ESMA_QA_799

Submission Date
10/11/2021

Status: Answer Published

Additional Information

Level 1 Regulation
Regulation 2020/1503 - European crowdfunding service providers for business

Topic
Information to clients on topics other than costs and charges

Additional Legal Reference
Article 2(1), point (l) ECSPR

Subject Matter
General provisions

Question
According to Article 2(1), point (l) of Regulation {EU) 2020/1503 {hereinafter, 'ECSPR'), a crowdfunding project means "the business activity or activities for which a project owner

seeks funding through the crowdfunding offer".
We would appreciate clarification on how the phrase "business activity or activities" should be interpreted in the context of the ECSPR.
More specifically, we would welcome confirmation that this provision does not prevent per se:
(i) public law entities or other non-profit entities from acting as project owners for the purposes of the ECSPR, or
(ii) to seek funding for projects related to public infrastructure, utilities and other types of projects involving the provisions of public sector services.

ESMA Answer

10-11-2021

Original language

Answer provided by the European Commission (Published as Q&A 3.1):

The concept of 'business activity' is intended to be interpreted in a broad sense, encompassing all kinds of economic activities by a natural (in the course of their business, trade or profession) or a legal person that give rise to a profit or any other economic benefit for those owning this 'business activity'. That would imply that non-profit organisations (e.g. an association or local public authorities) may act as 'project owners' as long as they raise funds for an activity that generates some economic benefit for its owners/members/ultimate beneficiaries (whether monetary or nonmonetary).

The answers provided by the European Commission are provided pursuant to Article 16b(5) of Regulation 2010/1095 to clarify provisions already contained in the applicable legislation. They do not extend in any way the rights and obligations deriving from such legislation nor do they introduce any additional requirements for the concerned operators and competent authorities. The answers are merely intended to assist natural or legal persons, including competent authorities and Union institutions and bodies in clarifying the application or implementation of the relevant legal provisions. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law. The views expressed in the internal Commission Decision cannot prejudge the position that the European Commission might take before the Union and national courts.