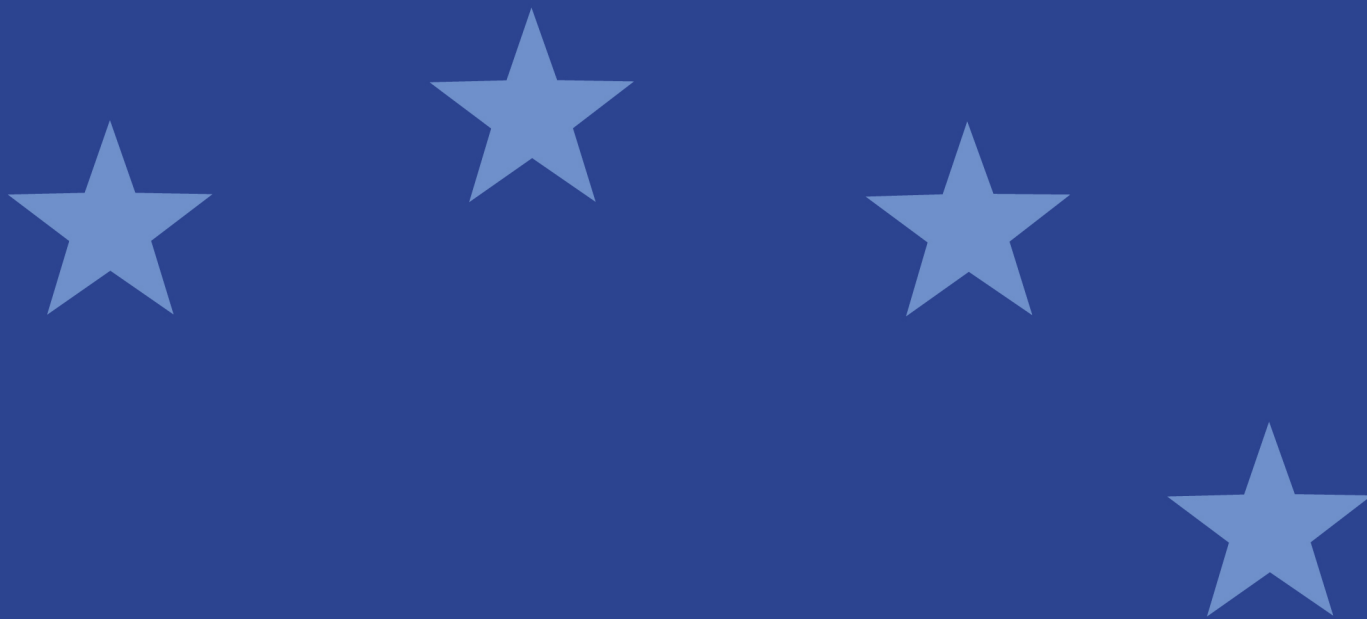




European Securities and
Markets Authority

Response form for the Consultation Paper on draft technical standards under the ECSP Regulation



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 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 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 under the heading '[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

Name of the company / organisation	Walliance S.p.A
Activity	Crowdfunding Service Provider
Are you representing an association?	<input type="checkbox"/>
Country/Region	Italy

Introduction

Please make your introductory comments below, if any:

<ESMA_COMMENT_ECSP_1>

Walliance is an Italian real estate CSP, authorized to operate in Italy and in France and, therefore, directly interested in the practical implementation of the measures provided for by the European Regulation.

Walliance is thankful for the opportunity to directly participate in these consultations.

<ESMA_COMMENT_ECSP_1>

Q1 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>

Walliance sees the requirements in Art 7 and the Annex III of the RTS as adequate. A deadline should be set less stringently, for example by increasing the maximum response time since different complaints may require different processing times.

Moreover, we believe that there should be a definition of “complaints” under the ECSPR, that should address the ECSP in identifying the complaints and in handling them. Walliance believes that ESMA should provide relevant guidance to Member States in this regard.

<ESMA_QUESTION_ECSP_1>

Q2 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>

Walliance sees the list in Article 1(5) of Annex IV as sufficient to prevent internal conflicts. We would not advise to add additional requirements. In order to ensure an adequate level of investor protection and the development of uniform practices, Walliance kindly suggests that ESMA provide a guidance to Member States to ensure the adequate implementation of ECSP in line with its intentions and an example of a procedure, complete with the necessary key contents, in order to facilitate and equalize the positions of CSPs, avoiding additional legal costs and limiting the risk of writing insufficient or non-compliant procedures. In this sense, it would be helpful a scheme of possible conflict of interests and the suggested measures that CSPs should adopt against them.

<ESMA_QUESTION_ECSP_2>

Q3 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>

Walliance sees the requirements in Art 3. of the draft RTS in Annex IV as sufficient to protect investors.

Walliance would suggest that the general procedure against possible conflict of interest could be positioned in the footer of the CSP website, next to the Privacy Policy, which is where a user would expect them. A dedicated section of the KIIS could be provided to specify whether or not the project owner, or any party connected to him, has any possible conflicting interests with the crowdfunding service provider.

Nonetheless, Walliance believes that some conflicts of interest that must be disclosed to investors are unclear. For example, we believe that ESMA should provide guidance, with practical examples, to ECSPs regarding how to manage conflicts of interest when platform employees or managers invest in projects and how to ensure that they do not have additional information compared to external investors. Indeed, it does not seem clear how this information should be provided, at what time, and how it could be ensured that employees do not have additional information on published projects.

<ESMA_QUESTION_ECSP_3>

Q4 Do you agree with the details of the business continuity plan suggested in the draft RTS?

<ESMA_QUESTION_ECSP_4>

ESMA should consider that, to write a Business Continuity Plan procedure, every CSP must anticipate many possible future events, even unlikely ones. For this reason, Walliance kindly suggests providing a practical guide for CSPs to prepare each Plan. Moreover, ESMA should provide clarification to Member States on what is meant by "significant business disruption or incidents" and what approaches by CSPs would be considered acceptable in the context of the business continuity plan.<ESMA_QUESTION_ECSP_4>

Q5 Do you have any comment on the authorisation procedure proposed in the draft RTS?

<ESMA_QUESTION_ECSP_5>

Walliance would like to make the following comments on Art. 12 ECSP-R and Annex VI of the RTS.

Art. 5 (3) Del-R: - We would like to encourage ESMA to give some exemplary cases and a clear definition for “changes” and “material changes” set out in Art. 5 of RTS Draft (page 80). This would also ensure a consistent interpretation and application EU-wide throughout the Member States by the respective competent authorities

TAB “Content of application”

Field 5 SubField 1 (g)

We would appreciate ESMA's confirmation on this view, that only services subject to further authorization under national law have to be disclosed in the application process.

Field 5 SubField 2(c)

This field requests to include in the application the “*description of the procedures for the transmission of the orders collected from investors to the entities that receive and execute the orders*”. This provision appears to require the CSP to transfer the payment order to an intermediary (such as a Bank or Investment Firm) for execution.

In this sense, a clarification on the nature of that intermediary would be welcome, considering that in some national legislations, such as the Italian one, this service could only be intermediated by Banks, SIMs or investment firms only. Therefore, we ask ESMA to confirm that any entity authorized under the PSDII can offer this type of service, without necessarily being a bank.

In addition, we ask if ESMA could confirm that the crowdfunding service provider can transmit the order related to the subscription of a financial instrument directly to the issuer.

Field 5 SubField 3

We want to point out that marketing measures can vary significantly in relation to certain projects and therefore a detailed description of the marketing strategy is difficult to give in advance.

With regard to "Marketing Strategy," we ask for confirmation as to whether it is sufficient to name the country (or countries) to which the campaign is directed and the language used (and guaranteed).

It is suggested to eliminate this field or limit the scope of the requested information to general indications on how the crowdfunding service provider intends to structure the marketing campaign in the launch phase of the platform.

Field 6 SubField 4

We would suggest a description of “Accounting Procedure”.

Field 9 SubField 4 (b) / (c)

The draft RTS provides forecast accounting plans including balance sheets and a profit / loss accounts or income statements for the first three business years as well as the planning assumptions for the above.

We would rather expect these forecasts as part of the business plan layed out in Field 5 and would therefore suggest moving any information related to planned business growth and financial figures to be part of the information provided based on Art. 12 (2) lit. (d);

Field 9 SubField 5

We suggest to a clear description of ”prudential safeguards planning” and “monitoring procedures” and how these informations must be provided.

Field 12 SubField 1-10

We suggest to provide further clarifications about this extension to shareholders required.

Field 19 D 1 lit. c)

The reference to Article 21 paragraph 42 seems to be incorrect as there is no Art. 21 paragraph 42 in neither the ECSPR nor the delegated regulation referring to the application process.

A clarification by ESMA as to the correct reference would be appreciated.

<ESMA_QUESTION_ECSP_5>

Q6 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>

Walliance believes that the information required by the RTS is too excessive and burdensome for the enforcement process. Therefore, we don't fully agree with the requested information in Annex VI Annex 1 and we believe the RTS in Annex VI often go beyond what the Tier 1 text requires. We believe this will make the ECSP-R regime overly burdensome for platforms.

In particular, Walliance believes that the requirement for a description of the marketing strategy that the CSP expects to use in the UE, including the languages of the marketing communications, is excessive. In addition, the identification of the member states where advertising will be most visible in the media and, even more, the expected frequency is, in our opinion, too difficult to predict and therefore not necessary for the purposes of the application. Furthermore, thanks to the ECSPR, the member states in which the offers are marketed, as well as the languages, may change during operation, so it is not clear how this data should be included in the initial application

<ESMA_QUESTION_ECSP_6>

Q7 Do you think that the methodologies provided in the draft RTS are sufficiently clear?

<ESMA_QUESTION_ECSP_7>

Walliance kindly asks ESMA to confirm that equity and debt platforms are excluded from this specific provision.

<ESMA_QUESTION_ECSP_7>

Q8 Do you agree with the list of information set out in Article 4(1) of the draft RTS?

<ESMA_QUESTION_ECSP_8>

Walliance is of the view that the list of information in Article 4(1) of the draft RTS is too broad. The questions stated in the RTS are too excessive. We believe that potential investors may be very reluctant to give this required information to the CSP.

In view of Article 57 of the RTS, we suggest that it be clarified in paragraph (a) that the CSP only needs to inquire whether the potential investor has general experience in crowdfunding investments.

We suggest that in letter b) it be clarified that the CSP only requires the volume of the respective instruments in the last five years and, to this reference, it would be preferable to put volume ranges (e.g., "greater than tot" or "less than tot") and not the exact number.

We suggest that in c) the platform simply asks a simple yes/no if the potential investor is familiar with the risks of the proposed financial instruments.

Moreover, the Level 1 text states that the entry knowledge test should take place "before giving unsophisticated potential investors full access to invest in crowdfunding projects on their crowdfunding platform." The RTS states that the entry knowledge test should take place "before giving access to their crowdfunding platforms.". A clarification would be very much appreciated.

<ESMA_QUESTION_ECSP_8>

Q9 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>

Walliance appreciates that the ESMA clarifies how the tool is set up and how a potential loss can be simulated. However, we also think that the practical value of the online tool will incur costs that may not match the benefits. In addition, Walliance is asking ESMA to clarify whether this tool is mandatory and must be offered as an optional service for the investor, or if it is an option to provide it.

Moreover, it would be thus helpful to understand the relationship between the online calculation tool and the calculation of the net worth, as a separate requirement.

<ESMA_QUESTION_ECSP_9>

Q10 Do you agree with the suggested method to calculate the non-sophisticated investor's net worth?

<ESMA_QUESTION_ECSP_10>

We believe that the information required for the calculation of unsophisticated investors is overly burdensome and requires information that investors investing small amounts are unlikely to have an interest in providing. This would result in this category of investors being driven away from investing. It is therefore suggested that the information required by Articles 8, 9 and 10 of the RTS be rationalized or, at most, that it be required only in the case of sophisticated investors.

We feel it is too intrusive to ask potential investors to state in detail their income and liquidity. We believe that it is more appropriate to allow investors to enter general amounts.

Moreover, it would be thus helpful to understand the relationship between the online calculation tool and the calculation of the net worth, as a separate requirement.

<ESMA_QUESTION_ECSP_10>

Q11 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>

Walliance agrees with the provisions that ESMA proposes to specify the ECSPR requirements for the KIIS model.

Just a few comments on some points that we feel are too demanding.

General comment on the length:

Pursuant to Article 23(7), the KIIS consists of a maximum of six sides of A4 if printed. Considering that the format in the Annex of the RTS is already longer than 6 sheets of A4, it seems difficult to comply with the level 1 provision (considering that some fields require a description to be included). As a result, we deem it appropriate to limit the scope of information to be included in the KIIS, where possible and appropriate, in order to make it appropriate with its maximum length.

Pre-Contractual Reflection Period: We believe that the pre-contractual cooling off period as provided by the ECSPR and the RTS is not in line with other investor withdrawal rights provided at the EU level. Therefore a clarification from ESMA in this regard would be greatly appreciated.

Part A (a) - Conflict of interests:

It is suggested to delete the field denominated "Conflict of interest", considering that: (a) the Level 1-texts of the ECSPR does not include this information in the information that shall be provided in the KIIS; and (b) the identification, management and disclosure of conflict of interests is a responsibility of the crowdfunding service provider, according to Article 8 of the ECSPR and, therefore, it seems inconsistent to request to include a disclosure on the conflict of interests in a document prepared by the project owner, under its responsibility.

Ownership: Part A lit. a) stipulates a "brief description of the ownership structure". Given the informative nature of this description, it would be helpful for ESMA to clarify whether all shareholders should be considered in this description, i.e., whether the project owner is required to account for its major shareholders holding 25% or more of the shares and how other minority shareholders are managed.

Conflict of interest: Part A lit. a) of the draft RTS allows for a description of potential conflict of interests, that was not provided for in the Level 1-texts of the ECSPR.

We understand this provision to be optional due to its wording "if so, please describe".

We would appreciate if ESMA could clarify between whom this conflict may arise and under what terms.

Amount of own funds committed by the project owner: Part B lit. e) provides for the project owner to indicate the intension of its major shareholders or members of the management, supervisory or administrative bodies to subscribe in the offered instruments and the amount thereof. This information is part of the project's business plan, so it does not translate into an "intention", but rather a certain data that certifies the equity capital that the project owner will invest directly in his project. We ask for kind confirmation of the above.

Main risk types: A specification of how in-depth the risk analysis in Section C should be would be welcome, i.e., whether risks should only be listed or described and with what level of accuracy.

Oversubscriptions: A clarification regarding oversubscription would be welcome

Also a clarification regarding the delivery date and process of the relevant instruments would be welcome.

Risks: Too much emphasis on potential risks associated with the crowdfunding project. For example risk type 3 and risk type 5 are likely present in every project. Moreover these are risks that have to be disclosed in the business continuity plan of the CSP.

Part F(b) - Restrictions to which the [transferable securities] or [admitted instruments for crowdfunding purposes] are subject and restrictions on the transferring of the instruments

The definition of “admitted instruments for crowdfunding purposes” includes shares of a private limited liability companies “*that are not subject to restrictions that would effectively prevent them from being transferred, including restrictions to the way in which those shares are offered or advertised to the public*”. On the other hand, the KIIS encompasses a section dedicated to the restrictions on the transferring of the offered instruments, to be included also in relation to “admitted instruments for crowdfunding purposes”. Accordingly, it would be useful if ESMA clarifies, for the example through a Q&A, which kind of restrictions to the transferability of the securities would not be able to preclude the relevant instruments from accessing crowdfunding platforms.

By way of example, under Italian law, the subscription of certain instruments (in particular, debt instruments issued by limited liability companies) is restricted to professional investors subject to prudential supervision. Such instruments can currently be offered by investment crowdfunding platforms under the Italian national regime, in compliance with the mentioned restriction. It is not clear if this would be still possible in light of the ECSPR.

<ESMA_QUESTION_ECSP_11>

Q12 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>

Since the structure of the KIIS is provided by the level 1 text, a confirmation of the structure and template provided would be helpful.

<ESMA_QUESTION_ECSP_12>

Q13 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>

We would appreciate it if ESMA could ask NCAs to actively support national crowdfunding and fintech associations, as well as individual providers, to develop templates for issuers and give them feedback on text templates. In this regard, it would be appropriate to provide as many templates as possible and to create a reference page on the websites of ESMA and the NCAs, so to ensure a continuous dialogue, especially in the first stage of implementation of the new rules. With reference to the national Italian Authority, it is expected that ESMA could encourage CONSOB to communicate with platform providers, providing guidance, assistance and practical templates

<ESMA_QUESTION_ECSP_13>

Q14 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>

Implementation costs are certainly significant. Certainly, these costs could be reduced considerably if templates are provided, as encouraged in many points.

<ESMA_QUESTION_ECSP_14>

Q15 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>

Walliance would appreciate if ESMA could provide a template for the reporting in the form of an Excel-File, which can be used by the CSPs for reporting. In general and for the same reasons, Walliance would appreciate the provision of templates for other entries as well, where possible.

We would also appreciate if ESMA could ensure that CONSOB do not impose additional reporting requirements on CSPs.

<ESMA_QUESTION_ECSP_15>

Q16 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>

Walliance would appreciate if ESMA could provide a template for the reporting in the form of an Excel-File, which can be used by the CSPs for reporting. In general and for the same reasons, Walliance would appreciate the provision of templates for other entries as well, where possible.

<ESMA_QUESTION_ECSP_16>

Q17 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>

Walliance does not envisage any impact due to the anonymization method.

<ESMA_QUESTION_ECSP_17>

Q18 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>

Walliance sees the information on the national laws applied to marketing communications as sufficient. However, Walliance would like to note that the same information should also be provided with regard to other legal branches reserved to national competence, which could be an obstacle for the operation of the portals at European level. Above all, Walliance believes that legal aspects to company law and in particular the nature of financial instruments "admitted for crowdfunding purposes" issued and offered should be clarified and explained. In addition, it could also be clarified the liability regimes and pre-contractual reflection periods and the thresholds in Art. 49

<ESMA_QUESTION_ECSP_18>

Q19 Do you agree with the cost benefit analysis as it has been described in Annex II?

<ESMA_QUESTION_ECSP_19>

Walliance would kindly point out that the cost of the implementation of the ECSP-R and the Level-2 clarifications are significantly higher, also due to the increased requirements in Art. 12 and Art. 23. Moreover, the costs for an ECSP are significant both for the authorization process, for the IT changes to be made to the platform website and for the legal costs for the drafts to be prepared. In this sense, ESMA and national authorities are encouraged to provide as many drafts as possible, both with regard to KIIS, to the complaint handling procedure and to the conflict of interest procedures, so that these costs can be contained as much as possible. In this sense, ESMA and national authorities are encouraged to prepare as many drafts as possible, both with regard to KIIS, complaint handling and conflict of interest procedures, so that these costs can be contained as much as possible.

<ESMA_QUESTION_ECSP_19>

Q20 Are there any additional comments that you would like to raise and/or information that you would like to provide?

<ESMA_QUESTION_ECSP_20>

Walliance would like to encourage both the European Commission and ESMA to ensure that the regulation is uniformly applied in Europe, and where there are differences in the member states, that CSPs can easily access information about the situation in each member state. In this sense, ESMA could provide on its website. ESMA could publish on its website a page dedicated to ECSPs in which all the national regulations of the sector are collected, divided by each State. In this sense, it could also incentivize national authorities to do the same, by offering on its website a page dedicated to ECSPs and the applicable national legislation in accordance with the EU legislation. On this page, it would be appreciated if the draft KIIS and as many templates as possible were also published, so that the conditions could be the same for all the ECSP and disparities and legal costs could be reduced. Indeed, otherwise there is a risk that only those who can afford significant legal fees will have more developed templates than others. Providing drafts and references to individual national laws could reduce differences.

<ESMA_QUESTION_ECSP_20>