



Setting up your future success in the new crowdfunding market



To harmonize the field of crowdfunding, the EU published the Regulation on European Crowdfunding Service Providers (ECSP) and it entered into force on 10 November 2021. The aim of the new regulation is to support funding across borders and improve access to funding for small-medium enterprises (SMEs) and start-ups. All existing crowdfunding parties in the EU must obtain an ECSP license as per November 2023.

The purpose of this article is to describe the 5 steps for a successful and timely ECSP license application:



Beware: existing crowdfunding platforms in Europe must seize their activities if they do not obtain a crowdfunding license from their respective regulator before November 2023.^{1,2}

01 Establish service offering

Determine which services are offered as part of the license, as different requirements apply per service:

- **Loan-based services** facilitate the lending of money to a company or a private individual, with interest on the loan as compensation.
- **Equity-based services** to facilitate investing in a company, with a dividend and share appreciation as compensation.
- **Ancillary services:** such as: asset safekeeping, payment services, special purpose vehicles, bulletin boards, credit scoring of projects and establishment and operation of contingency funds.

02 Build a sound policy house

- Draft a business plan detailing the strategy
- Establish a sound governance
- Conduct risk analyses and identify potential mitigants
- Draft policies detailing: governance, risk, anti-money laundering, outsourcing, information security, incident-, change-, data, complaints- and business continuity management

03 Set up operations & internal control

- Translate policies into procedures and control measures in the Procedural Handbook and Risk Control Framework
- Describe, implement and test controls to manage risks arising in the various processes
- Incorporate controls into tooling to automate notifications and administer control results

04 Submit application & engage supervisor

- Submit the license application to the regulator, who will review, assess and challenge the content of the submission

05 Operationalize license & go-live

- Once the supervisor has been engaged, it is time to operationalize internal and/or regulatory gaps to prepare for go-live

Lessons learned from previous ESCP license applications

- Contact the regulator early-on and notify them of the intent of the license submission
- Include a detailed description on which regulatory services are going to be provided (e.g. legal opinion)
- Submit a first-time-right application including all requested documentation to prevent delays
- Prepare for any questions of the regulator in advance to speed up the application process
- Start preparing for go-live (e.g. initiate contracting the asset safekeeping- and payment service provider)

Objectives of the ESCP regulations

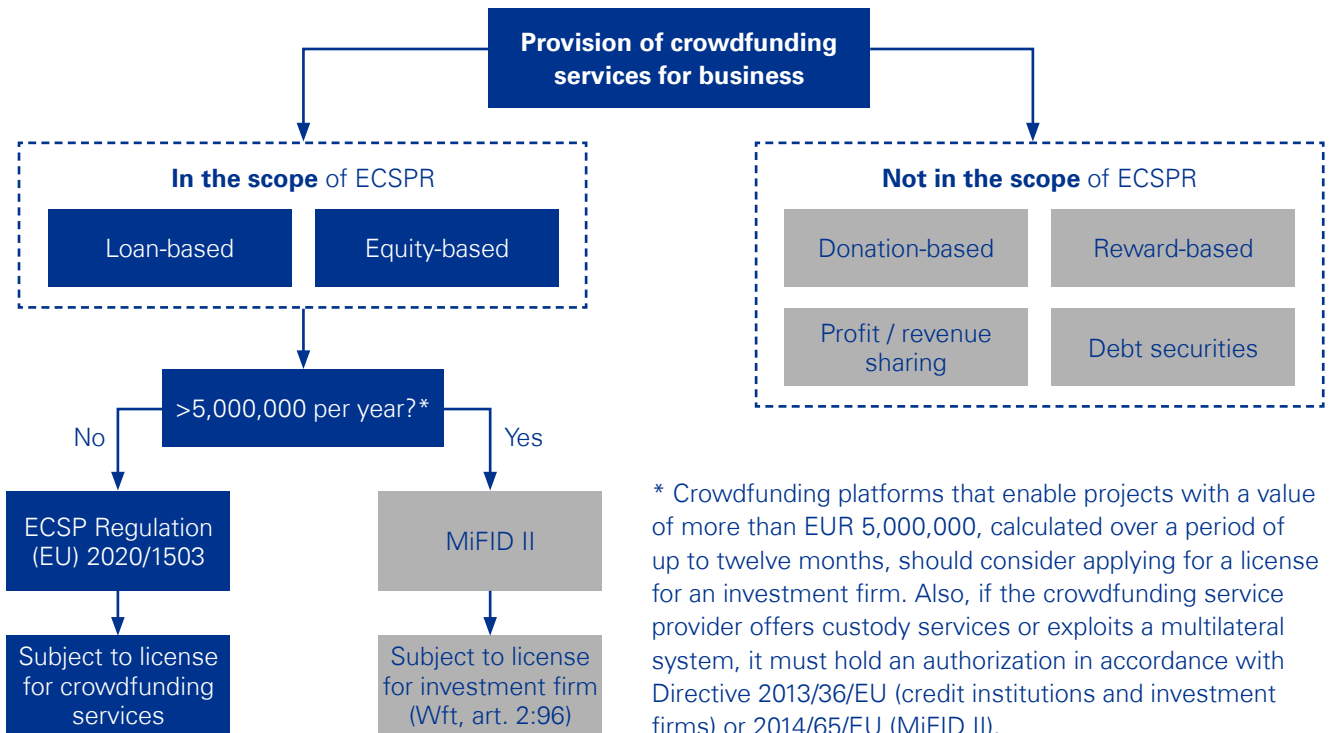
- Protect investors by providing a set of rules
- Foster cross-border harmonization in the EU
- Enable offering across EU under one license

¹ Regulation (EU) 2020/1503 on European crowdfunding service providers for business (October, 2020)

² Regulation (EU) 2020/1988, extending the transitional period for continuing to provide crowdfunding services (12 July 2022).

01 Determine the services offered

Not all European crowdfunding service providers (ECSPs) require a license. Instead, the type of (crowdfunding) services offered determines which license is needed, which is detailed in the figure below.



* Crowdfunding platforms that enable projects with a value of more than EUR 5,000,000, calculated over a period of up to twelve months, should consider applying for a license for an investment firm. Also, if the crowdfunding service provider offers custody services or exploits a multilateral system, it must hold an authorization in accordance with Directive 2013/36/EU (credit institutions and investment firms) or 2014/65/EU (MiFID II).

Loan-based or equity-based?

The ECSPR differentiates between loan-based and equity-based services. **Loan-based services** facilitate the lending of money to a company or a private individual, with interest on the loan as compensation. However, crowdfunding providers may also offer **equity-based services** to facilitate investing in a company, with potential for dividend and share appreciation as compensation.

Other activities?

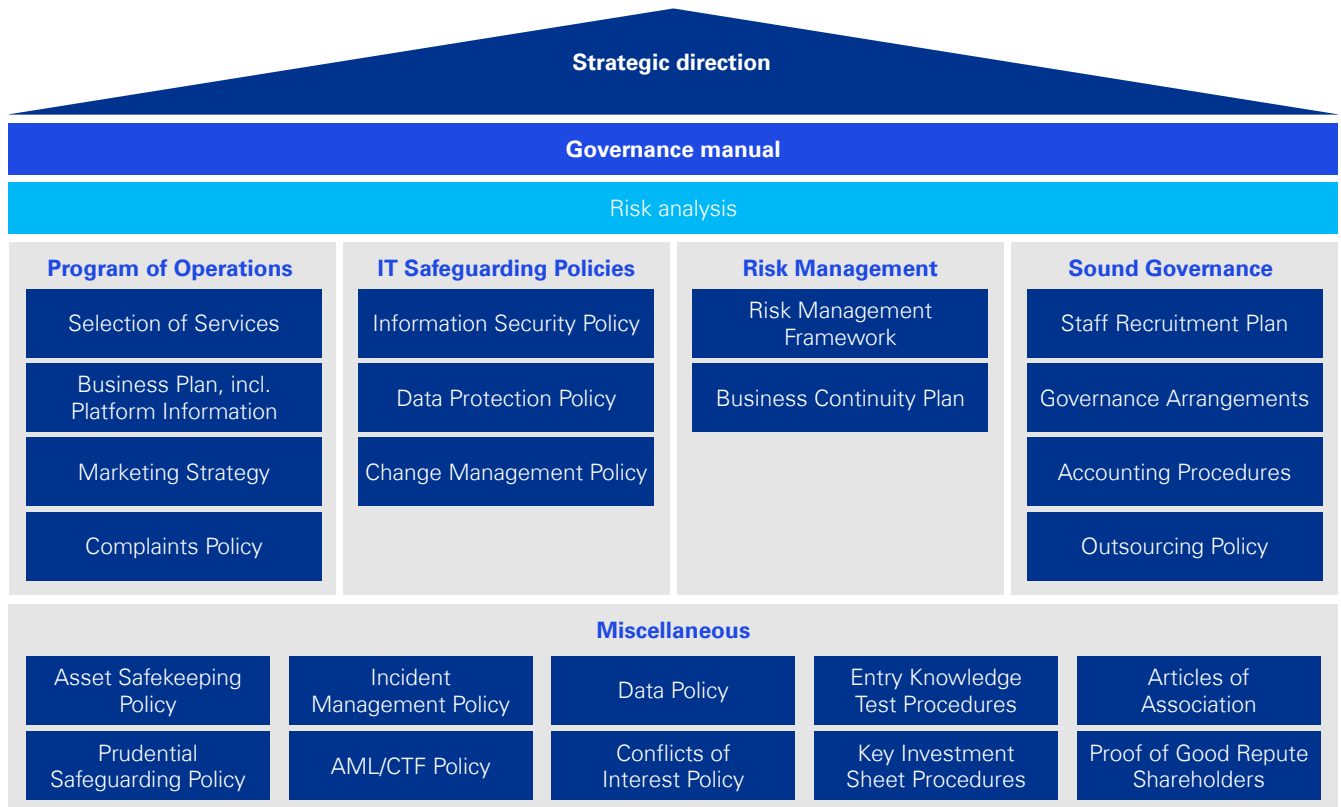
Crowdfunding providers may offer a wider range of services other than loan-based or equity-based crowdfunding. The program of operations must clearly state what other activities the service provider might engage in, for example:

- Safekeeping of assets
- Provision of payment services
- Use of special purpose vehicles to provide crowdfunding services
- Application of credit scores to crowdfunding projects
- Suggestion of the price and/or interest rate of crowdfunding offers
- Operation of a bulletin board
- Establishment and operation of contingency funds

Based on the total package of activities that service providers will offer, the ECSPR imposes additional regulatory requirements. ECSPs must ensure that they hold the relevant authorizations to offer the other activities. For example, payment services may only be offered if the crowdfunding service provider holds the relevant payment licenses.

02 Build a sound policy house

Crowdfunding service providers can ensure compliance with all applicable rules and regulations by building a sound policy house. The policy house should include documentation related to the company's overall strategy, governance, risk management, IT and other operational arrangements (e.g. outsourcing and business continuity management). The figure on the next page provides an example of a policy house.



03 Set up sound operations & internal control

After establishing clear governance, procedures and control measures should be drafted, implemented and tested to ensure a controlled environment. The Procedural Handbook includes all relevant primary and supporting procedures of the crowdfunding service provider. The Risk Control Framework should describe the control measures in place to manage risks that arise in the various processes. Risk control measures can be incorporated into Governance Risk Control tooling (GRC) to automate control notifications and administer periodic test results.

04 Submit application & engage supervisor

Once a strong policy house, sound operations and internal control mechanisms are in place, it is time to engage with the (local) regulator. In this step, all documentation that complies with the [ECSPR](#), [ESMA regulatory standards](#) and local regulatory procedures should be submitted to the regulator. The regulator will review, assess and challenge the content of the documentation submitted.

05 Operationalize license & go-live

After submitting the license application, it is time to operationalize and/or strengthen your internal governance and process controls. By implementing the ECSPR measures will help you meet compliance with ECSPR, ESMA regulatory standards and local regulatory procedures. This will show investors your commitment to sound business operations and investor protection.

Once the local regulator concludes its assessment and the ECSP license is granted, the crowdfunding service provider can operate as a licensed entity. From this time onwards, your crowdfunding platform is now allowed to apply for an EU passport and scale its crowdfunding services across the European Union.



More information?

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