transitional period in order for these crowdfunding service providers to continue to provide crowdfunding services thereafter.**

As outlined in the answer to the following question, it is the Central Bank's expectation that crowdfunding service providers in scope of the transitional period should have made clear progress towards meeting the requirements set out in the Addendum to the Code and the Regulation by the time an application for authorisation is submitted.

Are crowdfunding service providers currently required to comply with the Addendum to the Consumer Protection Code 2012 published on 13 January 2022 (which applies a number of provisions of the Consumer Protection Code 2012) (the Code) to advertising by crowdfunding service providers?

(Added November 2022)

The Code does not apply to a crowdfunding service provider operating under the transitional period permitted under Article 48 (1) of the Regulation as it is not yet "*authorised, registered or licensed by the Central Bank*". The Code will apply when a crowdfunding service provider availing of the transitional period is authorised under the Regulation.

However, such crowdfunding service providers should use this time to consider what changes need to be implemented to their internal

processes and procedures to ensure compliance with the Code and the Regulation once authorised by the Central Bank. It is the Central Bank's expectation that crowdfunding service providers in scope of the transitional period should have made clear progress towards meeting the requirements set out in the Code and the Regulation by the time an application for authorisation as a crowdfunding service provider is submitted.

According to the Scope section of the Code, it applies to the "regulated activities of regulated entities" operating in the State. Regulated entities are defined in the Code as "a financial services provider authorised, registered or licensed by the Central Bank or other EU or EEA Member State that is providing regulated activities in the State".

Specifically, the Clarification of Scope section in Chapter 9 notes that:

"

c) Where regulated entities are providing crowdfunding services which fall within the scope of Regulation 2020/1503/EU, only Provisions 9.1a, 9.2 to 9.11, 9.13, 9.14, 9.16 to 9.18, 9.36, 9.39, 9.41, 9.46 and 9.53 apply".

As a result, the applicable provisions of the Code apply to crowdfunding service providers, once authorised under the Regulation.

Crowdfunding service providers should also note the following:

1. According to Article 48 (1) of the Regulation, "crowdfunding service providers may continue in accordance with the applicable national law to provide crowdfunding services that are included within the scope of this Regulation until 10 November 2022 or until they are granted an authorisation referred to in Article 12, whichever is sooner". A [Delegated Regulation](#) to extend the transitional period permitted under Article 48 (1) of the Regulation by 12 months i.e. from 10 November 2022 to **10 November 2023** was adopted on 21 October 2022. Accordingly, crowdfunding service providers availing of the transitional period can continue to do so until 10 November 2023 or until they are authorised, whichever is sooner.
2. A crowdfunding service provider that did not operate under applicable national law prior to the application date of the Regulation on 10 November 2021 **cannot** operate within this

jurisdiction until it is authorised by the Central Bank in accordance with the Regulation. Accordingly, the Code will apply to those new entrants once granted an authorisation.

3. Those firms who provide crowdfunding services on a cross-border basis into Ireland as permitted under Article 18 of the Regulation (i.e. where a financial firm uses an authorisation obtained in another EEA Member State to sell its products or services to consumers in Ireland), will be required to comply with the Code with immediate effect from the time they commence the provision of crowdfunding services in line with the timelines set out in the Regulation.

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