Crowdfunding for financing Renewable Energy Projects

Tanja Aschenbeck-Florange, LLM.
(San Francisco)
Matthias Klaes, University of Dundee
Crowd Dialog Europe, Helsinki
27 August 2015
Workshop
"Crowdfunding for financing Renewable Energy Projects"

1. Renewable Energy Projects
   - financial environment in Europe
   - political environment in Europe

2. Regulatory framework in Europe
   - EU – some examples
   - recent developments in Germany
   - recent European developments

3. Project "CrowdFundRES"
Regulatory framework in Europe
Regulatory framework in Europe
EU – some examples

United Kingdom
➢ liberal approach results in EU wide leadership in Crowdfunding

• figures show that UK is very popular for alternative financing
  ⇒ UK's total alternative finance market size 2014: EUR 2.3 billion
  ⇒ rest of Europe's alternative finance market size 2014: EUR 620 million

• P2P Lending
  ⇒ largest sector of Crowdfunding in UK - EUR 753 million
Regulatory framework in Europe
EU – some examples

- Equity Model
  - regulated securities business
  - MiFID (or UK securities) license required
  - threshold for prospectus requirement up to EUR 5 million
  - appropriateness = exam requirement
  - limited investor categories:
    - high net worth
    - sophisticated
    - restricted = new category of investor with less than or equal to 10% investment in non-readily realisable securities
Regulatory framework in Europe
EU – some examples

• Lending Model
  ⇒ debentures (securities) or P2P loans
Regulatory framework in Europe
EU – some examples

- debentures
  - similar to Equity Model
  - regulated securities business / MiFID (or UK securities) license required
  - threshold for prospectus requirement up to EUR 5 million
  - appropriateness = exam requirement
  - limited investor categories:
    - high net worth
    - sophisticated
    - restricted = new category of investor with less than or equal to 10% investment in non-readily realisable securities
Regulatory framework in Europe
EU – some examples

• P2P loans
  ➔ light touch P2P regime
  ➔ open to all retail investors – no appropriateness test or exam required
  ➔ no prospectus regime – simple requirement to be clear, fair and not misleading
  ➔ disclosure of past performance
  ➔ living wills
Regulatory framework in Europe
EU – some examples

Italy
➢ first worldwide tailored Crowdfunding legislation in June 2013
  ➢ only Equity Model

➢ Crowdfunding only possible with lead investor (professional investor)
  investing 5%

➢ limited to "innovative Italian Start-up Companies"

➢ threshold for prospectus requirement up to EUR 5 million
Regulatory framework in Europe
EU – some examples

France

- new regulation applicable since 1 October 2014. A very comprehensive regulation (covering equity/lending/reward and creating also two optional lighter status for platforms).
  - Equity Model
    - platform is regulated as crowdfunding investment advisor (CIP)
    - platforms have a strengthened information obligation towards the investors with a very detailed level of information to provide on the securities' issuer in a language accessible to a lay person.
  - Lending Model / Donations / Rewards Model
    - platform is regulated as crowdfunding investment intermediary (IFP)
Regulatory framework in Europe  
EU – some examples

• Equity (ordinary shares and bounds with fixed interest rate only)
  ⇨ Exemption of prospectus requirement up to EUR 1 million per year and per project

• Lending Model
  ⇨ Exception to French banks' monopoly up to EUR 1 million per project
  ⇨ Interests bearing loans, only individuals can act as lenders
Recent developments in Germany

Background

• insolvency of German wind parks operator PROKON generated high media attention
• call for stricter regulation of so called "grey capital market"
• jump start of Crowdfunding Regulation in Germany

• package of measures of the German government to improve protection of retail investors
  ➢ "balancing concerns of crowd financed young companies and the interests of investor protection"
Recent developments in Germany
Legislative Procedure

• first draft (*Referentenentwurf*) of 28 July 2014

• government draft (*Regierungsentwurf*) of 10 November 2014

• final draft adopted by German Bundestag on 23 April 2015
  ➞ with substantial changes

  ➞ entered into force on 10 July 2015
Recent developments in Germany
Extension of scope of Investment Products Act

• subordinated profit participating loans (partiarische Nachrangdarlehen) no investment products (Vermögensanlagen) so far

• now regulated:
  – profit participating loans
  – subordinated loans
  – commercially comparable investments

⇒ investment products (Vermögensanlagen) within the meaning of Investment Products Act (Vermögensanlagengesetz - VermAnlG)
Recent developments in Germany
Exception for Crowdfunding

• offering does not exceed threshold of EUR 2.5 million per project
• total investment per investor limited to EUR 10,000
  ⇒ more than EUR 1,000 further requirements, i.e. self-exploration of wealth and income
• offering of profit participating loans (partiarische Darlehen) or subordinated loans (Nachrangdarlehen) only
• marketing by means of "internet service platform"
  ⇒ operator must have licence for brokering of loans, financial investment intermediary under Trade, Commerce and Industry Act (Gewerbeordnung) or licence pursuant to Banking Act (Kreditwesengesetz) or Securities Trading Act (Wertpapierhandelsgesetz)
  ⇒ very light regulation
  ⇒ especially no requirement to publish a prospectus
Recent developments in Germany
Exception for Crowdfunding

Maximum amount of EUR 2.5 million per project

- until now: EUR 100,000 p. a.
- drafts: EUR 1 million
- now: EUR 2.5 million

- Prospectus Directive: EUR 5 million
- other member states of EU: EUR 5 million or EUR 2.5 million
Recent developments in Germany
Exception for Crowdfunding

Maximum amount per investor
• first draft:
  – EUR 10,000 per investor
• adopted by German Bundestag:
  – up to EUR 1,000: no restriction
  – more than EUR 1,000: self-exploration of investor
    • disposable assets of minimum EUR 100,000 in bank deposits or financial instruments
    • maximum two net incomes
  – EUR 10,000: absolut maximum amount
Recent developments in Germany
Exception for Crowdfunding

New Provision "professional investors" (now adopted)

• corporations
  ➞ stock corporations (*Aktiengesellschaften*)
  ➞ partnership limited by shares (*Kommanditgesellschaft auf Aktien*) and
  ➞ limited liability company (*Gesellschaft mit beschränkter Haftung*)

• not allowed: entrepreneurial company (*Unternehmergesellschaft*)
  ➞ "higher degree of professionalisation"
Recent developments in Germany
Exception for Crowdfunding

Limitation to profit participating and subordinated loans

- background: no regulation

- economically intended: "close to" equity participation
  - legislator afraid of defining Crowdfunding
  - equal treatment of all investment products (*Vermögensanlagen*) in Investment Products Act (*Vermögensanlagengesetz*)
  - consumer protection
    - no liberalisation of existing regulation
Recent developments in Germany
Requirements under the Crowdfunding Exception

• only very restricted applicability of Investment Products Act (Vermögensanlagengesetz)
  ⇒ in particular: no prospectus requirement

• addressee of duties
  ⇒ companies / project initiators that seek financing by means of Crowdfunding

• remaining regulatory requirements
  ⇒ now modified – appropriate
Recent developments in Germany
Requirements under the Crowdfunding Exception

Fact Sheet (*Vermögensanlagen-Informationsblatt* - VIB)

- obligation to prepare a fact sheet
  - summarising presentation of investment product (*Vermögensanlage*)
    - (highly formalized, maximum three pages)
  - preparation of VIB reasonable task

- now electronic confirmation of attention by investor
Recent developments in Germany
Requirements under the Crowdfunding Exception

Advertising / right of withdrawal (*Widerrufsrecht*)

- now (only) warning notices and right of withdrawal (*Widerrufsrecht*) instead of prohibition of advertising
- advertising in print media and online/social media (facebook, twitter)
  - if warning notice regarding risks
  - also as link (e.g. twitter)
  
  "The acquisition of this investment product is associated with considerable risks and can result in the loss of the invested funds."

- 14-day right of withdrawal (*Widerrufsrecht*)
Recent developments in Germany
Renewable Regulation

• renewable power plants can no longer apply for statutory feed-in tariffs (Einspeisevergütungen)
  ⇒ instead implementation of market premium model including direct sales to third parties
• funding of renewable projects will be completely shifted to public auctioning mechanisms in 2017
  ⇒ significant impact on small renewable projects due to increasing funding and regulatory requirements and benchmarks
  ⇒ first pilot auctioning mechanism in April 2015 (150MW for ground-mounted solar projects)
  ⇒ higher demand for alternative financing, e.g. Crowdfunding
Regulatory framework in Europe
Recent European developments

• set up of expert group "European Crowdfunding Stakeholder Forum" (ECSF) in mid 2014
  ⇒ advises the European Commission in developing policies for Crowdfunding

• European Securities and Markets Authority (ESMA) published opinion/advice on *investment-based* Crowdfunding in end of 2014
  ⇒ clarifies how Crowdfunding models fit within existing EU legislation (MiFID, Prospectus Directive, AIFMD and other financial regulations)
  ⇒ provides EU institutions with gaps/issues in current applicable regime (i. a. impact of prospectus thresholds or potential EU Crowdfunding regime)
Regulatory framework in Europe
Recent European developments

• European Banking Authority (EBA) published opinion on *lending-based* Crowdfunding in February 2015
  ⇨ clarifies how lending-based Crowdfunding fits within existing EU legislation (i. a. Anti-Money Laundering Directive and especially PSD)

• start of multiple projects initiated by the European Commission
Project "CrowdFundRES"
Project "CrowdFundRES"
Overview

• Project initiated by the European Commission

• Horizon 2020 research and innovation programme

"Unleashing the potential of Crowdfunding for Financing Renewable Energy Projects"
Project "CrowdFundRES"
Partners
Project "CrowdFundRES"
Basic Data

• three year EU-wide project until 2018
• 14 partners from 7 member states of the EU
  – Austria
  – Belgium
  – France
  – Germany
  – Ireland
  – Italy
  – UK
Project "CrowdFundRES" Objectives

- gain a deep understanding of crowdfunding for financing renewable energy projects
- develop and apply guidelines that support easier and more effective practices
- help improve the market and regulatory framework in Europe
Project "CrowdFundRES"
OC tasks

⇒ "Review of crowdfunding regulation and market developments for RES project financing in the EU"
Project "CrowdFundRES"
OC tasks

What OC already did

- "Review of Crowdfunding Regulation" in cooperation with ECN in 2013 and 2014 and in collaboration with legal partners from 29 countries

- key findings of both Reviews
  - no harmonised legal framework in EU
  - need for level playing field across Europe
Project "CrowdFundRES"
OC tasks

What OC will do in the course of CrowdFundRES

- prepare a report reviewing crowdfunding regulation in EU-28
- "Review of Crowdfunding Regulation" 2013 and 2014 as a starting point
- special focus on aspects relevant for application of crowdfunding to renewable energy projects in EU-28

- aim: get an overview over existing regulation of crowdfunding platforms and potential risks for RES projects which want to raise capital by means of crowdfunding
Project "CrowdFundRES"
Insights from Europe wide survey

- emerging insights from ongoing Europe wide survey

  - Disclaimer: We are presenting interim snapshots: data not yet reliable, not even for any preliminary insights
  - But we can use the diversity of responses to engage in a more general discussion on crowdfunding of Renewable Energy (RE) projects in Europe (and beyond)

- Platforms, RE Developers
- Potential CF Investors ('The Crowd')
Project "CrowdFundRES" Multilingual Concept Awareness

Are you familiar with the concept of crowdfunding?

- Yes: 223 (89.9%)
- No: 25 (10.1%)

Total: 248
Project "CrowdFundRES"
Market Experience

Have you ever invested in renewable energy projects via a crowdfunding platform?
(by respondent's language)

<table>
<thead>
<tr>
<th></th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>All</td>
<td>57</td>
<td>54</td>
</tr>
<tr>
<td>EN</td>
<td>22</td>
<td>17</td>
</tr>
<tr>
<td>FR</td>
<td>15</td>
<td>18</td>
</tr>
<tr>
<td>DE</td>
<td>7</td>
<td>5</td>
</tr>
<tr>
<td>NL</td>
<td>10</td>
<td>17</td>
</tr>
</tbody>
</table>

Yes 57 51.3%
No 54 48.6%
Total 111
Project "CrowdFundRES" Platform Linguistics

What language(s) are used on the crowdfunding platform?

Dutch
English
French
German
Other (please specify)
Project "CrowdFundRES" Platform Ecology

Do you have plans to expand to other EU countries?

- Yes: 50%
- No: 50%

Does the platform have cooperation/support with institutional and/or private partners?

- EU Authorities and Agencies: 10%
- National Authorities and Agencies: 20%
- Local Authorities and Agencies: 20%
- Private companies: 70%
- Associations: 30%
If your platform has financed Renewable Energy Source (RES) projects, what technology(ies) were applied in these projects?

What is the average amount (in Euro) raised per project on your platform?

Average size range of the RES project(s) in your platform?
Project "CrowdFundRES"
Drivers and Barriers

Obstacles related to crowd investors

To what extent do you agree with each of the following statement:

- Non-professional investors are not well enough informed...
- The lack of trust towards online payments is an...
- The lack of trust towards data protection (in...
- The potential lack of transparency on what a project is...
- The lack of knowledge of the crowd on renewable.
- The uncertainty of future financial returns on the RES.

Strongly Agree
Agree
Neither Agree nor Disagree
Disagree
Strongly Disagree
Unsure
Project "CrowdFundRES"
Key Stakeholder Dimensions

• Investor Behaviour

• Platform Ecology

• Developer Engagement

• Multinational Diversity in a Globalised World Economy

• Outlook
As a Partner in the banking and capital markets team, Tanja advises national and international companies on banking matters and capital markets. Her main focus is on corporate finance, real estate finance, structuring funds and regulatory matters, including payment processing.

She has acted for numerous US and UK companies and investors on cross-border transactions, and regularly advises German companies on capital market, corporate and banking law.

She qualified in 2001 and worked for other high-profile law firms before joining Osborne Clarke in May 2006. After completion of her first state board exam in 1997, Tanja earned a Master of Laws in international business transactions at the University of San Francisco (LL.M.). During her legal clerkship she spent time working with the legal department of the West German Lander Bank (WestLB) in New York. In 2006 Tanja also qualified as a tax lawyer.

Tanja has published articles in law magazines and is also co-author of the LexisNexis handbook on corporate law and a handbook on the boards of directors and supervisory boards of German companies.

Matthias Klaes pursues research at the intersection of economics & finance, the technologies of commerce, and history, with a particular interest in the methodological and philosophical dimensions of these areas.

His academic background is in communications engineering, business economics and science & technology studies (Dipl-Wirtsch-Ing. TU Darmstadt; PhD, Edinburgh 1999; including periods of study spent at Supelec Paris and the Science Dynamics Department of the University of Amsterdam).

He has been Professor of Commerce at Keele University from 2005, moving to the University of Dundee in 2013, where he has joined CECHR, the Centre for Environmental Change and Human Resilience.