



June 2021

## Crowdfunding Update

In October 2020, the [Crowdfunding Regulation \(\(EU\) 2020/1503\)](#) was published in the Official Journal of the European Union. The Crowdfunding Regulation establishes an EU regulatory regime for Crowdfunding Service Providers (**CSPs**) which will apply from 10 November 2021. Further information on the Crowdfunding Regulation can be found in our [Dillon Eustace Client Briefing on the Crowdfunding Regulation](#).

Various developments relating to the Crowdfunding Regulation, at both an EU and national level, have taken place since its publication, and we have set out the main developments below.

## ESMA consults on regulatory and implementing technical standards

In February 2021, ESMA published a [Consultation Paper](#) on draft regulatory technical standards (**RTS**) and implementing technical standards (**ITS**) on a variety of topics relating to CSPs, including the following:

- ▣ **Complaints handling:** the requirements, standard formats and procedures for complaints handling;
- ▣ **Conflicts of interests:** internal rules on conflicts of interest and the steps to prevent, identify, manage and disclose conflicts of interest;
- ▣ **Business Continuity Plan:** the measures and procedures for the business continuity plan;
- ▣ **Application for authorisation:** the requirements and arrangements for the application for authorisation, including the standard forms, templates and procedures for the application;
- ▣ **Default Rates:** in relation to loan-based crowdfunding platforms, the methodology for calculating the default rates of the crowdfunding loans offered on the platforms, including the actual and expected default rates of the loans facilitated by the CSP by risk category;

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- **Appropriateness Assessment:** In relation to non-sophisticated investors, the arrangements relating to the assessment of whether and which crowdfunding services offered are appropriate for the prospective non-sophisticated investors, and the simulation of non-sophisticated investors' ability to bear loss;
- **Key Investment Information Sheet (KIIS):** further requirements in relation to the Key Investment Information Sheet;
- **Reporting by CSPs:** data standards and formats, templates and procedures for the information to be reported by CSPs to competent authorities; and
- **Notification of national provisions:** standard forms, templates and procedures for the competent authorities' notifications to ESMA of national provisions concerning marketing requirements.

The consultation closed in May 2021 and ESMA will consider the responses when developing the draft technical standards for the European Commission. The majority of these RTS and ITS must be submitted to the European Commission for adoption before 10 November 2021. The remaining RTS and ITS must be delivered by 10 May 2022.

## Crowdfunding Directive transposed into Irish law

On 28 April 2021, the [Crowdfunding Directive \(\(EU\) 2020/1504\)](#) was transposed into Irish law by the [European Union \(Markets in Financial Instruments\) \(Amendment\) Regulations 2021 \(S.I. No. 203/2021\) \(2021 Regulations\)](#). The 2021 Regulations amend the European Union (Markets in Financial Instruments) Regulations 2017 (S.I. No. 375/2017) (**MiFID II Regulations**) to exclude CSPs, as defined in the Crowdfunding Regulation, from the scope of the MiFID II Regulations.

The 2021 Regulations will come into operation on 10 November 2021.

## Central Bank consults on crowdfunding marketing requirements

The Crowdfunding Regulation sets out certain marketing requirements for CSPs but also requires competent authorities to oversee CSPs' compliance with national requirements relating to marketing communications. The Central Bank of Ireland (**Central Bank**) will be the competent authority for the supervision of CSPs in Ireland.

In April 2021, the Central Bank published [Consultation Paper 141 on Crowdfunding Marketing Requirements \(CP 141\)](#) setting out the rules that the Central Bank proposes to apply to crowdfunding services provided by CSPs to Irish consumers. The Central Bank proposes to apply certain advertising requirements contained in the Consumer Protection Code 2012 (**CPC**), which are relevant to the crowdfunding business model.

In addition to views on the application of certain CPC requirements to CSP advertisements, the Central Bank seeks views on proposed risk warnings to be included in CSP advertisements which are consistent with the investor warning to be contained in the crowdfunding Key Investment Information Sheet (**KIIS**).

The Central Bank is seeking feedback on CP 141 by 13 July 2021.

## EBA consults on individual portfolio management of loans

In June 2021, the EBA launched a [Consultation](#) on draft RTS applicable to CSPs offering individual portfolio management of loans. More specifically, these RTS set out the information that CSPs offering individual portfolio management of loans shall provide to investors on each portfolio, and in relation to the method to assess credit risk. The draft RTS also specify the policies, procedures and organisational arrangements that CSPs shall have in place in relation to any contingency fund they may offer to investors.

The EBA is seeking feedback on this consultation by 4 September 2021.

### Contact us

If you have any queries about the information contained in this article, please contact the Financial Regulation Team or your usual Dillon Eustace contact.

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