



EBA/Op/2023/04

7 June 2023

Opinion of the European Banking Authority

on the European Commission's amendments relating to the final draft Technical Standards on requirements on credit scoring of crowdfunding projects, pricing of crowdfunding offers, and risk management policies and procedures supplementing Regulation (EU) No 2020/1503, having regard in particular to Article 19(7) thereof.

Introduction and legal basis

The European Banking Authority's (EBA) competence to deliver an opinion is based on the fifth subparagraph of Article 10(1) of Regulation (EU) No 1093/2010¹ ('EBA Regulation'), as the specification of the requirements of credit scoring of crowdfunding projects, pricing of crowdfunding offers, and risk management policies and procedures, under Regulation (EU) 2020/1503², is an area of competence of the EBA which has been mandated to develop draft regulatory technical standards on this topic.

In accordance with Article 14(7) of the Rules of Procedure of the Board of Supervisors³, the Board of Supervisors has adopted this opinion which is addressed to the European Commission.

¹ Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority) amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p. 12)

² 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

³ Decision adopting the Rules of Procedure of the European Banking Authority Board of Supervisors of 22 January 2020 (EBA/DC/2020/307), amended by EBA/DC/2021/392 of 29.05.2021 and EBA/DC/451 of 21 June 2022

Comments

1. On 10th May 2022 EBA submitted for adoption by the European Commission the final draft regulatory technical standards ('RTS') on requirements on credit scoring of crowdfunding projects, pricing of crowdfunding offers, and risk management policies and procedures in accordance with Article 19(7) of Regulation (EU) No 2020/1503. The draft RTS specified the information that crowdfunding service providers shall provide to investors on the calculation of credit scores and prices of crowdfunding offers, the information to be considered for credit risk assessment and loan valuation and the underlying policies and governance arrangements.
2. With its letter of 2nd May 2023, the European Commission informed the EBA of its intention to endorse the draft RTS with amendments and submitted to the EBA a modified version. The letter details one substantive amendment to the draft RTS, which the EBA considers that it changes the draft RTS in a significant manner from a policy perspective and therefore warrants a formal opinion as set out in Article 10(1) subparagraph 5 of the EBA Regulation.
3. In the draft RTS submitted by the EBA on 10th May 2022, it was proposed that crowdfunding service providers shall document decisions on the assessment of creditworthiness of project owners and shall keep that documentation "for at least 5 years after the repayment of the final instalment of the loan". This provision considered the emergent phase of development of the crowdfunding sector, and the need to provide crowdfunding service providers with adequate amount of time to build up a robust database on financial and non-financial factors on projects and project owners. This would ensure crowdfunding service providers the access to sufficient amount of data and information to compare the creditworthiness of perspective project owners with historical ones, and to enhance scoring models. Eventually, this would help improve the decisions on the projects to be financed on their platforms.
4. The European Commission has proposed an amendment following the comments received by European Data Protection Supervisor (EDPS) that the wording of Article 5 of the draft RTS may not be in line with the principle established in Article 5(1)(e) of the General Data Protection Regulation (EU) 2016/679 ("GDPR"), which requires that personal data should only be stored for the time necessary to fulfil the original purpose of their collection and use. Therefore, the European Commission proposes that a paragraph shall be added to the text of Article 5 of the RTS on crowdfunding, specifying that:

For the purpose of paragraph 2, any personal data as defined in Article 4(1) of Regulation (EU) 2016/679 of the European Parliament and the Council, shall be kept for no longer than 5 years after the repayment of the final instalment of the loan.

A recital has also been added to clarify the rationale of the provision.

5. The assessment of creditworthiness is conducted when perspective project owners apply for their project to be financed on the platform, and it is based on the extensive amount of information (which may contain both personal and non-personal data) included in Articles 6-11

of the draft RTS, aimed at assessing the capacity of the project owner to repay the loan, and such decision must be well documented. To this extent, as this documentation may contain personal data, the EBA notes that personal data should always be stored in accordance with GDPR, i.e. for the time necessary to fulfil the original purpose of their collection and use, in this case for the period that is necessary to assess the capacity of project owners to repay their loan. In addition, the new Article 5(3) also provides the possibility to keep personal data up to five years after the final instalment of the loan, in so avoiding that personal data could be stored indefinitely without justification.

6. While the original wording in the draft RTS was proposed as a regulatory record-keeping requirement to which the GDPR principles would continue to apply, the EBA understands the rationale behind the EDPS's advice that, in this particular case which relates to individual customers, a more precise and harmonised approach would be preferable. This approach, as reflected in the amendment proposed by the European Commission, would allow to address directly in the draft RTS both the need for a minimum period for record-keeping of relevant documentation for internal benchmarking and regulatory purposes, and the GDPR need for a maximum retention period with regards to personal data.
7. Consequently, the EBA is accepting the amendments proposed by the European Commission. When accepting these amendments, the EBA has also taken into consideration that the overall objective of the draft RTS as expressed at the beginning of this opinion is preserved, as well as the specific objective of ensuring that crowdfunding providers can access to historical data to improve the assessment of creditworthiness and the performance of their scoring models.

Conclusion:

For the reasons above, the EBA has accepted the substantive amendment to the draft RTS. The EBA submits the draft RTS to the European Commission in the form set out in the Annex.

This opinion will be published on the EBA's website.

Done at Paris, 7 June 2023

[signed]

[José Manuel Campa]

Chairperson
For the Board of Supervisors