ESMA_QA_2747

Submission Date
05/01/2026

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 5

Subject Matter
Due diligence

Question
How should the due diligence requirements set out in Article 5(2) of the ESCPR be applied by CSPs?

ESMA Answer

05-01-2026

Original language

Article 5 of the ECSPR requires CSPs to undertake at least a minimum level of due diligence in respect of project owners proposing their projects to be funded through their crowdfunding platform.

Points (a) and (b) of Article 5(2) of the ECSPR provide a list of evidence that a CSP needs to obtain from project owners as part of its minimum due diligence requirements.

ESMA believes that CSPs should comply with the provisions set out in point (a) and point (b) mentioned above with regard to all project owners who propose their projects to be funded through their crowdfunding platform regardless of whether a project owner is in the form of natural or legal person.

For point (b)(*), the provisions of Directive 2015/849, and especially Recital 29, support an application of the provision to project owners both in the form of a legal person or a natural person.

In relation to point (a) of Article 5(2) of the ECSPR, the same approach shall be followed. CSPs are therefore expected to ensure that, if the project owner is a legal person, the evidence of the lack of criminal records is provided in relation to the legal person, as well as in relation to shareholders who directly or indirectly hold 20% or more of the legal person's share capital or voting rights, each member of the legal person's management body (**), including persons who effectively direct its business (***).

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Footnotes

(*) According to which CSPs shall obtain evidence that the project owner is not established in a non-cooperative jurisdiction, as recognised by the relevant Union policy, or in a high-risk third country pursuant to Article 9(2) of Directive (EU) 2015/849 (AML Directive).

(**) In line with what is established under other EU legislative acts (such as MiFID II (directive 2014/65/EU), and CRD (Directive 2013/36/EU)), ‘management body’ should be intended as the body or bodies of an entity, which are appointed in accordance with national law, which are empowered to set the entity’s strategy, objectives and overall direction, and which oversee and monitor management decision-making and include persons who effectively direct the business of the entity.

(***) This reference should be intended as concerning those persons who effectively direct the business of a project owner, irrespective of whether or not they are members of the management or administrative organ appointed in accordance with national company law.