



DLA
The Power of Fintech Lending

Managing Director

04/13/2023

Digital Lending Association e.V. • Leipziger Str. 124 • 10117 Berlin

European Securities and Markets Authority (ESMA)

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ECSPR

Ladies and Gentlemen,

We take the liberty of asking you questions about the use and interpretation of the ECSPR.

I. Regarding the Scope and the exemptions in Art. 1 ECSPR

Art. 1 sec. 2 lit. c) ECSP-R stipulates that

This Regulation does not apply to crowdfunding offers with a consideration of more than EUR 5 000 000, which are to be calculated over a period of 12 months as the sum of:

- (i) the total consideration of offers of transferable securities and admitted instruments for crowdfunding purposes as defined in points (m) and (n) of Article 2(1) of this Regulation and amounts raised by means of loans through a crowdfunding platform by a particular project owner; and*

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- (ii) *the total consideration of offers to the public of transferable securities made by the project owner referred to in point (i) of this point in its capacity as an offeror pursuant to the exemption under Article 1(3), or Article 3(2), of Regulation (EU) 2017/1129.*

Question 1: From which moment should the 12-month period be calculated?

The moment, the project owner places its proposition live on the crowdfunding platform (i.e. start of the public offer) **or** the closing date, i.e. the date on which the project owner receives its funds and, in case of financial instruments, issues the securities or admitted instruments for crowdfunding purposes?

Question 2: Which amount has to be taken under consideration - it seems that the wording of the regulation makes a difference here regarding loans and securities / admitted instruments for crowdfunding purposes?

The maximum amount of the public offer or the amount which could actually be raised?

Question 3: In this context the regulation mentions the term crowdfunding offer that is defined in Art. 2 sec. 1 lit. f) ECSPR as follows:

crowdfunding offer' means any communication by a crowdfunding service provider, in any form and by any means, presenting sufficient information on the terms of the offer and the crowdfunding project being offered, so as to enable an investor to invest in the crowdfunding project.

Taking this into account it would lead to a situation where a project owner would have different crowdfunding projects and therefore be able to collect more than EUR 5 Mio for different projects. Is this interpretation correct?

II. Regarding the Pre-Contractual Reflection Period in Art. 22 ECSPR

Art. 22 sec. 2 and 3 ECSPR stipulates that

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2. The crowdfunding service provider shall provide for a pre-contractual reflection period, during which the prospective non-sophisticated investor may, at any time, revoke his or her offer to invest or expression of interest in the crowdfunding offer without giving a reason and without incurring a penalty.

3. The reflection period referred to in paragraph 2 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.

Question 3: Does "pre-contractual" in this context mean, that the period in which the investor may revoke his or her offer to invest has to end before the "final" contract between the project owner and the investor gets closed?

Question 4: How is the relationship between the right of the non-sophisticated investor to revoke his or her offer in the reflection period acc. to Art. 22 ECSP-R in respect to the right to withdraw his or her investment after closing of the contract according to EU-directives on consumer protection and their different implementations in different member states if the non-sophisticated investor is also to be regarded as a consumer?

Thank you very much for your time and support.

Yours sincerely

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