ESMA_QA_815

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 23 ECSPR

Subject Matter
Investor protection and marketing communication

Question
Article 23, paragraphs 2, 8, 11 and 12 of Regulation (EU) 2020/1503 (hereinafter, 'ECSPR') set out the requirements regarding the preparation of the KIIS, its publication on the

crowdfunding platform and the verification that needs to be undertaken to ensure the completeness, correctness and clarity of the information it contains.
We would appreciate if the European Commission could clarify the respective responsibilities of the project owner and the crowdfunding service provider in respect of those requirements, in particular with respect to offers made in more than one Member State.

ESMA Answer

10-11-2021

Original language

Answer from the European Commission - (Published as Crowdfunding Q&A 5.2)

Article 23(9) of the ECSPR sets out the liability of 'at least' the project owner for the information given in a key investment information sheet (hereinafter, KIIS). That paragraph needs to be read in conjunction with article 23(11), which limits the responsibility of the crowdfunding service provider to having 'adequate procedures to verify the completeness, correctness and clarity of the information contained in the key investment information sheet'. As a result, the project owner is the one ultimately responsible for the information provided in the KIIS, while the crowdfunding service provider is responsible for the procedures in place to verify that the information provided is complete, correct and clear. In other words, the project owner is solely responsible for any misleading or inaccurate information, as well as omissions, unless those omissions are the direct result of inadequate procedures by the crowdfunding service provider in the collection of this information made available in the KIIS. In that case, the crowdfunding service provider could be partially or fully responsible.

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.