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Additional Information

Level 1 Regulation

Regulation 2020/1503 - European crowdfunding service providers for business

Topic

Suitability

Additional Legal Reference

Article 1(2) of ECSPR

Subject Matter

Scope of the ECSPR - Calculation of threshold in point (c) of Article 1(2) of ECSPR

Question

How should the threshold laid down in point (c) of Article 1(2) of ECSPR be calculated?

ESMA Answer

12-02-2025

Original language

The ECSPR enables project owners to make use of crowdfunding platforms to raise funds up to an aggregated maximum amount of EUR 5 000 000 euros in a 12-month period.

The EUR 5 000 000 aggregated amount includes (i) the offers (of transferable securities and admitted instruments (*), and loans) conducted through crowdfunding platforms as well as (ii) the other offers to the public (of transferable securities) conducted in exemption of the obligation to publish a prospectus (i.e. so called “small offers” (**)) by a specific project owner over a period of 12 months.

More in div, point (c) of Article 1(2) of the ECSPR states that the ECSPR does not apply to crowdfunding offers with an aggregated consideration of more than EUR 5 000 000, which are to be calculated over a period of 12 months as the sum of:

- the total consideration of offers of transferable securities and admitted instruments for crowdfunding purposes and amounts raised by means of loans through a crowdfunding platform by a particular project owner; and
- the total consideration of offers to the public of transferable securities made by that project owner through other offers covered by the so-called “small offer” exemptions of the prospectus regulation.

With regard to the calculation of the 5-million threshold for the application of the ECSPR, ESMA is of the view that the reference to the “total consideration” of offers made in both point (i) and (ii) of point (c) of Article 1(2) of the ECSPR, should be read consistently with the reference to the “total consideration” of offers made in Article 1(3) and in Article 3(2) of Prospectus Regulation (Regulation (EU) 2017/1129) with regard to offers to the public which are exempted from the obligation to publish a prospectus.

In light of the above, ESMA believes that, in order to assess if a crowdfunding offer is covered under the ECSPR, the following amounts should be aggregated and summed up:

- (a) the amount in transferable securities and admitted instruments that the project owner offered in offers conducted through crowdfunding platforms across the Union over the previous 12 months,
- (b) the amount raised by that project owner in offers of loans conducted through crowdfunding platforms across the Union over the previous 12 months,
- (c) the amount in transferable securities that the same project owner offered in other offers to the public, when exempted from the obligation to publish a prospectus in accordance with Article 1(3) or Article 3(2) of the Prospectus Regulation.

If the sum of the items a) to c) above exceeds EUR 5 000 000, the offer shall be considered as not covered by the ECSPR (i.e. such an offer is not included in the authorisation to operate as CSP).

This implies that surpassing the threshold established under point (c) of Article 1(2) of the ECSPR is not only relevant for the project owner, but also for the CSP which should assess whether the project owner remains below the threshold, taking into account the restrictions of its authorisation under the ECSPR (i.e., to provide crowdfunding services as defined under the ECSPR across the Union), and the risk of providing investment services exceeding this authorisation.

Endnotes

(*) As defined, respectively, in points (m) and (n) of Article 2(1) of the ECSPR.

(**) Point (ii) of Article 1(2)(c) of the ECSPR notably refers to the exemption from the obligation to publish a prospectus under Article 1(3), or Article 3(2), of Regulation (EU) 2017/1129 (Prospectus Regulation).