EBA/CP/2021/22

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BANKING STAKEHOLDER GROUP

BSG response to EBA CP: draft RTS on Individual Portfolio Management of loans offered by crowdfunding service providers under Art. 6(7) Regulation (EU) 2020/1503

Under the European Crowdfunding Service Providers Regulation (ECSPR), Regulation (EU) 2020/1503, EBA was tasked under Article 6(7) with preparing draft RTS, in close co-operation with ESMA, to specify:

- Disclosures in relation to how the crowdfunding service provider assesses credit risk of the investor's portfolio, and its constituent projects and project owners;
- Disclosures in relation to the characteristics of the portfolio and its components, including valuations;
- Policies, procedures and organisational arrangements in relation to any contingency fund, including disclosures about the size, governance and operation of the fund.

A further mandate under ECSPR Article 19(7) to develop RTS on credit risk assessment, loan valuation and pricing and sound risk management practices and arrangements is not addressed in this consultation.

We welcome the opportunity to comment on the matters under the Article 6(7) remit but consider that it would have been preferable to consider them alongside the draft RTS in relation to Article 19(7) about how credit risk will actually be assessed and the risk framework given the evident interaction between disclosures about how credit risk is assessed and the underlying policies and practices. We understand that the deadline for this RTS is earlier, but think it is difficult to comment on all details of this RTS without clarity on the content of the other one.

Q1: Do you have any comment on the elements to be disclosed as part of the description of the credit risk assessment process?

It is unclear what effect this disclosure requirement will have unless the elements here are specified as mandatory under the RTS provided for in Article 19(7)(b) of the ECSPR. There will need to be greater clarity on what is mandatory for CSPs to do. If elements are required to be covered in the disclosures that are not mandatory under Article 19(7)(b) it will need to be clearer whether the intention is that

the CSP should disclose that a given element is *not* part of its credit risk assessment process. That could potentially be useful but would need to be done consistently. The elements mentioned in Article 3 in relation to the individual crowdfunding projects all seem relevant though we are unsure whether it is clear what is meant by 'type' of repayment schedule and we suggest more clarity is provided on this point.

The elements mentioned in Article 4 in relation to the portfolio level also all seem relevant and the same can be said about the elements mentioned in Article 5 in relation to project owners. However, we are not sure whether it is clear what is meant by "framework" in points (a), (b) and (c) under Article 5 and we suggest to be more specific here, too. We are also unclear how point (e) on 'creditworthiness assessment' is intended to relate to all the others which seem to cover potential constituent parts of a creditworthiness assessment. Similarly, it is unclear how Article 6 on the use of models would fit with the points referred to in the previous articles. There is perhaps also a doubt as to whether investors will be able to make effective use of information at this level of granularity in the context of the significant amounts of other information disclosed.

We are concerned that in Article 7 requiring disclosure of scenario analysis and stress testing "where applicable" could create disincentives for CSPs to carry out such analysis. Reducing the incentives for such analysis is unlikely to be in the consumer interest. This problem could be addressed by requiring CSPs to disclose and explain whether or not such scenario analysis is carried out.

Otherwise, we agree with the information proposed.

Q2: Do you agree with the information to be provided for each portfolio, in accordance with Art. 6(7)(b) and 6(4)?

Recital 5 specifies that until a risk framework and risk categories are in place through the RTS which will further specify Article 19(7), CSPs should use their own risk categories to fulfil obligations under Article 9 of this RTS. We do not think it is sensible to introduce this provision and that it would be better for at least this part of the RTS to take effect at the same time as the Article 19(7) RTS. Otherwise, there is a significant risk of consumer/investor confusion as well as the potential for significant waste of effort and resource by CSPs.

We would not normally comment on linguistic matters but it is important to replace 'in case' as used in Article 15 and 16 because it is incorrectly used and in its correct meaning could introduce a degree of doubt about whether the CSP has an obligation to carry out a valuation, while the underlying ECSPR is clear that there is such an obligation in specified circumstances. We therefore suggest an alternative formulation such as "Where a CSP carries out a valuation of a loan in one of the circumstances specified in Article 4(4)(e) of Regulation EU No. 2020/1503 or otherwise, it shall….".

Otherwise, we agree with the information proposed.

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?

We have not identified examples of individual disclosures that we can recommend. In considering good practice, we think it is important to bear in mind the customer experience and the characteristics

of different technology platforms. This should include considerations of how disclosures will be accessed where consumers are interacting primarily through smartphone 'apps' as well as the now more traditional use of websites as a portal and repository of information which continues to be important for many customers. We also think it is important to reflect on lessons learned from the extensive work undertaken by ESMA to give effect to the PRIIPS KIID.

Q4: Do you agree with the scope of credit agreements relevant for the information on past defaults to be included to Investors?

No. We consider that limiting the disclosure just to credit agreements related to crowdfunding platforms is likely to be highly misleading for investors because it will disguise situations where a borrower has defaulted on credit agreements elsewhere. We understand that there may be an imperfect alignment of definitions of 'credit agreement' used elsewhere but consider that this is preferable to having such a significant gap in coverage. We also think that it should be feasible for crowdfunding service providers to require project owners to disclose their credit history in order to raise funds through the platform and for the crowdfunding service providers to carry out reasonable checks from available sources, to which they are likely to have at least some access.

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?

There seem to be two missing elements here:

- In Article 20 Funding Policy, there should additionally be a requirement for policies on the segregation and safeguarding of funds intended to be used for the contingency funds from the CSP's and project-owner or indeed investor assets to ensure that the funds are actually available when needed for the purpose that has been promised to investors;

- In Article 21 Disbursement Policy consideration should be given to how the competing claims of different investors will be evaluated given the very real possibility that many investors could have simultaneous claims.