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Additional Information

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

Topic
Best Execution

Additional Legal Reference
Article 2(1)of the ECSPR

Subject Matter
Assessment of the entity to be considered as the project owner

Question
How should point (h) of Article 2(1) of the ECSPR be applied for the purpose of identifying the project owner?

ESMA Answer

03-04-2025

Original language

Several provisions of the ECSPR concern the project owner including Article 1(2)(c), points (i) and (ii) where a threshold of EUR 5 000 000 for a total consideration of crowdfunding offers made by a particular project owner is imposed (see also Recital 16 of the same Regulation).

Point (h) of Article 2(1) of the ECSPR defines the project owner as '*any natural or legal person who seeks funding through a crowdfunding platform*'.

In most cases, this definition is self-evident and the identification of the natural or legal person which will be considered as project owner for the purpose of the ECSPR is straightforward. However, the identification of the project owner sometimes proves to be more complicated, notably in those situations in which several entities or several layers of entities are involved.

ESMA acknowledges that the ECSPR does not contain provisions preventing a project owner from seeking funding for several crowdfunding projects either at the same time or successively.

At the same time, ESMA would like to clarify that the determination of the project owner shall be grounded on the economic and business reality of the crowdfunding project (in addition to the compliance with the rules set out in the ECSPR). CSPs should pay special attention to avoid practices consisting in designating as project owner an entity having insufficient or artificial link with the crowdfunding project.

When assessing whether a legal or natural person shall be considered as the project owner, CSPs may, *inter alia*, consider some or all of the following indicative elements:

- the entity launched and/or contributed to developing the crowdfunding project in its early stage,
- the entity has sufficient legal and economic ties to the crowdfunding project,
- *for investment-based crowdfunding*, the entity is issuing the transferable securities and the admitted instruments for crowdfunding purposes directly or through a SPV,
- *for loan-based crowdfunding,* the entity is the one to which investors make available the amount they lend, and it is the entity that assumes an unconditional obligation to repay that amount to investors, together with the accrued interest, in accordance with the instalment payment schedule.

Lastly, it should be reminded that ultimately, this determination made by the CSP may be challenged by the relevant Competent Authority as part of its supervision powers following a case-by-case assessment taking into account the specificities of the crowdfunding project and the designated project owner.