



## MARKETING COMMUNICATIONS OF CROWDFUNDING SERVICES PROVIDERS

**References: Article L. 547-2 of the Monetary and Financial Code and Articles 27 and 28 of Regulation (EU) 2020/1503 of the European Parliament and of the Council of 7 October 2020**

### Introduction

In accordance with the provisions of paragraph 3 of Article L. 547-1 of the Monetary and Financial Code, the AMF may ask the Autorité de Contrôle Prudentiel et de Résolution (**ACPR**) to monitor and supervise crowdfunding service providers (**CSPs**) where the provider's programme of operations includes the facilitation of granting of loans.

This position has therefore been drawn up jointly with the ACPR, which the AMF may ask to take charge of the monitoring of marketing communications related to the facilitation of granting of loans disseminated by CSPs in France.

### Scope

This position applies to marketing communications disseminated in France by crowdfunding service providers that are authorised in France or authorised to provide their services in France. The purpose of this position is to specify the AMF's expectations regarding the language and content of marketing communications issued by CSPs, relating to crowdfunding offers involving financial securities or loans (together, hereinafter referred to as the "**Products**"), in light of the provisions of Regulation (EU) 2020/1503 of 7 October 2020 and the Monetary and Financial Code.

In addition to the information on marketing communications set out in this position, the AMF reminds CSPs that the obligation to provide information that is fair, clear and not misleading applies to:

- All information provided to clients by CSPs about themselves, about the costs, financial risks and charges related to crowdfunding services or investments, about the crowdfunding project selection criteria, and about the nature of, and risks associated with, their crowdfunding services (Article 19.1 of the aforementioned Regulation);
- The information contained in the key investment information sheet (Article 27.2 of the same Regulation). The information contained in marketing communications must be consistent with the content of the key investment information sheet.

The policy elements contained in this position are therefore useful to CSPs in ensuring compliance with these obligations.

## 1. LANGUAGE USED IN MARKETING COMMUNICATIONS

In accordance with the second paragraph of Article L. 547-2 of the Monetary and Financial Code, “When disseminated in France, the marketing communications referred to in paragraph 3 of Article 27 of Regulation (EU) 2020/1503 of 7 October 2020 shall be written in French. However, under the conditions and within the limits set by the AMF General Regulation, they may be written in a language other than French that is customary in the sphere of finance”.

The AMF General Regulation does not allow these marketing communications to be written in a language other than French. Consequently, all marketing communications disseminated by crowdfunding service providers in France must be written in French. However, this requirement does not apply to marketing communications that are intended exclusively for dissemination outside France, which must comply with the rules of the country in which they are disseminated.

## 2. CONTENT OF MARKETING COMMUNICATIONS

### 2.1. Reminder of the regulations

In accordance with Article 27 of Regulation (EU) 2020/1503 of the European Parliament and of the Council of 7 October 2020:

“1. Crowdfunding service providers shall ensure that all marketing communications about their services, including those outsourced to third parties, are clearly identifiable as such.

2. Prior to the closure of raising funds for a project, no marketing communication shall disproportionately target planned, pending or current individual crowdfunding projects or offers.<sup>1</sup>

The information contained in a marketing communication shall be fair, clear and not misleading, and shall be consistent with the information contained in the key investment information sheet, if the key investment information sheet is already available, or with the information required to be contained in the key investment information sheet, if the key investment information sheet is not yet available (...).”

To be correct, the information must present the different characteristics of the offer in a balanced way. In particular, the platform must not emphasise the potential advantages of the investment without also explaining, correctly and very clearly, the associated disadvantages and/or any corresponding risks.

The following are therefore not acceptable:

- Presenting the risks of the proposed offer or the detailed offer in a section inserted at the bottom of a marketing communication while presenting the advantages in the body of the document;
- Using simplified advertising slogans that mention only one feature of the Product being offered;
- Where gross performance is quoted in the advertising information, failing to specify the effect of fees, commissions and taxes applicable to the Product;
- Failing to refer in the advertising information to the fees associated with the offer and payable by investors and project owners, or referring to them in a way that does not make them obvious;
- Using an advertising slogan that combines the concepts of performance and security.

For the offer to be clear, the information on its main features must be both sufficient and presented in a way that can be understood by an investor.

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<sup>1</sup> On this point, see Question and Answer 5.18 of the [Questions and Answers on the European crowdfunding service providers for business Regulation \(ESMA35-42-1088\)](#).

Misleading information is information that is likely to mislead investors by misrepresenting or offering an incomplete presentation of the offer. To avoid being misleading, the information must not distort, minimise or conceal any important facts, declarations or warnings.

The AMF also reminds providers that all misleading commercial practices are forbidden in France.

## 2.2. Details on the visual aspects

### Position

Particular care should be taken to the typography, especially the font size and the colours used for providing information on performance in order to avoid this aspect being given prominence. For example, the use of colour or bold font when presenting risks helps to make them more visible. The font size used to present performance data must be proportionate or similar to that used to present the other features of the Product, including the risks.

To avoid misleading investors, care must also be taken to the images illustrating the offer, which must not give the impression that this is the project actually proposed by the platform, when in fact they are non-binding commercial illustrations. As such “stylised” performance graphs that do not display the x-axis and/or y-axis should also be avoided as they do not necessarily reflect the real performance of the Product being offered.

## 2.3. Details on comparisons between Products

### Position

Where comparative information is provided, the comparison must be relevant and presented in a fair and balanced way, the sources used must be specified and the facts and assumptions used to draw the comparison must be stated.

## 2.4. Details on the vocabulary used

### Position

With regard to its activity, the platform must refrain from using self-praising language to promote its services and proposed projects. For example, wording such as “*the leading crowdfunding platform*” may not be used unless it can be backed up by specific and readily available evidence.<sup>2</sup>

Furthermore, the way in which the platform presents the selection process for offers made available online must not imply to potential investors that the offers presented are risk-free.

Similarly, superlative comparative expressions such as “*the best projects*” or “*the most attractive opportunities*” must be avoided. Positive advertising messages such as “*growing companies*”, “*vetted projects*”, “*transparent*”

<sup>2</sup> See the [French Professional Advertising Regulation Authority’s recommendation of 6 June 2017 entitled “Vocabulaire publicitaire”](#).

***investment***” and ***secure service***” must be amended, as they could turn out to be, if not inaccurate, at least misleading.

## 2.5. Details on information relating to performance

### Position

Past or future performance must not be the main focus of any communication about an offer. This is because such information would not be exhaustive and could lead online users to sign up based on incomplete or even misleading information.

Any communication that focuses solely on the potential performance of the offers presented on the platform is not permitted. The platform must not mention the lists of successful offers or offers for which returns are currently being paid out, the percentages of successful offers or the speed at which investors are signing up to offers, without also informing the potential investor of projects that have been abandoned, suffered a loss or have failed. A low failure rate must not be presented as an indicator of the quality of the projects offered online on the platform.<sup>3</sup>

Where marketing communications include information on future performance, CSPs shall ensure that the following conditions are met:

- a) the information is not based on nor makes reference to simulations of past performance;
- b) the information is based on reasonable assumptions backed up by objective data;
- c) where the information relates to gross performance, it specifies the effect of commissions, fees and other charges;
- d) the information is based on performance scenarios (both negative and positive) that have different market conditions, and reflects the nature and risks of the specific types of instruments included in the analysis;
- e) the information includes a prominent warning that such forecasts are not a reliable indicator of future performance.

## 2.6. Details on information relating to tax treatment

### Position

Where the marketing communication refers to a particular tax treatment, a warning must be displayed specifying the compulsory holding period for the Product and the fact that the tax treatment depends on each investor’s individual situation and may change at a later date.

In the case of a crowdfunding offer that may or may not provide partial tax relief, the platform must also state that the tax benefits are offered in exchange for a risk of capital loss and an asset lock-in period, which will

<sup>3</sup> As a reminder, Article 20 of Regulation (EU) 2020/1503 and Commission Delegated Regulation (EU) 2022/2115 of 13 July 2022 set out the default rate disclosure requirements for CSPs that provide crowdfunding services consisting of the facilitation of granting of loans.

depend on the specific nature of the offer and will generally be longer than the minimum holding period for tax purposes.

## 2.7. Details on references to competent authorities

### Position

CSPs must not use the name of any competent authority in such a way that would indicate or suggest endorsement or approval by that authority of the platform's products or services, except in the case of mandatory wording.

Neither the logo of a regulator, for example the AMF or the ACPR, nor the *"Crowdfunding platform regulated by the French authorities"* label, registered by the French government with the French National Institute of Intellectual Property, may be used as a selling point for the Product.

## 2.8. Consistency with the key investment information sheet

Article 27.2 of Regulation (EU) 2020/1503 of the European Parliament and of the Council of 7 October 2020 states that:

"The information contained in a marketing communication shall be fair, clear and not misleading, and shall be consistent with the information contained in the key investment information sheet, if the key investment information sheet is already available, or with the information required to be in the key investment information sheet, if the key investment information sheet is not yet available".

Furthermore, Article 2 of Commission Delegated Regulation (EU) 2022/2119 of 13 July 2022<sup>4</sup> stipulates as follows:

"1. The information (...) [in the key investment information sheet] shall be presented in a way that is easy to read and shall be expressed in a way that facilitates the understanding of the information, including by prospective non-sophisticated investors, and taking into consideration the possible comprehension difficulties arising from the nature, scale and complexity of the crowdfunding offer.

2. The language used in the key investment information sheet shall be clear and succinct and technical terms shall be avoided where everyday words can be used instead".

Article 6.2 of the same Delegated Regulation states that "[t]he description of the risks associated with a crowdfunding offer (...) shall not give general statements on investment risks or limit the liability of the project owner or any persons acting on their behalf".

### Position

CSP's marketing communications shall comply with the obligation for marketing communications to be consistent with the information contained in the key investment information sheet, as provided in Article 27 of Regulation (EU) 2020/1503.

<sup>4</sup> [COMMISSION DELEGATED REGULATION \(EU\) 2022/2119 of 13 July 2022 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.](#)

**For example, a marketing communication may not include a reference to a profitability target if this is not consistent with the information contained in the key investment information sheet.**

## **2.9. Details on communication media**

The requirements to ensure that information is clear, correct and not misleading set out in this position apply to an individual communication on a proposed offer and to the various communications taken as a whole for the same offer.

Accordingly, when the level of detail of the information contained in these communications varies depending on the type of communication, or when the proposed offer or detailed offer is presented in several documents (or several messages for publications on social media), no marketing communication shall present the benefits more specifically and then refer the investor to another document for the disadvantages. In such cases, the information could be considered misleading.

Examples of such media include the website (home page, project pages, frequently asked questions), outbound media such as information emails sent to investors as part of the platform's monitoring of their investment and search engine optimisation titles and descriptions, as well as the key investor information sheet and all documents with hyperlinks to information that is useful for understanding the activities of the issuer, the funded target company and the group to which it belongs.

### **Position**

**Where content (e.g. web banners, emails or tweets) presents the platform's performance or the features of a proposed offer, a statement such as *"risk of capital loss"* and/or *"past performance is not an indication of future performance"* must appear to balance the overall message. These two statements must appear if they are both relevant to the message.**

**CSPs are responsible not only for the information they publish, but also for information they pass on but not originally written by them (for example a *"retweet"* on Twitter). CSPs are therefore responsible for ensuring that all information they disseminate complies with applicable regulation.**