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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 | AVVOCATI.NET |
| Activity | Legal and Accountancy |
| Are you representing an association? |[x]
| Country/Region | Italy |

# Introduction

Please make your introductory comments below, if any:

<ESMA\_COMMENT\_ECSP\_1>

AVVOCATI.NET is a legal firm involved with fintech and innovation, focused on lending and equity crowdfunding platforms. To date, we have assisted more than 70 CSP, advised more than 10% of successful equity crowdfunding campaigns in Italy, 3 of which in the Italian top ten chart.

Mr Alessandro M. Lerro, senior partner of the law firm, is also chairman of AIEC, the Italian Equity Crowdfunding Association.

We run the Research Centre of AssoFintech, the Italian Association of Fintech and Insurtech companies; Mr Lerro is the chairman of AssoFintech scientific committee.

<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>

NO

<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>

Art. 1.5.b) includes among the interests in potential conflict also that of the CFP. This inclusion should be reconsidered as the usual business model of CSP is the success fee; therefore CSP (and their employees) are always in potential conflict of interest with their clients. In addition, art.1.5 should be more clear and specific.

<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>

YES

<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>

YES

<ESMA\_QUESTION\_ECSP\_4>

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

<ESMA\_QUESTION\_ECSP\_5>

NO

<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>

We agree; the list is complete.

<ESMA\_QUESTION\_ECSP\_6>

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

<ESMA\_QUESTION\_ECSP\_7>

Art. 1.4 requires CFP to have “effective processes that allow them to obtain the relevant information …”. In most cases this is not possible, as the CFP has no inspection powers and may not force the borrower to provide information.

<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>

YES

<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>

We don’t agree.

Anyway, considering that the simulation is required by art. 21.5 of the ECSPR, it should be clearly stated that:

1. no information of the online calculation tool may be processed or anyhow used (including the storage of information) by CSP or anybody else;
2. the result of the simulation is available only for the investor;
3. the tool may be downloaded and run locally by the client computer, totally off-line and in a safe environment, where there is no risk that his/her personal information are processed by third parties.

We also note that the title of Art. 6 “online calculation tool” may be deceptive, as the calculation shall be executed offline.

<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>

YES

<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>

In Italy the information document has been limited to 5 pages in order to keep it short and concise.

Unfortunately this solution is inadequate to guarantee full disclosure of any relevant information in a clearly readable form. The use of colours, different fonts, figures and schemes should be encouraged.

It is important that the responsibility of the KIIS is kept on the project owner, as required by art. 23 ECSPR; in Italy the document is often written by CSP, who are in conflict of interest.

Italian regulation currently requires to mention the advisors that have contributed to the drafting of the document. This is a good solution in order to make advisors accountable for the KIIS content.

<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>

YES.

But we think that 2 months is not enough, as most CSP are small companies and will prepare reports without sophisticated technologies.

In Italy the term is 3 months and several CSP experience delays.

<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>

MICROSOFT EXCEL is the most common software.

<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>

Campaigns are public, therefore no anonymisation is necessary.

Data collected are required by EU law, therefore the legal basis of data processing is the law and no consent is necessary .

A pseudonymisation might be considered.

<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>

Such information should be published in order to help CSP, project owners and investors to have a clear picture of the legal framework in the countries where they might extend their services.

<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>

YES

<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>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_ECSP\_20>