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| 26 February 2021 |

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| Response form for the Consultation Paper on draft technical standards under the ECSP Regulation |
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| Date: 26 February 2021 |

**Responding to this paper**

ESMA invites responses to the questions set out throughout this Consultation Paper and summarised in Annex II. Responses are most helpful if they:

* respond to the question stated and indicate the specific question to which they relate;
* contain a clear rationale; and
* describe any alternatives ESMA should consider.

ESMA will consider all comments received by **Friday 28th May 2021.**

All contributions should be submitted online at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading ‘Your input - Consultations’.

**Instructions**

In order to facilitate analysis of responses to the Consultation Paper, respondents are requested to follow the steps below when preparing and submitting their response:

* Insert your responses to the consultation questions in this form.
* Please do not remove tags of the type <ESMA\_QUESTION\_ECSP\_1>. Your response to each question has to be framed by the two tags corresponding to the question.
* If you do not wish to respond to a given question, please do not delete it but simply leave the text “TYPE YOUR TEXT HERE” between the tags.
* When you have drafted your response, name your response form according to the following convention: ESMA\_ECSP\_nameofrespondent\_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESMA\_ECSP\_ABCD\_RESPONSEFORM.
* Upload the form containing your responses, in Word format, to ESMA’s website ([www.esma.europa.eu](http://www.esma.europa.eu) under the heading ‘Your input – Open consultations’ → ‘Consultation on draft technical standards under the ECSP Regulation’).

**Publication of responses**

All contributions received will be published following the close of the consultation, unless you request otherwise. If you do not wish for your response to be publicly disclosed, please clearly indicate this by ticking the appropriate box on the website submission page. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. A confidential response may be requested from us in accordance with ESMA’s rules on access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by ESMA’s Board of Appeal and the European Ombudsman.

**Data protection**

Information on data protection can be found at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading ‘[Data protection](https://www.esma.europa.eu/about-esma/data-protection)’.

**Who should read this paper?**

This Consultation Paper primarily of interest to crowdfunding service providers within the meaning of point (e) of Article 2(1) of the ECSP Regulation, competent authorities and other entities that are subject to the ECSP but it is also important for trade associations and industry bodies, sophisticated and non-sophisticated investors, consumer associations, as well as any market participant engaged in the provision of crowdfunding services

# General information about respondent

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| --- | --- |
| Name of the company / organisation | Keijser Van der Velden advocaten |
| Activity | Legal and Accountancy |
| Are you representing an association? |[ ]
| Country/Region | Netherlands |

# Introduction

Please make your introductory comments below, if any:

<ESMA\_COMMENT\_ECSP\_1>

TYPE YOUR TEXT HERE

<ESMA\_COMMENT\_ECSP\_1>

1. Do you consider that the requirements should be made more granular, notably to set a fixed deadline for CSP to handle a complaint and reply to complainants, in order to ensure a better and more harmonised investor protection?

<ESMA\_QUESTION\_ECSP\_1>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_ECSP\_1>

1. Do you agree that the list set out in Article 1(5) of the draft RTS sets out a sufficiently harmonised minimal level of requirements for the internal rules to prevent conflicts of interest?

<ESMA\_QUESTION\_ECSP\_2>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_ECSP\_2>

1. Do you agree that the requirements set out in Article 3 of the draft RTS provide for arrangements that balance adequately the need to protect investors with the objective to limit unnecessary burden for CSP?

<ESMA\_QUESTION\_ECSP\_3>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_ECSP\_3>

1. Do you agree with the details of the business continuity plan suggested in the draft RTS?

<ESMA\_QUESTION\_ECSP\_4>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_ECSP\_4>

1. Do you have any comment on the authorisation procedure proposed in the draft RTS?

<ESMA\_QUESTION\_ECSP\_5>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_ECSP\_5>

1. Do you agree with the list of information set out in draft RTS to be provided to the Competent Authority of the Member State where the applicant is established? If not, what other information should ESMA further specify?

<ESMA\_QUESTION\_ECSP\_6>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_ECSP\_6>

1. Do you think that the methodologies provided in the draft RTS are sufficiently clear?

<ESMA\_QUESTION\_ECSP\_7>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_ECSP\_7>

1. Do you agree with the list of information set out in Article 4(1) of the draft RTS?

<ESMA\_QUESTION\_ECSP\_8>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_ECSP\_8>

1. Do you agree that requiring CSPs to make available to prospective non-sophisticated investors an online calculation tool will improve investor protection by simplifying the process of simulation of the ability to bear losses?

<ESMA\_QUESTION\_ECSP\_9>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_ECSP\_9>

1. Do you agree with the suggested method to calculate the non-sophisticated investor’s net worth?

<ESMA\_QUESTION\_ECSP\_10>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_ECSP\_10>

1. Do you agree with the extent of the provisions that ESMA proposes to specify the ECSPR’s requirements for the KIIS model? Please also state the reasons for your answer.

<ESMA\_QUESTION\_ECSP\_11>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_ECSP\_11>

1. How could the KIIS be alternatively structured to foster its provision by project owners, while ensuring investor protection? Please provide specific examples, if possible.

<ESMA\_QUESTION\_ECSP\_12>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_ECSP\_12>

1. Based on your experience with investor information documents required under your national regulatory framework on crowdfunding: Have you seen good practices of information disclosure which could help investors to better understand risks, benefits and other key features related to crowdfunding offers under the ECSPR? Please provide specific examples, if possible.

<ESMA\_QUESTION\_ECSP\_13>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_ECSP\_13>

1. What, if any, additional costs and/or benefits do you envisage arising from the proposed approach taken for the KIIS? Please quantify and provide details.

<ESMA\_QUESTION\_ECSP\_14>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_ECSP\_14>

1. Do you agree with the proposals with respect to standards, formats, templates and procedures for the provision of data by crowdfunding service providers to competent authorities?

<ESMA\_QUESTION\_ECSP\_15>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_ECSP\_15>

1. Do you consider that the format for the submission of the information to competent authorities should be further specified in the final draft ITS? Which technical format (e.g. CSV, others) should be considered by ESMA?

<ESMA\_QUESTION\_ECSP\_16>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_ECSP\_16>

1. Do you envisage any impacts of the proposals with respect to provision of data by competent authorities to ESMA, and in particular on the anonymisation methods that should be used when transmitting information by competent authorities to ESMA? Which specific anonymisation methods would be appropriate to fulfil the reporting requirements?

<ESMA\_QUESTION\_ECSP\_17>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_ECSP\_17>

1. Do you agree with the information on the national laws, regulations and administrative provisions applicable to marketing communications of CSPs that is being requested from CAs in the two templates? If not, which items should be added or deleted and for which reasons? Please provide a detailed answer.

<ESMA\_QUESTION\_ECSP\_18>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_ECSP\_18>

1. Do you agree with the cost benefit analysis as it has been described in Annex II?

<ESMA\_QUESTION\_ECSP\_19>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_ECSP\_19>

1. Are there any additional comments that you would like to raise and/or information that you would like to provide?

<ESMA\_QUESTION\_ECSP\_20>

With respect to the provisions on complaint handling as set out in Annex III, I want to raise a question regarding the meaning of the word ‘admissible’ in connection with the obligation of a CSP to inform a complainant of the timeframe within which a decision will be notified to him.

According to article 3 (1) CSPs shall confirm within 10 working days (1) the receipt of a complaint and (2) whether or not the complaint is admissible. The acknowledgement of a receipt of a complaint has to contain a reference to the timeframe as mentioned in article 1(2) point (f).

For a complaint to be admissible, it does not have to be clear or complete (see article 4 (1)). However, the circumstance that a complaint is ‘not clear or complete’, might have a direct effect on the timeframe within which a decision on such complaint can be given. Where in article 5 (3) is stated that a delay in the timeframe is possible, it also states that this is only the case ‘*in exceptional situations’*. It seems to me that the circumstance that complaints that are not clear or incomplete, is not likely to qualify as such *‘exceptional situations’*.

This raises the following question:

1.      Is it correct to assume that the timeframe as mentioned in the complaint handling procedures of the CSPs gives room for CSPs to implement different timeframes depending on whether a complaint is (not) clear and/or (not) complete?

The definition of 'client' is very broad and includes prospective investors. Since every visitor of the platform can be considered as a prospective investor, this implies that everyone could be a client and therefore a potential complainant. The fact that a CSP has to decide whether a complaint is admissible, suggests there are complaints that are not admissible.

This raises the following question:

2.      When is a complaint deemed ‘admissible’? -> Such qualification shall also be relevant to determine the starting point to take a decision on the complaint and subsequently notifying the complainant of such decision (see question 1).

<ESMA\_QUESTION\_ECSP\_20>