



2018/0048(COD)

10.8.2018

*****I**

DRAFT REPORT

on the proposal for a regulation of the European Parliament and of the Council
on European Crowdfunding Service Providers (ECSP) for Business
(COM(2018)0113 – C8-0103/2018 – 2018/0048(COD))

Committee on Economic and Monetary Affairs

Rapporteur: Ashley Fox

Symbols for procedures

- * Consultation procedure
- *** Consent procedure
- ***I Ordinary legislative procedure (first reading)
- ***II Ordinary legislative procedure (second reading)
- ***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

Amendments by Parliament set out in two columns

Deletions are indicated in ***bold italics*** in the left-hand column. Replacements are indicated in ***bold italics*** in both columns. New text is indicated in ***bold italics*** in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

Amendments by Parliament in the form of a consolidated text

New text is highlighted in ***bold italics***. Deletions are indicated using either the **■** symbol or ~~strikeout~~. Replacements are indicated by highlighting the new text in ***bold italics*** and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a regulation of the European Parliament and of the Council on European Crowdfunding Service Providers (ECSP) for Business (COM(2018)0113 – C8-0103/2018 – 2018/0048(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2018)0113),
 - having regard to Article 294(2) and Article 114 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C8-0103/2018),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to the opinion of the European Economic and Social Committee of 11 July 2018¹,
 - having regard to Rule 59 of its Rules of Procedure,
 - having regard to the report of the Committee on Economic and Monetary Affairs (A8-0000/2018),
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Amendment 1

Proposal for a regulation

Recital 1

Text proposed by the Commission

(1) Crowdfunding is increasingly an established form of alternative finance for small and medium enterprises (SMEs) at an early stage of company growth, typically relying on small investments.

Amendment

(1) Crowdfunding is increasingly an established form of alternative finance for small and medium enterprises (SMEs) at an early stage of company growth, typically relying on small investments.

¹ Not yet published in the Official Journal

Crowdfunding represents a new type of intermediation where a crowdfunding service provider *interacts with its clients through* a digital platform *without taking on own risk* in order to match prospective investors with businesses that seek funding, irrespective of whether that funding leads to a loan agreement, to an equity stake or to another transferable security based stake. It is therefore appropriate to include in the scope of this Regulation both lending-based crowdfunding and investment-based crowdfunding, *since they are comparable business funding alternatives*.

Crowdfunding represents a new type of intermediation where a crowdfunding service provider *operates* a digital platform *open to the public* in order to match *or facilitate the matching of* prospective investors *or lenders* with businesses that seek funding, irrespective of whether that funding leads to a loan agreement, to an equity stake or to another transferable security based stake, *without the crowdfunding service provider taking on own risk*. It is therefore appropriate to include in the scope of this Regulation both lending-based crowdfunding and investment-based crowdfunding.

Or. en

Amendment 2

Proposal for a regulation Recital 2

Text proposed by the Commission

(2) *Obtaining finance is challenging for small and nascent firms, particularly when they move from a start-up into the expansion phase.* Crowdfunding can contribute to provide access to finance for *such firms* and *so to* complete the Capital Markets Union (CMU). Lack of access to finance for such firms constitutes a problem even in Member States where access to bank finance has remained stable throughout the financial crisis. 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.

Amendment

(2) Crowdfunding can contribute to provide access to finance for *SMEs* and complete the Capital Markets Union (CMU). Lack of access to finance for such firms constitutes a problem even in Member States where access to bank finance has remained stable throughout the financial crisis. Crowdfunding has emerged as an established practice of funding a project or *business*, typically by a large number of people or organisations, through online platforms on which *private individuals*, organisations and businesses, including business start-ups, raise relatively small amounts of money.

Or. en

Amendment 3

Proposal for a regulation

Recital 3

Text proposed by the Commission

(3) 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.

Amendment

(3) The provision of crowdfunding services generally relies on three types of actors: the **entrepreneur** that proposes the project **or business** to be funded, investors who fund the proposed project, generally by limited investments **or loans**, and an intermediating organisation in the form of a service provider that brings together project owners and investors through an online platform.

Or. en

Amendment 4

Proposal for a regulation

Recital 4

Text proposed by the Commission

(4) In addition to providing an alternative source of financing, including venture capital, crowdfunding can offer other benefits to firms. It can provide concept and idea validation to the project **owner**, give access to a large number of people providing the entrepreneur with insights and information and be a marketing tool **if a crowdfunding campaign is successful**.

Amendment

(4) In addition to providing an alternative source of financing, including venture capital, crowdfunding can offer other benefits to firms. It can provide concept and idea validation to the project **or business**, give access to a large number of people providing the entrepreneur with insights and information and be a marketing tool.

Or. en

Amendment 5

Proposal for a regulation

Recital 12

Text proposed by the Commission

(12) Given the risks associated with crowdfunding investments, it is appropriate, in the interest of the effective protection of investors, to impose a threshold for a maximum consideration for each crowdfunding offer. That threshold should be set at EUR **1 000 000, because that threshold corresponds to the threshold set out in** Regulation (EU) 2017/1129 of the European Parliament and of the Council⁹ **for the mandatory drawing up and approval of a prospectus above that** threshold.

⁹ Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC (OJ L 168, 30.6.2017, p. 12).

Amendment

(12) Given the risks associated with crowdfunding investments, it is appropriate, in the interest of the effective protection of investors, to impose a threshold for a maximum consideration for each crowdfunding offer. That threshold should be set at EUR **8 000 000, which is the maximum** threshold **up to which Member States can exempt offers of securities to the public from the obligation to publish a prospectus in accordance with Article 3** Regulation (EU) 2017/1129 of the European Parliament and of the Council. **Notwithstanding the high standard of investor protection needed, this threshold should be set in accordance with practices on national markets to make the European platform attractive for cross-border business funding.**

⁹ Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC (OJ L 168, 30.6.2017, p. 12).

Or. en

Amendment 6

Proposal for a regulation Recital 15 a (new)

Text proposed by the Commission

Amendment

(15a) In order to allow for a competitive Union framework, crowdfunding service providers should be permitted to raise capital through their platforms using certain cryptocurrencies. Initial Coin Offerings (ICOs) offer new and

innovative ways of funding but can also generate substantial market, fraud and cyber security risks to investors. Therefore, crowdfunding service providers that wish to offer an ICO through their platform, should comply with specific additional requirements under this Regulation. However, private placements, ICOs raising in excess of EUR 8 000 000 or ICOs that do not use a counterparty do not fall within the scope of those requirements.

Or. en

Amendment 7

Proposal for a regulation

Recital 16

Text proposed by the Commission

(16) In order to improve the service to their clients, crowdfunding service providers should be able to exercise discretion on behalf of clients with respect to the parameters of the clients' orders, provided that they take all necessary steps to obtain the best possible result for their clients and that they disclose the exact method and parameters of the discretion. In order to ensure that prospective investors are offered investment opportunities on a neutral basis, crowdfunding service providers should not pay or accept any remuneration, discount or non-monetary benefit for routing investors' orders to a particular offer provided on their platform or to a particular offer provided on a third party platform.

Amendment

(16) In order to improve the service to their clients, ***either prospective or actual investor or project owner***, crowdfunding service providers should be able to exercise discretion on behalf of clients with respect to the parameters of the clients' orders, provided that they take all necessary steps to obtain the best possible result for their clients and that they disclose the exact method and parameters of the discretion. In order to ensure that prospective investors are offered investment opportunities on a neutral basis, crowdfunding service providers should not pay or accept any remuneration, discount or non-monetary benefit for routing investors' orders to a particular offer provided on their platform or to a particular offer provided on a third party platform.

Or. en

Amendment 8

Proposal for a regulation Recital 17

Text proposed by the Commission

(17) This Regulation aims to facilitate direct investment and to avoid creating regulatory arbitrage opportunities for financial intermediaries regulated under other Union legislation, in particular Union rules governing asset managers. The use of legal structures, including special purpose vehicles, to interpose between the crowdfunding project and investors, should therefore be strictly regulated and permitted only where it is justified.

Amendment

(17) This Regulation aims to facilitate direct investment and to avoid creating regulatory arbitrage opportunities for financial intermediaries regulated under other Union legislation, in particular Union rules governing asset managers. The use of legal structures, including special purpose vehicles, to interpose between the crowdfunding project **or business** and investors, should therefore be strictly regulated and permitted only where it is justified.

Or. en

Amendment 9

Proposal for a regulation Recital 19

Text proposed by the Commission

(19) Crowdfunding service providers should operate as neutral intermediaries between clients on their crowdfunding platform. In order to prevent conflicts of interests, certain requirements should be laid down with respect to crowdfunding service providers and managers and employees, or any person directly or indirectly controlling them. In particular, crowdfunding service providers should be prevented from having any financial participation in the crowdfunding offers on their crowdfunding platforms. Furthermore, shareholders holding 20 % or more of share capital or voting rights, managers **and employees**, or any person directly **or indirectly** controlling crowdfunding **platforms**, should not act as

Amendment

(19) Crowdfunding service providers should operate as neutral intermediaries between clients on their crowdfunding platform. In order to prevent conflicts of interests, certain requirements should be laid down with respect to crowdfunding service providers and managers and employees, or any person directly or indirectly controlling them. In particular, crowdfunding service providers should be prevented from having any financial participation in the crowdfunding offers on their crowdfunding platforms. Furthermore, shareholders holding 20% or more of share capital or voting rights **and** managers, or any person directly controlling crowdfunding **projects**, should not act as clients, in relation to **these**

clients, in relation to *the* crowdfunding services offered on that crowdfunding platform.

crowdfunding services offered on that crowdfunding platform.

Or. en

Amendment 10

Proposal for a regulation

Recital 20

Text proposed by the Commission

(20) In the interest of an efficient and smooth provision of crowdfunding services, crowdfunding service providers should be allowed to entrust any operational function, in whole or in part, to service providers provided that the outsourcing does not impair materially the quality of crowdfunding services providers' internal controls and effective supervision.. Crowdfunding service providers should however remain fully responsible for compliance with this Regulation.

Amendment

(20) In the interest of an efficient and smooth provision of crowdfunding services, crowdfunding service providers should be allowed to entrust any operational function, in whole or in part, to *other* service providers provided that the outsourcing does not impair materially the quality of crowdfunding services providers' internal controls and effective supervision. Crowdfunding service providers should however remain fully responsible for compliance with this Regulation.

Or. en

Amendment 11

Proposal for a regulation

Recital 21

Text proposed by the Commission

(21) The holding of clients' funds and the provision of payment services require an authorisation as a payment service provider in accordance with Directive (EU) 2015/2366 of the European Parliament and of the Council¹¹. That mandatory authorisation requirement cannot be satisfied by an authorisation as a crowdfunding service provider. Therefore, it is appropriate to clarify that where a

Amendment

(21) The holding of clients' funds and the provision of payment services require an authorisation as a payment service provider in accordance with Directive (EU) 2015/2366 of the European Parliament and of the Council. That mandatory authorisation requirement cannot be satisfied by an authorisation as a crowdfunding service provider. Therefore, it is appropriate to clarify that where a

crowdfunding service provider carries out such payment services in connection with its crowdfunding services, it needs to be authorised also as a payment institution in accordance with Directive (EU) 2015/2366. In order to enable a proper supervision of such activities, the *European Securities and Markets Authority (ESMA)* should be informed about whether the crowdfunding service provider intends to carry out payment services itself with the appropriate authorisation, or whether such services will be outsourced to an authorised third party.

¹¹ Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC (OJ L 337, 23.12.2015, p. 35).

crowdfunding service provider carries out such payment services in connection with its crowdfunding services, it needs to be authorised also as a payment institution in accordance with Directive (EU) 2015/2366. In order to enable a proper supervision of such activities, the *national competent authority* should be informed about whether the crowdfunding service provider intends to carry out payment services itself with the appropriate authorisation, or whether such services will be outsourced to an authorised third party.

¹¹ Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC (OJ L 337, 23.12.2015, p. 35).

Or. en

Amendment 12

Proposal for a regulation

Recital 24

Text proposed by the Commission

(24) Crowdfunding services can be exposed to money laundering and terrorist financing risks, as underlined in the Commission's Report on the assessment of the risks of money laundering and terrorist financing affecting the internal market and relating to cross-border situations¹². Safeguards should therefore be envisaged when meeting conditions for authorisation, assessing the good repute of the management, providing payment services only through licensed entities subject to anti-money laundering and terrorist

Amendment

(24) Crowdfunding services can be exposed to money laundering and terrorist financing risks, as underlined in the Commission's Report on the assessment of the risks of money laundering and terrorist financing affecting the internal market and relating to cross-border situations. Safeguards should therefore be envisaged when meeting conditions for authorisation, assessing the good repute of the management, providing payment services only through licensed entities subject to anti-money laundering and terrorist

financing requirements. With a view to further ensuring financial stability by preventing risks of money *lauderign* and terrorism financing, the Commission should assess the necessity and proportionality of subjecting crowdfunding service providers *to* obligations for compliance with the national provisions implementing Directive (EU) 2015/849 in respect of money laundering or terrorism financing and adding such crowdfunding service providers to the list of obliged entities for the purposes of Directive (EU) 2015/849.

¹² COM(2017) 340 final, Report from the Commission to the European Parliament and the Council on the assessment of the risks of money laundering and terrorist financing affecting the internal market and relating to cross-border activities.

financing requirements. With a view to further ensuring financial stability by preventing risks of money *laundering* and terrorism financing, *and taking into account the maximum threshold of funds that can be raised by a crowdfunding offer in accordance with this Regulation*, the Commission should assess the necessity and proportionality of subjecting crowdfunding service providers, *authorised under this Regulation to all or part of the* obligations for compliance with the national provisions implementing Directive (EU) 2015/849 in respect of money laundering or terrorism financing and adding such crowdfunding service providers to the list of obliged entities for the purposes of Directive (EU) 2015/849.

¹² COM(2017) 340 final, Report from the Commission to the European Parliament and the Council on the assessment of the risks of money laundering and terrorist financing affecting the internal market and relating to cross-border activities.

Or. en

Amendment 13

Proposal for a regulation Recital 25

Text proposed by the Commission

(25) To enable crowdfunding service providers to operate cross-border without facing divergent rules and thereby facilitating the funding of projects across the Union by investors from different Member States, Member States should not be allowed to impose additional requirements on crowdfunding service providers that are authorised *by ESMA*.

Amendment

(25) To enable crowdfunding service providers to operate cross-border without facing divergent rules and thereby facilitating the funding of projects across the Union by investors from different Member States, Member States should not be allowed to impose additional requirements on crowdfunding service providers that are authorised *under this Regulation*.

Amendment 14

Proposal for a regulation

Recital 26

Text proposed by the Commission

(26) The authorisation process should enable *ESMA* to be informed about the services that the prospective crowdfunding service providers intend to provide, to assess the quality of their management, and to assess the internal organisation and procedures set up by the prospective crowdfunding service providers to ensure compliance with the requirements set out in this Regulation.

Amendment

(26) The authorisation process should enable ***the national competent authority*** to be informed about the services that the prospective crowdfunding service providers intend to provide ***and the platform or platforms that they intend to operate***, to assess the quality of their management, and to assess the internal organisation and procedures set up by the prospective crowdfunding service providers to ensure compliance with the requirements set out in this Regulation.

Or. en

Amendment 15

Proposal for a regulation

Recital 27

Text proposed by the Commission

(27) To facilitate transparency for retail investors as regards the provision of crowdfunding services, ESMA should establish a public and up-to-date register of all crowdfunding services operating in the Union in accordance with this Regulation.

Amendment

(27) To facilitate transparency for retail investors as regards the provision of crowdfunding services, ESMA should establish a public and up-to-date register of all crowdfunding services ***providers authorised and*** operating ***platforms*** in the Union in accordance with this Regulation.

Or. en

Amendment 16

Proposal for a regulation Recital 28

Text proposed by the Commission

(28) The authorisation should be withdrawn where the conditions for its issuance are no longer met. In particular, **ESMA** should be able to assess whether the good repute of the management has been affected or whether the internal procedures and systems have seriously failed. To enable **ESMA** to assess whether the authorisation as a crowdfunding service provider should be withdrawn, national competent authorities should inform **ESMA** whenever a crowdfunding service provider, or a third party acting on its behalf, has lost its authorisation as a payment institution, or has been found to be in breach of Directive (EU) 2015/849 of the European Parliament and of the Council¹³.

¹³ Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73).

Amendment

(28) The authorisation should be withdrawn where the conditions for its issuance are no longer met. In particular, **the national competent authority** should be able to assess whether the good repute of the management has been affected or whether the internal procedures and systems have seriously failed. To enable **the national competent authority** to assess whether the authorisation as a crowdfunding service provider should be withdrawn, national competent authorities should inform **the national competent authority** whenever a crowdfunding service provider, or a third party acting on its behalf, has lost its authorisation as a payment institution, or has been found to be in breach of Directive (EU) 2015/849 of the European Parliament and of the Council.

¹³ Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73).

Or. en

Amendment 17

Proposal for a regulation Recital 30

Text proposed by the Commission

(30) Investments in products marketed on crowdfunding platforms are not comparable to traditional investments products or savings products and should not be marketed as such. However, to ensure that prospective investors understand the level of risk associated with crowdfunding investments, crowdfunding service providers should run an entry knowledge test of their prospective investors to establish their **knowledge of** investment. Crowdfunding service providers should explicitly warn prospective investors whenever the crowdfunding services provided are deemed as inappropriate for them.

Amendment

(30) Investments in products marketed on crowdfunding platforms are not comparable to traditional investments products or savings products and should not be marketed as such. However, to ensure that prospective investors understand the level of risk associated with crowdfunding investments, crowdfunding service providers should run an entry knowledge test of their prospective investors to establish their **understanding of the** investment. Crowdfunding service providers should explicitly warn prospective investors whenever the crowdfunding services provided are deemed as inappropriate for them.

Or. en

Amendment 18

Proposal for a regulation Recital 32

Text proposed by the Commission

(32) The key investment information sheet should also take into account the specific features and risks associated with early stage companies, and focus on material information about the project owners, the investors' rights and fees, and the type of securities offered and loan agreements. Because the project owner concerned is in the best position to provide that information, the key investment information sheet should be drawn up by that project owner. However, since crowdfunding service providers are responsible for informing their prospective

Amendment

(32) The key investment information sheet should also take into account the specific features and risks associated with early stage companies, and focus on material information about the project owners, the investors' rights and fees, and the type of securities offered and loan agreements. Because the project owner concerned is in the best position to provide that information, the key investment information sheet should be drawn up by that project owner. However, since crowdfunding service providers are responsible for informing their prospective

investors, they *should ensure that* the key investment information sheet *is complete*.

investors, they *are responsible for the completeness of* the key investment information sheet.

Or. en

Amendment 19

Proposal for a regulation

Recital 34

Text proposed by the Commission

(34) To avoid unnecessary costs and administrative burden on the cross-border provision of crowdfunding services, marketing communications should not be subject to translation requirements *where they are provided in a language customary in the sphere of finance*.

Amendment

(34) To avoid unnecessary costs and administrative burden on the cross-border provision of crowdfunding services, marketing communications should not be subject to translation requirements.

Or. en

Amendment 20

Proposal for a regulation

Recital 35

Text proposed by the Commission

(35) Crowdfunding service providers should not be able to provide any discretionary or non-discretionary matching of buying and selling interest, because that activity requires an authorisation as an investment firm in accordance with Article 5 of Directive 2014/65/EU, or as a regulated market in accordance with Article 44 of that Directive. Crowdfunding service providers should, in the interest of transparency and flow of information, be able to allow investors who have made investments through their platform to contact, and transact with, each other over their

Amendment

(35) Crowdfunding service providers should not be able to provide any discretionary or non-discretionary matching of buying and selling interest, because that activity requires an authorisation as an investment firm in accordance with Article 5 of Directive 2014/65/EU, or as a regulated market in accordance with Article 44 of that Directive. Crowdfunding service providers should, in the interest of transparency and flow of information, be able to allow investors who have made investments through their platform to contact, and transact with, each other over their

platforms in relation to investments originally made on their platform. Crowdfunding service *provider* should however inform their clients that they *does* not operate a trading system and that any buying and selling activity on their platforms is at the client's discretion and responsibility.

platforms in relation to investments originally made on their platform. Crowdfunding service *providers* should however inform their clients that they *do* not operate a trading system and that any buying and selling activity on their platforms is at the client's discretion and responsibility.

Or. en

Amendment 21

Proposal for a regulation Recital 37

Text proposed by the Commission

(37) To ensure fair and non-discriminatory treatment of investors, crowdfunding service providers that are promoting their services through marketing communications should not treat any particular project more favourably *by singling it out from* other projects offered on their *platform. Any open or planned projects should therefore not feature in marketing communications of a crowdfunding* platform. Crowdfunding service providers should however not be prevented from mentioning successfully closed offers in which investments through the platform are no longer possible.

Amendment

(37) To ensure fair and non-discriminatory treatment of investors, crowdfunding service providers that are promoting their services through marketing communications should not treat any particular project more favourably *than* other projects offered on their platform. Crowdfunding service providers should however not be prevented from mentioning successfully closed offers in which investments through the platform are no longer possible *and are encouraged to allow for comparability of the performance of their closed projects.*

Or. en

Amendment 22

Proposal for a regulation Recital 38

Text proposed by the Commission

(38) To provide for more legal certainty to crowdfunding service providers

Amendment

(38) To provide for more legal certainty to crowdfunding service providers

operating across the Union and to ensure easier market access, complete information about the laws, regulations and administrative provisions applicable in the Member States, and summaries thereof, which specifically govern marketing communications of crowdfunding service providers, should be published electronically *in a language customary in the sphere of international finance*. For that purpose, competent authorities and ESMA should maintain central databases.

operating across the Union and to ensure easier market access, complete information about the laws, regulations and administrative provisions applicable in the Member States, and summaries thereof, which specifically govern marketing communications of crowdfunding service providers, should be published electronically. For that purpose, competent authorities and ESMA should maintain central databases.

Or. en

Amendment 23

Proposal for a regulation

Recital 39 a (new)

Text proposed by the Commission

Amendment

(39a) In order to ensure the consistent application of the authorisations of and requirements for crowdfunding services providers operating across the Union, regulatory technical standards should be developed by ESMA for submission to the Commission.

Or. en

Amendment 24

Proposal for a regulation

Recital 39 b (new)

Text proposed by the Commission

Amendment

(39b) In order to ensure the consistent application of the authorisations of and requirements for crowdfunding services providers operating across the Union, regulatory technical standards should be developed by ESMA for submission to the

Commission. The Commission should adopt draft regulatory technical standards developed by ESMA by means of delegated acts pursuant to Article 290 of the Treaty on the Functioning of the European Union and in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council¹, regarding the requirements for the maintenance or operation of internal rules when it comes to conflicts of interest, as well as steps to be taken and arrangements for disclosure; regarding the minimum content of the cooperation arrangements for the authorisation by third country competent authorities of crowdfunding services providers; regarding the specifications of the entry knowledge test and simulation of the ability to bear loss; regarding the requirements and arrangements for the application to NCAs for authorisation as a crowd funding service provider and regarding certain specifications on the content and formatting of the Key investment information sheet.

¹ *Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).*

Or. en

Amendment 25

**Proposal for a regulation
Recital 40**

Text proposed by the Commission

(40) It is important to effectively and efficiently ensure compliance with the requirements for authorisation and for the provision of crowdfunding services, in accordance with this Regulation. **ESMA should *therefore be conferred competences to* grant authorisation and exercise oversight. *To enable ESMA to fulfil that supervisory mandate, it should be given* the power to request information, carry out general investigations and on-site inspections, issue public notices and warnings and impose sanctions. ESMA should make use of its oversight and sanctioning competences in a proportionate manner.**

Amendment

(40) It is important to effectively and efficiently ensure compliance with the requirements for authorisation and for the provision of crowdfunding services, in accordance with this Regulation. **The national competent authority** should grant authorisation and exercise oversight. **The national competent authority** should **have** the power to request information, carry out general investigations and on-site inspections, issue public notices and warnings and impose sanctions. **The national competent authority** should make use of its oversight and sanctioning competences in a proportionate manner.

Or. en

Amendment 26

Proposal for a regulation

Recital 41

Text proposed by the Commission

(41) *Granting those competences to ESMA allows for a more efficient and centrally managed authorisation and oversight, generating economies of scale. Such a central supervisory regime is beneficial to the market participants in terms of greater transparency, investor protection and market efficiency.*

Amendment

deleted

Or. en

Amendment 27

Proposal for a regulation

Recital 42

Text proposed by the Commission

(42) *ESMA* should charge fees on directly supervised entities to cover its costs, including overheads. The level of the fee should be proportionate to the size of a directly supervised entity, having regard to the early stage of development of the crowdfunding industry.

Amendment

(42) ***The national competent authority*** should charge fees on directly supervised entities to cover its costs, including overheads. The level of the fee should be proportionate to the size of a directly supervised entity, having regard to the early stage of development of the crowdfunding industry.

Or. en

Amendment 28

Proposal for a regulation

Recital 42 a (new)

Text proposed by the Commission

Amendment

(42a) Third-country providers of crowdfunding services are important for the scale in cross-border provision of early stage financing for business across the Union. Third country crowdfunding service providers who wish to offer their services across the Union should be allowed to do so, provided that they are authorised to do so by the competent authorities of a third country, whose domestic legal framework and supervisory practices have been determined by the Commission to be equivalent to those of the Union and the crowdfunding service provider has been registered with ESMA. Importantly that assessment of equivalence should aim at ensuring that the third country crowdfunding service providers acts in accordance with this Regulation and that the third country has in place relevant national regulations and supervisory provisions that achieves the same regulatory outcomes as meeting applicable Union law. Third countries should also ensure that they have implemented effective tools to monitor

that the conditions under which equivalence is granted are met on a continuing basis.

Or. en

Amendment 29

Proposal for a regulation Article 2 – paragraph 2 – point c

Text proposed by the Commission

(c) crowdfunding services that are provided by natural or legal persons in accordance with national law;

Amendment

(c) crowdfunding services that are provided by natural or legal persons ***who have not sought authorisation in accordance with Article 10 but who instead operate*** in accordance with national law ***of a Member State***;

Or. en

Amendment 30

Proposal for a regulation Article 2 – paragraph 2 – point d

Text proposed by the Commission

(d) crowdfunding offers with a consideration of more than EUR ***1 000 000*** per crowdfunding offer, which shall be calculated over a period of 12 months with in regard to a particular crowdfunding project.

Amendment

(d) 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 in regard to a particular crowdfunding project.

Or. en

Amendment 31

Proposal for a regulation Article 2 – paragraph 2 – point d a (new)

Text proposed by the Commission

Amendment

(da) crowdfunding service providers that facilitate the raising of capital through their platforms via Initial Coin Offerings (ICO) that issue tokens that do not use a counterparty.

Or. en

Amendment 32

Proposal for a regulation

Article 3 – paragraph 1 – point a – introductory part

Text proposed by the Commission

Amendment

(a) ‘crowdfunding service’ means the ***matching of business funding interest of investors and project owners through the use of*** a crowdfunding platform ***and which consist*** of any of the following:

(a) ‘crowdfunding service’ means the ***provision via*** a crowdfunding platform of any of the following ***services***:

Or. en

Amendment 33

Proposal for a regulation

Article 3 – paragraph 1 – point a – point i

Text proposed by the Commission

Amendment

(i) the ***facilitation of granting of loans***;

(i) the ***placing without firm commitment, as referred to in point 7 of Section A of Annex I to Directive 2014/65/EU, of transferable securities issued by project owners; the offer of investment advice, as referred to in point 5 of Section A to Annex I to that Directive, with regards to those transferable securities and the reception and transmission of client orders, as referred to in point 1 of Section A to Annex I to that Directive, with regard to***

those transferable securities;

Or. en

Amendment 34

Proposal for a regulation

Article 3 – paragraph 1 – point a – point ii

Text proposed by the Commission

(ii) the *placing without firm commitment, as referred to in point 7 of Section A of Annex I to Directive 2014/65/EU, of transferable securities issued by project owners and the reception and transmission of client orders, as referred to in point 1 of Section A to Annex I to Directive 2014/65, with regard to those transferable securities;*

Amendment

(ii) the *facilitation of the granting of loans by investors to project owners, including only matching investors and project owners;*

Or. en

Amendment 35

Proposal for a regulation

Article 3 – paragraph 1 – point a – point ii a (new)

Text proposed by the Commission

(*ii*a) *the facilitation of the granting of loans by investors to project owners, including at least matching investors and project owners and determining the pricing and packaging of offers;*

Amendment

Or. en

Amendment 36

Proposal for a regulation

Article 3 – paragraph 1 – point a – point ii b (new)

Text proposed by the Commission

Amendment

(iib) the facilitation of offerings where the service provider acts as an intermediary between an entity issuing tokens via an ICO using a counterparty and investors.

Or. en

Amendment 37

Proposal for a regulation

Article 3 – paragraph 1 – point b

Text proposed by the Commission

Amendment

(b) ‘crowdfunding platform’ means an electronic **information** system operated or managed by a crowdfunding service provider;

(b) ‘crowdfunding platform’ means an electronic system operated or managed by a crowdfunding service provider;

Or. en

Amendment 38

Proposal for a regulation

Article 3 – paragraph 1 – point c

Text proposed by the Commission

Amendment

(c) ‘crowdfunding service provider’ means a legal person who provides crowdfunding services and has been authorised for that purpose by the **European Securities and Markets Authority (ESMA)** in accordance with Article **11** of this Regulation;

(c) ‘crowdfunding service provider’ means a legal person who provides **one or more** crowdfunding services and has been authorised for that purpose by the **relevant national competent** authority in accordance with Article **10**;

Or. en

Amendment 39

Proposal for a regulation

Article 3 – paragraph 1 – point f

Text proposed by the Commission

(f) ‘project owner’ means any person that seeks to ***fund its crowdfunding project*** through a crowdfunding platform;

Amendment

(f) ‘project owner’ means any person that seeks to ***raise capital*** through a crowdfunding platform;

Or. en

Amendment 40

Proposal for a regulation

Article 3 – paragraph 1 – point h

Text proposed by the Commission

(h) ‘crowdfunding project’ means the ***business activity or activities that*** a project owner funds or seeks to ***fund*** through the crowdfunding offer;

Amendment

(h) ‘crowdfunding project’ means the ***purpose for which*** a project owner ***raises*** funds or seeks to ***raise funds*** through the crowdfunding offer;

Or. en

Amendment 41

Proposal for a regulation

Article 3 – paragraph 1 – point l

Text proposed by the Commission

(l) ‘special purpose vehicle’ or ‘SPV’ means ***entities whose sole purpose is to carry on*** a securitisation within the meaning of Article 1(2) of Regulation (EU) No 1075/2013 of the European Central Bank¹⁵.

Amendment

(l) ‘special purpose vehicle’ or ‘SPV’ means ***an entity created solely for, or which solely serves the purpose of*** a securitisation within the meaning of Article 1(2) of Regulation (EU) No 1075/2013 of the European Central Bank.

¹⁵ OJ L 297, 7.11.2013, p. 107.

¹⁵ OJ L 297, 7.11.2013, p. 107.

Or. en

Amendment 42

Proposal for a regulation

Article 3 – paragraph 1 – point I a (new)

Text proposed by the Commission

Amendment

(la) *‘loan’ means an agreement under which an amount is made available by one or more clients to one or more project owner through the crowdfunding platform which is repayable or returnable;*

Or. en

Amendment 43

Proposal for a regulation

Article 3 – paragraph 1 – point I b (new)

Text proposed by the Commission

Amendment

(lb) *‘Initial Coin Offering or ICO’ means raising funds from the public in a dematerialised way using coins or tokens that are put for sale for a limited time by a business or an individual in exchange for fiat or virtual currencies;*

Or. en

Amendment 44

Proposal for a regulation

Article 3 – paragraph 1 – point I c (new)

Text proposed by the Commission

Amendment

(lc) *‘National Competent Authority’ means the national authority which the Member State designates to undertake the authorisation and supervision of crowdfunding service providers within the*

scope of this Regulation.

Or. en

Amendment 45

Proposal for a regulation Article 3 – paragraph 2

Text proposed by the Commission

Amendment

2. *The Commission shall be empowered to adopt delegated acts in accordance with Article 38 to specify further technical elements of the definitions laid down in paragraph 1 to take into account market developments, technological developments and experience in the operation of crowdfunding platforms and provision of crowdfunding services.*

deleted

Or. en

Amendment 46

Proposal for a regulation Article 4 – paragraph 3

Text proposed by the Commission

Amendment

3. Crowdfunding service providers shall not pay or accept any remuneration, discount or non-monetary benefit for routing investors' orders to a particular crowdfunding offer made on *theirs* platform or to a particular crowdfunding offer provided on a third party platform.

3. Crowdfunding service providers shall not pay or accept any remuneration, discount or non-monetary benefit for routing investors' orders to a particular crowdfunding offer made on *their* platform or to a particular crowdfunding offer provided on a third party platform.

Or. en

Amendment 47

Proposal for a regulation

Article 4 – paragraph 5

Text proposed by the Commission

5. *As regards* the use of special purpose vehicles for the provision of crowdfunding services, crowdfunding service providers shall only have the right to transfer one asset to the special purpose vehicle to enable investors to take exposure to that asset by means of acquiring securities. The decision to take exposure to that underlying asset shall exclusively lie with investors.

Amendment

5. *Where* the use of *a* special purpose vehicles *is necessary* for the provision of crowdfunding services, crowdfunding service providers shall only have *for a single project* the right to transfer one asset to the special purpose vehicle to enable investors to take exposure to that asset by means of acquiring securities. The decision to take exposure to that underlying asset shall exclusively lie with investors.

Or. en

Amendment 48

Proposal for a regulation

Article 4a (new)

Text proposed by the Commission

Amendment

Article 4a

Provision of Initial Coin Offerings

1. *Crowdfunding service providers who offer services referred to in point (ii b) of Article 3(1)(a) shall be within the scope of this Regulation subject to fulfilling the criteria of Article 10.*
2. *This Regulation shall only apply to the primary selling of coins or tokens.*
3. *This Regulation shall not apply to private placement of coins or tokens.*

Or. en

Amendment 49

Proposal for a regulation Article 5 – paragraph 1

Text proposed by the Commission

The management of crowdfunding service providers shall establish, and oversee the implementation of, adequate policies and procedures to ensure effective and prudent management, including the segregation of duties, business continuity and the prevention of conflicts of interest, in a manner that promotes the integrity of the market and the interest of their clients.

Amendment

The management of crowdfunding service providers shall establish, and oversee the implementation of, adequate policies and procedures to ensure effective and prudent management, including the segregation of duties, business continuity and the prevention of conflicts of interest, in a manner that promotes the integrity of the market and the interest of their clients.
Crowdfunding service providers who offer services referred to in point (ii a) of Article 3(1)(a) shall ensure that they have adequate systems and controls for the management of risk and financial modelling for the crowdfunding offer.

Or. en

Amendment 50

Proposal for a regulation Article 6 – paragraph 1

Text proposed by the Commission

1. Crowdfunding service providers shall ***establish and maintain*** effective and transparent procedures for the prompt, fair and consistent handling of complaints received from clients.

Amendment

1. Crowdfunding service providers shall ***have in place and publish*** effective and transparent procedures for the prompt, fair and consistent handling of complaints received from clients.

Or. en

Amendment 51

Proposal for a regulation Article 6 – paragraph 3

Text proposed by the Commission

3. Crowdfunding service providers shall keep a record of all complaints received and the measures taken.

Amendment

3. Crowdfunding service providers shall ***develop and make available to clients a standard complaint template and*** keep a record of all complaints received and the measures taken.

Or. en

Amendment 52

Proposal for a regulation Article 6 – paragraph 4

Text proposed by the Commission

4. ***The Commission may adopt delegated acts in accordance with Article 37 to specify the requirements, standard formats and procedures for complaint handling.***

Amendment

4. ***Crowdfunding service providers shall investigate all complaints in a timely and fair manner and communicate the outcome within a reasonable period of time to the complainant.***

Or. en

Amendment 53

Proposal for a regulation Article 7 – paragraph 1

Text proposed by the Commission

1. Crowdfunding service providers shall not have any financial participation in any crowdfunding offer on their crowdfunding platforms.

Amendment

1. Crowdfunding service providers shall not have any financial participation in any crowdfunding offer on their crowdfunding platforms, ***except where that financial participation is designed to ensure on a systematic basis across all offers an alignment of interests between the crowdfunding service providers and the investors or as a means of intervention to ensure the integrity of the marketplace.***

Or. en

Amendment 54

Proposal for a regulation Article 7 – paragraph 2

Text proposed by the Commission

2. Crowdfunding service providers shall not accept as their clients any of their shareholders holding 20% or more of share capital or voting rights, any of their managers *or employees*, or any person directly *or indirectly* linked to those shareholders, managers *and employees* by control as defined in Article 4(1)(35)(b) of Directive 2014/65/EU.

Amendment

2. Crowdfunding service providers shall not accept as their clients any of their shareholders holding 20% or more of share capital or voting rights, any of their managers, or any person directly linked to those shareholders *and* managers by control as defined in Article 4(1)(35)(b) of Directive 2014/65/EU.

Or. en

Amendment 55

Proposal for a regulation Article 7 – paragraph 3

Text proposed by the Commission

3. Crowdfunding service providers shall maintain and operate effective internal rules to prevent conflicts of interest.

Amendment

3. Crowdfunding service providers shall maintain and operate effective internal rules to prevent conflicts of interest *and they shall ensure that their employees can not hold directly or indirectly any influence over projects they financially participate in.*

Or. en

Amendment 56

Proposal for a regulation Article 7 – paragraph 7 – introductory part

Text proposed by the Commission

7. *The Commission* shall *be*

Amendment

7. *ESMA* shall *develop draft*

empowered to adopt delegated acts in accordance with Article 37 to specify:

regulatory technical standards to specify:

Or. en

Amendment 57

Proposal for a regulation

Article 7 – paragraph 7 – subparagraph 1 (new)

Text proposed by the Commission

Amendment

ESMA shall submit those draft regulatory technical standards to the Commission by ... [XXX months after the date of entry into force of this Regulation].

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with the procedure laid down in Article 10 to 14 of Regulation (EU) No 1095/2010.

Or. en

Amendment 58

Proposal for a regulation

Article 8 – paragraph 2

Text proposed by the Commission

Amendment

2. Outsourcing of operational functions shall not impair *materially* the quality of the crowdfunding service providers' internal control and the ability of *ESMA* to monitor the crowdfunding service provider's compliance with all obligations laid down in this Regulation.

2. Outsourcing of operational functions shall not impair the quality of the crowdfunding service providers' internal control and the ability of *the national competent authority* to monitor the crowdfunding service provider's compliance with all obligations laid down in this Regulation.

Or. en

Amendment 59

Proposal for a regulation

Article 10 – paragraph 1

Text proposed by the Commission

1. A legal person that intends to **provide** crowdfunding services **shall apply to ESMA** for authorisation **as a crowd funding service provider**.

Amendment

1. **Any** legal person that intends to **become a crowdfunding service provider shall apply to the national competent authority of the Member State where it is established** for authorisation **to provide** crowdfunding services.

Or. en

Amendment 60

Proposal for a regulation

Article 10 – paragraph 2 – point d

Text proposed by the Commission

(d) a programme of operations setting out the types of crowdfunding services that the prospective crowd funding service provider wishes to provide;

Amendment

(d) 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 will be marketed**;

Or. en

Amendment 61

Proposal for a regulation

Article 10 – paragraph 2 – point j

Text proposed by the Commission

(j) a description of the internal rules of the prospective crowdfunding service provider to prevent that its shareholders who hold 20% or more of the share capital or voting rights, its managers or **its employees or** any person directly **or**

Amendment

(j) a description of the internal rules of the prospective crowdfunding service provider to prevent that its shareholders who hold 20% or more of the share capital or voting rights, its managers or any person directly linked to them by control engage

indirectly linked to them by control engage in crowdfunding transactions offered by the prospective crowdfunding service provider;

in crowdfunding transactions offered by the prospective crowdfunding service provider, *as well as of internal rules on the conflict of interest of employees exposure to projects*;

Or. en

Amendment 62

Proposal for a regulation Article 10 – paragraph 4

Text proposed by the Commission

4. *ESMA* shall, within **20** working days of receipt of the application referred to in paragraph 1, assess whether that application is complete. Where the application is not complete, *ESMA* shall set a deadline by which the prospective crowdfunding service provider is to provide the missing information.

Amendment

4. *The national competent authority* shall, within **30** working days of receipt of the application referred to in paragraph 1, assess whether that application is complete. Where the application is not complete, *the national competent authority* shall set a deadline by which the prospective crowdfunding service provider is to provide the missing information.

Or. en

Amendment 63

Proposal for a regulation Article 10 – paragraph 5

Text proposed by the Commission

5. Where an application as referred to in paragraph 1 is complete, *ESMA* shall immediately notify the prospective crowdfunding service provider thereof.

Amendment

5. Where an application as referred to in paragraph 1 is complete, *the national competent authority* shall immediately notify the prospective crowdfunding service provider thereof.

Or. en

Amendment 64

Proposal for a regulation Article 10 – paragraph 5 a (new)

Text proposed by the Commission

Amendment

5a. *The national competent authority may, before making its decision on granting or refusing authorisation as a crowdfunding service provider, consult the national competent authority of any other Member State, in the following cases:*

(a) the prospective crowdfunding service provider is a subsidiary of a crowdfunding service provider authorised in that other Member State;

(b) the prospective crowdfunding service provider is a subsidiary of the parent undertaking of a crowdfunding service provider authorised in that other Member State;

(c) the prospective crowdfunding service provider is controlled by the same natural or legal persons who control a crowdfunding service provider authorised in that other Member State;

(d) the prospective crowdfunding service provider intends to directly market offers in that other Member State.

Or. en

Amendment 65

Proposal for a regulation Article 10 – paragraph 6

Text proposed by the Commission

Amendment

6. *ESMA shall, within two months from the receipt of a complete application, assess whether the prospective crowdfunding service provider complies with the requirements set out in this*

6. *The national competent authority shall, within three months from the receipt of a complete application, assess whether the prospective crowdfunding service provider complies with the requirements*

Regulation and shall adopt a fully reasoned decision granting or refusing authorisation as a crowdfunding service provider. **ESMA** shall have the right to refuse authorisation if there are objective and demonstrable grounds for believing that the management of the crowdfunding service provider may pose a threat to its effective, sound and prudent management and business continuity and to the adequate consideration of the interest of its clients and the integrity of the market.

set out in this Regulation and shall adopt a fully reasoned decision granting or refusing authorisation as a crowdfunding service provider. **The national competent authority** shall have the right to refuse authorisation if there are objective and demonstrable grounds for believing that the management of the crowdfunding service provider may pose a threat to its effective, sound and prudent management and business continuity and to the adequate consideration of the interest of its clients and the integrity of the market.

Or. en

Amendment 66

Proposal for a regulation Article 10 – paragraph 7

Text proposed by the Commission

7. **ESMA** shall notify the prospective crowdfunding service provider of its decision within **five** working days after having taken that decision.

Amendment

7. **The national competent authority** shall notify the prospective crowdfunding service provider of its decision within **two** working days after having taken that decision.

Or. en

Amendment 67

Proposal for a regulation Article 10 – paragraph 7 a (new)

Text proposed by the Commission

Amendment

7a. The crowdfunding service provider authorised in accordance with this Article shall meet at all times the conditions for its authorisation.

Or. en

Amendment 68

Proposal for a regulation Article 10 – paragraph 9

Text proposed by the Commission

9. Member States shall not require crowdfunding service providers to have physical presence in the territory of a Member State other than the Member State in which those crowdfunding service providers are established in order to provide crowdfunding services on a cross-border basis.

Amendment

9. Member States shall not require crowdfunding service providers to have physical presence in the territory of a Member State other than the ***facilities in the*** Member State in which those crowdfunding service providers are established ***and have obtained authorisation*** in order to provide crowdfunding services on a cross-border basis.

Or. en

Amendment 69

Proposal for a regulation Article 10 – paragraph 10

Text proposed by the Commission

10. ***The Commission shall adopt delegated acts in accordance with Article 37 to specify further the requirements and arrangements*** for the application referred to in ***paragraph 1***.

Amendment

10. ***ESMA shall develop draft implementing technical standards to establish standard forms, templates and procedures*** for the application ***for authorisation. ESMA shall submit those draft implementing technical standards to the Commission by ... [XX months after the date of entry into force of this Regulation]***

Power is delegated to the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with the procedure laid down in Articles 15 of Regulation (EU) No 1095/2010.

Or. en

Amendment 70

Proposal for a regulation Article 10 a (new)

Text proposed by the Commission

Amendment

Article 10 a

Authorisation of third-country crowdfunding service providers

1. A crowdfunding service provider established in a third country may provide crowdfunding services in the Union provided that the following conditions are met:

(a) the Commission has adopted, in accordance with paragraph 2 of this Article, an equivalence decision with regards to the country of establishment of the crowdfunding service provider;

(b) the crowdfunding service provider is authorised to provide crowdfunding services, and is subject to supervision, in the third country in question;

(c) cooperation arrangements referred to in paragraph 3 have been established and are operational;

Upon fulfilment of the conditions referred to in the first subparagraph, the crowdfunding service provider shall register with ESMA its intention to provide services in the Union.

2. The Commission may adopt an implementing act recognising that the legal framework and supervisory practices of a third country ensures that:

(a) crowdfunding service providers authorised in that third country comply with this Regulation or comply with legally binding requirements of that third country's national law which are equivalent to the requirements of applicable Union law;

(b) the binding requirements are subject to effective supervision and enforcement on an on-going basis in that third-country.

Such implementing act shall be adopted in accordance with the examination procedure referred to in Article 37a(2).

3. ESMA shall establish cooperation arrangements with the competent authorities of third countries whose legal framework and supervisory practices have been recognised as equivalent in accordance with paragraph 2. Such arrangements shall specify at least:

(a) the mechanism for the exchange of information between ESMA and the competent authorities of third countries concerned, including access to all relevant information regarding the crowdfunding service providers authorised in that third country that is requested by ESMA;

(b) the mechanism for prompt notification to ESMA where a third country competent authority deems that the crowdfunding service provider authorised in that third country and under its supervision is in breach of the conditions of its authorisation or other national legislation in that third country;

(c) the procedures concerning the coordination of supervisory activities.

4. ESMA shall develop draft regulatory technical standards to determine the minimum content of the cooperation arrangements referred to in paragraph 3 so as to ensure that the competent authorities and ESMA are able to exercise all their supervisory powers under this Regulation.

ESMA shall submit those draft regulatory technical standards to the Commission by ... [XX months after the date of entry into force of this Regulation].

Power is delegated to the Commission to

supplement this Regulation by adopting the regulatory technical standards referred to in the first subparagraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1095/2010.

Or. en

Amendment 71

Proposal for a regulation Article 11 – paragraph 1

Text proposed by the Commission

1. ESMA shall establish a register of all crowdfunding service providers. That register shall be publicly available on its website and shall be updated on a regular basis.

Amendment

1. ESMA shall establish a register of all crowdfunding service providers ***authorised by national competent authorities in accordance with Article 10 and, separately, of all third country crowdfunding service providers that are registered with ESMA in accordance with Article 10a.*** That register shall be publicly available on its website and shall be updated on a regular basis.

Or. en

Amendment 72

Proposal for a regulation Article 12 – paragraph -1 (new)

Text proposed by the Commission

Amendment

-1. Each Member State shall designate a 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 thereof.

Where a Member State designates more than one competent authority, it shall

determine their respective roles and shall designate a single authority to be responsible for cooperation with other Member States' competent authorities, and ESMA, where specifically referred to in this Regulation.

ESMA shall publish on its website a list of the competent authorities designated in accordance with the first subparagraph.

The national competent authorities shall have the supervisory and investigatory powers necessary for the exercise of their functions.

Or. en

Amendment 73

Proposal for a regulation Article 12 – paragraph 1

Text proposed by the Commission

1. Crowdfunding service providers shall provide their services under the supervision of *ESMA*.

Amendment

1. Crowdfunding service providers shall provide their services under the supervision of *the national competent authorities*.

Or. en

Amendment 74

Proposal for a regulation Article 12 – paragraph 3

Text proposed by the Commission

3. *ESMA* shall assess compliance of crowdfunding service providers with the obligations provided for in this Regulation.

Amendment

3. *The national competent authorities* shall assess compliance of crowdfunding service providers with the obligations provided for in this Regulation. *They shall determine the frequency and depth of that assessment having regard to the size and complexity of the activities of the service*

provider. For the purpose of that assessment, the national competent authorities may subject the service provider to on-site inspection.

Or. en

Amendment 75

Proposal for a regulation Article 12 – paragraph 4

Text proposed by the Commission

4. Crowdfunding service providers shall notify *ESMA* of any material changes to the conditions for authorisation without undue delay and, upon request, shall provide the information needed to assess their compliance with this Regulation.

Amendment

4. Crowdfunding service providers shall notify *the national competent authority* of any material changes to the conditions for authorisation without undue delay and, upon request, shall provide the information needed to assess their compliance with this Regulation.

Or. en

Amendment 76

Proposal for a regulation Article 12 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4a. ESMA shall ensure that all national competent authorities consistently apply this Regulation.

Or. en

Amendment 77

Proposal for a regulation Article 13 – paragraph 1 – introductory part

Text proposed by the Commission

1. **ESMA** shall have the power to withdraw the authorisation of a crowdfunding service provider in any of the following situations where the crowdfunding service provider:

Amendment

1. **The national competent authorities** shall have the power to withdraw the authorisation of a crowdfunding service provider in any of the following situations where the crowdfunding service provider:

Or. en

Amendment 78

Proposal for a regulation

Article 13 – paragraph 1 – point f a (new)

Text proposed by the Commission

Amendment

(fa) has lost its authorisation as a payment institution in accordance with Article 13 of Directive 2015/2366/EU, or a third party provider acting on his behalf, has lost that authorisation;

Or. en

Amendment 79

Proposal for a regulation

Article 13 – paragraph 1 – point f b (new)

Text proposed by the Commission

Amendment

(fb) has breached national provisions implementing Directive (EU) 2015/849 in respect of money laundering or terrorism financing; or its managers, employees or third parties acting on its behalf have breached those provisions.

Or. en

Amendment 80

Proposal for a regulation Article 13 – paragraph 2

Text proposed by the Commission

Amendment

2. National competent authorities shall notify ESMA of the following without delay: **deleted**

(a) the fact that a crowdfunding service provider, or a third party provider acting on behalf of that crowdfunding service provider, has lost its authorisation as a payment institution in accordance with Article 13 of Directive 2015/2366/EU;

(b) the fact that a crowdfunding service provider, or its managers, employees or third parties acting on its behalf, have breached national provisions implementing Directive (EU) 2015/849 in respect of money laundering or terrorism financing.

Subparagraph 2(b) shall also apply to national competent authorities designated under the provisions of Directive (EU) 2015/849.

Or. en

Amendment 81

Proposal for a regulation Article 13 – paragraph 3

Text proposed by the Commission

Amendment

3. ESMA shall withdraw the authorisation as a crowdfunding service provider where ESMA is of the opinion that the facts referred to in points (a) and (b) of paragraph 2 affect the good repute of the management of the crowdfunding service provider, or indicate a failure of the governance arrangements, internal **deleted**

control mechanisms or procedures referred to in Article 5.

Or. en

Amendment 82

Proposal for a regulation Article 13 – paragraph 4

Text proposed by the Commission

4. *ESMA* shall notify, without undue delay, *the national competent authority of the Member State where the crowdfunding service provider is established* of its decision to withdraw the authorisation of a crowdfunding service provider.

Amendment

4. *The national competent authority* shall notify, without undue delay, *ESMA* of its decision to withdraw the authorisation of a crowdfunding service provider.

Or. en

Amendment 83

Proposal for a regulation Article 14 – paragraph 1

Text proposed by the Commission

1. All information, including marketing communications as referred to in Article 19, from crowdfunding service providers to clients or potential clients about themselves, about the costs and charges related to crowdfunding services or investments, about the crowdfunding conditions, including crowdfunding project selection criteria, or about the nature of and risks associated with their crowdfunding services shall be clear, *comprehensible, complete and correct*.

Amendment

1. All information, including marketing communications as referred to in Article 19, from crowdfunding service providers to clients or potential clients about themselves, about the costs, *risks* and charges related to crowdfunding services or investments, *including about insolvency risks of the crowdfunding service provider and its platform* about the crowdfunding conditions, including crowdfunding project selection criteria, or about the nature of and risks associated with their crowdfunding services shall be *fair, clear, and not misleading*.

Or. en

Amendment 84

Proposal for a regulation Article 14 – paragraph 2

Text proposed by the Commission

2. The information referred to in paragraph 1 shall be provided to **potential** clients **before they enter** into a crowdfunding transaction.

Amendment

2. The information referred to in paragraph 1 shall be provided **in a non-discriminatory manner** to clients **at all appropriate times and prior to entering** into a crowdfunding transaction.

Or. en

Amendment 85

Proposal for a regulation Article 14 – paragraph 3

Text proposed by the Commission

3. **The information referred to in paragraph 1 shall be available to all clients and potential clients on a clearly identified section of the website of the crowdfunding platform and in a non-discriminatory manner.**

Amendment

deleted

Or. en

Amendment 86

Proposal for a regulation Article 15 – paragraph 1

Text proposed by the Commission

1. Crowdfunding service providers shall, **before giving prospective investors full access to their crowdfunding offers**, assess whether and which crowdfunding services offered are appropriate for the

Amendment

1. Crowdfunding service providers shall assess whether and which crowdfunding services offered are appropriate for the prospective investors.

prospective investors.

Or. en

Amendment 87

Proposal for a regulation

Article 15 – paragraph 2 – introductory part

Text proposed by the Commission

2. For the purposes of the assessment pursuant to the first paragraph 1, crowdfunding service providers shall request information about the prospective investor's basic **knowledge and** understanding of risk in investing in general and in the types of investments offered on the crowdfunding platform, including information about:

Amendment

2. For the purposes of the assessment pursuant to the first paragraph 1, crowdfunding service providers shall request information about the prospective investor's basic understanding of risk in investing in general and in the types of investments offered on the crowdfunding platform, including information about:

Or. en

Amendment 88

Proposal for a regulation

Article 15 – paragraph 2 – point b

Text proposed by the Commission

(b) **any relevant knowledge** or professional experience in relation to crowdfunding investments.

Amendment

(b) **understanding of** or professional experience in relation to crowdfunding investments;

Or. en

Amendment 89

Proposal for a regulation

Article 15 – paragraph 2 – point b a (new)

Text proposed by the Commission

Amendment

(ba) *understanding of risks involved in lending-based crowdfunding.*

Or. en

Amendment 90

Proposal for a regulation Article 15 – paragraph 3

Text proposed by the Commission

Amendment

3. *Crowdfunding service providers shall take the measures necessary to comply with paragraph 1 for each investor every two years.*

deleted

Or. en

Amendment 91

Proposal for a regulation Article 15 – paragraph 4

Text proposed by the Commission

Amendment

4. Where prospective investors do not provide the information required pursuant to paragraph *1*, or where crowdfunding service providers consider, on the basis of the information received under paragraph *1* that the prospective investors have insufficient *knowledge*, crowdfunding service providers shall inform those prospective investors that the services offered on their platforms may be inappropriate for them and give them a risk warning. That information or risk warning shall not prevent prospective investors from investing in crowdfunding projects.

4. Where prospective investors do not provide the information required pursuant to paragraph *2*, or where crowdfunding service providers consider, on the basis of the information received under paragraph *2* that the prospective investors have insufficient *understanding of its offering*, crowdfunding service providers shall inform those prospective investors that the services offered on their platforms may be inappropriate for them and give them a risk warning. That information or risk warning shall not prevent prospective investors from investing in crowdfunding projects.

Or. en

Amendment 92

Proposal for a regulation

Article 15 – paragraph 5 – subparagraph 1 – point a

Text proposed by the Commission

(a) regular income **and** total income, and whether the income is earned on a permanent or temporary basis;

Amendment

(a) regular income, total **income and, where appropriate, household** income, and whether the income is earned on a permanent or temporary basis;

Or. en

Amendment 93

Proposal for a regulation

Article 15 – paragraph 6 – introductory part

Text proposed by the Commission

6. **The Commission may adopt delegated acts in accordance with Article 37** to specify the arrangements necessary to:

Amendment

6. **ESMA, in close cooperation with the EBA, shall develop draft regulatory technical standards** to specify the arrangements necessary to:

Or. en

Amendment 94

Proposal for a regulation

Article 15 – paragraph 6 – point b

Text proposed by the Commission

(b) carry out the simulation referred to in paragraph 3;

Amendment

(b) carry out the simulation referred to in paragraph 5;

Or. en

Amendment 95

Proposal for a regulation

Article 15 – paragraph 6 – subparagraph 1 (new)

Text proposed by the Commission

Amendment

When preparing the draft regulatory technical standards, ESMA shall distinguish between lending-based crowdfunding and investment-based crowdfunding.

ESMA shall submit those draft regulatory technical standards to the Commission by ... [XX months after the date of entry into force of this Regulation].

Power is delegated to the Commission to supplement this Regulation by adopting the regulatory technical standards referred to in the first subparagraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1095/2010.

Or. en

Amendment 96

Proposal for a regulation

Article 16 – paragraph 1

Text proposed by the Commission

Amendment

1. Crowdfunding service providers shall provide prospective investors with a key investment information sheet drawn up by the project owner for each crowdfunding offer. The key investment information sheet shall be drafted in at least one of the official languages of the Member State concerned or in ***a language customary in the sphere of international finance.***

1. Crowdfunding service providers ***who offer services referred to in points (i), (ii) and (ii b) of Article 3(1)(a)*** shall provide prospective investors with a key investment information sheet drawn up by the project owner for each crowdfunding offer. The key investment information sheet shall be drafted in at least one of the official languages of the Member State concerned or in ***English.***

Or. en

Amendment 97

Proposal for a regulation Article 16 – paragraph 3

Text proposed by the Commission

3. The key investment information sheet shall be clear, ***comprehensible, complete and correct*** and shall not contain any footnotes, other than those with references to applicable law. It shall be presented in a stand-alone, durable medium which is clearly distinguishable from marketing communications and consist of maximum **6** sides of A4-sized paper format if printed.

Amendment

3. The key investment information sheet shall be ***fair***, clear ***and not misleading*** and shall not contain any footnotes, other than those with references to applicable law. It shall be presented in a stand-alone, durable medium which is clearly distinguishable from marketing communications and consist of maximum **3** sides of A4-sized paper format if printed.

Or. en

Amendment 98

Proposal for a regulation Article 16 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4a. The requirement set out in point (a) of paragraph 2 shall not apply to crowdfunding service providers who offer services referred to in point (ii a) of Article 3(1)(a).

Such crowdfunding service providers shall instead draw up a key investment information sheet regarding the platform, which shall contain detailed information on the platform, its systems and controls for the management of risk and financial modelling for the crowdfunding offer,; as well as its historic performance.

Or. en

Amendment 99

Proposal for a regulation

Article 16 – paragraph 5

Text proposed by the Commission

5. Crowdfunding service providers shall have in place and apply adequate procedures to verify the completeness and the clarity of information contained in the key investment information sheet.

Amendment

5. **All** crowdfunding service providers shall have in place and apply adequate procedures to verify the completeness, **the correctness** and the clarity of information contained in the key investment information sheet.

Or. en

Amendment 100

Proposal for a regulation

Article 16 – paragraph 6

Text proposed by the Commission

6. When a crowdfunding service provider identifies **a material** omission, a **material** mistake or **a material** inaccuracy in the key investment information sheet, the project owner shall complement or amend that information. Where such complement or amendment is not possible, the crowdfunding service provider shall not make the crowdfunding offer or cancel the existing offer until the key investment information sheet complies with the requirements of this Article.

Amendment

6. When a crowdfunding service provider identifies **an** omission, a mistake or **an** inaccuracy in the key investment information sheet, **which could have a material impact on the expected return of the investment the corrections are to be made in the following manner:**

(a) crowdfunding service providers who offer services referred to in points (i), (ii) and (ii b) of Article 3(1)(a) shall signal the omission, mistake or inaccuracy promptly to the project owner, who shall complement or amend that information;

(b) crowdfunding service providers who offer services referred to in point (ii a) of Article 3(1)(a) shall amend omission, mistake or inaccuracy in the key information sheet themselves.

Where such complement or amendment is not possible, the crowdfunding service provider shall not make the crowdfunding offer or cancel the existing offer until the key investment information sheet complies with the requirements of this Article.

Or. en

Amendment 101

Proposal for a regulation

Article 16 – paragraph 7 – subparagraph 1

Text proposed by the Commission

An investor may request a crowdfunding service provider to arrange for a translation of the key investment information sheet into a language of the investor's choice. The translation shall accurately reflect the content of the original key investment information sheet.

Amendment

An investor may request a crowdfunding service provider to arrange for a translation of the key investment information sheet into a language of the investor's choice. The translation shall ***faithfully and*** accurately reflect the content of the original key investment information sheet.

Or. en

Amendment 102

Proposal for a regulation

Article 16 – paragraph 9 – introductory part

Text proposed by the Commission

9. ***The Commission may adopt delegated acts in accordance with Article 37 specifying:***

Amendment

9. ***ESMA may develop draft regulatory technical standards to specify:***

Or. en

Amendment 103

Proposal for a regulation

Article 16 – paragraph 9 – point c

Text proposed by the Commission

(c) the fees and costs referred to in point (a) of Part H of the Annex, including a detailed breakdown of direct and indirect costs to be borne by the investor.

Amendment

(c) the **commissions and** fees and **transaction** costs referred to in point (a) of Part H of the Annex, including a detailed breakdown of direct and indirect costs to be borne by the investor.

Or. en

Amendment 104

Proposal for a regulation

Article 16 – paragraph 9 – subparagraph 1 (new)

Text proposed by the Commission

Amendment

ESMA shall submit those draft regulatory technical standards to the Commission by ... [XXX months after the date of entry into force of this Regulation].

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No1095/2010.

Or. en

Amendment 105

Proposal for a regulation

Article 17 – paragraph 1

Text proposed by the Commission

Amendment

1. Crowdfunding service providers that allow their investors to interact directly with each other to buy and sell loan agreements or transferable securities which were originally crowdfunded on their platforms, shall inform their clients that they do not operate a trading system

1. Crowdfunding service providers that allow their investors to interact directly with each other to buy and sell loan agreements or transferable securities which were originally crowdfunded on their platforms, shall inform their clients that they do not operate a trading system

and that such buying and selling activity on their platforms is at the client's own discretion and responsibility.

and that such buying and selling activity on their platforms is at the client's own discretion and responsibility ***and that rules applicable to multilateral trading facilities and organised trading facilities under Article 5 and Article 44 of the Directive 2014/65/EU do not apply.***

Or. en

Amendment 106

Proposal for a regulation Article 17 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. In order to enable investors buying and selling loans acquired through their platform, crowdfunding service providers shall facilitate transparency to investors about their platforms by providing information on the performance of loans generated.

Or. en

Amendment 107

Proposal for a regulation Article 19 – paragraph 2

Text proposed by the Commission

Amendment

2. No marketing communication shall ***comprise marketing of*** individual planned or pending crowdfunding projects or offers. ***Marketing communications may only indicate where and in which language clients can obtain information about individual projects or offers.***

2. ***Prior to their closure***, no marketing communication shall ***disproportionately target*** individual planned or pending crowdfunding projects or offers.

Or. en

Amendment 108

Proposal for a regulation Article 19 – paragraph 3

Text proposed by the Commission

3. For their marketing communications, crowdfunding service providers shall use one or more of the official languages of the Member State in which the crowdfunding service provider is active or *a language customary in the sphere of international finance*.

Amendment

3. For their marketing communications, crowdfunding service providers shall use one or more of the official languages of the Member State in which the crowdfunding service provider is active or *English*.

Or. en

Amendment 109

Proposal for a regulation Article 20 – paragraph 6

Text proposed by the Commission

6. *ESMA may issue guidelines or recommendations addressed to national competent authorities specifying the best practices of marketing communications and verifying marketing communications of crowdfunding service providers.*

Amendment

deleted

Or. en

Amendment 110

Proposal for a regulation Chapter 6 – title

Text proposed by the Commission

ESMA powers and competences

Amendment

Powers and competences *of the relevant national competent authority*

Or. en

Amendment 111

Proposal for a regulation Article 21 – paragraph 1

Text proposed by the Commission

The powers conferred on *ESMA* by Articles 22 to 25, or on any official or other person authorised by *ESMA*, shall not be used to require the disclosure of information which is subject to legal privilege.

Amendment

The powers conferred on *the national competent authority* by Articles 22 to 25, or on any official or other person authorised by *the national competent authority*, shall not be used to require the disclosure of information which is subject to legal privilege.

Or. en

Amendment 112

Proposal for a regulation Article 22

Text proposed by the Commission

[...]

Amendment

deleted

Or. en

Amendment 113

Proposal for a regulation Article 23

Text proposed by the Commission

[...]

Amendment

deleted

Or. en

Amendment 114

Proposal for a regulation Article 24

Text proposed by the Commission

Amendment

[...]

deleted

Or. en

Amendment 115

Proposal for a regulation Article 26 – paragraph 1

Text proposed by the Commission

Amendment

The obligation of professional secrecy referred to in Article 76 of Directive 2014/65/EU shall apply to ESMA and all persons who work or who have worked for ESMA or for any other person to whom **ESMA has** delegated **tasks**, including auditors and experts contracted **by ESMA**.

The obligation of professional secrecy referred to in Article 76 of Directive 2014/65/EU shall apply to **the national competent authorities**, ESMA and all persons who work or who have worked for **the national competent authorities and ESMA** or for any other person to whom **tasks were** delegated, including auditors and experts contracted.

Or. en

Amendment 116

Proposal for a regulation Article 27

Text proposed by the Commission

Amendment

[...]

deleted

Or. en

Amendment 117

Proposal for a regulation Article 27 a (new)

Text proposed by the Commission

Amendment

Article 27 a

Administrative sanctions and remedial measures

1. Without prejudice to the right of Member States to provide for and impose criminal sanctions pursuant to Article 27c, Member States shall lay down rules establishing appropriate administrative sanctions and remedial measures, applicable at least to situations where a crowdfunding service provider has committed infringements to requirements laid down in Chapters I to V.

Member States shall ensure that those administrative sanctions and/or remedial measures are effectively implemented.

Those sanctions and measures shall be effective, proportionate and dissuasive.

2. Member States shall confer on national competent authorities the power to apply at least the following sanctions and measures in the event of the infringements referred to in paragraph 1:

(a) a public statement which indicates the identity of the natural or legal person and the nature of the infringement;

(b) an order requiring the natural or legal person to cease the conduct and to desist from a repetition of that conduct;

(c) a temporary ban preventing any member of the management body or any other natural person held responsible for the infringement from exercising management functions in such undertakings;

(d) in the case of a natural person, maximum administrative pecuniary sanctions of at least EUR XXX or, in the

Member States whose currency is not the euro, the corresponding value in the national currency on ...[date of entry into force of this Regulation];

(e) in the case of a legal person, maximum administrative pecuniary sanctions of at least EUR XXX, or in the Member States whose currency is not the euro, the corresponding value in the national currency on ... [date of entry into force of this Regulation];

(f) maximum administrative pecuniary sanctions of at least twice the amount of the benefit derived from the infringement where that benefit can be determined, even if that exceeds the maximum amounts in points (d) or (e);

3. Where the provisions referred to in the first paragraph apply to legal persons, Member States shall confer on competent authorities the power to apply the administrative sanctions and remedial measures set out in paragraph 2, subject to the conditions provided for in national law, to members of the management body, and to other individuals who under national law are considered responsible for the infringement.

4. Member States shall ensure that any decision imposing administrative sanctions or remedial measures set out in paragraph 2 is properly reasoned and is subject to a right of appeal.

Or. en

Amendment 118

Proposal for a regulation Article 27 b (new)

Text proposed by the Commission

Amendment

Article 27 b

***Exercise of the power to impose
administrative sanctions and remedial
measures***

1. Competent authorities shall exercise the powers to impose administrative sanctions and remedial measures referred to in Article 27a in accordance with their national legal frameworks, as appropriate:

- (a) directly;***
- (b) in collaboration with other authorities;***
- (c) under their responsibility by delegation to other authorities;***
- (d) by application to the competent judicial authorities.***

2. Competent authorities, when determining the type and level of an administrative sanction or remedial measure, shall take into account the extent to which the infringement is intentional or results from negligence and all other relevant circumstances, including, where appropriate:

- (a) the materiality, gravity and the duration of the infringement;***
- (b) the degree of responsibility of the natural or legal person responsible for the infringement;***
- (c) the financial strength of the responsible natural or legal person;***
- (d) the importance of profits gained or losses avoided by the responsible natural or legal person, insofar as they can be determined;***
- (e) the losses for third parties caused by the infringement, insofar as they can be determined;***
- (f) the level of cooperation of the responsible natural or legal person with the competent authority, without prejudice to the need to ensure disgorgement of profits gained or losses avoided by that***

person;

(g) previous infringements by the responsible natural or legal person.

Or. en

Amendment 119

Proposal for a regulation Article 27 c (new)

Text proposed by the Commission

Amendment

Article 27 c

Criminal sanctions

1. Member States may decide not to lay down rules for administrative sanctions or remedial measures for infringements which are subject to criminal sanctions under their national law.

2. Where Member States have chosen, in accordance with paragraph 1 of this Article, to lay down criminal sanctions for the infringements referred to in Article 27a(1), they shall ensure that appropriate measures are in place so that national competent authorities have all the necessary powers to liaise with judicial, prosecuting, or criminal justice authorities within their jurisdiction to receive specific information related to criminal investigations or proceedings commenced for the infringements referred to in Article 27a(1), and to provide the same information to other competent authorities as well as ESMA to fulfil their obligation to cooperate for the purposes of this Regulation.

Or. en

Amendment 120

Proposal for a regulation Article 27 d (new)

Text proposed by the Commission

Amendment

Article 27 d

Notification duties

Member States shall notify the laws, regulations and administrative provisions implementing this Chapter, including any relevant criminal law provisions, to the Commission and ESMA by ... [one year after entry into force of this Regulation]. Member States shall notify the Commission and ESMA without undue delay of any subsequent amendments thereto.

Or. en

Amendment 121

Proposal for a regulation Article 27 e (new)

Text proposed by the Commission

Amendment

Article 27 e

Cooperation between competent authorities and ESMA

- 1. The national competent authorities referred to in Article 12 and ESMA shall cooperate closely with each other and exchange information to carry out their duties under this Chapter.***
- 2. National competent authorities shall closely coordinate their supervision in order to identify and remedy infringements of this Regulation, develop and promote best practices, facilitate collaboration, foster consistency of interpretation and provide cross-jurisdictional assessments in the event of***

any disagreements.

3. Where a national competent authority finds that one or more of the requirements under Chapter I to V have been infringed or has reason to believe so, it shall inform the national competent authority of the entity or entities suspected of such infringement of its findings in a sufficiently detailed manner. The national competent authorities concerned shall closely coordinate their supervision in order to ensure consistent decisions.

Or. en

Amendment 122

Proposal for a regulation Article 27 f (new)

Text proposed by the Commission

Amendment

Article 27 f

Publication of administrative sanctions

1. Member States shall ensure that national competent authorities publish on their official websites, without undue delay and as a minimum, any decision imposing an administrative sanction against which there is no appeal after the addressee of the sanction has been notified of that decision.

2. The publication referred to in paragraph 1 shall include information on the type and nature of the infringement and the identity of the persons responsible and the sanctions imposed.

3. Where the publication of the identity, in the case of legal persons, or of the identity and personal data, in the case of natural persons is considered by the competent authority to be disproportionate following a case-by-case assessment, or where the competent authority considers that the publication

jeopardises the stability of financial markets or an on-going criminal investigation, or where the publication would cause, insofar as it can be determined, disproportionate damages to the person involved, Member States shall ensure that competent authorities either:

(a) defer the publication of the decision imposing the administrative sanction until the moment where the reasons for non-publication cease to exist;

(b) publish the decision imposing the administrative sanction on an anonymous basis, in accordance with national law; or

(c) not publish at all the decision to impose the administrative sanction in the event that the options set out in points (a) and (b) are considered to be insufficient to ensure:

(i) that the stability of financial markets would not be put in jeopardy; or

(ii) the proportionality of the publication of such decisions with regard to measures which are deemed to be of a minor nature.

4. In the case of a decision to publish a sanction on an anonymous basis, the publication of the relevant data may be postponed. Where a national competent authority publishes a decision imposing an administrative sanction against which there is an appeal before the relevant judicial authorities, competent authorities shall also immediately add on their official website that information and any subsequent information on the outcome of such appeal. Any judicial decision annulling a decision imposing an administrative sanction shall also be published.

5. National competent authorities shall ensure that any publication referred to in paragraphs 1 to 4 shall remain on their official website for at least five years after its publication. Personal data contained in the publication shall only be

kept on the official website of the competent authority for the period which is necessary in accordance with the applicable data protection rules.

6. National competent authorities shall inform ESMA of all administrative sanctions imposed, including, where appropriate, any appeal in relation thereto and the outcome thereof.

7. ESMA shall maintain a central database of administrative sanctions communicated to it. That database shall be only accessible to ESMA, the EBA, EIOPA and the competent authorities and shall be updated on the basis of the information provided by the national competent authorities in accordance with paragraph 6.

Or. en

Amendment 123

Proposal for a regulation Article 28

Text proposed by the Commission

Amendment

Article 28

deleted

Fines

1. Where in accordance with Article 31(5), ESMA finds that a person has, intentionally or negligently, committed one of the infringements listed in Chapter I to V, it shall adopt a decision imposing a fine in accordance with paragraph 3.

2. An infringement shall be considered to have been committed intentionally if ESMA finds objective factors which demonstrate that a person acted deliberately to commit the infringement.

3. The maximum amount of the fine referred to in paragraph 1 shall be

maximum 5% of the annual turnover of the crowdfunding service provider during a calendar year.

4. When determining the level of a fine pursuant to paragraph 1, ESMA shall take into account the criteria set out in Article 27(2).

Or. en

Amendment 124

Proposal for a regulation Article 29

Text proposed by the Commission

Amendment

Article 29

deleted

Periodic penalty payments

1. ESMA shall, by decision, impose periodic penalty payments in order to compel:

(a) a person to put an end to an infringement in accordance with a decision taken pursuant to Article 23;

(b) a person referred to in Article 22(1):

(i) to supply complete information which has been requested by a decision pursuant to Article 22;

(ii) to submit to an investigation and in particular to produce complete records, data, procedures or any other material required and to complete and correct other information provided in an investigation launched by a decision pursuant to Article 23;

(iii) to submit to an on-site inspection ordered by a decision taken pursuant to Article 24.

2. A periodic penalty payment shall be effective and proportionate. The periodic penalty payment shall be imposed

for each day of delay.

3. Notwithstanding paragraph 2, the amount of the periodic penalty payments shall be 3 % of the average daily turnover in the preceding business year, or, in the case of natural persons, 2 % of the average daily income in the preceding calendar year. It shall be calculated from the date stipulated in the decision imposing the periodic penalty payment.

4. A periodic penalty payment shall be imposed for a maximum period of six months following the notification of ESMA's decision. Following the end of the period, ESMA shall review the measure.

Or. en

Amendment 125

Proposal for a regulation Article 30

Text proposed by the Commission

Amendment

Article 30

deleted

Disclosure, nature, enforcement and allocation of fines and periodic penalty payments

1. ESMA shall disclose to the public every fine and periodic penalty payment that has been imposed pursuant to Articles 28 and 29 unless such disclosure to the public would seriously jeopardise the financial markets or cause disproportionate damage to the parties involved. Such disclosure shall not contain personal data within the meaning of Regulation (EU) 2016/679¹⁶.

2. Fines and periodic penalty payments imposed pursuant to Articles 34 and 35 shall be of an administrative nature.

3. *Where ESMA decides to impose no fines or penalty payments, it shall inform the European Parliament, the Council, the Commission, and the competent authorities of the Member State concerned accordingly and shall set out the reasons for its decision.*

4. *Fines and periodic penalty payments imposed pursuant to Articles 28 and 29 shall be enforceable.*

5. *Enforcement shall be governed by the rules of civil procedure in force in the State in the territory of which it is carried out.*

6. *The amounts of the fines and periodic penalty payments shall be allocated to the general budget of the European Union.*

¹⁶ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

Or. en

Amendment 126

Proposal for a regulation Article 31

Text proposed by the Commission

Amendment

[...]

deleted

Or. en

Amendment 127

Proposal for a regulation Article 32

Text proposed by the Commission

Amendment

Article 32

deleted

Hearing of persons concerned

- 1. Before taking any decision pursuant to Articles 27, 28 and 29, ESMA shall give the persons subject to the proceedings the opportunity to be heard on its findings. ESMA shall base its decisions only on findings on which the persons subject to the proceedings have had an opportunity to comment.*
- 2. The first subparagraph shall not apply if urgent action is needed in order to prevent significant and imminent damage to the financial system. In such a case ESMA may adopt an interim decision and shall give the persons concerned the opportunity to be heard as soon as possible after taking its decision.*
- 3. The rights of the defence of the persons subject to investigations shall be fully respected in the proceedings. They shall be entitled to have access to ESMA's file, subject to the legitimate interest of other persons in the protection of their business secrets. The right of access to the file shall not extend to confidential information or ESMA's internal preparatory documents.*

Or. en

Amendment 128

Proposal for a regulation Article 33

Text proposed by the Commission

Amendment

Article 33

deleted

Review by the Court of Justice

The Court of Justice shall have unlimited jurisdiction to review decisions whereby ESMA has imposed a fine or a periodic penalty payment or imposed any other sanction or administrative measure in accordance with this Regulation. It may annul, reduce or increase the fine or periodic penalty payment imposed.

Or. en

Amendment 129

Proposal for a regulation

Article 34

Text proposed by the Commission

Amendment

Article 34

deleted

Authorisation and supervisory fees

- 1. ESMA shall charge fees to the crowdfunding service providers in accordance with this Regulation and in accordance with the delegated acts adopted pursuant to paragraph 3. Those fees shall cover ESMA's expenditure relating to the authorisation and supervision of crowdfunding service providers and the reimbursement of costs that the competent authorities may incur carrying out work pursuant to this Regulation, in particular as a result of any delegation of tasks in accordance with Article 35.***
- 2. The amount of the fee charged to an individual crowdfunding service provider shall be capped to an amount proportionate to the size of the crowdfunding service provider's activities.***

3. The Commission shall adopt a delegated act in accordance with Article 37 by [Publications Office: please insert date 24 months after entry into force] to specify the type of fees, the matters for which fees are due, the amount of the fees and the manner in which they are to be paid and the methodology to calculate the maximum amount per entity under paragraph 2 that can be charged by ESMA.

Or. en

Amendment 130

Proposal for a regulation Article 35

Text proposed by the Commission

Amendment

Article 35

deleted

Delegation of tasks by ESMA to competent authorities

1. Where necessary for the proper performance of a supervisory task, ESMA may delegate specific supervisory tasks to the competent authority of a Member State in accordance with the guidelines issued by ESMA pursuant to Article 16 of Regulation (EU) No 1095/2010. Such specific supervisory tasks may, in particular, include the power to carry out requests for information in accordance with Article 22 and to conduct investigations and on-site inspections in accordance with Article 23 and Article 24.

2. Prior to delegation of a task, ESMA shall consult the relevant competent authority about:

(a) the scope of the task to be delegated;

(b) the timetable for the performance of the task; and

(c) *the transmission of necessary information by and to ESMA.*

3. *In accordance with the regulation on fees adopted by the Commission pursuant to Article 34(3), ESMA shall reimburse a competent authority for costs incurred as a result of carrying out delegated tasks.*

4. *ESMA shall review the decision referred to in paragraph 1 at appropriate intervals. A delegation may be revoked at any time.*

Or. en

Amendment 131

Proposal for a regulation Chapter 7 – title

Text proposed by the Commission

Amendment

Delegated acts

Delegated *and Implementing* acts

Or. en

Amendment 132

Proposal for a regulation Article 37 – paragraph 2

Text proposed by the Commission

Amendment

2. The power to adopt delegated acts referred to in Article 3(2), **Article 6(4), Article 7(7), Article 10(10), Article 15(6), Article 16(9)**, Article 31(10) and Article 34(3) shall be conferred on the Commission for an indeterminate period from [**Publications Office: Date** of entry into force of this Regulation].

2. The power to adopt delegated acts referred to in Article 3(2), Article 31(10) and Article 34(3) shall be conferred on the Commission for an indeterminate period from ... [date of entry into force of this Regulation].

Or. en

Amendment 133

Proposal for a regulation Article 37 – paragraph 3

Text proposed by the Commission

3. The delegation of powers referred to in Article 3(2), **Article 6(4)**, **Article 7(7)**, **Article 10(10)**, **Article 15(6)**, **Article 16(9)**, Article 31(10) and Article 34(3) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

Amendment

3. The delegation of powers referred to in Article 3(2), Article 31(10) and Article 34(3) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

Or. en

Amendment 134

Proposal for a regulation Article 37 – paragraph 6

Text proposed by the Commission

6. A delegated act adopted pursuant to Article 3(2), Article **6(4)**, **Article 7(7)**, **Article 10(10)**, **Article 15(6)**, **Article 16(9)**, **Article 31(10)** and Article 34(3) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of three months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by three months at

Amendment

6. A delegated act adopted pursuant to Article 3(2), Article 31(10) and Article 34(3) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of three months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by three months at the initiative of the European Parliament or of the Council.

the initiative of the European Parliament or of the Council.

Or. en

Amendment 135

Proposal for a regulation Article 37 a (new)

Text proposed by the Commission

Amendment

Article 37 a

Committee procedure

- 1. The Commission shall be assisted by the European Securities Committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.*
- 2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply, having regard to the provisions of Article 8 thereof.*

Or. en

Amendment 136

Proposal for a regulation Article 38 – paragraph 2 – point a

Text proposed by the Commission

Amendment

(a) the functioning of the market for crowdfunding service providers in the Union, including market development *and* trends, *taking into account supervisory experience acquired by ESMA, the number of crowdfunding service providers authorised by ESMA and* their market share and in particular examining whether any adjustments are needed to the definitions set out in this Regulation and whether the scope of services covered by

(a) the functioning of the market for crowdfunding service providers in the Union, including market development, trends, their market share and in particular examining whether any adjustments are needed to the definitions set out in this Regulation and whether the scope of services covered by this Regulation remains appropriate;

this Regulation remains appropriate;

Or. en

EXPLANATORY STATEMENT

With the introduction of a European passport for crowdfunding service providers ('CSPs') through its proposal for a Crowdfunding Regulation, as well as its proposal to amend MiFID II, the Commission aims to enable Crowdfunding platforms to offer their services throughout Europe and to unlock early stage financing for businesses. The proposal is the first deliverable of the Commission's Action Plan on how to harness the opportunities presented by technology-enabled innovation in financial services ('FinTech').

In its report on 28 April 2017 on 'FinTech: the influence of technology on the future of the financial sector' (2016/2243(INI)), the European Parliament recognised the potential of alternative lending and investment channels, such as crowdfunding, to increase access to capital, in particular for SMEs and microenterprises. It called on the Commission to ensure consumer protection standards when proposing its Action Plan, including the prevention of abusive or unfair commercial practices.

Overall, the Rapporteur welcomes the proposal of the Commission as part of efforts to build a Capital Market Union (CMU): differing national regimes applied to CSPs impede their cross-border activity and a pan-European regime holds the potential to scale up crowdfunding activity in Europe, without disturbing well-functioning domestic markets and rules. In particular, the Rapporteur supports the creation of a proportionate risk management framework applicable to CSPs and the high level of investor protection aimed at in the proposal.

Nevertheless, the Rapporteur believes that a number of changes should be introduced to improve the proposal. In particular, the changes concern the threshold for crowdfunding offers that fall under the scope of the CSPs, the responsibility of National Competent Authorities ('NCAs'), the differentiation between simple and complex crowdfunding structures, the expansion of scope to initial coin offerings and the level playing field towards third-country crowdfunding platforms:

- The threshold proposed by the Commission for crowdfunding offers, calculated over a 12-month period, would be set in accordance with Regulation (EU) No 2017/1129 ('Prospectus Regulation') at EUR 1 000 000. As certain Member States currently hold a higher threshold, this would hamper the attractiveness and the competitiveness of the European legislative framework for CSPs from its outset. This seems to be contrary to the intention of the Commission to create an attractive cross-border business funding regime and the threshold should be increased to EUR 8 000 000;
- The experience of NCAs on granting authorisation and supervising the crowdfunding platforms should be recognised and their role in the European framework should be enhanced. NCAs do not only have this experience but are also closer to the national markets and better positioned to assess the CSPs. Whilst a 29th regime is necessary when creating an enabling regime that holds the same rules for all SMEs and microenterprises, it does not necessarily require the European Securities and Markets Authority (ESMA) to hold primary supervisory responsibility, which should therefore remain with NCAs, within a common supervisory framework;

- Crowdfunding platforms vary in levels of complexity and the Commission has looked to rule out more complex structures and differentiate between investment-based crowdfunding and lending based. The Rapporteur's draft report looks to differentiate between platforms facilitating the matching of investors and project owners and platforms that determine the pricing and packaging of offers by requiring different disclosure requirements for each. In doing this there is the opportunity to provide more proportionate regulation based on activities and risk. ESMA, in close cooperation with the European Banking Authority (EBA), could be asked to distinguish between the different types of crowdfunding platforms, when preparing draft regulatory technical standards;
- This regulation is an opportunity to provide regulation for initial coin offerings. At present initial coin offerings are operating in an unregulated space and consumers are at risk from fraudulent activity taking place in this market. This Regulation gives the opportunity to ICOs that want to prove their legitimacy to comply with the requirements of this regulation. Whilst this regulation may not provide the solution for regulating the ICO market, it takes a much-needed step towards imposing standards and protections in place for what is an excellent funding stream for tech start-ups;
- Finally, third-country providers of crowdfunding services are important for the scale in cross-border provision of early stage financing for business across Europe. Third country crowdfunding service providers who wish to offer their services across the Union should be allowed to do so, provided that they are authorised to do so by the competent authorities of a third country and measures are in place to guarantee their CSPs adhere to the same rules as CSPs with a European passport.