

## **AUTHORISATION OF CROWDFUNDING SERVICE PROVIDERS**

On 10 November 2021, Regulation (EU) 2020/1503 of the European Parliament and of the Council of 7 October 2020 on European crowdfunding business service providers and amending Regulation (EU) 2017/1129 and Directive 2019/1937 (the **Regulation**) entered into force. This Guide has been prepared to provide guidance on the rules and expectations related to the licensing process for crowdfunding service providers, **but the Magyar Nemzeti Bank (MNB) notes that the Regulation contains several provisions mandating the European Commission to develop regulatory technical standards (RTS), which are still in draft form**<sup>1</sup>. The MNB will conduct the authorisation procedures on the basis of the Regulation and the Draft RTSs in order to allow market participants to obtain authorisation until the end of the extended transitional period under Article 48 of the Regulation, i.e. until 10 November 2023. However, it reminds applicants that **if the drafts are adopted and enter into force with changes during the period of the procedures, the amended requirements will have to be demonstrated during the procedure. Whenever the Guide makes reference to an RTS rule, it should be treated with the caveat that it is only a draft and has not yet been adopted, so it is possible that it will be incorporated with amendments in the final version of the RTS.**

### **I. GENERAL RULES OF PROCEDURE**

Section 40(37) of Act CXXXIX of 2013 on the Magyar Nemzeti Bank (**MNB Act**) stipulates that the MNB is responsible for the tasks related to the implementation of the Regulation, including the authorisation procedures. The procedural rules are basically governed by the Regulation and the regulatory technical standard for authorisation procedures (**Authorisation RTS**), but certain provisions of the MNB Act, such as those on electronic communication, cannot be ignored (see Section I.2.).

Crowdfunding services may only be provided by legal entities established in the European Union if they are authorised under Article 12 of the Regulation<sup>2</sup>. Legal entities wishing to provide crowdfunding services do not need to obtain a licence from the MNB to be set up, but they cannot start crowdfunding activities without a licence from the MNB.

#### **I.1. Administration deadline**

The time limits are regulated by the Regulation and the Authorisation RTS and can be summarised as follows:

1. the MNB issues an acknowledgement of receipt within 10 working days of receipt of the request<sup>3</sup>
2. within 25 working days of receipt of the application, the MNB shall check that all the necessary documents have been submitted and, if necessary, order to remedy deficiencies<sup>4</sup>
  - if the applicant shall be invited to remedy deficiencies, the 25 working day time limit, which is not restarted by the submission of the missing documents, shall be suspended<sup>5</sup>
  - if the application is still incomplete after 25 working days, the examination of the application may be refused<sup>6</sup>
3. if the application is complete, the MNB shall notify the applicant without delay<sup>7</sup>
4. within three months of receipt of a complete application, the MNB shall assess the content of the application (substantive examination)<sup>8</sup>
  - if necessary, the MNB may invite the customer to submit additional documents
  - if the applicant makes any changes to the documentation submitted, either as a result of the MNB's call to remedy deficiencies or voluntarily, the three-month deadline will restart<sup>9</sup>. The applicant shall notify the MNB without delay of any amendment to the application.
5. within three working days of the date of the decision, the MNB shall notify the applicant of the decision<sup>10</sup>

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<sup>1</sup> <https://www.esma.europa.eu/press-news/esma-news/esma-publishes-technical-standards-crowdfunding>

<sup>2</sup> Article 3(1) of the Regulation

<sup>3</sup> Authorisation RTS Article 3

<sup>4</sup> Article 12(4) of the Regulation

<sup>5</sup> Authorisation RTS Article 4

<sup>6</sup> Authorisation RTS Article 12(5)

<sup>7</sup> Article 12(6) of the Regulation

<sup>8</sup> Article 12(8) of the Regulation

<sup>9</sup> Authorisation RTS Article 5

<sup>10</sup> Article 12(10) of the Regulation

The MNB shall consult the competent authority of another Member State by means of an official request if the applicant has an ownership link with a crowdfunding service provider established in another Member State<sup>11</sup>. The administrative time limit does not include the time taken to contact the foreign authority<sup>12</sup>.

## **I.2. Electronic communication**

Section 58 of the MNB Act on electronic communication shall apply to the authorisation procedure for crowdfunding service providers.

The business entity or legal representative obliged to use electronic communication can submit its/his/her application using the general electronic application form ("Other applications, notifications") available in the ERA – 'E-Administration – Authorisation', and the electronic form and the annexes must be submitted in an electronically authenticated form (for more information on electronic administration, see<sup>13</sup> in the footnote).

## **I.3. Administrative service fee**

Pursuant to Section 11 of MNB Decree No 32/2023 (VII. 19.) on the administrative service fee for certain licensing and registration proceedings in the framework of the supervision of the financial intermediary system by the Magyar Nemzeti Bank and proceedings carried out in respect of fiduciary asset management companies (Fee Decree), the administrative service fee for the procedure for granting the activity licence of a crowdfunding service provider is **HUF 1,900,000**.

## **II. SERVICES THAT CAN BE PROVIDED BY CROWDFUNDING SERVICE PROVIDERS**

### **II.1. Crowdfunding services**

Crowdfunding service under the Regulation means the matching of business funding interests of investors and project owners through the use of a crowdfunding platform and which consists of any of the following activities: (i) the facilitation of granting of loans; (ii) the placing without a firm commitment basis, as referred to in Annex I, Section A, point (7), of Directive 2014/65/EU, of transferable securities and admitted instruments for crowdfunding purposes issued by project owners or a special purpose vehicle, and the reception and transmission of client orders, as referred to in point (1) of that Section, in relation to those transferable securities and admitted instruments for crowdfunding purposes<sup>14</sup>.

Crowdfunding services providers under the Regulation are legal persons who provide crowdfunding services<sup>15</sup>, and accordingly, crowdfunding service providers shall provide at least one of the above activities.

### **II.2. Optional services**

The provision of the following services is not mandatory for crowdfunding service providers, but may be optionally requested.

- individual loan portfolio management: the allocation by a crowdfunding service provider of a pre-determined amount of funds from an investor who is an original lender to one or more crowdfunding projects on the service provider's crowdfunding platform, on the basis of an individual mandate given at the discretion of the investor<sup>16</sup>
- asset safekeeping<sup>17</sup>: may only provide this service if the applicant is itself authorised to perform this activity as a qualified custodian in accordance with Directive 2014/65/EU or Directive 2013/36/EU, otherwise it must appoint a third party

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<sup>11</sup> Article 12(7) of the Regulation

<sup>12</sup> Section 49 (4) paragraph a) of the MNB Act

<sup>13</sup> <https://www.mnb.hu/letoltes/tajekoztatas-az-e-ugyintezesrol-az-mnb-elotti-engedelyezesi-eljarasokban-1.pdf>

<sup>14</sup> Article 2(1)(a) of the Regulation

<sup>15</sup> Article 2(1)(e) of the Regulation

<sup>16</sup> Regulation Article 2(1)(c), RTS according to Regulation Article 6, Regulation Article 6(7)

<sup>17</sup> Regulation Article 10

- provision of payment services<sup>18</sup>: may only provide this service if the applicant is itself a payment service provider in accordance with the provisions of Directive 2015/2366, otherwise it must appoint a third party
- the use of special purpose vehicles in crowdfunding services<sup>19</sup>
- application of credit scores<sup>20</sup>
- determining the price of a crowdfunding offer<sup>21</sup>
- operating a bulletin board<sup>22</sup>
- establishment and operation of a contingency fund<sup>23</sup>

### III. LIST OF DOCUMENTS TO BE SUBMITTED

This section lists the documents to be submitted during the procedure, following the requirements of Article 12 of the Regulation and the Annex to the Authorisation RTS. Where appropriate, the relevant legal provisions are indicated in the relevant annexes.

- Request for authorisation by electronic form ("Other requests, notifications" form)
- Authorisation RTS form<sup>24</sup>: the form is currently available in English, which can be filled in by applicants in Hungarian. The form may include the relevant information, but may also refer to the annex containing this information
- general data on applicants: official name, trade name, internet address, registered office, national identifier (if available), LEI code (if available)
- contact person information: name of the contact person, title (if the applicant appoints a representative, e.g. a law firm, the power of attorney must be attached), postal address (if different from the registered office), telephone number, e-mail address
- the legal form of the applicant
- the applicant's certificate of incorporation and the decision to register the company with the company registration court
- a business plan setting out the types of crowdfunding services the applicant intends to provide and the crowdfunding platform it intends to operate, including information on where and how it will market crowdfunding offers
  - types of crowdfunding services<sup>25</sup>
  - crowdfunding platform<sup>26</sup>
  - marketing strategy<sup>27</sup>
- a description of the applicant's system of management and internal control mechanisms, including risk management and accounting procedures, to ensure compliance with the Regulation
  - description of the management system<sup>28</sup>
  - description of internal control mechanisms
  - description of accounting procedures
- a description of the applicant's systems, resources and procedures for the control and protection of data processing systems
- a description of the applicant's operational risks
  - a description of the risks associated with the IT structure and procedures
  - a description of the risks involved in the event of outsourcing<sup>29</sup>

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<sup>18</sup> Regulation Article 10

<sup>19</sup> Regulation Article 3(6)

<sup>20</sup> Regulation Article 19(6), RTS according to Regulation Article 19(7)

<sup>21</sup> Regulation Article 4(4), RTS according to Regulation Article 19(7)

<sup>22</sup> Regulation Article 25

<sup>23</sup> Regulation Article 6(5)-(6), RTS according to Regulation Article 6(7)

<sup>24</sup> Annex to the Authorisation RTS

<sup>25</sup> see point II of this Guide. Where the crowdfunding service is provided through the intermediation of credit, Article 21 of the Regulation and the RTS according to Article 21(3) must also be complied with.

<sup>26</sup> Regulation Article 19, Regulation Article 26, and other provisions of the Regulation applicable to the crowdfunding platform

<sup>27</sup> Regulation Articles 27–28

<sup>28</sup> Regulation Article 4(1)–(2)

<sup>29</sup> Regulation Article 9

- description of other operational risks
- a description of the applicant's prudential safeguards under Article 11 of the Regulation
  - the amount of the prudential safeguard available<sup>30</sup> (at least EUR 25,000 **and** one quarter of the fixed overheads of the preceding year, reviewed annually (in the case of loans, the amount of the credit management costs for three months)
  - proof of own funds, if any<sup>31</sup>
  - presentation of an insurance policy, if available<sup>32</sup>
  - a description of the business continuity plan for the first three years
  - description of the design for prudential safeguards
- a description of the applicant's business continuity plan which, taking into account the nature, scale and complexity of the crowdfunding services that the applicant intends to provide, establishes measures and procedures that ensure, in the event of failure of the applicant, the continuity of the provision of critical services related to existing investments and sound administration of agreements between the applicant and its clients<sup>33</sup>
- the identity of persons holding directly or indirectly at least 20% of the applicant's shares
  - description of ownership structure (down to actual owners)
  - natural person identification data
  - in the case of legal persons, the identity of the members of the governing body and of the persons who effectively control the company
  - presentation of the extent of holdings
  - in the case of an indirect holding, a description of the person through whom they exercise their influence
  - proof of good repute (in the case of a legal person, also for the members of the management body and for the persons who effectively control the company)
  - declaration of conflict of interest
  - information on whether the person's good repute has already been assessed by a public authority (including, in the case of a legal person, the members of the management body and the persons who effectively control it)
  - a description of the group structure, if necessary
- the identity of the natural persons responsible for the management of the applicant (information on the members of the management body, the supervisory body and the persons who effectively direct the activities of the applicant and, where appropriate, those who exercise control functions) and evidence that these natural persons are of good repute and possess sufficient knowledge, skills and experience to manage the applicant
  - natural person identification data
  - telephone number, e-mail address
  - title
  - proof of good repute (except for persons with a control function)
  - submit a CV
  - proof that the person concerned can devote sufficient time to his or her duties
  - information on whether an assessment of the person's good repute has already been carried out by a public authority (except for persons with a control function)
  - description of the assessment of the collective knowledge of the bodies
- proof of absence of a criminal record in respect of infringements of national rules in the fields of commercial law, insolvency law, financial services law, anti-money laundering law, fraud law or professional liability obligations for all the natural persons involved in the management of the prospective crowdfunding service provider and for shareholders who hold 20% or more of the share capital or voting rights;
- a description of the applicant's internal rules preventing the persons referred to in the first subparagraph of Article 8(2) of the Regulation from participating as promoters in the crowdfunding services offered by the prospective crowdfunding service provider<sup>34</sup>

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<sup>30</sup> Regulation Article 11(1)

<sup>31</sup> Regulation Article 11(2)(a)

<sup>32</sup> Regulation Article 11(2)(b), Article 11(6)

<sup>33</sup> Regulation Article 4(1) and (3), RTS according to Regulation Article 12(16)

<sup>34</sup> Regulation Article 8, RTS according to Regulation Article 8(7)

- the submission of the applicant's outsourcing agreements (if the applicant is already a supervised institution and the agreements have been previously submitted, it is sufficient to name the outsourcing agreements)<sup>35</sup>
- a description of the applicant's procedures for handling customer complaints<sup>36</sup>
- confirmation of whether the applicant intends to provide payment services itself or through a third party in accordance with Directive (EU) 2015/2366 or through an agreement pursuant to Article 10(5) of this Regulation
- a description of the applicant's procedures for verifying the completeness, accuracy and clarity of the information contained in the key investor information form<sup>37</sup>
- a description of the applicant's procedures regarding investment limits for non-sophisticated investors referred to in Regulation Article 21(7)<sup>38</sup>
- client information policy

**If the following services are provided, the service provider must also provide the following documents:**

**Individual loan portfolio management:**

- internal rules on the criteria for granting credit to investors and the methodology for its assessment<sup>39</sup>
- contingency fund
  - risk warning
  - business policy
  - defining the decision-making process
  - the insolvency procedure
  - fixing the obligation to provide information to the public

**Custody, payment services**

- a declaration that the crowdfunding service provider provides these services itself or through a third party **Please note that asset safekeeping and the provision of payment services may only be performed by legal persons authorised to provide such services (see point II.2).**
- a description of measures to ensure that project owners can only accept funding for crowdfunding projects, or any other payments, through a payment service provider
- a description of the risks associated with the service

**IV. CROSS-BORDER PROVISION OF CROWDFUNDING SERVICES<sup>40</sup>**

To start the provision of cross-border crowdfunding services, a service provider already authorised to provide Community financing services must submit the following information:

- a) a list of the Member States in which the crowdfunding service provider intends to provide crowdfunding services;
  - b) the identity of the natural and legal persons responsible for the provision of the crowdfunding services in those Member States;
  - c) the starting date of the intended provision of the crowdfunding services by the crowdfunding service provider;
- a list of any other activities provided by the crowdfunding service provider not covered by this Regulation.

The service provider may start its activity in another Member State upon receipt of the notification of the above information for registration with the European Securities and Markets Authority (**ESMA**) or at the latest 15 calendar days after the submission of this information.

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<sup>35</sup> Regulation Article 9

<sup>36</sup> Regulation Article 7, RTS according to Regulation Article 7(5)

<sup>37</sup> Regulation Articles 23 and 24, RTS according to Regulation Article 23(16)

<sup>38</sup> Regulation Article 21, RTS according to Regulation Article 21(8)

<sup>39</sup> Regulation Article 6

<sup>40</sup> Regulation Article 18

Finally, please note that further general information on authorisation, registration and notification procedures is available on the MNB website<sup>41</sup>.

If, after carefully reading this guide, you have any further questions, which can be answered by telephone or in writing, please contact the Secretariat of the Financial and Capital Markets Licensing Department (phone: +361-489-9731; e-mail: [ptef@mnb.hu](mailto:ptef@mnb.hu)).

*Last amendment: August 2023*

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<sup>41</sup> <https://www.mnb.hu/felugyelet/engedelyezes-es-intezmenyfelugyeles/engedelyezes/altalanos-informaciok>

