

New EU regulation on “Crowdfunding”

On 7th October 2020, it has been approved a Regulation (EU Regulation 2020/1503) by the European Union with the aim of regulating participatory financing as known as “Crowdfunding”.

I. What is “Crowdfunding”?

“Crowdfunding” is a concept, which allows small investors to grant micro-credits to entities, which allow them funding them externally for their initiatives or projects.

In recent years, “Crowdfunding” has been an alternative financing method for “start-ups” and SMEs.

Some platforms operate as providers of crowdfunding services, without assuming any risk of their own, with the aim of facilitating contact between potential investors or lenders and companies seeking funding.

II. Content of the Regulation and its scope of application

The Regulation establishes uniform requirements for Member States in several areas:

- a) The provision of the crowdfunding service itself.
- b) The organisation, authorisation, and supervision of crowdfunding providers.
- c) The operation of crowdfunding platforms.
- d) Transparency regulation.
- e) Advertisement regulation.

The following are excluded from the scope of application of the Regulation:

- *Crowdfunding* services provided for projects related to consumers defined by Directive 2008/48/EC¹.
- Other services provided in accordance with national law.
- Equity *crowdfunding* offers with a value of more than 5.000.000 euros within a period of one year.

¹ Art. 3 of Directive 2008/48/EC: "consumer": means a natural person who, in transactions covered by this Directive, is acting for purposes which are outside his trade, business or profession.



III. Concept of crowdfunding and platform services

The Regulation defines the *crowdfunding* service as “the connection of the interests of investors and project owners in terms of financing via use of participatory financing service platforms, consisting of any of the following activities:

- Granting loans: Granted loans provided by *crowdfunding* service platforms must be entailed with the obligation of reimbursement agreed beforehand to the investor, so that the platforms only provide investors and project owners the conclusion of loan contracts, without acting as creditor of project owner.
- Placement, without basis on a precise commitment of negotiable securities and instruments admitted for “Crowdfunding”, issued by the project owners or by an essential entity, and receiving and delivering client orders related to those securities and instruments.

Likewise, the Regulation introduces:

- Personalised loan portfolio management services: It consists of the allocation of a predetermined amount of funds from an investor to one or more participatory financing projects on its platform by the “Crowdfunding” service provider, in accordance with a personalised term preferred by the investor. For the provision of this service, it is not necessary that the investor to make a decision expressly regarding each investment offer.
- Possibility of specific crowdfunding project proposal for each investor, considering the specific parameters or risk indicators chosen by the investor. The “Crowdfunding” service provider will not pay or accept any type of remuneration, discount, or non-monetary return for guiding the investor's decision towards a specific project on its platform or on third-party platforms.
- Safekeeping of assets and payment services. “Crowdfunding” service providers may grant payment services and safekeeping of asset services by themselves or through a third party, always in condition that they are authorized by virtue of the applicable regulations.

IV. Authorization and Supervision

The services provided by the “Crowdfunding” platforms are subject to authorisation and supervision of competent authorities in each Member State; in the case of Spain, the competent body is the National Securities Market Commission (“CNMV”).

A new feature is introduced in relation to reviewing and assessing the application by the CNMV in Spain or the competent body in another Member State in a period of 25



business days. If the competent authority considers that the application is correctly submitted, the evaluation process begins, which has a duration of 3 months.

V. Investor Protection

A) Classes of Investors

The Regulation makes a distinction between sophisticated investor and non-sophisticated investor and includes various levels of protection for each of the categories:

- ✓ **Sophisticated investor:** any natural or legal person who is a professional client by virtue of MiFID² or who meets following criteria:
 - I. Legal persons meeting at least one of the following criteria:
 - i. Own funds of at least 100.000 euros (Spanish regulation requires for accredited investors 300.000 euros);
 - ii. Net turnover of at least 2.000.000 euros;
 - iii. Balance sheet of at least 1.000.000 euros.
 - II. Natural persons meeting at least two of the following criteria:
 - i. Personal gross income of at least 60.000 euros per fiscal year, or a financial instrument portfolio, defined as including cash deposits and financial assets, that exceeds 100.000 euros. Spanish legislation establishes that annual gross income of 50.000 euros and the same figure for financial assets, and an express request to be considered as non-accredited investors;
 - ii. Experience in the financial sector for at least one year in a professional position which requires knowledge of the transactions or services envisaged, or the investor has held an executive position for at least 12 months in a legal entity considered a sophisticated investor. This requirement is not established in Spanish regulation;
 - iii. The investor has carried out transactions of a significant size on the capital markets at an average frequency of 10 per quarter, over the previous four quarters. This requirement is not established in Spanish regulation.

² Directive 2014/65/EU



✓ **Non-sophisticated investor:** an investor who is not a sophisticated investor.

A) Entry knowledge test and simulation of the ability to bear loss

The Regulation establishes an initial test of knowledge and simulation of the capacity to bear losses in order to evaluate whether the offered services are appropriate for the prospective non-sophisticated investors.

Non-sophisticated investor must expressly acknowledge the risks they are assuming. In the case of required information is not provided, or it is considered that investor does not have the knowledge, skills or experience required after the evaluation has been carried out, *crowdfunding* service providers shall inform non-sophisticated investor that the services offered on their crowdfunding platforms may be inappropriate for them and issue them a risk warning which clearly states the risk of losing the entirety of the money invested. The non-sophisticated investor shall expressly acknowledge that he/she has received and understood the warning issued by the crowdfunding service provider.

Likewise, non-sophisticated investors will be asked to simulate their ability to bear losses, calculated as 10% of their net worth, based on their financial information and with the requirements established in the Regulation, and it will be reviewed every year.

B) Reflection Period and Expression Registry

In order to reinforce the protection of non-sophisticated investors, a reflection period of 4 calendar days is established in which the non-sophisticated investor may revoke an offer to invest or an expression of interest in a particular crowdfunding offer without giving a reason and without incurring a penalty.

The providers of “*Crowdfunding*” services must guarantee that they keep investor expression records up to date. Likewise, Crowdfunding service providers should ensure that no money is collected from the investor or transferred to the project owner before the reflection period has expired.

VI. Other obligations of “*Crowdfunding*” service providers

- a) Implementation of procedures to process customer complaints quickly, impartially, and consistently.
- b) Operate as intermediaries in a neutral way between clients on their platform.



- c) Define and maintain governance mechanisms that guarantee an efficient and prudent administration.

VII. Transitional period and its application

Crowdfunding service providers may continue in accordance with the applicable national law to provide crowdfunding services that are included within the scope of this Regulation until 10 November 2022 or until they are granted an authorisation referred to in Regulation, whichever is sooner.

For the duration of the transitional period, Member States may have in place simplified authorisation procedures for entities that, at the time of entry into force of this Regulation, are authorised under national law to provide crowdfunding services.

This Regulation shall enter into force and will be applicable in Member States on **10 November 2021**.

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