

EBA/CP/2021/22

04 June 2021

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

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1. Responding to this consultation

The EBA invites comments on all proposals put forward in this paper and in particular on the specific questions summarised in 5.2.

Comments are most helpful if they:

- respond to the question stated;
- indicate the specific point to which a comment relates;
- contain a clear rationale;
- provide evidence to support the views expressed/ rationale proposed; and
- describe any alternative regulatory choices the EBA should consider.

Submission of responses

To submit your comments, click on the 'send your comments' button on the consultation page by 4 September 2021. Please note that comments submitted after this deadline, or submitted via other means may not be processed.

Publication of responses

Please clearly indicate in the consultation form if you wish your comments to be disclosed or to be treated as confidential. A confidential response may be requested from us in accordance with the EBA's rules on public 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 the EBA's Board of Appeal and the European Ombudsman.

Data protection

The protection of individuals with regard to the processing of personal data by the EBA is based on Regulation (EU) 1725/2018 of the European Parliament and of the Council of 23 October 2018. Further information on data protection can be found under the Legal notice section of the EBA website.

2. Executive Summary

Over the last years, crowdfunding has become a significant mean through which start-ups and SMEs can finance their projects. Differently from banking intermediation, the crowdfunding service provider does not take any risk of its own; rather, the risk remain entirely on the investor. The Regulation (EU) 2020/1503 on European Crowdfunding Service Providers Regulation (ECSPR) was issued with the aim of ensuring uniform conditions for crowdfunding service providers across the Union (thus fostering cross-border provisions of these services) and to provide a robust framework for investor protection. In particular, the disclosure of reliable and accurate information as a key component of a sound investor protection framework becomes very relevant when crowdfunding service providers offer individual portfolio management of loans, i.e. when they allocate a pre-determined amount of funds of an investor to one or multiple crowdfunding projects, in accordance with a specific mandate.

To this extent, Art. 6(7) of the ECSPR mandates the EBA to submit draft Regulatory Technical Standards to specify some information that shall be provided to investors in order to be appropriately informed about the risks they are exposed to when they invest in individual portfolio management of loans. These risks may originate from the following circumstances:

- i. Investors may underestimate the risks of their investment, assuming that every loan and project within a portfolio is subject to an adequate risk assessment process.
- ii. As crowdfunding is particularly relevant for small businesses and start-ups, often with little or no credit history, investors relying on these platforms may not be fully aware of the real quality of borrowers and may find it difficult to appreciate the risks involved for each of the loans in the portfolio.

In addition, crowdfunding platforms may set up contingency funds to compensate investors in the event of a default of a borrower and smooth their returns. In order to avoid any misrepresentation of the underlying risk, the ECSPR makes it clear that the mere existence of these funds does not provide a guaranteed rate of return of the investment and that there is absolute discretion on potential refunds. Further to that, Art. 6(7) of the ECSPR mandates to EBA to specify the policies and procedures that crowdfunding platforms must have in place with respect to contingency funds.

This Consultation Paper puts forward the EBA proposal with respect to disclosures and policies required for crowdfunding service providers that offer individual portfolio management of loans. First, they are required to show that the measurement techniques employed for risk assessments are based on a sufficient number of elements and are appropriate to the complexity and level of the risks underlying i) the single projects; ii) the portfolio; iii) the project owners. This will allow investors to have sufficient knowledge about the returns and risks of the projects and take informed decisions. Second, the draft RTS sets out the information that crowdfunding platforms must disclose in relation to several key characteristics of each loans included in a certain portfolio. Third, the policies that the crowdfunding platform need to have in place in relation to contingency funds

are specified. These policies are aimed at ensuring that contingency funds have appropriate governance arrangements and procedures with respect to collection of fees and disbursements of refunds.

Through these requirements, the draft RTS aims at mitigating the information gaps between project owners and investors, and to ensuring transparency and protection for investors.

Next steps

After a consultation period of 3 months, the EBA will submit the final draft RTS to the EU Commission. The submission to the EU Commission is expected to take place in October 2021.

3. Background and rationale

2. Over the last years, crowdfunding has become a significant mean through which start-ups and Small and Medium Enterprises (SMEs) can finance their projects. Through crowdfunding, a service provider usually operates a digital platform to match or facilitate the matching between prospective investors and lenders on the one side, to owners of projects that need financing on the other. However, differently from banking intermediation, the crowdfunding service provider does not take any risk of its own; rather, the risk remain entirely on the investor. The funding of projects can then take the form of loans (“lending-based” crowdfunding) or transferrable securities (“investment-based” crowdfunding).
3. In order to ensure uniform conditions for crowdfunding service providers across the Union, and thus fostering cross-border provisions of crowdfunding services and the proper functioning of the internal market, the Regulation (EU) 2020/1503 on European Crowdfunding Service Providers Regulation (ECSPR) has been recently issued¹. The new Regulation will allow crowdfunding providers to apply for an EU passport based on a single set of rules. In turn, this will make it easier for them to offer their services across the EU.
4. The ECSPR contains two specific mandates to EBA to develop – in close cooperation with ESMA - two draft Regulatory Technical Standards (RTSs) on:
 - i. adequate disclosure of information to investors and appropriate policies and procedures on contingency funds, in regards to Individual Portfolio Management of loans [Art. 6(7) of ECSPR]; and
 - ii. the requirement for crowdfunding service providers to have in place an appropriate framework for credit risk assessment, loan valuation and pricing, and sound risk management practices and arrangements [Art. 19(7) of ECSPR].
5. The present Consultation Paper presents a proposal of the draft RTS from Art. 6(7) of ECSPR on individual portfolio management of loans. According to Art. 2(1)(c) of the ECSPR, “*individual portfolio management of loans*” means “*the allocation by the crowdfunding service provider of a pre-determined amount of funds of an investor to one or multiple crowdfunding projects on its platform, in accordance with an individual investor’s mandate*”. In practice, an investor provides the crowdfunding platform with a number of requirements that the projects to be financed must fulfil, and the service provider will allocate the investor’s funds accordingly.
6. When dealing with the allocation of their funds to a portfolio of loans by a crowdfunding service provider, it is important that investors are appropriately informed about the risks they are exposed to, which originate from the following instances:
 - i. Investors may underestimate the risks of their investment, assuming that every loan and project within a portfolio is subject to an adequate risk assessment process. Moreover, the risk of default is not borne by the crowdfunding service provider, but

¹ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32020R1503&from=EN>

rather by the investors: this may lead crowdfunding platforms to take operational and reputational risks or overlook appropriate due diligence.

- ii. As crowdfunding is particularly relevant for small businesses and start-ups, often with little or no credit history, investors relying on these platforms may face an asymmetric information problem, because i) they may not be aware of the real quality of borrowers; ii) information on the creditworthiness of the project owner may be hard to collect; iii) it may be difficult to appreciate the risks involved for each of the loans in the portfolio.
7. In addition, crowdfunding platforms may set up contingency funds to compensate investors in the event of a default of one or more project owners, and smooth their returns, but these tools are not mandatory and – above all – do not guarantee any payout in case of default of a project owner.
8. In order to mitigate these information gaps, ensure transparency and adequate protection for investors, Article 6(7) of ESCPR requires that the draft RTS developed by EBA will have to specify:
- i. the elements to be included in the information to investors with respect to description of the method to assess credit risk (Art. 6(7)(a));
 - ii. the information about each individual portfolio (Art. 6(7)(b));
 - iii. the policies governing any contingency funds that the crowdfunding provider will decide to operate (Art. 6(7)(c))

Structure of the draft RTS

9. The organisation of the content of the draft RTS has been quite straightforward, as the mandate set out in Art. 6(7) of ECSPR already identifies three specific areas of analysis. Therefore, the draft RTS has been developed following the same structure of Art. 6(7):
- i. Chapter I sets out some general provisions in terms of the quality of data to be disclosed and the format in which information will be disclosed;
 - ii. Chapter II requires crowdfunding platforms to show that the measurement techniques employed for risk assessments are based on a sufficient number of elements and are appropriate to the complexity and level of the risks underlying i) the single projects; ii) the portfolio; iii) the project owners. This will allow investors to have sufficient knowledge about the returns and risks of the projects and take informed decisions.
 - iii. Chapter III sets out the information that crowdfunding platforms must disclose in relation to all the elements listed in Art. 6(4) and referring to several key characteristics of each loans included in a certain portfolio.

- iv. Chapter IV specifies the policies that the crowdfunding platform need to have in place in relation to contingency funds. These policies are aimed at ensuring that contingency funds have appropriate governance arrangements and procedures with respect to collection of fees and disbursements of refunds.

Information on the method to assess credit risk

10. Art. 4(4) of the ECSPR requires crowdfunding service providers to undertake an adequate assessment of credit risk of the crowdfunding projects and the project owner at the moment the crowdfunding offer is made, and to base such credit risk assessment on sufficient information. This approach is close to the one that banks need to follow when assessing credit risks at the point of loan origination, which is described in the EBA Guidelines on loan origination and monitoring². However, in individual portfolio management of loans the investor selects a number of parameters and the crowdfunding platform allocates the funds accordingly. Therefore, as investors are not selecting directly the project they want to invest in, the need of providing adequate disclosure on how credit risk assessment is carried out becomes particularly important.

11. Therefore, Art. 6(7)(a) of the ECSPR requires to specify the elements to be included in the description of the method referred in Art. 6(2), i.e. in the description provided to the investors of the method to assess:

- i. The credit risk of individual projects selected for the investor's portfolio
- ii. The credit risk of the investor's portfolio as a whole
- iii. The credit risk of the project owners selected for the investor's portfolio.

12. For this purpose, Chapter II of the draft RTS requires crowdfunding providers to demonstrate to investors to be able to analyse credit risk at the loan/project and at portfolio level, to enable them to understand the quality of the due diligence that providers carry out. Crowdfunding service providers are thus requested to disclose to investors adequate information about the existence of prudent and robust credit decision-making processes for the assessment of single projects and single borrowers, as well as the elements considered when building a portfolio of loans.

13. Finally, investors need to be adequately informed that these measurement techniques are appropriate to the complexity and level of the risks underlying the single projects and/or the portfolios, based on robust data, and subject to periodic validation.

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https://www.eba.europa.eu/sites/default/documents/files/document_library/Publications/Guidelines/2020/Guidelines%20on%20loan%20origination%20and%20monitoring/884283/EBA%20GL%202020%2006%20Final%20Report%20on%20GL%20on%20loan%20origination%20and%20monitoring.pdf

Information on each individual portfolio

14. Art. 6(7)(b) ECSPR requires EBA to specify the information referred in Art. 6(4), i.e. a minimum list of items for each portfolio. A private lender however does not usually possess the resources to collect all the information; therefore, the crowdfunding provider will need to disclose a very detailed set of information on the loans included in each individual portfolio. The list of information to be disclosed in accordance with Art. 6(4) is in line with the list of information to be disclosed in the Key Investor Information Sheet (KIIS) defined in Annex I, part G of the ESCPR.
- 15.. Therefore, the approach adopted by the EBA when developing Chapter III focuses on providing adequate details for each of the elements Article 6(4) ECSPR, to enable investors to achieve full understanding of the features and of the riskiness of loans they are investing in through a certain portfolio³. In addition, in specifying how certain information needs to be disclosed, the draft RTS aims to achieve a uniform representation of the loans in a portfolio, thus enabling investors to compare different portfolios, either on the same platform, or on different ones.
16. The scope of information to be specified by the draft RTS is already very defined, so the room for leeway is relatively limited. However, Art. 6(4)(f) requires the draft RTS to specify the information to be provided *“on any default on credit agreements by the project owner within the past five years”*. While a definition of default is provided in Art. 1(1) of ESMA RTS⁴ (*under consultation*), the ECSPR does not provide a definition of *“credit agreements”*, so a policy choice had to be made to define their scope for the purpose of this Chapter.
17. To that extent, it was recognised that - if not properly addressed - adverse selection mechanisms may lead only borrowers with low creditworthiness to finance their projects mainly through crowdfunding platforms, thus increasing the inherent risk of this investment. For this reason, the EBA sees the value of disclosing adequate information to investors on the financial history of the project owners to enable investor to be properly informed about the quality of creditworthiness of project owners. However, it was recognised that in case a project owner has already incurred in a default, for instance, on a banking loan, there may be hurdles for crowdfunding providers (unless they are part of a banking group) to obtain such information from national credit information systems.
18. Therefore, in order to avoid disparity among crowdfunding service providers in accessing project owners' information and create an uneven playing field among platforms belonging or not to banking groups, Chapter III of the draft RTS requires crowdfunding providers to ask project owners to provide information about their past defaults on credit agreements defined as loans facilitated by crowdfunding platforms.
19. However, in order to provide investors with adequate information about the financial history of a borrower to which they ultimately lend their money, the draft RTS also require crowdfunding

³ To note that Art. 6(4) (e) of ECSPR requires the draft RTS to specify risk mitigation measures for every loan in a portfolio. While this is addressed in Art. 11 of the present draft RTS, risk mitigation techniques adopted by project owners many not necessarily be fully comparable to those recognised under the CRR.

⁴ See <https://www.esma.europa.eu/press-news/esma-news/esma-consults-regulating-crowdfunding>

platforms to disclose information obtained by project owners about the days past due⁵ and the amount of arrears in credit obligation they may have stipulated outside the crowdfunding remit.

Information on the policies and procedures on contingency funds

20. Several platforms have set up contingency funds, with a view to provide some compensation to investors in the event of a default of a borrower and smooth their returns. To this extent, the approach taken by the ECSPR is avoid the perception that the existence of these funds hide or misrepresent the underlying risk, leading investors to assume that the mere existence of these funds implies that platforms provide a guaranteed rate of return on loans. To mitigate this risk, Art. 6(5)(a) of ECSPR requires crowdfunding service providers to publish a specific risk warning, stating that the contingency fund operator has absolute discretion as to the amount that may be paid, including the possibility that no payment will be issued to the investors, even in case they suffer a loss.
21. In addition, Art. 6(5)(b) requires the disclosure of a contingency fund policy, including the source of the money paid into the fund; how the fund is governed; whom the money belongs to; how the money paid into the fund will be treated in the event of insolvency of the contingency fund operator, and the consideration made in deciding where or not proceed to a payout.
22. While Art. 6(5)(b) refers to a disclosure requirement, the mandate for the EBA in Art. 6(7)(c) is of prudential nature and requires to define the organisational arrangements, the policies and procedures that crowdfunding service providers need to have in place to ensure that the contingency fund is managed in a prudential manner. Therefore, Chapter IV defines the elements to be considered when designing policies on governance, funding, disbursement and requires the content of these policy to be consistent with the disclosure to be made to investors. In addition, Chapter IV clarifies that those policies and procedures should be reflected consistently in the content of the contingency fund policy disclosed to investors.

⁵ To this extent, as the information is provided directly by the project owner, a contractual notion of past due is used, i.e. materiality thresholds are not applied/considered.



4. Draft regulatory technical standards

In between the text of the draft RTS/ITS/Guidelines/advice that follows, further explanations on specific aspects of the proposed text are occasionally provided, which either offer examples or provide the rationale behind a provision, or set out specific questions for the consultation process. Where this is the case, this explanatory text appears in a framed text box.



COMMISSION DELEGATED REGULATION (EU) No .../..

of XXX

[...]

supplementing [Directive XXXX/xx/.. / Regulation (..) No xx/XXXX] of the European Parliament and of the Council with regard to regulatory technical standards for [insert text describing the subject matter of the standards required by the basic act] [N.B. when amending another act use/add the following: 'amending with regard to']

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,
Having regard to 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, and in particular Article 6(7)(a) thereof,

Whereas:

- (1) When investing in a portfolio of loans offered by a crowdfunding service provider, investors do not select the projects in which they will invest their funds, but rather select a number of parameters and risk indicators and leave to the crowdfunding service provider the task of allocating the funds accordingly. Therefore, the crowdfunding service provider should disclose appropriate levels of information to prospective and current investors, allowing them to have sufficient knowledge about the returns and risks of the projects and take informed decisions.
- (2) In order to reduce the information asymmetry between crowdfunding service providers and investors, investors should be provided with all relevant information about the composition of the portfolio, including the projects where their funds are invested, as well as the quality of the loans financing these projects. This should allow investors to better understand and compare the performance and riskiness of different portfolios, either offered on the same platform or on alternative platforms.
- (3) Investors are exposed not only to risks connected to the projects or the loans in which their funds are invested, but also to the way the crowdfunding service provider assesses the risk of these loans and projects and how it manages the selection of loans for the portfolio.



- (4) In order to ensure effective transparency, the information about the elements to be included by the crowdfunding service provider in the method employed to perform credit risk assessment should be appropriately disclosed. This will allow investors understand whether an adequate and prudential approach is taken by crowdfunding service providers in the process of assessing the sustainability of projects being financed, the affordability of the loans for the project owners, and the composition of the individual loans into a structured portfolio.
- (5) All relevant information should be provided to investors in regards to the risk categories for each loan in the portfolio. The allocation to loans to well-defined risk categories is also part of the elements of the method to assess credit risk for the individual loans. The minimum content and governance of the risk-management framework in charge of establishing risk categories will be specified by the regulatory technical standards that the Commission will have to adopt in accordance with Article 19(7) of Regulation (EU) 2020/1503 on the basis of the draft that EBA, in close cooperation with ESMA, shall submit to the Commission by 10 May 2022. Until those regulatory technical standards are in place, crowdfunding service providers should establish and maintain clear and effective policies and procedures for the definition of the risk categories, for the purpose of the disclosure of information to investors, in accordance with Article 6(4) (c) of Regulation (EU) 2020/1503.
- (6) When a crowdfunding service provider is relying on a dedicated contingency fund to compensate investors for the losses they may incur in case project owners do not reimburse their loans, investors will need to be made aware that the mere existence of the contingency fund does not provide a guarantee that the investment can be considered as risk-free and that they will be reimbursed in case the loan they have financed is going to default, as there is absolute discretion from the crowdfunding service provider to decide about any payments. In order to ensure adequate investor protection, it is relevant that crowdfunding service providers have in place appropriate policies governance arrangements when managing, either directly or through a third party provider, contingency funds.
- (7) This Regulation is based on the draft regulatory technical standards developed by EBA in close cooperation with the ESMA and submitted to the Commission.
- (8) EBA has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Banking Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1093/2010⁶,

⁶ Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2020, p. 12).



HAS ADOPTED THIS REGULATION:

CHAPTER 1

General provisions

Article 1

Accuracy and reliability of information provided to investors

1. Crowdfunding service providers shall ensure that the information provided to investors pursuant to Article 6(7) of Regulation (EU) 2020/1503 is accurate, reliable and updated on continuous basis.
2. For the purpose of paragraph 1, crowdfunding service providers shall ensure that :
 - a. The data used to conduct the assessments of creditworthiness referred in Chapter II are consistent, complete and appropriate;
 - b. The measurement techniques are appropriate to the complexity and level of the risks underlying the single crowdfunding projects and/or the portfolios, are based on reliable data, and subject to periodic validation; and
 - c. The procedures related to data management are robust well documented, reliable and regularly updated.

Article 2

Format of the information to be disclosed

1. For the purpose of Chapter II and Chapter III, the information provided to investors shall be easily available in a dedicated section of the website of the crowdfunding service provider that is clearly distinguishable from marketing communications.
2. The information referred in paragraph 1 shall be presented in a way that is easy to read, and expressed in a manner that facilitates its understanding, in particular by prospective non-sophisticated investors.
3. The language used when providing information referred in Chapter II and in Chapter III shall be clear and understandable; where ordinary words can be used, technical terms shall be avoided and, when used, they should be explained.



CHAPTER II

Elements to be included in the description of the method to assess credit risk

Article 3

Credit risk of individual crowdfunding projects

For the purpose of Art. 6(7)(a) and in accordance with the second subparagraph of Art. 6(2) of Regulation (EU) 2020/1503, the description provided to investors of the method to assess credit risk of individual crowdfunding projects within a portfolio shall at least include the following elements:

- a. the criteria and the key financial indicators used to establish the feasibility and sustainability of the business plans of the individual crowdfunding projects;
- b. the analysis of the expected cash flows of the crowdfunding projects and their uncertainty over different time horizons;
- c. the analysis of the characteristics – including the degree of competition - of the business sector in which project owners operate;
- d. the assessment of the project owners’ knowledge, experience, reputation, and capacity to manage business activities in the project’s specific sector;
- e. the procedures regarding the acceptance and recognition of collateral or guarantee and credit risk mitigation measures, where relevant;
- f. type of the repayment schedule of the loan;
- g. the procedures to assign each loan associated with a project to an appropriate risk category defined by the risk management framework; and
- h. the source and type of appropriate data used for the purpose of points (a)-(e).

Article 4

Credit risk at investor’s portfolio level

1. For the purpose of Art. 6(7)(a) and in accordance with the second subparagraph of Art. 6(2) of Regulation (EU) 2020/1503, the description provided to investors of the method to assess credit risk at the investor’s portfolio level shall at least include an explanation of how the following elements are taken into account in the composition of the portfolio:
 - a. the distribution of loans according to their maturity within the same portfolio;
 - b. the level of interest rate defined in each loan of the same portfolio;



- c. the share of loans in a single portfolio granted to the same project owner or to a group of connected project owners;
 - d. the share of loans in a single portfolio granted to project owners established or operating in the same jurisdiction or geographical areas;
 - e. the share of loans in a single portfolio granted to project owners operating in the same business sector;
 - f. the share of loans assigned to the same risk category; and
 - g. the method used to evaluate the correlation of risks within the same portfolio
2. For the purpose of Article 4(1)(c), a group of connected project owners means any of the following:
- a. two or more natural or legal persons who constitute a single risk because one of them, directly or indirectly, has control over the other or others;
 - b. two or more natural or legal persons to be regarded as constituting a single risk because they are so interconnected that, if one of them were to experience financial problems, the other or all of the others would also be likely to encounter funding or repayment difficulties.
3. When the crowdfunding service provider advertises a specific target rate of return on investment for a portfolio, it shall disclose the procedure employed to select the individual loans to be included in the portfolio.

Article 5

Credit risk of project owners

For the purpose of Art. 6(7)(a) and in accordance with the second subparagraph of Art. 6(2) of Regulation (EU) 2020/1503, the description provided to investors of the method to assess credit risk of project owners shall at least include the following elements:

- a. the framework for the credit approval and monitoring processes;
- b. the framework to determine the project owner's credit scoring, where applicable;
- c. the framework for the use of external ratings for the purpose of assessing the creditworthiness of a project owner;
- d. the procedures regarding the acceptance and recognition of collateral or guarantee and credit risk mitigation measures, where relevant;
- e. the creditworthiness assessment of the project owner;



- f. the procedures and data to assess the financial history of the project owner and the treatment of situation when the project owner fails or refuses to provide the required information.

Article 6

Use of models

1. For the purpose of Art. 6(7)(a) and in accordance with the second subparagraph of Art. 6(2) of Regulation (EU) 2020/1503, crowdfunding service providers shall provide adequate information on the models used for the credit risk assessment of crowdfunding projects, the creditworthiness assessment of project owners, the credit approval and monitoring processes, and the composition of portfolios.
2. For the purpose of paragraph 1, crowdfunding service providers shall disclose the following elements:
 - a. the source of data used to feed the models used;
 - b. the framework employed to ensure the quality of the input data;
 - c. the existence of appropriate governance arrangements for the design and use of such models and
 - d. the framework to ensure that the quality of the model output is regularly assessed and validated, and where appropriate, reviewed;
3. When automated models are used in the credit risk assessment of crowdfunding projects, in the creditworthiness assessment of project owners, in the credit approval and monitoring processes, and/or in the composition of portfolios, crowdfunding service providers shall disclose:
 - a. how the use of automated models is appropriate to the size, nature and complexity of the types of crowdfunding projects selected for the investor's portfolio
 - b. the conditions for the application of automated decision-making in the credit-approval and monitoring processes, including identifying loans, segments and limits for which automated decision-making is allowed.

Article 7

Information on stress testing and analysis scenarios

Where applicable, crowdfunding service providers shall disclose information on:

- a. At the level of the single loan and single project owner, any sensitivity analyses conducted to reflect potential negative market and idiosyncratic events in the future that are relevant to the type and purpose of the loan; and



- b. At the level of portfolio, the procedures and information systems for the purpose of stress testing conducted to assess the resiliency of the portfolio through the economic cycle and in different scenarios.

CHAPTER III

Information to be provided on each individual portfolio

Article 8

Calculation of the weighted average annual interest rate

1. For the purpose of the calculation of the weighted average annual interest rate on loans in a portfolio in accordance with point (b) of Article 6(4) of Regulation (EU) 2020/1503, crowdfunding service providers shall calculate the average (weighted for the outstanding amount of loans in a portfolio) of the annual interest rate of every loan of which the portfolio is composed.
2. For the purpose of paragraph (1), in order to calculate the weighted average annual interest rate, crowdfunding service providers shall ensure all of the following:
 - that the denominator consists of the sum of the notional amount of every loan included in the portfolio;
 - that the numerator consists of the sum of the product (i) of the notional amount and (ii) of the annual interest rate of every loan included in the portfolio;
 - that the annual interest rate of every loan is the annual interest rate defined in the loan contract and in force at the time of the publication.

Article 9

Distribution of loans according to risk category

1. For the purpose of the calculation of the distribution of loans according to risk category, in accordance with point (c) of Article 6(4) of Regulation (EU) 2020/1503, crowdfunding service providers shall ensure that each individual loan is assigned to the relevant risk category set out in the risk management framework on the basis of sound and well-defined criteria, as referred to in Article 4(4)(f) of Regulation (EU) No 2020/1503 and as specified in accordance with Article 19(7)(d) of the same Regulation.
2. For the purpose of paragraph 1, and for each risk category, the following definition shall apply:



- a. The distribution of loans according to risk category in absolute numbers refers to the sum of the notional amount of every loan in the same risk category.
- b. The distribution of loans according to risk category in percentage refers to the ratio between (i) the sum of the notional amount of every loan in the same risk category and (ii) the total notional amount of all loans within the portfolio.

Article 10

Key information for every loan included in the portfolio

1. For the purpose of Article 6, paragraph 4(d) of Regulation No 2020/1503, the crowdfunding service provider shall provide the investor with key information for every loan of which a portfolio is composed, including at least:
 - The amount of the loan, including the most recent outstanding balance;
 - The currency in which the loan is granted;
 - The entity (including its legal name, registration number and place of registration, registered office and contact details) responsible for the servicing of the loan and its servicing policy;
 - The identity of the project owner by indicating its legal name, the country of incorporation and registration number, the address of its registered office, and its corporate website;
 - The ownership structure of the project owner;
 - The purpose of the loan, by adding a brief description of the crowdfunding project;
 - The interest rate or any other compensation defined in the loan, for each year until maturity; in case the interest rate or any other compensation is not be directly available, the calculation method shall be disclosed;
 - The maturity date of the loan;
 - The relevant risk category to which the loan is assigned in accordance with the risk management framework, as referred to in Article 4(4)(f);
 - The schedule for the repayment of the principal and for the payment of interests of the loan;
 - The compliance of the project owner with that instalment payment schedule by indicating any past due payment or any default as defined by Article 1(1) of the Delegated Regulation xxx/XXX (ESMA RTS5) with regard to



- regulatory technical standards specifying the methodology for calculating the default rates referred to in Article 20(1) of Regulation No 2020/1503;
- The percentage of the amount of the crowdfunding project being financed by the investor through the loan, expressed as the ratio between (i) the notional amount of the loan and (ii) the total amount of the crowdfunding project.
2. The information provided for each loan included in a portfolio shall report whether a project owner has more than one crowdfunding project in place, financed through any crowdfunding service provider and specify the information referred under paragraph 3.
 3. For the purpose of paragraph 2, the crowdfunding service provider shall require the project owner to provide the following information on his/her other crowdfunding projects:
 - a. The type of offer and the instrument used for financing the project
 - b. The completion date (past or expected)
 - c. The notional amount that the project owner is borrowing
 - d. Other relevant information, including all other financial obligations and contingent liabilities.
 4. Crowdfunding service providers shall take reasonable steps to ensure that the information provided by project owners in accordance with paragraph 3 is accurate, reliable and up to date.

Article 11

Information on risk mitigation measures

1. For the purpose of Article 6, paragraph 4(e) of the Regulation No 2020/1503, a “risk mitigation measure” means a technique used by a project owner to reduce the credit risk associated with a loan.
2. For the purpose of paragraph 1, risk mitigation techniques can be qualified as “funded credit protection” or as “unfunded credit protection”:
 - “funded credit protection” means a technique of risk mitigation where the reduction of the credit risk associated with a loan derives from the right of the investor, in the event of the default of the loan or on the occurrence of other specified credit events relating to the project or project owner, to liquidate or obtain transfer or appropriation of, or to retain, certain assets or amounts, or to reduce the amount of the loan;
 - “unfunded credit protection” means a technique of risk mitigation where the reduction of the credit risk associated with a loan derives from the obligation



of a third party to pay an amount in the event of the default of the loan or on the occurrence of other specified credit events relating to the project or project owner.

3. In case of a loan is guaranteed by “funded credit protection” as defined in paragraph 2, the crowdfunding service provider shall provide at least the following information:
 - i. the type of asset(s);
 - ii. the most recent valuation of such asset(s) and the amount(s) that can be liquidated, transferred, retained or appropriated;
 - iii. the valuation method;
 - iv. the ratio between the amount provided for in (ii) and the total notional amount of the loan, expressed in percentage.
4. In case of a loan is guaranteed by “unfunded credit protection” as defined in paragraph 2, the crowdfunding service provider shall provide at least the following information:
 - i. Name, address and legal nature of the third party acting as protection provider or guarantor;
 - ii. The ratio between (i) the notional amount of the loan covered by the third party and (ii) the total notional amount of the loan, expressed in percentage.
5. For the purpose of paragraphs 3 and 4, crowdfunding service providers shall ensure all of the following:
 - that the eligibility and the valuation of any risk mitigation measure are assessed according to adequate policies and procedures within the risk management framework, as referred to in Article 4(4)(f) of Regulation (EU) 2020/1503 and as specified in accordance with Article 19(7)(d);
 - that the valuation of any risk mitigation measure, takes into account all disposition costs from obtaining and selling collateral.

Article 12

Information on defaults on credit agreements by the project owner

1. For the purpose of Article 6, paragraph 4(f) of the Regulation No 2020/1503, the following definitions shall apply:
 - a “default” is defined by Article 1(1) of the Delegated Regulation xxx/XXX (ESMA RTS5) with regard to regulatory technical standards specifying the methodology for calculating the default rates referred to in Article 20(1) of Regulation No 2020/1503;



- a “credit agreement” means an agreement whereby an investor, as defined by article 2, paragraph 1, (i) of Regulation No 2020/1503, grants to a project owner, as defined by article 2, paragraph 1, (h) of Regulation No 2020/1503, credit in the form of a loan for a specific crowdfunding project..
2. In order to comply with Article 6, paragraph 4(f) of the Regulation No 2020/1503, crowdfunding service providers shall require project owners to provide information on defaults occurred under credit agreements in the past five years.
 3. The information on defaults referred in paragraph 2 shall be provided by the project owner to the crowdfunding service provider:
 - a. At the point of loan origination;
 - b. Immediately after the occurrence of a default event; and
 - c. Until the maturity date of the credit agreement included in the portfolio.
 4. Crowdfunding service providers shall take reasonable steps to ensure that the information provided by project owners in accordance with paragraphs 2 and 3 is accurate, reliable and up to date.
 5. Crowdfunding service providers shall disclose to investors whether the source of information on defaults referred in paragraphs 2 and 4 is included in one or more of the following and specify which:
 - a. Sworn statement by the project owner;
 - b. Information available in credit registers;
 - c. Publicly available information, including from debt collection companies or credit rating agencies;
 - d. Other type of information

Article 13

Information on past due days and arrears by the project owner

1. In order to provide investors full understanding of the creditworthiness of the project owner, crowdfunding service providers shall disclose information on the financial history of the project owner.
2. For the purpose of paragraph 1, crowdfunding service providers shall require project owners to provide the following information for any payment obligation they have in place relating to any “financial instrument” as defined by Art. 4(1)(50) of Regulation (EU) 2013/575 over the past five years:
 - a. past due days; and
 - b. amount of arrears.



3. Crowdfunding service providers shall take reasonable steps to ensure that:
 - a. the information provided by project owners in accordance with paragraph 2 is accurate, reliable and up to date; and
 - b. the disclosure to investors of information referred in paragraph 2 is in accordance with Regulation (EU) 2016/679 on data protection
4. Crowdfunding service providers shall disclose to investors whether the source of information referred in paragraph 2 and 3 is included in one or more of the following and specify which:
 - a. Sworn statement by the project owner;
 - b. Information available in credit registers;
 - c. Publicly available information
 - d. Other type of information

Article 14

Information on fees paid in respect of the loan by the investor, the crowdfunding service provider or the project owner

1. For the purpose of Article 6, paragraph 4(g) of the Regulation No 2020/1503, the crowdfunding service provider shall provide to the investor, for each of the loans included in his/her portfolio, adequate information about the fees paid in respect of these loans.
2. For the purpose of paragraph 1, the information provided to the investor shall include:
 - i. the subject paying the fees, including whether this subject is the investor, the crowdfunding service provider, the project owner, or a third party;
 - ii. the monetary amount of the fees;
 - iii. the subject receiving the fees, including whether this subject is the crowdfunding service provider or a third party in case of outsourcing of operational functions;
 - iv. the indication of corresponding services remunerated by fees, including the subscription fees management fees, fees for debt collection process, and exit fees;
 - v. the calculation method, including whether the amount of the fees represents a percentage of the notional amount of the loan or any other variable, or a fixed amount;
 - vi. the schedule of payment of the fees.



Article 15

Information on the valuation of the loan

1. For the purpose of Article 6, paragraph 4(h) of the Regulation No 2020/1503, in case the crowdfunding service provider has carried out a valuation of the loan, for each of the relevant loans included in a portfolio it shall provide to investors, adequate information about the valuation of those loans.
2. The explanation about the reasons why the crowdfunding service provider conducted the valuation shall indicate, at least, one of the circumstances as listed in Article 4(4)(e) of Regulation (EU) No 2020/1503.
3. For each individual loan, the valuation of the loan shall reflect the likely actual return, being defined as the discounted annual return on the investment expected by the investor at a given valuation date, based on the most recent available information.
4. For the purpose of paragraph 3, the calculation of the likely actual return shall consider the following information:
 - The interest rate or any other compensation defined in the loan;
 - The yield to maturity;
 - The application of any fees in accordance with Article 14 of this RTS;
 - The expected default rates, defined in accordance with Article 4(1) of the Delegated Regulation xxx/XXX (ESMA RTS5); and
 - Any other costs paid by the project owner or the investor or the crowdfunding service provider in relation to the loan.

Article 16

Information on the valuation of the portfolio

1. For the purpose of Article 6, paragraph 4(h) of the Regulation No 2020/1503, in case the crowdfunding service provider has carried out a valuation of loans, , the crowdfunding service provider shall disclose the likely actual return for each individual portfolio, defined as the simple average (loan weighted) of the discounted annual return on investment expected by the investor for every loan of which the portfolio is composed, expressed in percentage.
2. For the purpose of paragraph 1, in order to calculate the likely actual return of each individual portfolio, crowdfunding service providers shall ensure both of the following:
 - that the denominator consists of the sum of the notional amount of every loan of which the portfolio is composed;



- that the numerator consists of the sum of the product (i) of the notional amount and (ii) of the likely actual return of every loan of which the portfolio is composed.
- 3. For each individual portfolio, the crowdfunding service provider shall disclose a measure of its risk, expressed for instance by the variance or by the standard deviation of the returns of loans within the portfolio and their correlation.
- 4. Crowdfunding service providers shall not manipulate or misrepresent the likely actual return disclosed in accordance with Article 6(4)(h) of Regulation (EU) No 2020/1503.

CHAPTER 4

Policies , procedures and organisational arrangements to have in place with regards to contingency funds

Article 17

General provisions

1. In accordance with Art. 6(7)(c) of Regulation (EU) 2020/1503, where a crowdfunding service provider has established and operates a contingency fund for its activity related to the individual portfolio management of loans, it shall have in place adequate policies and procedures and organisational arrangements so to ensure that the contingency fund is managed prudently and can fulfill its objectives.
2. For the purpose of paragraph 1, the policies, procedures and organisational arrangements related to the contingency fund shall be approved by the management body of the crowdfunding service provider and shall be in written form, updated, and well documented.

Article 18

Organisational arrangements

1. The crowdfunding service provider shall ensure a suitable and transparent organisational and operational structure for any contingency fund it may have in place and shall have a written description of it.
2. The management body of the crowdfunding service provider shall oversee the implementation of the governance and organisational arrangements of the contingency fund.
3. For the purpose of paragraph 2, all the members of the management body of the crowdfunding service provider;



- a. shall have full knowledge of the legal, organisational and operational structure of the contingency fund and ensure that it is in line with its approved purposes; and
 - b. shall be fully aware of the structure and responsibilities and of the division of tasks within the contingency fund.
4. The organisational structure of the fund shall not impede the ability of the management body to identify, oversee and manage effectively the risks that the fund will face following its operations.

Article 19

Governance policy

1. The crowdfunding service provider shall have in place a policy to define the governance of the contingency fund. This policy shall ensure that internal governance arrangements, processes and mechanisms are consistent, well integrated and adequate.
 2. For the purpose of paragraph 1, the policy shall include the following elements and information:
 - a. The purpose of the contingency fund;
 - b. The legal and operational structure of the contingency fund, including whether it is operated by the crowdfunding service provider itself or by a third party;
 - c. The duration of the contingency fund, including the case the fund has an unlimited term.
 3. In case the fund is operated by a third party, the policy in paragraph 2 shall also include the following information:
 - a. The composition of the management body of the contingency fund;
 - b. The responsibilities and duties of the management body of the contingency fund;
 - c. An explanation of the competences and skills of each member of the management body of the contingency fund;
 - d. The frequency of the meetings of the management body of the contingency fund
 - e. The reporting requirements between the management body of the fund and the management body of the crowdfunding service provider;
 - f. The responsibilities for the documentation, management and control of the outsourcing arrangements;
-



- g. Identification of one or more senior staff member who are directly accountable to the management body of the crowdfunding service provider and responsible for managing and overseeing the risks of outsourcing arrangements, including the respective documentation.

Article 20

Funding policy

1. The crowdfunding service provider shall have in place a policy to define how the contingency fund is financed and how the proceeds collected are managed.
2. For the purpose of paragraph 1, the following elements shall be specified:
 - a. Any initial contribution made by the crowdfunding service provider into the contingency fund;
 - b. The type of fees that are collected for the purpose of accruing the contingency fund;
 - c. The criteria the contingency fund management takes into account when deciding the type of fees to be levied;
 - d. The criteria the contingency fund management takes into account when deciding the amount of fees to be levied for each loan;
 - e. The decision-making process to define the amount and nature of fees to be levied;
 - f. The investment strategy adopted by the contingency fund, for the purpose of investing the funds under management;
 - g. The legal ownership of the funds;
 - h. How the funds will be dissolved in case of maturity of the contingency fund;
 - i. How the money paid into the fund will be treated in the event of insolvency of the contingency fund operator.

Article 21

Disbursement policy

1. The crowdfunding service provider shall have in place a policy to define how at least the following elements are considered in the decision of proceeding to any disbursement out of the contingency fund to investors:
 - a. Updated available fund balance;
 - b. The share of the loans that have defaulted in a given portfolio;



- c. The interest rates and maturity of the loans that have defaulted in a given portfolio;
- d. The procedure to be followed in order to consider whether to make a discretionary payment from the contingency fund;
- e. The circumstances in which the contingency fund may be activated for the payout.

Article 22

Business continuity policy

Crowdfunding service providers shall establish a sound business continuity policy for the contingency fund to ensure its ability to operate on an ongoing basis and to limit possible losses in the event of temporary or definitive failure.

Article 23

Transparency and disclosure to investors

1. The management body of the crowdfunding service provider shall inform and update its staff about the contingency fund's policies and procedures in a clear and consistent way, at least to the level needed to carry out the duties of the contingency fund.
2. The policies, procedures and organisational arrangements that the crowdfunding service provider shall have in place in accordance with Art. 6(7)(c) of Regulation 2020/1503 shall be consistently reflected in the contingency fund policy referred to in Art. 6(5) of Regulation 2020/1503.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

*For the Commission
The President*

*[For the Commission
On behalf of the President*



5. Accompanying documents

5.1 Draft cost-benefit analysis / impact assessment

23. In recent years, crowdfunding platforms have developed as a form of alternative finance for start-ups and Small and Medium Enterprises (SMEs). Through crowdfunding, a service provider operates a digital platform to facilitate the matching between prospective investors and lenders with owners of projects that need financing. The new EU Regulation on crowdfunding (REGULATION (EU) 2020/1503 - ECSPR) was recently introduced with the purpose to provide a standardised framework to guide the functioning of such platforms. Article 6(7) of ECSPR mandates the EBA to develop draft regulatory technical standards (RTS) to further specify the requirements that the crowdfunding platform should comply in relation to individual portfolio management of loans.

24. As per Article 10(1) of the EBA regulation (Regulation (EU) No 1093/2010 of the European Parliament and of the Council), any RTS developed by the EBA shall be accompanied by an Impact Assessment (IA) annex which analyses 'the potential related costs and benefits' before submitting to the European Commission. Such annex shall provide the reader with an overview of the findings as regards the problem identification, the options identified to remove the problem and their potential impacts.

25. The EBA prepared the IA included in this consultation paper analysing the policy options considered when developing the regulatory technical standards. Given the nature of the study, the IA is qualitative in nature.

A. Problem identification

26. One important difference between crowdfunding and traditional banking intermediation is that the crowdfunding service provider facilitating the match between project owners/borrowers and investors does not take any borrowers' risk of its own. Rather, the risk stemming from the creditworthiness of borrowers remains entirely on the investor. Moreover, the asymmetric information between lenders and project owners may increase the chance that the former underestimate the risks of an investment, either because of lack of adequate information or for the assumption that every project proposed on a platform is subject to an adequate risk assessment process. This asymmetry of information may be even greater when in case the crowdfunding service provider offers the individual management of portfolio of loans, i.e. allocates a pre-determined amount of funds of an investor to one or multiple crowdfunding projects, in accordance with an individual investor's mandate, which may include the choice of target rate.

27. Under this situation, it is necessary to develop a framework that ensures the protection of investors and provides enough transparency to inform investment decisions and limit



excessive risk taking. The ECSPR already provides the basis for such a framework but more detailed and technical guidelines are needed to create a comprehensive framework.

28. Additionally, in the absence of an EU comprehensive framework for crowdfunding platforms, many Member States have already introduced national regimes. This has somehow led to the lack of uniform conditions for crowdfunding platforms operating in different Member States, which in turn may create uncertainty and ultimately may discourage investors to channel their funds into perspective projects.

B. Policy objectives

29. As a general objective, the draft RTS aims to contribute to enhance transparency, providing investors with appropriate tools to take a well informed decision about the projects and the project owners they are financing through the crowdfunding platform.

30. As a main objective, it aims to comply with the mandate in Article 6(7) of ECSPR with regards to information on Individual Portfolio Management of loans, i.e. In order to mitigate the gaps of information that may arise between project owners and investors, the mandate request the definition of a framework to oblige providers to disclose adequate levels of information on the method to assess credit risk, on individual loans within a portfolio, and to have in place adequate policies to manage any contingency funds.

31. The RTS has the following specific objectives as described in the mandate:

- i. To define the elements to be included in the information to investors with respect to the method to assess credit risk;
- ii. To define the information about each individual portfolio that should be disclose to investors;
- iii. To define the policies governing any contingency funds that the crowdfunding provider will decide to operate.

C. Baseline scenario

32. Article 6(7) of ECSPR establishes the requirements that crowdfunding service providers need to have in place with regards to the obligation to provide information about the method to assess credit risk, about the individual portfolio itself and about the policies, procedures and organisational arrangements that the provider must have in place in case it operates a contingency fund.

33. Nevertheless, the existing regulation does not define which elements shall be included in the description of the method to assess credit risk, it does not provide details on the specific information that should be shared with the investors with regards to the individual portfolio



and does not define the policies, procedures and governance arrangements to be established with respect to contingency funds.

D. Options considered

34. When drafting the draft RTS, the EBA considered different policy options for each of the three main chapters of the RTS, corresponding to the main area of analysis.

a. Definition of the information to be included in the description of the method to assess credit risk

35. The EBA has assessed two options with regards to the element that have to be included in the description of the method to assess credit risk as per mandate of Art. 6(7)(a) and in accordance with Art. 6(2) ECSPR:

- **Option 1: The RTS shall focus on providing investors adequate information on the method used to assess creditworthiness**
- **Option 2: The RTS should focus more on defining the input and data used to assess creditworthiness**

b. Information to be disclosed by the crowdfunding platform with regards to individual portfolio

36. The EBA has assessed different options with regards to the level of information of the project owner that should be disclosed with regards to Art. 6(4)(f) (i.e. scope of credit agreements for disclosure of past defaults):

- **Option 1: To limit the disclosure of information to projects funded through the same crowdfunding platform**
- **Option 2: To extend the disclosure of information to projects funded through any crowdfunding platform**
- **Option 3: To extend the disclosure of information to projects funded through any crowdfunding platform and require adequate disclosure of information about the financial history of the project owner**
- **Option 4: To require the same disclosure of information to projects funded through any crowdfunding platform and additional loans obtained through traditional financial sector**



c. **The definition of policies, procedures and governance arrangements of the contingency fund**

37. The EBA has assessed two different set of options with regards the requirements to be set in place with respect to any contingency fund that the crowdfunding service providers decides to have in place, in accordance with Art. 6(7)(c):

- **Option 1a: To limit the content of the draft RTS to the definition of policies, procedures and governance arrangements of the contingency fund.**
- **Option 1b: To extend the scope of the draft RTS to also cover disclosure requirements of policies, procedures and governance arrangements of the contingency plan.**
- **Option 2a: To require that the management of the contingency fund is external to the crowdfunding service provider**
- **Option 2b: To extend Option 2a to the possibility that the contingency fund is operated directly by the crowdfunding service provider**

E. Assessment of the options and the preferred option(s)

a. **Definition of the information to be included in the description of the method to assess credit risk**

38. Art. 6(2) requires crowdfunding platforms to show that the measurement techniques employed for risk assessments are based on a sufficient number of elements and are appropriate to the complexity and level of the risks underlying i) the single projects; ii) the portfolio; iii) the project owners. The mandate in Art. 6(7)(a) requires the EBA to specify the elements, including the format, that are to be included in the description - provided to the investors - of the method used for the assessment of credit risk referred in Art. 6(2).

39. When developing the content of this part of the draft RTS, the EBA has assessed whether these specifications should concentrate on the components of a sound credit risk assessment process or whether should focus on defining a list of specific data or variables to be considered as the input in the method to assess credit risk. To this extent, it has been noted that the reference to *“elements to be included in the description of the method”* leads more to a *“process/methodological”* perspective, and that investors should be informed about the existence of a sound process to assess credit risk at various levels, rather than about the single data that are considered in the assessment.

40. Moreover, it has also been noted that it would be this level of detail should be covered in a separate RTS following the mandate in Art. 19(7)(b) and Art. 4(4) that requires the EBA to



specify the information and factors that crowdfunding service providers are to consider when carrying out a credit risk assessment of the crowdfunding project or project owner before the crowdfunding offer is made. In addition, while the current draft RTS refers to a disclosure requirement, the one from Art. 19(7) is a requirement more of prudential nature, i.e. what crowdfunding platforms needs to take into account in their credit risk assessment, but they are not required to disclose.

41. For these reasons, the EBA considers that the scope of this RTS should be limited to provide investors adequate information about the existence of prudent and robust credit decision-making processes for the assessment of single projects and single borrowers rather than to specify the list of input variables. This will be included in the scope of a different RTS. Therefore, the preferred option is Option 1: *The RTS shall focus on providing investors adequate information on the method used to assess creditworthiness.*

b. Information to be disclosed with regards to individual portfolio

42. Art. 6(7)(b) requires to specify the information referred in Art. 6(4). Point (f) of Art. 6(4) requires to specify information on any default on credit agreements by the project owner within the past five years. The EBA has assessed different options with regards to the scope of credit agreements whose information shall be disclosed, having in mind that the disclosure of historical information of the creditworthiness of the project owner is a key element to provide an adequate level of protection to investors.

43. The history of default events or financial information of the borrower that could be of investors' interest could not be limited to loans financed through the same crowdfunding platform, but it could extend to funds obtained from other crowdfunding platforms or also from the financial sector. To this extent, Option 4: *"To extend the disclosure of information to projects funded through any crowdfunding platform and additional loans obtained through traditional financial sector"*, would achieve the maximum level of transparency and the highest possible level of protection to investors. However, in order to be effectively implemented, this option would possibly imply that crowdfunding service providers can participate in the same credit information systems as banks. This way, they would be able to access information from the banking system but, at the same time, banks should ideally be able to access information on loans granted via crowdfunding platforms. This would ensure reciprocity and ultimately would allow an in depth assessment of the creditworthiness of the borrowers at system level. In absence of a centralized credit information system, this option could create excessive burden to crowdfunding platforms as they may face legal impediments to access and disclose all the relevant information on banking loans' defaults from the borrower. Moreover, Art. 6(4) refers to "defaults" on "credit agreements"; to this extent, it has been noted that i) the definition of default for loans facilitated by the crowdfunding platforms is provided in Art. 1(1) of ESMA RTS5, which is different from the definition of default on banking loans as provided by Art. 178 CRR; ii) the definition of credit agreements is not provided in the ECSPR. Therefore, including defaults in banking loans and defaults on crowdfunding loans under the definition of defaults on credit agreements would possibly lead to some inconsistencies.



44. Differently, option 1 and 2 would be less burdening for the platforms but would not provide a full set of information for investors. Asking the platform to acquire information limited to loans granted via the crowdfunding platform would be of limited use, and mandating the crowdfunding service provider to get the information on loans from other crowdfunding platforms would only provide a partial picture of the creditworthiness of the borrower.
45. Option 4 would allow ensuring the provision of relevant information to investors in the same level as option 1 and 2. However, it would also require to provide additional information on the financial history of the project owners in respect to other credit obligations. However, information on default on banking loans would not be always available to crowdfunding providers and project owners themselves could not know whether a default classification is given by “unlikeliness to pay” considerations, or on more objective parameters, like the past due days. Therefore, as it has been recognised that there is additional value in providing information about past financial history of the project owners also outside the crowdfunding remit, it was decided to include the disclosure of data on past due days and the amount of arrears on other credit obligations that the project owners may have in place. In any case, in order to mitigate the drawback related to the reliability of information on the credit financial history, it is required that crowdfunding service providers also disclose the source of that information, to ensure transparency and further investor protection. Option 4 is then considered the most balanced option: *To extend the disclosure of information to projects funded through any crowdfunding platform and additional loans obtained through traditional financial sector..*

c. The definition of policies, procedures and governing of the contingency plan

46. Article 6(7)(c) requires the EBA to specify the “policies, procedures, organisational arrangements that the crowdfunding service providers are to have in place as regards any contingency funds they might offer as referred to in paragraphs 5 and 6”; In turn, Article 6(5) (b) refers to the description and the elements of the “contingency fund policy” that should be disclosed to investors by the crowdfunding service provider. The EBA discussed whether the draft RTS should specify the elements included in the “contingency fund policy” to be disclosed to investors, that are already identified in Art. 6(5)(b).
47. To this extent, it has been noted that, while the requirement set out in Art. 6(5)(b) is a disclosure requirement, Art. 6(7) is instead of a prudential nature, and may be wider in scope than the content of Art. 6(5)(b), which defines the minimum set of information that needs to be disclosed to investors. For these reasons the preferred option is to limit the content of the RTS to the definition of policies, procedures and governing of the contingency (Option 1b) without creating an additional disclosure requirement. However, the draft RTS requires that the policies and procedures that the crowdfunding service provider needs to have in place as per Art. 6(7)(c) must be consistent with the contingency fund policy disclosed to investors in accordance with Art. 6(5)(b).



48. While the decision to have a contingency fund in place is entrusted to the crowdfunding service provider, Art. 6(5)(a) and Art. 6(5)(b)(iv) refer to a “contingency fund operator”, thus implying that the fund may be operated by a third party, possibly on a mandate of the crowdfunding service provider, as confirmed also by some market practices. However, the EBA did not want to limit the possibility that – especially in the early stages - a contingency fund could be operated directly by the crowdfunding service provider. The underlying approach is that the ownership of policies and procedures remains always of the crowdfunding service provider, which can delegate the management of the fund to a third party. In this latter case, the draft RTS requires that – within the governance policy – clear rules and procedures are established with respect to the mandate that the provider assigns to the third party operator. In this respect, Option 2b (to allow management of the contingency fund both by the crowdfunding service provider and by a third party) has been chosen as the one that could leave more operational flexibility to crowdfunding platforms.



5.2 Overview of questions for consultation

- **Q1: Do you have any comment on the elements to be disclosed as part of the description of the credit risk assessment process?**
- **Q2: Do you agree with the information to be provided for each portfolio, in accordance with Art. 6(7)(b) and 6(4)?**
- **Q3: Based on your experience with investor information documents required under your national regulatory framework on crowdfunding: Have you seen good practices of information disclosure for loans included in individual portfolio management?**
- **Q4: Do you agree with the scope of credit agreements relevant for the information on past defaults to be included to Investors?**
- **Q5: Do you agree with the content of policies and procedures that crowdfunding service providers need to have in place with respect to contingency funds?**