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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 (a) of ECSPR

Subject Matter
General provisions

Question
Article 2(1), point (a), of Regulation {EU) 2020/1503 (hereinafter, 'ECSPR') defines a 'crowdfunding service' as "the matching of business funding interests of investors and project owners through the use of a crowdfunding platform and which consists of any of the following activities:
(i) the facilitation of granting of loans;
(ii) the placing without a firm commitment basis, as referred to in Annex I, Section A, point (7), of Directive 2014/65/EU, of transferable securities and admitted instruments for

crowdfunding purposes issued by project owners or a special purpose vehicle, and the reception and transmission of client orders, as referred to in point (1) of that Section, in relation to those transferable securities and admitted instruments for crowdfunding purposes.
Article 2(1), point (c), of the ECSPR defines 'individual portfolio management of loans' as "the allocation by the crowdfunding service provider of a pre-determined amount of funds of an investor, which is an original lender, to one or multiple crowdfunding projects on its crowdfunding platform in accordance with an individual mandate given by the investor on a discretionary investor-by-investor basis".
We would appreciate clarification as to the legal nature of the activity of individual portfolio management of loans. We would specifically appreciate if the European Commission could confirm that it should be considered as forming part of the notion of crowdfunding service and, if yes, that it should be regarded as ancillary to the activity of facilitation of granting loans referred to in Article 2(1), point (a)(i).

ESMA Answer

10-11-2021

Original language

Answer provided by the European Commission (Published as Q&A 3.2 on 10 November 2021)

Article 6 of the ECSPR introduces the possibility for crowdfunding service providers to offer individual portfolio management of loans. In that respect, the non-inclusion in the definition of core 'crowdfunding services' in article 2(1) of the ECSPR was the result of the consideration that individual portfolio management of loans is a more sophisticated allocation of funds to loans, but it remains in the nature of service that facilitates the granting of loans. As a result, the regulation imposes additional requirements over a minimum set of standards, which are those applied to providers of facilitation of granting of loans. As a consequence, this service should be considered an ancillary service to the facilitation of granting of loans, also in relation to the authorisation process that comes with it.

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.