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Additional Information

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

Topic
Appropriateness

Subject Matter
Prudential requirements

Question
How should NCAs apply Article 11(2)(c) of the ESCPR at the point of authorisation? How and to what extent can an insurance policy be combined with own funds?

ESMA Answer

18-12-2023

Original language

Article 11 of the ECSPR requires CSPs to have – at all time - prudential safeguards and establishes the form and the amount that such prudential safeguards2 shall comply with. The ECSPR provides for requirements regarding the calculation of the amount of the prudential safeguards (paragraphs 8 and 9 of Article 11 of ECSPR, as well as paragraph 5).

Article 11(2) of the ECSPR provides that the prudential safeguards shall take the form of:

(i) own funds,

(ii) an insurance policy covering the territories of the Union where crowdfunding offers are

actively marketed or a comparable guarantee, or

(iii) a combination of both.

The ECSPR also provides for requirements concerning the characteristics of the own funds as well as of the insurance policy4 (paragraphs 6 and 7 of Article 11 of the ECSPR). Commission Delegated Regulation 2022/2112, on requirements and arrangements for the application for authorisation as a CSP, provides div on the information that applicants shall provide to the authorising NCA with regard to the description of the prudential safeguards (Point 9 of the Annex to Regulation 2022/2122) and the relevant proof that the applicant meets the prudential safeguards (Point 10 of the mentioned Annex).

The ECSPR and the delegated Regulation 2022/2112 on the authorisation as CSP do not contain provision regarding the choice of prospective CSPs opting for prudential safeguards taking the form of a combination of own funds and an insurance policy or a preferred suggested the balance between the two. As a consequence, it is up to the approving NCAs, after assessing that the suggested calculation of the prudential safeguards needed is correct and comply with Article 11 of the ECSPR and point 9 of the Annex to the Delegated Regulation 2022/2112, to determine whether the sums covered by the own funds and the

insurance policy amount to the sum calculated in accordance with Article 11(1) of the ECSPR. For this purpose, the NCA shall ensure that:

(a) the own funds correspond to the items referred to in point (a) of Article 11(2) of the ECSPR (see footnote 3 above) and comply with point 10(1) of the Annex to the Delegated Regulation 2022/2112),

(b) the insurance policy incorporates all the characteristics listed in paragraph 6 and 7 of Article 11 of the ECSPR and complies with point 10(2) of the Annex to the Delegated Regulation 2022/2112.