



**DLA**  
The Power of Fintech Lending

**Managing Director**

12/08/2023

Digital Lending Association • Leipziger Str. 124 • 10117 Berlin

ESMA

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## **Article 9 ECSPR**

Dear Sir or Madam,

On behalf of our Committee on Legal & European Affairs, we would like to submit the following question on the application and interpretation of Article 9 of the ECSPR:

**Does Art. 9 ECSPR apply to all outsourcing concepts in connection with the provision of crowdfunding services or is a distinction between essential and non-essential/simple outsourcing allowed?**

Background:

Unlike Art. 16 para. 5 subpara. 1 of the Markets in Financial Instruments Directive (2014/65/EU), which expressly addresses material operational tasks, the ECSPR does not provide for such a restriction to material outsourcing at article level. It is therefore similar to Art. 20 para. 1 sentence 1 of the 1<sup>st</sup> Fund Managers Directive (2011/61/EU). However, in contrast to the 31<sup>st</sup> recital of this Directive, according to which at least the delegation of ancillary tasks does not qualify as outsourcing, the ECSPR does not provide for such an explicit restriction at the level of the recitals either. The wording and system of the ECSPR as well as the brief legal comparison suggest that

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Art. 9 of the Regulation applies to all outsourcing concepts without exception if they are related to the provision of crowdfunding services.

ESMA's answer would be highly appreciated.

Yours sincerely

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