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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 | Spanish Fintech Association |
| Activity | Non-governmental Organisation and Other Associations |
| Are you representing an association? |  |
| Country/Region | Spain |

# 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>

Adding more granularity to the requirements is not necessary as this do not help to the complaint to be adequately treated. Regarding the term to handle a complaint, the Spanish Fintech Association thinks that it would be sufficient that the CSP establish a deadline on the platform, not being necessary that ESMA sets a deadline. The key point here is to be efficient. In addition, the term will depend on the specific matter.

<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>

The Spanish Fintech Association thinks that it is sufficient. No more requirements are needed.

<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>

The Spanish Fintech Association thinks that it would be sufficient the existence of strong rules to prevent the conflicts of interest and having those rules accessible for the investors. The Spanish Fintech Association thinks that publishing the rules on each project and specifying the existing conflicts do not add more protection.

The Spanish Fintech Association would appreciate if ESMA could clarify if the "specific and clear description of the conflicts of interest" implies including general professional details or implies including names of the people affected by the conflict of interests, as the latter may be in conflict with the data protection regulation.<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>

The cases for which the continuity plan is required are too broad. Given the nature of the crowdfunding sector, there are many different scenarios on which the plan would be needed, based on the "significant business interruption or incident" concept. We would be grateful if ESMA could specify that concept. By specifying scenarios, the process to obtain the authorisation would not be too much onerous.<ESMA\_QUESTION\_ECSP\_4>

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

<ESMA\_QUESTION\_ECSP\_5>

According to the Spanish practice, any change on the circumstances between the submission of the application and the grant of the authorisation is considered as part of the existing application.

In addition, the Spanish Fintech Association considers that having to specify the types of instruments to be offered exceeds the detail established by the ECSP-Regulation.<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>

As not all the platforms have the LEI, the Spanish Fintech Association would like to suggest ESMA to offer some kind of alternative identifier code (such as national tax identification number) to the LEI code. <ESMA\_QUESTION\_ECSP\_6>

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

<ESMA\_QUESTION\_ECSP\_7>

No comments.

<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>

The list of information is too extensive and onerous. This makes very onerous the process to invest and discourage the investments. The information requested is disproportional compared to average investment tickets. Having to provide too much information to invest can make crowdfunding distractive and goes against the purpose of crowdfunding, which is based on swift investments. It should be enough to grant some kind of statement under which the investor says that it is sufficiently aware of the risks.

In addition, we think that art. 3(1) RTS Annex VIII conflicts the ECSP-Regulation. While the Regulation says that the assessment needs to be carried before granting full access to the platform (ie. investing), the RTS speaks about just “giving access to the platform”, which can involve just navigating over the webpage. We would be grateful if ESMA could clarify this point. <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>

The Spanish Fintech Association considers that this tool is not very useful for low amount investors, which usually are non-sophisticated investors.<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>

Because of the information to be provided, the method of calculation can be very onerous, especially for non-sophisticated investors. For non-sophisticated investors the process should not be so complicated.

<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>

The Spanish Fintech Association considers that the extent of the provision is disproportional for small projects. This only increases the costs for the project owner. The requirements should be reduced <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>

No comments.

<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>

No comments.

<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>

No comments.

<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>

No comments.

<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>

The Spanish Fintech Association considers very useful having a submission template as it helps to standardise the submissions so the information is the same for everyone. The Spanish Fintech Association would appreciate if ESMA could provide a template in Excel format.<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>

No comments.

<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>

The Spanish Fintech Association thinks that it would be very useful to have a similar platform which includes national laws, regulations and administrative provisions of the different EU Member States applicable to crowdfunding as it would help to analyse the possibility of making offers in other EU Member States.<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>

No comments.

<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>

One of the most important things for the Spanish Fintech companies is the regulation of SPV. In its experience, the easiest way to manage equity projects is through a SPV. This helps the efficiency on the relationship between project owners and investors.

Thus, the Spanish Fintech Association does not completely understand the type of vehicle mentioned on art.3(6) ECSP-Regulation and how an equity platform can securitize. The Spanish Fintech Association understands crowdfunding and securitization as completely different things. The investors looking for securities go to different entities to invest rather to crowdfunding.

The Spanish Fintech Association would appreciate if ESMA could clarify this point and allows SPV created by the project owners and managed by the platforms. Also the Spanish Fintech Association would like ESMA to clarify which type of SPVs are allowed and, if any other type of structures involving SPVs that are not expressly forbidden in the ECSP-Regulation are then allowed..<ESMA\_QUESTION\_ECSP\_20>