

ESMA_QA_2201

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 is the seniority between the own funds and the insurance policy in case of losses for the CSP whose prudential safeguards are a combination of own funds and insurance policy (as allowed in point (c) of Article 11(2) of the ECSPR)?

27-05-2024

Original language

The ECSPR does not provide any specific indication on how occurred losses should impact the prudential safeguards of a CSP (i.e., whether such losses should be deducted from the own funds at first level and then from the insurance policy or differently). ESMA notes that such impact will often depend upon the terms and conditions of the insurance policy subscribed by the CSP.

ESMA is of the view that a CSP whose prudential safeguards are a combination of own funds and insurance policy shall pay specific attention to the terms and conditions of its insurance policy to ensure that in case of occurred losses the portion meant to be covered by the insurance policy can be made available without undue delay.

ESMA would also like to remind that, in case of losses, CSPs shall put in place actions to continue to comply with Article 11(1) of the ECSPR, according to which CSPs shall, at all times, have in place prudential safeguards equal to an amount of at least the higher of the following:

(a) EUR 25 000; and

(b) one quarter of the fixed overheads of the preceding year, reviewed annually, which are to include the cost of servicing loans for three months where the crowdfunding service provider also facilitates the granting of loans.