



## **EDPS Formal comments on the draft Proposals for Regulatory Technical Standards and Implementing Technical Standards required by Regulation (EU) 2020/1503 on European Crowdfunding Service Providers for business**

### **THE EUROPEAN DATA PROTECTION SUPERVISOR,**

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data ('EUDPR')<sup>1</sup>, and in particular Article 42(1) thereof,

### **HAS ADOPTED THE FOLLOWING FORMAL COMMENTS:**

#### **1. Introduction and background**

1. The European Commission issued draft Proposals for Regulatory Technical Standards ('draft RTS')<sup>2</sup> and Implementing Technical Standards ('draft ITS')<sup>3</sup> ('the draft Proposals') required by Regulation (EU) 2020/1503 on European Crowdfunding Service Providers for business ('the Regulation')<sup>4</sup>.
2. The objective of the draft Proposals is to ensure the implementation and operationalisation of the new legislative framework for crowdfunding services providers, as laid down under the Regulation, which entered into force on 10 November 2020 and into application on 10 November 2021.
3. The draft RTS are adopted pursuant to Articles 6(7), 7(5), 8(7), 12(16), 20(3), 21(8), 23(16), 31(8). The draft ITS are adopted pursuant to Articles 16(3), 28(5), 31(9), 32(4) of the Regulation.
4. The present formal comments of the EDPS are issued in response to a consultation by the European Commission of 2 May 2022, pursuant to Article 42(1) of Regulation 2018/1725<sup>5</sup> ('EUDPR').
5. These formal comments do not preclude any additional comments by the EDPS in the future, in particular if further issues are identified or new information becomes available, for example as a result of the adoption of other related implementing or delegated acts<sup>6</sup>.
6. Furthermore, these formal comments are without prejudice to any future action that may be taken by the EDPS in the exercise of his powers pursuant to Article 58 of the EUDPR and are limited to the provisions of the draft Proposals that are relevant from a data protection perspective.

## **2. Comments**

### **2.1. General comments**

7. The EDPS notes that the Regulation aims to increase the availability of crowdfunding as innovative form of finance, which will help companies seeking alternatives to bank financing. At the same time, the Regulation aims to ensure that investors on crowdfunding platforms benefit from an enhanced investor protection, based on clear rules on information disclosures for project owners and crowdfunding platforms.
8. The rules contained in the draft RTS and the draft ITS concern the reporting of information by providers of crowdfunding services on projects funded through crowdfunding platforms and aim at providing the appropriate level of transparency to investors and to the competent authorities, as well as at ensuring administrative cooperation between competent authorities and ESMA.

### **2.2. Categories of data**

9. The EDPS notes that the information to be provided by crowdfunding service providers may constitute personal data insofar as it relates to identified or identifiable natural persons. However, the EDPS considers that the types of data to be reported, having regard to data standards, formats, templates and procedures for reporting information on projects funded via crowdfunding, as specified in the draft ITS, are in line with the Regulation and do not raise data protection concerns.
10. Similar consideration (the types of data to be reported, having regard to data standards, formats, templates and procedures are in line with the Regulation and do not raise data protection concerns) applies to the draft RTS, in particular to the draft RTS on individual portfolio management of loans by crowdfunding service providers, specifying the elements of the method to assess credit risk, the information on each individual portfolio to be disclosed to investors, and the policies and procedures required in relation to contingency funds<sup>7</sup>, and to the draft RTS for the key investment information sheet<sup>8</sup>.
11. However, having regard to the draft RTS specifying requirements and arrangements for the application for authorisation as a crowdfunding service provider<sup>9</sup>, the EDPS considers that the information to be collected for the proof of good repute<sup>10</sup> should be listed exhaustively (thus deleting letter (e)) and specify that the information under letter (d), on dismissal from employment, should be related to positions and tasks concerning the management of funds or similar fiduciary relationships.

12. Similar considerations apply to the draft RTS with regard to standard forms, templates and procedures for the cooperation and exchange of information between competent authorities and ESMA<sup>11</sup>. Also in this case, the EDPS recommends including a closed list of information to be provided about reputation of persons responsible for the management of the crowdfunding service, thus deleting the words “*including, but not limited to*” in Article 1(c)(ii). The EDPS also recommends specifying that the information under Article 1(c)(ii)(4), on dismissal from employment, should be related to positions and tasks concerning the management of funds or similar fiduciary relationships.

### **2.3. Forms, templates and procedures for exchange of information between competent authorities and ESMA**

13. The EDPS also notes that a Commission Implementing Regulation lays down implementing technical standards with regard to standard forms, templates and procedures for the cooperation and exchange of information between competent authorities concerning European crowdfunding service providers<sup>12</sup>, and that a Commission Implementing Regulation lays down implementing technical standards with regard to standard forms, templates and procedures for the cooperation and exchange of information between competent authorities and ESMA<sup>13</sup>.

14. In this regard, considered that, as specified by recital 73 of the Regulation<sup>14</sup>, Regulation 2016/679<sup>15</sup> (‘the GDPR’) and the EUDR shall be applicable to all processing of personal data in the context of the draft Proposals, the EDPS considers that these draft ITS do not raise data protection concerns. However, the EDPS recommends including in the forms annexed to these draft ITS a reference to the relevant provisions of the GDPR and of the EUDPR to ensure that all relevant information on the processing of personal data is provided to the data subjects.

### **2.4. Absence of the reference to this consultation in a Recital of the draft Proposals**

15. The EDPS notes the absence of the reference to this consultation in a Recital of the draft Proposals. Hence, the EDPS recommends inserting a reference to the EDPS consultation in a Recital of each of the draft Proposals.

Brussels, 30 May 2022

*(e-signed)*

Wojciech Rafał Wiewiórowski

## Notes

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<sup>1</sup> OJ L 295, 21.11.2018, p. 39.

<sup>2</sup> Commission Delegated Regulation supplementing Regulation (EU) 2020/1503 of the European Parliament and of the Council with regard to regulatory technical standards on individual portfolio management of loans by crowdfunding service providers, specifying the elements of the method to assess credit risk, the information on each individual portfolio to be disclosed to investors, and the policies and procedures required in relation to contingency funds; Commission Delegated Regulation supplementing Regulation (EU) 2020/1503 of the European Parliament and of the Council with regard to regulatory technical standards specifying the requirements, standard formats and procedures for complaint handling; Commission Delegated Regulation supplementing Regulation (EU) 2020/1503 of the European Parliament and of the Council with regard to regulatory technical standards specifying conflicts of interest requirements for crowdfunding service providers; Commission Delegated Regulation supplementing Regulation (EU) 2020/1503 of the European Parliament and of the Council with regard to regulatory technical standards specifying the measures and procedures for crowdfunding service providers' business continuity plan; Commission Delegated Regulation supplementing Regulation (EU) 2020/1503 of the European Parliament and of the Council with regard to regulatory technical standards specifying requirements and arrangements for the application for authorisation as a crowdfunding service provider; Commission Delegated Regulation supplementing Regulation (EU) 2020/1503 of the European Parliament and of the Council with regard to regulatory technical standards specifying the methodology for calculating default rates of loans offered on a crowdfunding platform; Commission Delegated Regulation supplementing Regulation (EU) 2020/1503 of the European Parliament and of the Council with regard to regulatory technical standards specifying the entry knowledge test and the simulation of the ability to bear loss for prospective non-sophisticated investors in crowdfunding projects; Commission Delegated Regulation supplementing Regulation (EU) 2020/1503 of the European Parliament and of the Council with regard to regulatory technical standards for the key investment information sheet; Commission Delegated Regulation supplementing Regulation (EU) 2020/1503 of the European Parliament and of the Council with regard to regulatory technical standards for the exchange of information between competent authorities in relation to investigation, supervision and enforcement activities in relation to European crowdfunding service providers for business.

<sup>3</sup> Commission Implementing Regulation laying down implementing technical standards for the application of Regulation (EU) 2020/1503 of the European Parliament and of the Council with regard to data standards and formats, templates and procedures for reporting information on projects funded through crowdfunding platforms; Commission Implementing Regulation laying down implementing technical standards for the application of Regulation (EU) 2020/1503 of the European Parliament and of the Council with regard to the standard forms, templates and procedures for the notifications of national marketing requirements applicable to crowdfunding service providers by competent authorities to ESMA; Commission Implementing Regulation laying down implementing technical standards for the application of Regulation (EU) 2020/1503 of the European Parliament and of the Council with regard to standard forms, templates and procedures for the cooperation and exchange of information between competent authorities concerning European crowdfunding service providers for business; Commission Implementing Regulation laying down implementing technical standards for the application of Regulation (EU) 2020/1503 of the European Parliament and of the Council with regard to standard forms, templates and procedures for the cooperation and exchange of information between competent authorities and ESMA in relation to European crowdfunding service providers for business.

<sup>4</sup> 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, OJ L 347, 20.10.2020, p. 1.

<sup>5</sup> Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC, OJ, 21.11.2018, L.295, p. 39.

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<sup>6</sup> In case of other implementing or delegated acts with an impact on the protection of individuals' rights and freedoms with regard to the processing of personal data, the EDPS would like to remind that he needs to be consulted on those acts as well. The same applies in case of future amendments that would introduce new or modify existing provisions that directly or indirectly concern the processing of personal data.

<sup>7</sup> Commission Delegated Regulation supplementing Regulation (EU) No 2020/1503 of the European Parliament and of the Council with regard to regulatory technical standards on individual portfolio management of loans by crowdfunding service providers, specifying the elements of the method to assess credit risk, the information on each individual portfolio to be disclosed to investors, and the policies and procedures required in relation to contingency funds.

<sup>8</sup> Commission Delegated Regulation supplementing Regulation (EU) 2020/1503 of the European Parliament and of the Council with regard to regulatory technical standards for the key investment information sheet.

<sup>9</sup> Commission Delegated Regulation supplementing Regulation (EU) 2020/1503 of the European Parliament and of the Council with regard to regulatory technical standards specifying requirements and arrangements for the application for authorisation as a crowdfunding service provider.

<sup>10</sup> See sub-field 9 of the Annex.

<sup>11</sup> Commission Implementing Regulation laying down implementing technical standards for the application of Regulation (EU) 2020/1503 of the European Parliament and of the Council with regard to standard forms, templates and procedures for the cooperation and exchange of information between competent authorities and ESMA in relation to European crowdfunding service providers for business.

<sup>12</sup> Commission Implementing Regulation laying down implementing technical standards for the application of Regulation (EU) 2020/1503 of the European Parliament and of the Council with regard to standard forms, templates and procedures for the cooperation and exchange of information between competent authorities concerning European crowdfunding service providers for business.

<sup>13</sup> Commission Implementing Regulation laying down implementing technical standards for the application of Regulation (EU) 2020/1503 of the European Parliament and of the Council with regard to standard forms, templates and procedures for the cooperation and exchange of information between competent authorities and ESMA in relation to European crowdfunding service providers for business.

<sup>14</sup> Recital 73 lays down: "*Any processing of personal data carried out within the framework of this Regulation, such as the exchange or transmission of personal data by the competent authorities, should be undertaken in accordance with Regulation (EU) 2016/679 of the European Parliament and of the Council and any exchange or transmission of information by ESMA should be undertaken in accordance with Regulation (EU) 2018/1725 of the European Parliament and of the Council.*"

<sup>15</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (Text with EEA relevance), OJ L 119, 4.5.2016, p. 1.