



European Securities and  
Markets Authority

# Questions and Answers

**On the European crowdfunding service providers for business Regulation**





European Securities and  
Markets Authority

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## Acronyms and definitions used

ECSPR	European crowdfunding service providers for business Regulation – Regulation (EU) 2020/1503 on European crowdfunding service providers for business
ESMA	European Markets and Securities Authority
ITS	Implementing Technical Standards
MiFID II	Markets in Financial Instruments Directive (recast) – Directive 2014/65/EU of the European Parliament and of the Council
Q&A	Question and Answer
RTS	Regulatory Technical Standards
SPV	Special Purpose Vehicle



## Table of questions

	Topic of the Question	Level 1/Level 2	Last Update
<b>Use of SPVs</b>	1 Circumstances and conditions in which an SPV can be created for the provision of crowdfunding services	Articles 2(1) and 3(6) of ECSPR	25/02/2021
	2 The types of instruments that can be offered to investors via an SPV	Articles 2(1) and 3(6) of ECSPR	25/02/2021
	3 Whether an SPV can give exposure to more than one underlying asset	Articles 2(1) and 3(6) of ECSPR	25/02/2021
	4 The type of underlying asset an SPV can give exposure to	Articles 2(1) and 3(6) of ECSPR	25/02/2021
	5 When an asset should be deemed to be illiquid or indivisible within the meaning of the ECSPR	Articles 2(1) and 3(6) of ECSPR	25/02/2021



## **Introduction**

### **Background**

The ECSPR was published in the Official Journal on 20 October 2020 and entered into force on 9 November 2020.

A number of obligations under the ECSPR will be further specified in delegated acts to be adopted by the European Commission based on technical standards developed by the European Securities and Markets Authority (ESMA).

### **Purpose**

The purpose of this document is to promote common supervisory approaches and practices in the application of the ECSPR. It aims at providing responses to questions posed by the general public, market participants and competent authorities in relation to the practical application of the ECSPR. The content of this document is aimed at competent authorities and crowdfunding service providers.

The content of this document is not exhaustive and does not constitute new policy.

### **Status**

The question and answer (Q&A) mechanism is a practical convergence tool used to promote common supervisory approaches and practices under Article 29(2) of the ESMA Regulation<sup>1</sup>.

Due to the nature of Q&As, formal consultation on the draft answers is considered unnecessary. However, even if Q&As are not formally consulted on, ESMA may check them with representatives of ESMA's Securities and Markets Stakeholder Group, the relevant Standing Committees' Consultative Working Group or, where specific expertise is needed, with other external parties.

ESMA will periodically review these Q&As on a regular basis to update them where required and to identify if, in a certain area, there is a need to convert some of the material into ESMA Guidelines and recommendations. In such cases, the procedures foreseen under Article 16 of the ESMA Regulation will be followed.

### **Questions and answers**

This document is intended to be continually edited and updated as and when new questions are received. The date on which each section was last amended is included for ease of reference.

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<sup>1</sup> Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC Regulation, 15.12.2010, L331/84.



# 1 Use of Special Purpose Vehicles (SPV) [Last update: 25 February 2021]

## Question 1 [Last update: 25 February 2021]

*In which circumstances and subject to which conditions can an SPV be created for the provision of crowdfunding services?*

### Answer 1

According to the ECSPR, an SPV is an entity created for the sole purpose of securitisation within the meaning of point (2) of Article 1 of Regulation (EU) No 1075/2013 of the European Central Bank. An SPV can only be created if (i) it is interposed between the project owner and investors and (ii) serves the sole purpose of enabling investors to acquire an interest in one illiquid or indivisible underlying asset which could otherwise not or not easily be offered to investors.

## Question 2 [Last update: 25 February 2021]

*What type of instruments can be offered to investors via an SPV?*

### Answer 2

Where a crowdfunding offer is made via an SPV, the instruments offered to investors can be either transferable securities within the meaning of point (44) of Article 4(1) of Directive 2014/65/EU or admitted instruments for crowdfunding purposes within the meaning of point (n) of Article 2(1) of the ESCPR. Conversely, the ECSPR does not envisage the possibility of loan-based crowdfunding offers made via an SPV.

## Question 3 [Last update: 25 February 2021]

*Can an SPV give exposure to more than one underlying asset?*

### Answer 3

No. According to Article 3(6) of the ECSPR, an SPV cannot serve the purpose of enabling the offering to investors of exposure to more than one illiquid or indivisible asset.



#### **Question 4 [Last update: 25 February 2021]**

*What type of underlying asset can an SPV give exposure to?*

#### **Answer 4**

The ECSPR aims to facilitate direct investments and avoid creating regulatory arbitrage opportunities. The use of an SPV interposed between an underlying asset and investors shall be permitted only when it enables investors to gain exposure to assets which could otherwise not or not easily be offered to investors. For that reason, Article 3(6) of the ECSPR restricts the use of SPVs to illiquid or indivisible types of underlying assets only. Consequently, the interposition of an SPV can only be justified when the unique underlying asset is either illiquid or indivisible.

#### **Question 5 [Last update: 25 February 2021]**

*What are possible indications of an illiquid or indivisible asset, for the purpose of the application of the ECSPR?*

#### **Answer 5**

An asset should be deemed to be illiquid when it cannot be turned into cash swiftly. Factors such as, but not limited to, the following are indications that the asset may be illiquid:

- (i) there is no organised market for assets of that type;
- (ii) sales for that type of assets usually take place over the counter;
- (iii) there is no readily available value for assets of that type; or
- (iv) reaching an agreement on a selling price with a potential buyer encompasses significant costs (administrative fees, tax, audit and legal costs) and takes from a few weeks to a few months.

An asset should be deemed to be indivisible when it cannot be easily or swiftly divided into smaller, more moderately priced components for the purpose of its partial or total sale to investors or when such division in smaller component is not economically rational, notably because it prevents the asset from serving its core economical purpose. Factors such as, but not limited to, the following are indications that the asset may be indivisible:

- (i) because of its legal structure, the asset cannot be divided or easily divided into smaller components that can be sold easily to investors (examples of such smaller component include, for instance, shares or units);
- (ii) due to the very nature of the underlying asset, it can only be divided into a limited number of components each with a value far exceeding the value usually expected for shares or units (e.g. a residential building which typically can only be divided into a limited number of apartments and not into components with a smaller value);



- (iii) due to the nature of its core economical purpose, the asset if divided would stop achieving its core economical purpose (e.g. a solar power plant dismantled into individual solar panels).