ESMA_QA_2200

Submission Date
27/05/2024

Status: Answer Published

Additional Information

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

Topic
Control functions (Compliance, Risk and Audit)

Additional Legal Reference
Article 11 ECSPR

Subject Matter
Prudential requirements

Question
What should be done with a possible own risk excess of the insurance policy that CSPs subscribe to comply with the prudential safeguards established under Article 11 of the ECSPR?

ESMA Answer

27-05-2024

Original language

According to Article 4(3) of the ECSPR, the management body of a CSP shall review, at least once every two years, taking into account the nature, scale and complexity of the crowdfunding services provided, the prudential safeguards referred to in point (h) of Article 12(2) of the same regulation, which requires perspective CSPs to provide the authorising competent authority with (inter alia) a description of the prospective CSP’s prudential safeguards in accordance with Article 11 of the ECSPR.

According to Article 11(2) of the ECSPR, CSPs’ prudential safeguards (as defined in paragraph (1) [4] of the same article) shall take one of the following forms:

1. own funds
2. an insurance policy covering the territories of the Union where crowdfunding offers are actively marketed or a comparable guarantee; or
3. a combination of points (a) and (b).

Article 11 of the ECSPR provides the minimum characteristics that the insurance policy shall have in paragraph (6) and the list of risks that such insurance policy shall (at least) cover in paragraph (7).

ESMA believes that, where the insurance policy used by a CSP to fulfil the prudential safeguards leaves some risks related to the provision of crowdfunding services uncovered, the CSP shall complement the coverage of such risks using own funds, as required in point (c) of Article 11(2) of the ECSPR.