

Regulation on crowdfunding services, implementing Regulation (EU) 2020/1503 on European crowdfunding service providers for business and articles 4(6)1 and 100(3) of the Consolidated Law on Finance (TUF)

Adopted by resolution no. 22720 of 1 June 2023¹

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1. Resolution no. 22720 of 1 June 2023 and the attached regulations are published in Official Journal no. 134 of 10 June 2023 and CONSOB Fortnightly bulletin no. 6.1., June 2023. It is in force from the day following its publication in the Official Journal.

PART I GENERAL PROVISIONS

Art. 1 (Regulatory sources)

1. This regulation is adopted pursuant to articles 4(6)1 and 100(3) of Italian Legislative decree no. 58 of 24 February 1998.

Art. 2 (Definitions)

1. In this Regulation:

- a) "Consolidated Law on Finance" or "TUF": Legislative Decree no. 58 of 24 February 1998;
- b) 'Regulation (EU) 2020/1503': Regulation (EU) 2020/1503 of 7 October 2020 on European crowdfunding service providers, amending Regulation (EU) 2017/1129 and Directive (EU) 2019/1937;

2. Unless otherwise specified, for the purposes of this Regulation, the definitions contained in the Consolidated Law, in Regulation (EU) 2020/1503 on European crowdfunding service providers and in the regulatory technical standards implementing the aforementioned Regulation shall apply.

Art. 3 (Method for communication and transmission to CONSOB and identification of the organisational unit responsible for the procedure)

1. The applications, communications, deeds, documents and any other information required by these regulations are sent via certified electronic mail (PEC) to the address portalicrowdfunding@pec.consob.it.

2. The Intermediaries Division is the organisational unit responsible for the procedure set out in these regulations.

PART II AUTHORISATION PROCEDURE AS A CROWDFUNDING SERVICE PROVIDER AND WITHDRAWAL OF THE AUTHORISATION

Art. 4 (Authorisation procedure and authorisation extension)

1. The procedures for authorising the provision of crowdfunding services and their extension are governed, respectively, by Articles 12 and 13 of Regulation (EU) 2020/1503, as well as by delegated regulation (EU) 2022/2112.

2. For procedures for which it is responsible pursuant to Article 4(6)1 of the Consolidated Law on Finance, Consob, within twenty-five working days of receipt of the application for authorisation or its extension, shall check that the application is complete and communicate to the company any documents and information that may be missing. The missing information and documents must be forwarded to Consob within the time limits established by the latter. If the applicant fails to provide the missing information within the given terms, Consob shall notify its refusal to proceed with the application, pursuant to article 12(5) of Regulation (EU) 2020/1503. Article 4 of Delegated Regulation (EU) 2022/2112 shall apply.

Art. 5

(Authorisation withdrawal procedure)

1. In the cases identified by Article 17 of Regulation (EU) 2020/1503, Consob, having heard the Bank of Italy and, in the case referred to in Article 17(3) of Regulation (EU) 2020/1503, also the Authority of the Member State concerned, decides the withdrawal of the authorisation granted by the same within the term of three months from the date of commencement of the proceedings.
2. In the case identified by article 17(1)b) of Regulation (EU) 2020/1503, the deadline referred to in paragraph 1 is suspended, if Consob requests additional information, from the date the request for information is sent to the date of receipt by Consob of such information.
3. The deadline referred to in paragraph 1 shall not run or shall be suspended in the event that supervisory investigations are in progress or have been launched with regard to the crowdfunding service provider. In this case, the full deadline shall run from the moment the investigations have been completed.

PART III

DISCLOSURE OBLIGATIONS OF CROWDFUNDING SERVICE PROVIDERS TO CONSOB

Art. 6

(Method of transmission to Consob of the key investment information sheet)

1. Crowdfunding service providers authorised pursuant to Article 4(6)1 of the Consolidated Law on Finance shall provide potential investors with the key investment information sheet referred to in Articles 23 and 24 of Regulation (EU) 2020/1503, making it available to Consob at the same time, in the manner specified with specific operating instructions.
2. The key investment information sheet is written in Italian.

Art. 7

(Communications to the competent authorities)

1. Without prejudice to the powers set forth by Article 4(6)1, crowdfunding service providers authorised pursuant to the same article shall promptly communicate to Consob

and the Bank of Italy:

- i.* the start dates of the use of the authorisation, as well as any suspension and resumption of the provision of crowdfunding services;
 - ii.* any substantial changes to the authorisation conditions pursuant to Article 15(3) of Regulation (EU) 2020/1503.
2. By the end of the month of January of each year, the crowdfunding service providers authorised by Consob pursuant to Article 4(6)1 of the Consolidated Law on Finance shall send the latter the information referred to in Article 16(1) of Regulation (EU) 2020/1503.

PART IV MARKETING COMMUNICATIONS

Art. 8

(General criteria for marketing communications)

1. Without prejudice to the provisions of Article 27 of Regulation (EU) 2020/1503, marketing communications relating to crowdfunding services must meet the following conditions:
 - a)* they must include the name of the service provider and the platform's Internet address;
 - b)* they must provide a correct indication of the risks connected with the investment, including the risk of partial or total loss of the invested capital;
 - c)* they must present the risks using a font size at least equal to that used for the other information provided, as well as a graphic layout such as to ensure that the risks are highlighted;
 - d)* the information shall not conceal, minimise or obscure important items, statements or warnings;
 - e)* the information shall be up-to-date and relevant to the means of communication used.
2. Where marketing communications compare crowdfunding services or the results of offers, the crowdfunding service providers authorised pursuant to Article 4(6)1 of the Consolidated Law on Finance shall ensure that the following conditions are met:
 - i.* the comparison is significant and is presented in a fair and balanced way;
 - ii.* the sources of the information used for the comparison are specified;
 - iii.* the key facts and hypotheses used for the comparison are indicated.

3. Any marketing communication, in ways ensuring immediate and easy perception, shall contain the following warning: "before accepting, read the key investment information sheet". If audio-visual tools are used, the warning shall be given at least in audio form.

4. If the marketing communications also concern crowdfunding services other than those indicated in Article 2(1)a) of Regulation (EU) 2020/1503, the crowdfunding service providers authorised pursuant to Article 4(6)1 of the Consolidated Law on Finance shall include in the information relating to such services the following warning: "This crowdfunding service is not subject to authorisation or supervision by the Bank of Italy or Consob. The rules and safeguards provided by European Regulation no. 1503/2020 on crowdfunding service providers are not applicable to this service".

5. For their marketing communications circulated in the territory of the Republic, crowdfunding service providers shall use the Italian language.

Art. 9

(Marketing communications relating to individual portfolio management of loans)

1. Marketing communications relating to individual portfolio management of loans:

- a) shall specify which parameters the crowdfunding service provider complies with for providing the service, among those set out in Article 6(1) of Regulation (EU) 2020/1503;
- b) if referred to the contingency fund, shall be consistent with the information and warnings provided to investors pursuant to Article 6, paragraphs 5 and 6, of Regulation (EU) 2020/1503.

Art. 10

(Illustration of yields achieved and other data)

1. Where marketing communications contain an indication of the results of previous offers or other crowdfunding services, crowdfunding service providers authorised pursuant to Article 4(6)1 of the Consolidated Law on Finance shall ensure that the following conditions are met:

- a) this indication is not the most noticeable element of the communication;
- b) the reference period and the source of the information are clearly indicated;
- c) the information contains a clear warning that the data refers to the past and that past performance is not a reliable indicator of future results;
- d) yields are shown net of commissions and tax charges and, if this is not possible, it must be clearly indicated;
- e) the warning "Past yields are no indication of future ones" must appear.

Art. 11
(Scope of application)

The provisions contained in this Part IV also apply to crowdfunding service providers authorised in another Member State who have notified, in accordance with Article 18 of Regulation (EU) 2020/1503, their intention to provide crowdfunding services in Italy.

PART V
OBLIGATIONS OF CROWDFUNDING SERVICE PROVIDERS

Art. 12
(Information on individual offers)

1. In relation to each crowdfunding offer, the provider authorised pursuant to Article 4(6)1 of the Consolidated Law on Finance, in addition to the information required by Regulation (EU) 2020/1503, shall publish:

- a) the indication of any alternative arrangement for the transfer of the shares representing the share capital of the limited liability company envisaged in Article 100(3)(2) of the Consolidated Law and the related procedures for exercising the option to choose the arrangement to be applied;
- b) for each offer of bonds or debt securities, an indication of the manner in which the limits set out in Articles 2412 and 2483 of the Italian Civil Code are complied with.

Art. 13
(Further obligations)

1. For the purposes of the admission to trading on the platform, the provider authorised pursuant to Article 4(6)1 of the Consolidated Law on Finance shall verify that the articles or memorandum of association of the companies subject to a crowdfunding offer provide, in the case of offers concerning debt securities issued by a limited liability company, the possibility of issuing debt securities, in accordance with article 2483, paragraph 1, of the Italian Civil Code.

2. The provider shall ensure that:

- a) for each offer concerning bonds, the limits set by article 2412 are met;
- b) for each offer concerning debt securities, the limits set in Article 2483 of the Italian Civil Code, where relevant, as well as the additional limits imposed by the applicable special regulations, are complied with.