



Financial Supervision Authority

APPROVED
with the decision of the
Management Board of
the Financial
Supervision Authority of
1.11.2021 No. 1.1-7/182

Supervision policy of the Financial Supervision Authority on the provision of crowdfunding services

1. Foreword

- 1.1. Crowdfunding is one of the alternative forms of financing for start-up enterprises and small and medium-sized enterprises, which are usually dependent on small investments. The crowdfunding service generally involves three types of participants: the project owner (the applicant for funding) who submits the project for funding, the investors who finance the proposed project and the intermediary organisation (the crowdfunding service provider) which brings together project owners and investors as a service provider via an online platform.
- 1.2. On 9 November 2020, Regulation (EU) 2020/1503 of the European Parliament and of the Council¹ on European crowdfunding service providers for business (hereinafter the Regulation) entered into force. Crowdfunding services falling within the scope of the Regulation are subject to authorisation from 10 November 2021. The Regulation regulates the activities of crowdfunding service providers and establishes common rules in the European Union for the provision of crowdfunding services, the organisation, authorisation and supervision of crowdfunding service providers, and the transparency and marketing of crowdfunding services.
- 1.3. A distinction is made between loan-based and investment-based crowdfunding services:
 - 1.3.1. a loan-based crowdfunding service means the intermediation of lending, including the presentation and pricing of crowdfunding offers to clients and/or the assessment of the credit risk of crowdfunding projects or project owners;
 - 1.3.2. an investment-based crowdfunding service is the joint reception and transmission of client orders and the offering of freely transferable securities or qualifying instruments without a firm commitment on a public platform that provides unlimited access to investors for the purpose of crowdfunding.
- 1.4. The Regulation does not apply:
 - 1.4.1. if the project owner is a consumer for the purposes of Article 3(a) of Directive 2008/48/EC²;
 - 1.4.2. services related to other services as defined in Article 2(1)(a) of the Regulation and provided in accordance with national law;
 - 1.4.3. crowdfunding offers with a total value exceeding EUR 5,000,000, which must be calculated over a 12-month period as the sum of the following elements: the total value of offers of transferable securities and instruments admitted to trading for the purpose of crowdfunding, the amounts raised through loans on a crowdfunding platform and the

¹ Regulation (EU) 2020/1503 of the European Parliament and of the Council of 7 October 2020 on European crowdfunding service providers for business, and amending Regulation (EU) 2017/1129 and Directive (EU) 2019/1937. Online: <https://eur-lex.europa.eu/legal-content/ET/TXT/HTML/?uri=CELEX:32020R1503&from=EN>.

² Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC. Online: <https://eur-lex.europa.eu/legal-content/ET/TXT/HTML/?uri=CELEX:32008L0048&from=ET>.

total value of offers of freely transferable securities made to the public under the exemption provided for in Article 1(3) or Article 3(2) of Regulation (EU) 2017/1129.

- 1.5. The requirements set out in the Regulation do not ensure that individual crowdfunding projects do not become insolvent or do not encounter other investment-specific problems related to the project or project owner. In relation to them, the investor bears the corresponding risk.
- 1.6. The purpose of this Financial Supervision Policy Paper is to lay down the general requirements applicable to providers of crowdfunding services under the Regulation, to provide an overview of the tasks and responsibilities of the provider and to thereby assist subjects of financial supervision in adapting their activities and organisation to comply with the requirements set out in the Regulation and other relevant legislation. The implementation methods derived from this Policy Paper shall be applied in a proportionate manner, taking into account the size of the subject of financial supervision, the impact of the activities on the financial system, and the nature, scale and sophistication of the activities.
- 1.7. Where necessary, the Financial Supervision Authority will explain the applicable law, but will not itself provide legal advice, nor will it assess or give a preliminary assessment of the legal and commercial solutions of a particular company before the authorisation procedure. Binding assessments are carried out in the formal authorisation procedure under valid legislation.

2. Legal basis

- 2.1. Pursuant to subsection 3 (1) of the Financial Supervision Authority Act, the Financial Supervision Authority conducts state financial supervision in order to enhance the stability, reliability, transparency, and efficiency of the financial sector, to reduce systemic risks, and to promote prevention of the abuse of the financial sector for criminal purposes, with a view to protecting the interests of clients and investors by safeguarding their financial resources, and thereby supporting the stability of the monetary system of the Republic of Estonia.
- 2.2. Pursuant to subsection 57 (1) of the Financial Supervision Authority Act, the Financial Supervision Authority has the right to issue advisory guidelines to explain legislation regulating the activities of the financial sector and to provide guidance to subjects of financial supervision.

3. Application for activity licence

- 3.1. In order to start providing crowdfunding services, a legal person must submit an application containing all the information and documents listed in Article 12(2)(a) to (r) and Article 12(3) of the Regulation, and pay the processing fee.
- 3.2. The application for an activity licence must be submitted on the form set out in Annex 1 to the Regulatory Technical Standard (hereinafter the RTS)³ of the European Securities and Markets Authority (hereinafter the ESMA)⁴ and must include the data, documents, evidence required under other relevant legislation, including draft internal rules.
- 3.3. The applicant must provide the Financial Supervision Authority with comprehensive information on the service to be provided. The information to be provided must include, inter alia:

- 3.3.1. information on the crowdfunding platforms that the service provider intends to operate,

³ 3 Consultation Paper. Draft technical standards under the ECSP Regulation. Annex VI, Draft RTS pursuant to Article 12(16) of the ECSPR, 26.02.2021, pp 78–111. NB! This is a RTS project. The final document will be included when the RTS enters into force. Online: https://www.esma.europa.eu/sites/default/files/library/esma35-36-2201_cp_-_ecspr_technical_standards.pdf.

⁴ Consultation Paper. Draft technical standards under the ECSP Regulation. Annex VI, Draft RTS pursuant to Article 12(16) of the ECSPR. Annex I, Application for authorisation as crowdfunding service provider, 26.02.2021, pp 82–111. NB! This is a RTS project. The final document will be included when the RTS enters into force. Online: https://www.esma.europa.eu/sites/default/files/library/esma35-36-2201_cp_-_ecspr_technical_standards.pdf.

Financial Supervision Authority

including information on the legal name, trademarks, web addresses and physical addresses of the crowdfunding service provider;

- 3.3.2. data allowing for an assessment of the quality of the management of the crowdfunding service provider and its internal organisation and procedures, in order to ensure compliance with legal requirements.
- 3.4. The application for the activity licence of a crowdfunding service provider must be accompanied by a questionnaire completed by the persons belonging to management. If the undertaking, a member of its management body, procurator, beneficial owner or natural person is a foreign citizen, the applicant must provide, among other things, extracts from the criminal records of the country of origin and of each country of nationality for that foreign national.
- 3.5. The applicant must ensure that the application complies with the requirements laid down in the Regulation and in the legislation issued on the basis thereof and that the documents submitted have been drawn up with due care and quality.
- 3.6. The Financial Supervision Authority recommends that you contact the Financial Supervision Authority before submitting your application to present your business model and to discuss how the procedure can be carried out as smoothly as possible.
- 3.7. Upon receipt of an application, the Financial Supervision Authority will assess whether the application is complete within the time limit set in the Regulation. If the request is incomplete, the Financial Supervision Authority will set a deadline for providing the missing information. If the deficiencies have not been remedied by the deadline or have not been remedied with due diligence, the Financial Supervision Authority will refuse to review the application. The missing information may be the absence of the information required by the Regulation or the information provided, taking into account the planned activity, inadequate conceptual approach as well as material inconsistencies or major formalisation in the documents.
- 3.8. If the applicant has previously been granted an activity licence by the Financial Supervision Authority for an e-money institution, payment institution, credit institution or investment firm or is in the process of applying for such a licence, it is not necessary to provide the Financial Supervision Authority with information that has already been submitted in the relevant licencing procedure, provided that such information and documents are up-to-date and available to the Financial Supervision Authority. If the documents have changed since the activity licence was issued, they must be resubmitted. The Financial Supervision Authority recommends that, due to the large quantity of materials, data and documents be submitted in an orderly manner and grouped together, adding a list of documents in the form of a table to the application. In the case of data and documents already submitted earlier, reference shall be made to them indicating the name of the document and the date of submission to the Financial Supervision Authority.
- 3.9. When holding or applying for multiple licences, account must be taken of the fact that, in addition to the requirements of the Regulation, the requirements of the relevant specific law, delegated regulations governing the sector or acts issued on the basis thereof must be complied with.
- 3.10. If the Financial Supervision Authority deems it necessary to request additional information or documents from the applicant, the term in proceedings will be suspended for the period between the request for additional information or documents and the receipt of the requested additional information or documents. If significant changes are made to the information submitted with the application or significant changes occur in the applicant during the procedure, the Financial Supervision Authority must be informed immediately. In the event of significant changes (e.g. merger, division, change in the structure of qualifying holdings, change of management, etc.), the Financial Supervision Authority will treat the notification as a submission of a new application, for which the term in proceedings commences as of the receipt of the corresponding information.

Financial Supervision Authority

- 3.11. The Financial Supervision Authority will adopt a fully reasoned decision granting or refusing to grant activity licence of a crowdfunding service provider and will notify the applicant of the decision within the time limit specified in the Regulation. The Financial Supervision Authority does not exclude and asks the applicant to take into account the possibility that the term in proceedings may be extended beyond the time limit specified in the Regulation in circumstances where the number of applications during the transitional period is simultaneous and causes an unusually high administrative burden for the Financial Supervision Authority. Such procedures do not lead to the granting of a licence on the grounds of exceeding the term in proceedings and the licence is granted or refused at the earliest opportunity.
- 3.12. The crowdfunding service provider will notify the Financial Supervision Authority without undue delay of any material changes to the terms and conditions of the authorisation and shall, upon the request of the Financial Supervision Authority, provide any additional information necessary to enable the assessment of the compliance of the changes with the Regulation.
- 3.13. The crowdfunding service provider is entitled under Article 48(1) of the Regulation to continue to provide the crowdfunding services in scope of the Regulation until 10 November 2022 or until the activity licence is obtained, depending on whichever day is earlier. Due to the large number of applications for activity licences and the possible lengthening of the activity licence procedure in the cases referred to in clauses [3.7](#) and [3.10](#), the Financial Supervision Authority recommends that applications for activity licences be submitted early and that the submission be coordinated with the Financial Supervision Authority in advance. If applying for an activity licence is postponed till the end of the transitional period, it should be taken into account that the activity licence may not be issued by 10 November 2022 and the provision of the crowdfunding service will have to be discontinued.

4. Governance and organisational chart

- 4.1. The crowdfunding service provider must ensure that the organisational chart is proportionate to the nature, scale and sophistication of its activities and is appropriate to the size and existence of the risks to which it is exposed.
- 4.2. It is the responsibility of the management body of the crowdfunding service provider to put in place appropriate arrangements and procedures to ensure the effective and sound management of the service provider. The role of the governing body is, inter alia, to ensure segregation of tasks, business continuity and the avoidance of conflicts of interest, and to monitor their implementation in a way that supports market integrity and the interests of its clients.
- 4.3. The governing body of the crowdfunding service provider will put in place and monitor the implementation of appropriate systems and controls to assess the risks associated with the loans intermediated through the crowdfunding platform.
- 4.4. Fit and proper assessment
 - 4.4.1. The manager of the crowdfunding service provider must comply with the requirements laid down in the relevant legislation and must be of good repute, have sufficient knowledge, skills and experience and be able to devote sufficient time to its duties to ensure the efficient and sound management of the crowdfunding service provider. The obligation to ensure that the manager meets the established requirements rests primarily with the crowdfunding service provider itself. At the same time, in certain cases, such as in the context of an application for an activity licence or a change in the persons being assessed, there is an obligation to forward the relevant information and documentation to the Financial Supervision Authority. When assessing managers, it is important that, in addition to the assessment of the manager himself/herself, it is also necessary to assess that the governing body as a whole meets the requirements laid down in the legislation, also collectively.
 - 4.4.2. The Financial Supervision Authority will proceed from the instructions for conducting

Financial Supervision Authority

the fit and proper procedure⁵ when conducting the eligibility procedure. When forwarding information to the Financial Supervision Authority regarding managers, it is necessary to fill in the questionnaire of the Financial Supervision Authority concerning the person elected to the regulated position of the subject of financial supervision⁶.

- 4.4.3. The information specified in clause 3.4 of this document must also be submitted to the Financial Supervision Authority by a shareholder or shareholder of a crowdfunding service provider who holds 20% or more of the share capital or voting rights. In the case of a partner or shareholder who is a legal person, the above information must be provided by its managers.

4.5. Internal control mechanisms

- 4.5.1. The crowdfunding service provider must establish an adequate internal control system and implement adequate internal control measures covering all management and operational levels of the crowdfunding service provider. In an effective internal control system, three lines of defence are applied.

The general requirements that the Financial Supervision Authority follows when assessing the organisational structure, applying the principle of proportionality, are derived from the Financial Supervision Authority's advisory guidelines "Guidelines on internal governance"⁷.

- 4.5.2. There must be a separation of roles within the organisation, and the persons performing the control function must be independent and must not participate in other activities that involve a conflict of interest and that do not allow the control function to be performed with sufficient effectiveness.
- 4.5.3. Internal control mechanisms must ensure that the service provider's activities are in compliance with the legislation and internal rules. It is important to lay down a set of rules for regular internal audits to check that internal rules are up to date and in compliance with the requirements laid down in the legislation. It is also important to carry out regular checks on the quality of the service provided and to make appropriate corrections to internal procedures in order to identify shortcomings in one's activities.
- 4.5.4. An effective internal control system identifies reporting lines and chains of command that allow for effective monitoring, help identify problems early, ensure that all staff know their role in the organisational structure and know their tasks, the conflicts of interest tasks entail and implement effective measures to prevent them.
- 4.5.5. In order to ensure the functioning of an effective internal control system, the Financial Supervision Authority expects that significant management-related persons, including management board members, compliance and risk management functions, are within the organisation and are mostly located in the member state that issued the activity licence.

4.6. Managing and avoiding conflicts of interest

- 4.6.1. In order to avoid conflicts of interest, the crowdfunding service provider must have and apply internal rules and ensure that shareholders, managers or employees of the crowdfunding service provider with a qualifying shareholding, and natural or legal persons closely linked to them by control, are not accepted as project owners of the crowdfunding project. The crowdfunding service provider may not have any

⁵ Guidelines for conducting the fit and proper assessment. Online: <https://www.fi.ee/et/juhendid/pangandus-ja-krediit/sobivusmenetluse-labiviimise-juhend>.

⁶ Form for informing the subject of financial supervision of a person to be elected to a regulated position. Online: <https://www.fi.ee/et/juhendid/pangandus-ja-krediit/sobivusmenetluse-labiviimise-juhend>.

⁷ The European Banking Authority's guidelines on internal governance. Online: <https://www.fi.ee/et/juhendid/banking-and-credit/eba-suunised-sisejuhtimise-kohta>.

participation in crowdfunding offers conducted through its crowdfunding platform.

- 4.6.2. If a provider of crowdfunding services belongs to a consolidation group, conflicts of interest arising from that group must also be taken into account.
- 4.6.3. Procedures to manage and avoid conflicts of interest must be documented in writing and take into account the nature, scale and level of sophistication of the activities of the crowdfunding service provider. Procedures for managing and avoiding conflicts of interest must include, inter alia, at least the following:
- 1) identification of a conflict of interest and a description of the conflict situation;
 - 2) the measures to be implemented to address the conflict of interest;
 - 3) principles to ensure an appropriate separation of tasks;
 - 4) the policies for related party transactions;
 - 5) other appropriate policies and measures to help prevent and manage conflicts of interest;
 - 6) informing clients of potential or actual conflicts of interest.
- 4.6.4. The crowdfunding service provider must disclose on its website the general nature and sources of conflicts of interest, the risks arising therefrom and the measures taken to mitigate the conflicts of interest. The relevant information must be kept up to date, in particular when a new potential source of conflict of interest is identified. The description to be disclosed must be sufficiently detailed to ensure that investors are adequately informed before investing in the crowdfunding project.
- 4.6.5. The crowdfunding service provider must carry out due diligence and background checks on project owners. The inspection must include, as a minimum, the gathering of formal information on project owners that will enable the crowdfunding service provider to satisfy itself that the project owner has no criminal record in respect of infringements of national rules of commercial law, insolvency law, financial services law, anti-money laundering law, fraud law and professional liability law and is not established in a non-cooperative jurisdiction or high-risk third country under relevant EU policies.
- 4.6.6. The description of the process for carrying out the background check must be documented in writing and approved by the management board. The crowdfunding provider must be able to demonstrate to the Financial Supervision Authority that it has carried out the necessary background checks on project owners.
- 4.6.7. In order to manage and avoid conflicts of interest, the crowdfunding service provider must follow the requirements set out in the ESMA RTS⁸.
- 4.7. Operational Risk
- 4.7.1. Operational risk is the risk of loss resulting from the inadequate or non-functioning of internal processes, human errors or systems, or from external events. The organisation of operational risk management is addressed in the Financial Supervision Authority's advisory guidelines "Requirements for the organisation of operational risk management"⁹.
- 4.7.2. Business continuity is the capacity of a subject of supervision to continue providing its services at the predetermined acceptable levels after a significant business interruption.

⁸ Consultation Paper. Draft technical standards under the ECSP Regulation. Annex IV, Draft RTS pursuant to Article 8(7) of the ECSPR, 26.02.2021, pp 68–73. NB! This is a RTS project. The final document will be included when the RTS enters into force. Online: https://www.esma.europa.eu/sites/default/files/library/esma35-36-2201_cp_-_ecspr_technical_standards.pdf.

⁹ Requirements for the organisation of operational risk management. Online: https://www.fi.ee/sites/default/files/2019-08/N%C3%B5uded%20operatsiooniriski%20juhtimise%20korraldamiseks%20uus%20redaktsioon%20ET_0.pdf.

The organisation of the business continuity process is addressed in the Financial Supervision Authority's advisory guidelines "Requirements for the organisation of the business continuity process of a financial supervision subject"¹⁰.

- 4.7.3. The business continuity plan addresses the risks associated with termination of activities of the crowdfunding service provider. The plan must include provisions for the performance of critical functions, which, depending on the business model of the crowdfunding service provider, may include provisions for the continued servicing of outstanding loans, provision of information to clients and transfer of the agreements on the custody of assets.
- 4.7.4. Crowdfunding service providers should, on the basis of a business impact analysis, draw up business continuity assurance plans for information and communication technology (hereinafter ICT) systems (business continuity plans) to be documented and approved by their management bodies. These plans must specifically take into account the risks that may adversely affect ICT systems and ICT services. Plans should support the objectives of protecting and, where appropriate, restoring the confidentiality, integrity and availability of their business functions, support processes and information assets. Response and recovery plans must also be developed on the basis of business impact analyses and plausible scenarios. These plans must specify under what conditions the plans will be launched and what measures need to be taken to ensure at least the availability, business continuity and recovery of the company's critical ICT systems and ICT services.
- 4.7.5. When preparing a business continuity plan, the crowdfunding service provider must proceed from the requirements set out in the¹¹ ESMA RTS.
- 4.7.6. At least once every two years, the governing body of a crowdfunding service provider is obliged to review prudential requirements and their business continuity plan.

5. Capital requirements

- 5.1. Clients may be exposed to potential risks associated with crowdfunding providers, in particular operational risks. In order to protect clients from risks, a crowdfunding service provider must, at all times, have appropriate safeguards in place to ensure prudential requirements.
- 5.2. The amount of prudential requirements is a quarter of the fixed overhead costs of the previous financial year, which are reviewed each year and must cover the cost of servicing loans within three months if the crowdfunding service provider also mediates the granting of loans, but not less than EUR 25 000.
- 5.3. Prudential requirements are one of the following types:
 - 5.3.1. own funds;
 - 5.3.2. insurance contract;
 - 5.3.3. a combination of the two previous points.
- 5.4. Adequacy of own funds
 - 5.4.1. The legislation sets minimum requirements for the service provider's own funds. Own

¹⁰ Requirements for the organisation of the business continuity process of a financial supervision subject. Online: https://www.fi.ee/sites/default/files/2018-08/pp_nr_06.1_20170202_Nouded_finantsjarelevalve_subjekti_talituspidevuse_protsessi_korraldamisele.pdf.

¹¹ Consultation Paper. Draft technical standards under the ECSP Regulation. Annex V, Draft RTS pursuant to Article 12(16) of the ECSPR, 26.02.2021, pp 74–77. NB! This is a RTS project. The final document will be included when the RTS enters into force. Online: https://www.esma.europa.eu/sites/default/files/library/esma35-36-2201_cp_-_ecspr_technical_standards.pdf.

funds consist of a wider range of instruments than just share capital. For example, own funds may include issue premium, retained earnings, current year earnings, established reserves of equity capital. When calculating the amount of own funds, mandatory deductions must be made from them (for example, investments in intangible assets of the service provider).

- 5.4.2. For a more detailed list of eligible own funds instruments and mandatory deductions, see Articles 26-30 and 36 of the Capital Regulatory Regulation (Regulation (EU) No 575/2013 of the European Parliament and of the Council)¹².
- 5.4.3. The service provider's own resources must be at least EUR 25,000 or one quarter of the fixed overhead costs recorded in the accounts for the previous financial year, whichever is the greater. For a start-up provider, the estimate of fixed overhead costs provided in the business plan will be used. If the company was also operating before applying for an activity licence, it must provide an auditor's report confirming the level of own funds.
- 5.4.4. The minimum own funds requirement must be met at all times. As the current year's loss is included in own funds, the current year's loss immediately reduces own funds. The service provider must monitor compliance with the own funds requirement on an ongoing basis. The Financial Supervision Authority monitors the level of own funds on the basis of supervisory reporting. When assessing an application for activity licence, the Financial Supervision Authority will review the internal rules on internal capital management, which must describe the internal process by which the provider ensures ongoing compliance with the own funds requirement. One part of the capital management process is an internal capitalisation threshold, which must be set above the legal minimum and the breach of which triggers management measures to improve capitalisation.
- 5.4.5. In the case of a service provider taking up business, the own funds must exceed the minimum requirement at the time of application for an activity licence, with a sufficient margin to cover losses incurred during the start-up period and to meet the own funds requirement at any time after the issuance of activity licence. The excess of the reserve over the minimum own funds requirement is assessed on the basis of the business plan baseline forecast and a stress test. The stress test reflects the risk that it will take more time to start the business plan, costs will turn out to be higher than planned and revenues will be lower.

6. Requirements for providing the service

6.1. Individual portfolio management of loans

- 6.1.1. Individual portfolio management of loans refers to business models where the crowdfunding service provider automatically allocates funds to crowdfunding projects according to parameters and risk parameters predefined by the investor. When offering the service of individual portfolio management of loans, crowdfunding service providers must disclose to investors the information covering the list of loans included in the portfolio, the average interest rate of the portfolio, etc. In order to offer the service of individual portfolio management of loans, the crowdfunding service provider must establish internal processes and methodologies and use appropriate data. In doing so, the service provider must take into account the criteria and other factors identified for assessing credit risk. If possible, also verify the fulfilment by the project owner of previous payment obligations, payment disruptions and other relevant sources that characterise the project owner's past payment behaviour. When offering the service of individual portfolio management of loans, the crowdfunding service provider must comply with the requirements set out in the European Banking Authority's (hereinafter

¹² Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012. Online: <https://eur-lex.europa.eu/legal-content/ET/TXT/HTML/?uri=CELEX:32013R0575&from=EN>.

the EBA) RTS¹³.

- 6.1.2. A collective financial undertaking providing individual portfolio management of loans will base its risk management framework (including the assignment of risk categories) on the requirements set out in the EBA RTS¹⁴. Prior to the entry into force of the aforementioned EBA RTS, a crowdfunding service provider offering the management of an individual loan portfolio must, as a minimum, comply with the requirements set out in the Regulation when establishing a risk management framework.

6.2. Outsourcing

- 6.2.1. Outsourcing is the use by a subject of supervision, under contract and subject to specific requirements and limitations laid down in legislation, of the services of a third party (service provider), the purpose of which is to continue to carry out activities and operations necessary for the provision of the service(s) by the subject of supervision to its clients, and which would normally be carried out by the subject of supervision itself.
- 6.2.2. The crowdfunding service provider may not outsource activities in such a way as to prevent the internal control of the crowdfunding service provider or the necessary level of supervision over the crowdfunding service provider. The crowdfunding service provider must make a comprehensive and thorough assessment of the necessity of the outsourcing.
- 6.2.3. Outsourcing does not relieve the crowdfunding service provider from its responsibility for the functions outsourced and it is fully liable for compliance with the legal requirements. Outsourcing of an activity must not hamper or affect the quality and functioning of the outsourced activity.
- 6.2.4. If a crowdfunding service provider decides to outsource its activities to a third party, it must comply with the requirements set out in the Financial Supervision Authority's advisory guidelines "Requirements for outsourcing by a financial supervision subject"¹⁵.
- 6.2.5. There are no differences for the ICT services compared to the outsourcing of activities in other sectors. The crowdfunding service provider must ensure the effectiveness of risk management measures defined in the risk management framework when the ICT services and ICT systems for any activity are outsourced, including from group companies, or when third parties are used. The supervision policy and more specific requirements of the Financial Supervision Authority are set out in the Financial Supervision Authority's advisory guidelines "Requirements for the organisation of information technology and information security of financial supervision subjects"¹⁶, clause 3.4 "Use of external service providers".

6.3. Provision of the asset safekeeping and payment services

¹³ Consultation Paper. Draft Regulatory Technical Standards on Individual Portfolio Management of loans offered by crowdfunding service providers under Art. 6(7) Regulation (EU) 2020/1503, 04.06.2021, pp 12–29. NB! This is a RTS project. The final document will be included when the RTS enters into force. Online: https://www.eba.europa.eu/sites/default/documents/files/document_library/Publications/Consultations/2021/Consultation%20on%20draft%20RTS%20on%20Individual%20Portfolio%20Management%20of%20loans%20offered%20by%20crowdfunding%20service%20providers/1013925/CP%20on%20draft%20RTS%20on%20crowdfunding.pdf

¹⁴ The reference will be included when the RTS enters into force.

¹⁵ Requirements for outsourcing by a financial supervision subject. Online: <https://www.fi.ee/et/juhendid/pangandus-ja-krediit/nouded-finantsjarelevalve-subjekti-poolt-tegevuse-edasiandmisele-outsourcing-uus-redaktsioon>.

¹⁶ Requirements for the organisation of information technology and information security of financial supervision subjects. Online: <https://www.fi.ee/sites/default/files/2020-06/N%C3%B5uded%20finantsj%C3%A4relevalve%20subjekti%20infotehnoloogia%20ja%20infoturbe%20korraldus%20kinnitatus.pdf>.

- 6.3.1. When providing asset safekeeping or payment services, the crowdfunding service provider must provide information to customers, including a description of the service and the identity of the service provider: whether the service is provided by the crowdfunding service provider itself or by a third party. When a crowdfunding service provider carries out payment transactions involving freely transferable securities and admitted instruments for crowdfunding purposes, it deposits these funds with a credit institution.
- 6.3.2. When applying for an authorisation, the crowdfunding service provider must inform the Financial Supervision Authority whether it intends to provide payment services itself under the relevant activity licence or whether it will outsource the provision of payment services to a third party holding an activity licence. The outsourcing of activities to a third party will be subject to the provisions set out in clause [6.2](#) of this document.
- 6.3.3. The provider of the asset safekeeping service must be authorised in accordance with Directive 2013/36/EU or 2014/65/EU. Payment services may be provided by a person who is a payment service provider according to Directive (EU) 2015/2366. The provider of crowdfunding service must ensure that the provider itself, or the person who provides the asset safekeeping or payment services to the crowdfunding service, has an appropriate activity licence.
- 6.3.4. In Estonian legislation, the requirements for obtaining an activity licence to provide payment services are set out in the Payment Institutions and E-money Institutions Act (hereinafter the PIEIA)¹⁷. Where the PIEIA requirements are stricter than those of the Regulation and national law issued on the basis thereof, the requirements set out in the PIEIA must be followed. The general requirements for the safekeeping of assets are set out in the Securities Market Act¹⁸.
- 6.4. Cross-border provision of services
- 6.4.1. Cross-border services may be provided if the crowdfunding service provider holds an activity licence and has submitted the information required by the Regulation to the Financial Supervision Authority for the cross-border provision of services.

7. Investor protection

7.1. Assessment of credit risk

- 7.1.1. The crowdfunding service provider must assess the credit risk of the crowdfunding project and the project owner. Credit risk is the risk that a counterparty to a transaction is unable or unwilling to meet its obligations. In order to assess the risks associated with intermediated loans, the service provider must establish appropriate systems, effective policies and procedures (risk management framework), publish them and monitor their implementation.
- 7.1.2. The crowdfunding service provider must establish a methodology for the assessment and reassessment of the credit risk of the crowdfunding project and the project owner as a basis for the pricing of the crowdfunding offer. The credit risk assessment must be based on the annual reports of at least the last two financial years, where available, relevant information collected from the project owner and other relevant information collected. The crowdfunding service provider must set out in the methodology the frequency and processes for assessing credit risk, with the frequency of assessment covering at least the time of the loan, the time of the likely default, the default and if the investor is allowed to exit before the maturity date of the loan.
- 7.1.3. When assessing the risk of intermediation in a crowdfunding project, the crowdfunding

¹⁷ Payment Institutions and E-money Institutions Act. Online: <https://www.riigiteataja.ee/akt/110072020021?leiaKehtiv>.

¹⁸ Securities Market Act. Online: <https://www.riigiteataja.ee/akt/104122019004?leiaKehtiv>.

service provider must base its assessment on one or more specific parameters or risk indicators, such as the type or sector of business activity or credit rating. The crowdfunding service provider that applies a credit rating to a crowdfunding project or proposes the pricing of crowdfunding offers must establish a methodology for the calculation, pricing or interest rate assignment of credit ratings. If the calculation is based on unaudited accounts, this must be clearly stated in the description of the method.

- 7.1.4. When establishing a risk management framework, the crowdfunding service provider must, inter alia, put in place a methodology for calculating the credit ratings of projects where it relies on credit ratings to assess risk and for pricing crowdfunding offers, including the assessment of the credit risk of crowdfunding offers. In setting up the risk management framework underlying the credit ratings and the pricing of the crowdfunding offer, the crowdfunding service provider must follow the requirements set out in the EBA RTS¹⁹. Prior to the entry into force of the EBA RTS mentioned above, the crowdfunding service provider must, as a minimum, establish a risk management framework based on the requirements set out in the Regulation.
- 7.1.5. The Financial Supervision Authority will base its assessment of credit risk on the Regulation and will focus on assessing the adequacy of the internal rules of the crowdfunding service provider. The assessment of individual projects and the materialisation of the risks arising therefrom are the responsibility of the crowdfunding service provider, project owner and investor. The minimum list and accuracy of the information disclosed to the investor will be the responsibility of the project owner and the crowdfunding service provider.

7.2. Processing of complaints

- 7.2.1. The crowdfunding service provider must have in place a complaints handling policy and procedures to guide it in the resolution of complaints relating to the provision of the service. Complaint handling procedures must be published by the service provider on its website. The crowdfunding service provider must also publish on its website a standard template for complaints for clients to use when making a complaint. The crowdfunding service provider must acknowledge the receipt of the complaint and set a deadline for replying to the complaint within 10 working days of the receipt.
- 7.2.2. The reply to the complaint must be reasoned and must correspond to the complaint. If the client of a crowdfunding service provider is not satisfied with the response to his complaint or has not received a response from the service provider within the time limit, the client has the right to refer the matter to the Financial Supervision Authority. The Financial Supervision Authority will explain the applicable law and, if necessary, contact the service provider for further clarification, but will not settle any disputes that may arise or give a legal assessment of the complaint, except in cases provided for by law. The crowdfunding service provider must publish on its website clear and comprehensible indications that the client has the right to lodge a complaint with the Financial Supervision Authority, including the contact details of the Financial Supervision Authority. When handling complaints, establishing the appropriate procedures and the standard template, the crowdfunding service provider must comply with the requirements set out in the ESMA RTS²⁰.

¹⁹ EBA/RTS/2022/05. Final report. Draft Regulatory Technical Standards on credit scoring and pricing disclosure, credit risk assessment and risk management requirements for crowdfunding service providers under Article 19(7) Regulation (EU) 2020/1503 Online: https://www.eba.europa.eu/sites/default/documents/files/document_library/Publications/Draft%20Technical%20Standards/2022/EBA-RTS-2022-05%20RTS%20on%20crowdfunding%20for%20service%20providers/1032645/RTS%20on%20crowdfunding%20for%20service%20providers%20.pdf.

²⁰ Consultation Paper. Draft technical standards under the ECSP Regulation. Annex III, Draft RTS pursuant to Article 7(5) of the ECSPR, 26.02.2021, pp 55–67. NB! This is a RTS project. The final document will be included when the RTS enters into force. Online: <https://www.esma.europa.eu/sites/default/files/library/esma35-36->

7.3. Default rate disclosure

- 7.3.1. The crowdfunding service provider that provides crowdfunding services consisting of the facilitation of granting of loans must disclose on its website, in a prominent place, the default rates of the crowdfunding projects it has offered over at least the last 36 months. The service provider must also publish a report within four months of the end of each financial year, including, among other things, both expected and actual default rates. The purpose of the above is to provide investors with an understanding of the functioning, risks and returns of the loans offered on the crowdfunding platform.
- 7.3.2. A crowdfunding service provider which provides crowdfunding services consisting in the facilitation of granting loans shall consider a default to have occurred with regard to a particular loan offered on its crowdfunding platform when either or both of the following have taken place: (i) the crowdfunding service provider considers that the project owner is unlikely to pay in full, or otherwise fulfil its credit obligations related to a particular loan, without recourse to actions such as realising security; or (ii) the project owner is more than 90 days past due on any material credit obligation related to a particular loan.
- 7.3.3. The average default rate per year is calculated by the crowdfunding service provider on the basis of a historical observation period (minimum 36 months) and using 12-month observation windows. The denominator consists of the number of non-defaulted loans observed at the beginning of the 12-month observation window. The numerator includes all loans considered in the denominator that had at least one default event during the 12-month observation window. The default rate must also be calculated and disclosed by the crowdfunding service provider by risk category, as set out in the risk management framework.
- 7.3.4. The crowdfunding service provider must ensure that it has the necessary procedures and methods, understanding and know-how to identify payment defaults and to calculate and disclose default rates. In the event of a payment default, the crowdfunding service provider must inform investors immediately. The calculation and publication of default rates must be based on the requirements set out in the ESMA RTS²¹.

7.4. Entry knowledge test and simulation of the ability to bear loss

- 7.4.1. The crowdfunding service provider must assess the knowledge and experience of non-sophisticated investors and whether and which crowdfunding services offered are suitable for non-sophisticated investors. To do this, the service provider must collect the necessary data and documents from the investor and verify the accuracy of the information provided. Before making an investment, the investor must have been made aware of the risk warning and the investor must confirm that he/she has received and understands the risk warning.
- 7.4.2. The investor must be able to simulate the ability to bear loss, calculated as 10% of the investor's net worth, which includes the investor's income, assets and liabilities. In order to simulate the ability to bear loss, the crowdfunding service provider must develop a calculator that allows the investor to estimate its net worth. The requirements set out in the ESMA RTS²² must be followed when verifying the investor's knowledge and simulating the ability to bear loss.

[2201_cp - ecspr technical standards.pdf](#).

²¹ Consultation Paper. Draft technical standards under the ECSP Regulation. Annex VII, Draft RTS pursuant to Article 20(3) of the ECSPR, 26.02.2021, pp 112–117. NB! This is a RTS project. The final document will be included when the RTS enters into force. Online: https://www.esma.europa.eu/sites/default/files/library/esma35-36-2201_cp - ecspr technical standards.pdf.

²² Consultation Paper. Draft technical standards under the ECSP Regulation. Annex VIII, Draft RTS pursuant to Article 21(8) of the ECSPR, 26.02.2021, pp 118–128. NB! This is a RTS project. The final document will be included when the RTS enters into force. Online: https://www.esma.europa.eu/sites/default/files/library/esma35-36-2201_cp - ecspr technical standards.pdf.

7.5. Pre-contractual reflection period

- 7.5.1. A pre-contractual reflection period must be set by the crowdfunding service provider, during which a potential non-experienced investor may revoke his or her investment offer or expression of interest in a crowdfunding offer at any time, without giving a reason and without incurring a penalty. The reflection period shall start at the moment of the offer to invest or the expression of interest by the prospective non-sophisticated investor, and shall expire after four calendar days. The service provider must inform the investor in good time of the existence of the reflection period, its duration and the procedure for withdrawing an investment offer or expression of interest. The service provider must not make it difficult for the investor to withdraw an offer to invest or an expression of interest and must provide the investor with the aforementioned information in a clear and precise manner.

7.6. Key investment information sheet

- 7.6.1. The crowdfunding service provider must ensure that the investor has the opportunity to consult the key investment information sheet before making the investment and must ensure that the key investment information sheet prepared by the project owner is clear, understandable and non-confusing. The key information document must reflect the distinctive features of loan-based and investment-based crowdfunding and provide information on the project, the project owner, the different types of risks, the rights of the investor, the type of investment, etc.
- 7.6.2. The Financial Supervision Authority does not assess or approve individual key investment information sheets, but may request prior notification of a key investment information sheet at least seven days before it is published to investors. The Financial Supervision Authority has the power to impose laws, regulations and administrative provisions on natural and legal persons responsible for the information in the key investment information sheet and its translations where the information is misleading or inaccurate or where the key investment information sheet omits key information necessary to help investors decide on the financing of a project.
- 7.6.3. The crowdfunding service provider must establish and implement rules of procedure for assessing the clarity and completeness of the content of the key investment information sheet, for identifying and remedying deficiencies. In the event of an error or inaccuracy in the key investment information sheet, the crowdfunding service provider must inform the project owner of the error or inaccuracy. If the project owner makes any changes to the key investment information sheet, it must inform the crowdfunding service provider, which in turn will notify the investors of such changes without delay. The key investment information sheet must be drawn up in accordance with the requirements set out in the ESMA RTS²³ and using the form set out in the Annex to the RTS²⁴.

7.7. Marketing communications

- 7.7.1. When marketing the service, the crowdfunding service provider must comply with the requirements set out in the Advertising Act²⁵ for the advertising of financial services. Advertising of financial services must include an invitation to examine the terms and conditions of the financial services and to consult an expert, as necessary. The invitation must be presented in a clear, concise and distinctive manner. Besides, the

²³ Consultation Paper. Draft technical standards under the ECSP Regulation. Annex IX, Draft RTS pursuant to Article 23(16) of the ECSPR, 26.02.2021, pp 129–144. NB! This is a RTS project. The final document will be included when the RTS enters into force. Online: https://www.esma.europa.eu/sites/default/files/library/esma35-36-2201_cp_-_ecspr_technical_standards.pdf.

²⁴ Consultation Paper. Draft technical standards under the ECSP Regulation. Annex IX, Draft RTS pursuant to Article 23(16) of the ECSPR. Annex, Key investment information sheet model, 26.02.2021, pp 134–144. NB! This is a RTS project. The final document will be included when the RTS enters into force. Online: https://www.esma.europa.eu/sites/default/files/library/esma35-36-2201_cp_-_ecspr_technical_standards.pdf.

²⁵ Advertising Act. Online: <https://www.riigiteataja.ee/akt/101072020013?leiaKehtiv>.

crowdfunding service provider must comply with general advertising requirements, including that advertising must not be misleading or contrary to accepted principles of morality and public policy.

8. Reporting to the Financial Supervision Authority

- 8.1. The governance arrangements and internal control mechanisms of the crowdfunding service provider must ensure that complete and accurate data are reported to the Financial Supervisory Authority in a timely manner. The governance arrangements must specify who is responsible for reporting to the Financial Supervisory Authority and what control procedures are in place to ensure the completeness, compliance and timeliness of the data required under Article 16 of the Regulation. The management body of the crowdfunding service provider is responsible for regularly reviewing the relevant procedures and internal control mechanisms and ensuring that they are up-to-date and effective.
- 8.2. In order to meet the reporting requirements correctly, the crowdfunding service provider shall keep records on the crowdfunding platform for each crowdfunding offer intermediated, broken down by project owners, investors and instruments issued. The Financial Supervision Authority requires that the documents used as the source of the underlying data for the reports submitted are kept by the crowdfunding service provider on a durable medium for at least five years.
- 8.3. Where the crowdfunding service provider also provides financing for crowdfunding projects not falling within the scope of the Regulation, the relevant database for the provision of the data shall be structured in a way that distinguishes the data to be submitted under Article 16 of the Regulation.
- 8.4. General reporting requirements
 - 8.4.1. When providing the information required by the Regulation, the crowdfunding service provider must comply with the requirements set out in the ESMA Implementing Technical Standard (ITS)²⁶ and the Regulation of the Minister of Finance²⁷.
 - 8.4.2. The reports required by the Regulation are submitted via the data collection portal. When submitting the data, the crowdfunding service provider must comply with the reporting requirements for the XML format. Information on the data collection portal and the submission of data in XML format can be found on the website of the Financial Supervision Authority.
 - 8.4.3. In order to be able to submit reports, the crowdfunding service provider must have a global legal entity identifier – LEI (Legal Entity Identifier). In order to ensure the correct reporting of information, it is important that the reports also include the LEI of the project owner. If the project owner is a natural person, the rules on the identification of the natural person as set out in Article 6 of the Commission Delegated Regulation (EU) 2017/590²⁸ will be used to identify the project owner.
 - 8.4.4. The reports must include data on all crowdfunding proposals, including those that were not funded during the calendar year. The crowdfunding service provider must ensure that the information provided to the Financial Supervision Authority is complete and

²⁶ Consultation Paper. Draft technical standards under the ECSP Regulation. Annex X, Draft ITS pursuant to Article 16(3) of the ECSPR, 26.02.2021, pp 145–152. NB! This is a RTS project. The final document will be included when the RTS enters into force. Online: https://www.esma.europa.eu/sites/default/files/library/esma35-36-2201_cp_-_ecspr_technical_standards.pdf.

²⁷ The reference will be added upon entry into force of the Regulation of the Minister of Finance.

²⁸ Commission Delegated Regulation (EU) 2017/590 of 28 July 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the reporting of transactions to competent authorities. Online: <https://eur-lex.europa.eu/legalcontent/ET/TXT/HTML/?uri=CELEX:32017R0590&from=en>

accurate.

8.5. First reporting period and missing data to be reported

- 8.5.1. The data provided for in the Regulation must be provided for the first time for the period from the moment of authorisation to the end of the calendar year. Thereafter, data for each calendar year will be provided annually by the end of February. If the crowdfunding service provider has not commenced its activities after having obtained the activity licence, but the deadline for data submission has arrived, a blank report must be submitted. Similarly, where the crowdfunding service provider has not published any crowdfunding offer for which information is required by the Regulation, a blank report must be submitted.

8.6. Data verification, processing and transmission to the ESMA

- 8.6.1. The responsibility for the accuracy and timeliness of the information provided to the Financial Supervision Authority lies with the crowdfunding service provider. The crowdfunding service provider must allocate sufficient resources to ensure that complete and accurate data are submitted to the Financial Supervision Authority in a timely manner. After receipt of the data, the compliance of the data with the requirements of the Regulation and the standards established under it will be checked, but the technical and substantive accuracy of the data will not be checked. Any errors detected will be reported to the data provider. After receiving an error message, the data must be corrected and resubmitted immediately. When re-submitting the data, the justification for the submission must be included in the data collection portal. The Financial Supervision Authority will transmit the collected data to the ESMA, making the information provided on project owners anonymous prior to the transmission.

9. **Financial supervision**

- 9.1. Financial supervision is carried out in the public interest. The purpose of supervision is to ensure that the rules laid down for crowdfunding service providers are complied with.
- 9.2. The Financial Supervision Authority will operate pursuant to legislation and the internationally recognised principles relating to financial supervision, and will act openly and transparently, and apply the principles of sound administration. The frequency of supervisory activities of the Financial Supervision Authority and the methodology applied will take account of the size of the subject of financial supervision, the effect of its activity to the financial system as well as the type, extent and sophistication of the activity, based on the principle of proportionality.
- 9.3. The source of funding for the activities of the Financial Supervision Authority is the supervisory fees and procedural fees paid by the subjects of financial supervision. The crowdfunding service provider will pay a supervision fee to the Financial Supervision Authority in the amount set out in the Financial Supervision Authority Act.
- 9.4. On the basis of consumer complaints submitted to the Financial Supervision Authority, supervisory reporting and other information gathered, the Financial Supervision Authority will assess the organisation and activities of the crowdfunding service provider and, where necessary, take legal action against the crowdfunding service provider to bring its organisation and activities into compliance with the applicable rules.
- 9.5. In the course of its financial supervision, the Financial Supervision Authority will verify the compliance of the internal rules of the crowdfunding service provider with the requirements set out in the Regulation and other relevant legislation. The crowdfunding service provider will formalise the internal rules in writing, which must be up-to-date and easily identifiable, clear and transparent. The internal rules must correspond to the actual activities of the service provider and clearly explain to employees how to behave in different situations. Internal rules are unique to each undertaking and must take into account the nature, scale and sophistication of the service provider's activities and ensure compliance with the requirements set out in the Regulation and other relevant legislation.

Financial Supervision Authority

- 9.6. The supervisory measure to be applied will be chosen by the Financial Supervision Authority on the basis of its assessment of what is the most effective and proportionate measure for a particular subject of supervision in order to comply with the Regulation or other legislation and to protect the interests of the clients of the service provider. Such measures may include, individually or in combination with other measures, the carrying out of on-site inspection or off-site inspection, requesting information or documents from persons associated with a crowdfunding service provider, or issuing an injunction requiring a person to temporarily suspend its activities or to cease the activities considered to be offences and to refrain from repeating those activities, etc.
- 9.7. The Financial Supervision Authority has the right to revoke the activity licence of a crowdfunding service provider pursuant to the conditions provided for in the relevant legislation.