European Commission

Identifying market and regulatory obstacles to cross-border development of crowdfunding in the EU

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1. Abstract

[EN] This report identifies potential barriers to cross-border transactions that prevent securities-based and lending-based crowdfunding from scaling up across Europe. We look at the divergent regulatory approaches to crowdfunding across EU Member States, consider microstructural features of crowdfunding that may give rise to transaction costs that are beyond the immediate reach of regulators, and analyse the implications of these features from the perspective of consumer and investor protection and the importance of appropriate disclosures and safeguards.

Our analysis draws on extensive desk research on state of the art, in-depth legal analysis of regulatory context in all Member States and with focus on the six most significant national contexts (France, Germany, Italy, the Netherlands, Spain, and the UK), a bespoke survey targeted at European crowdfunding platforms active in cross-border crowdfunding, an analysis of a combined European user survey, and in-depth interviews with industry executives, regulators and other experts.

We find that the European crowdfunding sector is characterised by its highly heterogeneous nature, shaped by the different starting points of nascent national crowdfunding sectors across the EU, and largely determined by the incumbent regulatory frameworks as they pertain to crowdfunding as a novel form of technologically mediated market exchange.

[FR] Ce rapport vise à identifier les obstacles potentiels aux transactions transfrontalières qui empêchent le financement participatif de s'étendre à travers l'Europe. Nous examinons les approches réglementaires dans les États membres de l'UE, les caractéristiques microstructurales qui sont hors de la portée immédiate des régulateurs et qui peuvent donner lieu à des coûts de transaction plus élevés, et les implications de ces caractéristiques du point de vue de la protection des consommateurs et des investisseurs..

Notre analyse est basée sur une recherche documentaire approfondie sur l'état de l'art, une analyse juridique approfondie du contexte réglementaire dans tous les États membres, met l'accent sur les six contextes nationaux les plus significatifs (Allemagne, Espagne, France, Italie, Pays-Bas et Royaume-Uni), une enquête adressée aux plateformes européennes/actives dans le financement participatif transfrontalier et des entretiens approfondis avec des directeurs, régulateurs et experts du secteur.

Nous constatons que le secteur européen du financement participatif se caractérise par sa forte hétérogénéité, façonnée par les différents points de départ des nouveaux secteurs nationaux dans l'UE et largement déterminée par les cadres réglementaires qu'ils regardent au financement participatif comme une nouvelle forme d'échange de marché caractérisé par une particulaire médiation technologique.

2. Executive Summary

Introduction

The aim of this report is to contribute to the policy discussion on crowdfunding across European borders by identifying the potential barriers that prevent it from scaling up. Prima facie, among the most significant barriers are the divergent regulatory approaches to crowdfunding across EU Member States. But it is equally important to consider microstructural features of crowdfunding that may give rise to transaction costs that are beyond the immediate reach of regulators, and to look at the implications of these features from the perspective of consumer and investor protection and the importance in this context of appropriate disclosures and safeguards.

Purpose

The results of our work assist the Commission, in the context of CMU Action Plan implementation, in fulfilling its commitment to monitor the development of the sector and the effectiveness and degree of convergence of national regulatory frameworks, as well as to promote convergence, the sharing of best practice and the importance of keeping developments under review, by assessing the development of cross-border business and the related investor protection aspects. This study addresses crowdfunding models that entail a financial return, notably security-based crowdfunding and lending-based crowdfunding.

Methodology

Our research design is based on a mixed-methods framework with an emphasis on interview-based research but incorporating desk research, comparative legal analysis, and questionnaire-based survey. We have proceeded by adopting an iterative process of team-based inquiry that allows for the incremental probing and clarification of the issue under examination, whereby an initial set of qualitative findings is analysed 'on the go' to help refine subsequent iterations of interviews, etc., and is aimed at yielding an insider perspective that is validated through triangulation from a menu of different research methods that are recursively employed.

Findings from qualitative approaches were analysed in a broadly inductive fashion, with affinities to Grounded Theory and similar interpretive approaches, with an emphasis on emergent conceptualisation. Quantitative survey work supplemented the qualitative data gathering strategies within the overall mixed-methods framework of analysis.

Market and regulatory barriers

Market barriers

The European crowdfunding sector is characterised by its highly heterogeneous nature. In many ways this state of affairs reflects the range of different starting points of nascent national crowdfunding sectors which have originated in EU Member States over the past decade, largely determined by the incumbent regulatory frameworks as they pertain or may conceivably pertain to crowdfunding as a novel form of technologically mediated market exchange.

The complexities that arise as a direct result of diverging regulatory frameworks applying in different Member States can be considerable in a cross-border context. This has to do with the nature of revenue-based crowdfunding as marketplace investing and lending, which at the very least involves three parties: a fundraising party that is looking for a loan or seeking equity in various forms, a funder willing to offer a loan or become an investor, and the online marketplace platform bringing those two parties together.

In addition to these barriers, there are others more closely related to wider structural features of the institutional context of the crowdfunding sector at both national and international level. One way to define these structural frictions is to address them against the backdrop of an ongoing process of digitalisation of financial transactions and their social context. The following table once more summarises the key infrastructure and information market barriers in order to facilitate the following comparison to regulatory barriers, which we shall discuss in terms of legal uncertainty, thus adding a third dimension of relevant barriers to the cross-border development of crowdfunding.

	DIGITALISATION	TRANSACTION COSTS
MARKET BARRIERS	Lack of trust Data privacy Electronic identity User readiness	Information Measurement Market making

Regulatory barriers

We analyse the effect of fragmentation through the lens of the considerable legal uncertainty to which it gives rise, and which has direct implications as a cost driver and in terms of lost cross-border market growth. To better define the legal uncertainty arising from this fragmentation it is useful to distinguish between three sources of legal uncertainty: Uncertainty originating in national crowdfunding regulations; uncertainty arising out of otherwise well-intended EU legislation; and uncertainty relating to national laws applicable to crowdfunding.

It is worthwhile to expand in more detail on these kinds of legal uncertainty to allow the subsequent discussion to make most effective use of the key sources of uncertainty that we have identified, and which capture the behavioural effects of the underlying regulatory complexities that arise in cross-border constellations. We will do this, therefore, first by means of a taxonomy of three kinds of uncertainty, before tracing these kinds of uncertainty in the context of a simple analytical scheme that we introduce to more transparently distinguish inbound from outbound cross-border crowdfunding business. The table below outlines key regulatory barriers.

	COMPLEXITY	UNCERTAINTY
REGULATORY BARRIERS	Fragmentation Divergence Applicability Practicality	National CF regulation EU legislation National applicable laws

User disclosures and safeguards in a cross-border context

We analysed three different sources of information: existing regulation, codes of conduct, and information on individual platforms. We thus follow a top-down approach, first by providing the general regulatory context within which platforms are operating, second by describing the main features of the national codes of conduct per Member State and third by looking at the specificities of several individual platforms, always from a "safeguards and disclosures" perspective and, where applicable, in relation to the dimensions of cross-border crowdfunding.

Regulatory assessment

We collated data from the six target countries and present here the results of a comparative analysis across all three levels of data gathering:

- Existing regulation, i.e. regulatory dimensions of disclosures and safeguards under the following four themes: Categorisation of funders, Assessment of funder competence, Due diligence, and Disclosures to funders from fundraisers.
- Codes of conduct: industry codes of conduct with national reach, often aligned with local laws. Four out of the six analysed countries have industry codes of conduct. The only two countries where no industry code of conduct exists are Italy and Spain, which are also the two smallest markets of the six examined.
- Individual platforms: the minimum legal requirements and the respective behaviour as described by the national codes can be perceived as a level playing field for all platforms. In addition to this, individual platforms have taken a series of interesting initiatives in response to their regulatory context. We review here noteworthy individual platform characteristics and approaches regarding safeguards and disclosures.

Platform and market insights on disclosures and safeguards

This section discusses platforms' opinions and general input on safeguards and disclosures and respective cross-border issues. In terms of format, in the specific context of the questions raised, we identify ten key areas of interest of platforms (listed here in no particular order):

- Current national regulatory frameworks;
- Due diligence;
- Risk warnings;
- Redress;
- Information disclosures to funders;
- Availability and standardisation of market data;
- Financial literacy;
- Voluntary measures;
- Specific cross-border measures;
- Industry codes of conduct and self-regulation

User perceptions on cross-border crowdfunding regulation

The analysis of users' perceptions of whether and how regulation can aid cross-border crowdfunding development is based on existing data from a unique database of answers from users (funders only) of crowdfunding with financial returns, where specific questions are being asked about the impact of regulation on cross-border activities. The survey was designed and implemented by Nikos Daskalakis in the

context of a cooperation between two expert groups of the European Commission: The Financial Services Users Group (FSUG) and the European Crowdfunding Stakeholders Forum (ECSF).

When asked "Would you invest with the same confidence through platforms established in another EU Member State?", users of crowdfunding indicate that they do have interest and confidence in cross-border crowdfunding for both equity and lending.

	YES, I already do invest through platform(s) established in a country different from my country of residence.	YES, I would invest with the same confidence.	I would invest some money through foreign platforms, but not as much as through domestic ones.	NO, I would not invest through foreign platforms	No response
Equity	20.25%	36.08%	31.01%	11.39%	1.27%
Lending	12.66%	15.35%	34.34%	36.23%	1.42%

Cross-border platforms: best practice case studies and innovative potential

The European crowdfunding sector is characterised by a great diversity of approaches and business models. This is now well-documented on the aggregate level. Equally well-documented is the diversity of platforms. For the return-based part of the sector, which is the focus of the present study, the diversity ranges from those oriented towards consumer or business lending, via securities-based and debt-based funding models, to real estate models and invoice trading.

The core of most business models is a fee-based revenue model, whereby the funded party and/or the investing party are charged fees for the market making services of the platform, both at the point of onboarding, and maintenance fees. Platforms are also increasingly devising add-on fees for ancillary services such as listing in a secondary market or more flexible payment schedules, as well as higher levels of support or notification. Beyond that, operation can be quite different, and often dictated not just by the kind of crowdfunding that the platform engages in but also by regulatory constraints and requirements.

The lending part of the sector operates with quite different requirements, for example depending on whether the platform is engaged in consumer finance or business finance. Loan-based consumer finance typically concentrates on unsecured loans.

Origination is either through established retail channels as personal loans, or as point-of-sale finance.

Turning to equity/securities-based crowdfunding, the scale of finance increases while the throughput becomes more limited. Securities-based crowdfunding is de facto business finance, and deal origination is largely focused on SMEs. However, the sources of revenue are similar in kind (if not in scale) to lending, and again include listing fees and add-on service and maintenance charges.

General issues in platform operations

Crowdfunding platforms aiming at cross-border transactions need to comply with different sets of national or EU regulation. As we have seen, the set-up of the platform is the dominant factor here, as well as the EU Member State that the platform is incorporated in and the specific financial deal structure offered. Following on from the regulatory set-up, platforms can operate cross-border to varying degrees. There is no one model that has proven itself beyond doubt and none of the models is without hurdles. Several approaches can be identified across the sector. From the sample we worked with, we can identify at least six different models.

- The platform operates via distinct subsidiaries or businesses in each Member State under local legislation.
- The platform acts via a partner to collect investment from investors outside the home Member State.
- The platform operates under some sort of EU licence (usually MiFID) which in theory allows the platform to have its status as a financial service provider accepted in other EU Member States but operating under the supervision of the regulator in its home Member State.
- The platform pools investments in special purpose vehicles (SPV) that under national rules can make cross-border investments on behalf of the crowd.
- The platform is allowed under local rules to accept cross-border investments for predominantly local deal-flow.
- The platform focuses on operating a brokering marketplace, accepting cross-border investments under national rules while partnering with locally licensed or approved deal originators in the target Member States.

How platforms currently expand cross-border: Best practices

For platform operators, each of these approaches presents market and operational hurdles which need to be successfully overcome. The decision if and what solution is possible depends on the national regulation and interpretation of EU rules, but even once a legal solution has been identified and all compliance issues have been dealt with, significant hurdles to market entry still exist.

The following overview outlines the main cross-border business models in use at the time of publication.

	Business Model	Approach	Pro	Contra
1.	Operation via distinct business in each Member State under local legislation	A separate legal entity or joint venture run by a local partner is launched or acquired under local regulation in each Member State in which the platform operates	a. Avoids compliance cost under EU regulation (MiFID etc.) b. Provides a local footprint for the platform brand	a. Separate local regulatory approval process can be lengthy (up to 1 year) and thus costly b. Replication of all or some operations on the ground is thus

				dependent on the local team's ability to create success, at least with deal origination or customer support
2.	Operation via a partner platform to collect investment from investors outside the home Member State	A dedicated partnership with another platform in a different Member State is formed, where the investment opportunity is mirrored by the partner platform either via a special purpose vehicle or directly, if and where possible	a. No need for expansion of operations and expertise into new markets b. No need for additional compliance cost as both partner platforms already operate under the supervision of the relevant national regulators	a. Time-consuming to identify a partner platform with trusted professional set-up b. Set-up of SPV at partner-level platform to pool investments and allow for cross-border transaction
3.	Operation via EU licence for the platform as a financial service provider	Platforms are MiFID-compliant and passport their national licence into other EU Member States to offer their services cross-border; MTF structures also possible	a. Added value of increased professional management b. Recognition with national regulators and related marketing	a. Costly and time-consuming to set up, plus ongoing compliance cost b. Unclear benefits as some aspects of the platforms operations may remain under national rules and the replication of the home market business model is in most cases not possible cross-border
4.	Operation via special purpose vehicles (SPV)	Platforms structure special purpose vehicles under local regulation that allow the collection of funds (either local only or also from abroad) to make investments locally or cross-border	a. Bundled representation of diverse investor group within the target company b. Investor relations managed via the SPV (usually via the platform)	a. Cost of setting up an SPV b. Additional management needs for the ongoing operations of the SPV c. National restriction regarding co-investments

5.	Accepting cross-border investments (for predominantly local deal-flow)	Platforms that are not restricted by Member State regulation allowing fund inflows to participate in investment opportunities	a. Low cost for set-up b. Better results in web searches	a. No active cross-border marketing of financial services possible b. Uncertainty about what manifests active marketing in regulators' views c. Uncertainty about use of languages due to varying interpretations by Member States
6.	Brokering cross-border investments to local (and other) investors	Platforms that offer investment opportunities to local investors (and others) but refrain from engaging in deal origination and work with local partners in Member States	a. Low-cost set-up for the platform b. Limited regulatory compliance c. Benefits from cooperation with established local partners	a. Focus on the brokerage of transactions restricts quality control in deal origination b. Not applicable for securities

Cross-border business: Remaining challenges

Crowdfunding platforms are exploiting a multitude of options to establish some form of cross-border market activity. The potential to replicate these platforms' approaches is questionable, as they largely stem from the regulatory environment in their home markets. Remaining challenges identified are:

- Increased competition in larger markets and resulting lower margins
- Cost of evaluating market opportunities from a legal and business point of view
- Managing different taxation and business conduct on a local level
- Cultural and language barriers regarding investor mentality, approach to SME finance and regulatory preferences and behaviour

3. Introduction

The Capital Markets Union (CMU) is one of the flagship projects of the European Commission. This policy initiative is about market building, namely the building of a capital market that combines both the banking and financial sectors and helps create a more diversified financial system. To achieve this, the Commission's plan is to strengthen the different sources of alternative finance available, including crowdfunding.

This initiative is vital for the SME funding market. SMEs suffered the most after the financial crisis, particularly due to the fact that banks restricted their lending policies. Creating a market of alternative finance that complements the banking sector broadens the sources of finance available to SMEs, and allows them to pass the "death valley"[1] through expansion to sustainable scale and further development. Given its importance to the real economy for job creation and economic growth, the SME funding market is getting the attention it deserves in this context.

The European Parliament resolution of 9 July 2015 on Building a Capital Markets Union[2] states that "the CMU should create an appropriate regulatory environment that enhances cross-border access to information on the companies looking for credit, quasi-equity and equity structures, in order to promote growth of non-bank financing models, including crowdfunding and peer-to-peer lending". The Commission has acknowledged that crowdfunding can contribute to the CMU Action Plan objective to mobilise capital and channel it to all companies, including SMEs. Cross-border crowdfunding business is thus very significant in the context of the CMU project.

Any barriers that make it difficult for SMEs to navigate through funding sources across the EU could hamper the functioning of an integrated capital market and should receive close scrutiny if the overall aim is to work towards a smoothly functioning CMU.[3] These barriers can arise from regulation or may be extant in the market as a result of the structural features of cross-border crowdfunding. In this context, the Commission's efforts to closely monitor the development of cross-border crowdfunding business, to identify potential barriers and to work on reducing these barriers, have been positively received by the industry. In their effect, they are of considerable importance to the effective governance of the European economy.

The aim of this report is to contribute to the policy discussion on crowdfunding across European borders by identifying the potential barriers that prevent it from scaling up. Prima facie, among the most significant barriers are the divergent regulatory approaches to crowdfunding across EU Member States. But it is equally important to consider microstructural features of crowdfunding that may give rise to transaction costs that are beyond the immediate reach of regulators. It is equally important to look at the implications of these features from the perspective of consumer and investor protection and the importance in this context of appropriate disclosures and safeguards.

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[1] The problem of businesses being unable to take off because of insufficient access to risk capital at the stage of turning technology and ideas into a business. See Fuchita, Yasuyuki. "Protecting Investors While Encouraging the Supply of Risk Capital.", *Nomura Journal of Capital Markets*, (2014), p.13.
[2] European Parliament resolution of 9 July 2015 on Building a Capital Markets Union (2015/2634(RSP)), par. 47. Available at http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+TA+P8-TA-2015-0268+0+DOC+PDF+V0//EN
[3] Commission, SWD (2016) 154, "Crowdfunding in the EU Capital Markets Union", p. 4.

Our analysis draws on a range of data sources. It includes extensive desk research on the state of the art in all of these dimensions of cross-border crowdfunding, in-depth legal analysis of regulatory context in all Member States and, with a particular focus on the six most significant national contexts (France, Germany, Italy, the Netherlands, Spain, and the UK), a bespoke survey targeted at European crowdfunding platforms potentially interested or already active in cross-border crowdfunding, and an analysis of a combined European user survey of equity and lending-based crowdfunding investors.

We complement this analysis with wide-ranging qualitative research comprising 22 in-depth interviews with industry executives, policymakers and independent experts, augmented by four focus groups and an expert workshop in Brussels with key stakeholders. This offers us just under 30 hours of interview data to draw upon in order to triangulate our findings from desk research and surveys with evidence on market perceptions and the experiences of a large cross-section of the biggest and most successful European crowdfunding platforms to date. As well as covering the six target countries plus additional input from neighbouring regions, policymakers and user representatives, we are also using insights from ten detailed case studies of a selection of revealing platform trajectories and insights.

We present the results of our research separately for each dimension of cross-border crowdfunding that we have investigated: Exploration of market and regulatory barriers in Chapter 6; analysis of disclosures and safeguards in Chapter 7, and reflection on underlying business models and emerging best-practice in Chapter 8.

4. Purpose

Small firms, especially young and innovative ones that are sometimes not so well-suited to traditional bank financing, often have a hard time getting the funding they require to invest in their growth and create new jobs. The European Commission's 2015 Capital Markets Union (CMU) Action Plan[4] places emphasis on strengthening alternative finance, including crowdfunding, in order to help address these weaknesses in entrepreneurial finance.

The CMU Action Plan has committed the Commission to take stock of the situation of European crowdfunding markets and of the regulatory landscape as a basis for a future decision on how to best to enable this funding channel to serve the European economy while appropriately addressing any potential risks.

In the context of CMU Action Plan implementation, in May 2016 the Commission published a report that sets out the market and regulatory landscape in the field of crowdfunding.[5] The report finds that crowdfunding remains relatively small but is developing rapidly. If appropriately regulated, it has the potential in the longer term to grow into a key source of financing for European SMEs. EU Member States have begun to put in place national frameworks to support the growth of the crowdfunding sector and to help ensure that retail investors and lenders are appropriately protected.

These national frameworks are broadly consistent in terms of the objectives and outcomes they seek to achieve, but are tailored to local markets and domestic regulatory approaches while crowdfunding remains largely local. However, as the sector develops, it is of strategic importance to monitor opportunities for European crowdfunding to scale up across borders while the Commission is keeping developments in the sector under review.

The results of our work seek to assist the Commission in fulfilling its commitment to monitor the development of the sector and the effectiveness and degree of convergence of national regulatory frameworks, as well as to promote convergence, the sharing of best practice and the importance of keeping developments under review, by assessing the development of cross-border business and the related investor protection aspects.

Here, crowdfunding refers to an open call to the public to raise funds for a specific project. Crowdfunding platforms are online marketplaces that enable interaction between fundraisers and the crowd (investors and investees; lenders and borrowers; in short, the funders). Financial pledges can be made and collected through the platform.

We address crowdfunding models that entail a financial return, notably investment-based crowdfunding (where companies issue equity or debt instruments to private investors through a platform) and lending-based crowdfunding (where companies or individuals seek to obtain funds from the public through platforms in the form of a loan agreement).

[4] http://ec.europa.eu/finance/capital-markets-union/docs/building-cmu-action-plan_en.pdf
[5] http://ec.europa.eu/finance/general-policy/docs/crowdfunding/160428-crowdfunding-study_en.pdf

5. Methodology

Our research design is based on a mixed-methods framework with an emphasis on interview-based research but incorporating desk research, comparative legal analysis, and questionnaire-based survey.[6] We have proceeded by adopting an iterative process of team-based inquiry that allows for the incremental probing and clarification of the issue under examination, whereby an initial set of qualitative findings is analysed 'on the go' to help refine subsequent iterations of interviews etc., and is aimed at yielding an insider perspective that is validated through triangulation from a menu of different research methods that are recursively employed.

Findings from qualitative approaches were analysed in a broadly inductive fashion, with affinities to Grounded Theory and similar interpretive approaches, with an emphasis on emergent conceptualisation.[7] Quantitative survey work supplemented the qualitative data gathering strategies within the overall mixed-methods framework of analysis.

Interview and focus group themes were generated from desk research and prior industry insight, and in keeping with the overall study design were revisited and successively iterated within the research team to accommodate emerging patterns and findings. Interviews and focus groups themselves were semi-structured to maximise the potential for following up points of interest during the discussion in more detail while offering an overall comparable framework across interviews. They proceeded based on formalised protocols that were each prototyped and tested in iterative settings. Interview transcripts were reviewed by interviewees for cross-check and validation. Where possible, interviews and focus groups were conducted by two researchers. In all cases, findings were discussed and digested within the team to ensure ongoing breadth of focus and awareness of interdependencies of findings.

Principles of informed consent were applied to all qualitative research and communicated to participants. In the given setting of research with industry insiders, full anonymisation of rich interview material is challenging. Interviews were therefore conducted in a context of confidentiality and efforts were made to de-identify the collected data. Assurances were given to not directly attribute individual data sets or quotes to named respondents or organisations. On this basis, the present report incorporates direct de-identified quotes from interview and focus group material.

Altogether 22 interviews and 4 focus groups were conducted, plus an expert workshop in Brussels with key stakeholders including platform and policy representatives, and independent experts. More than 20 hours of recorded interview data and almost 7 hours of recorded material from focus groups provided almost 200,000 words of transcribed discussion to analyse, covering all six target countries plus additional input from neighbouring regions, policymakers, user representatives, and independent experts.

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[6] Beebe, J. 2014. *Rapid Qualitative Inquiry*, 2nd ed. Lanham, Maryland: Rowman and Littlefield; Bryman, A. 2015. *Social Research Methods*, 5th ed. Oxford University Press.
[7] Eisenhardt, K. M. 1989. Building theories from case study research. *Academy of Management Review* 14(4); Goulding, C. 2002. *Grounded Theory*, SAGE.

It is important to note that even in a context of confidential interview and focus group discussion, where resulting data are de-identified and quotes not directly attributable, the analysis of such data needs to consider the reflexivity implicit in this data gathering method. Interviewees and focus group respondents are senior executives and experts of leading platforms of the European crowdfunding sector, who in many cases have ample experience of interaction with regulators and policymakers and may seek to promote particular interests. They will also be acutely aware of sometimes very competitive constellations between industry players, and thus reluctant even in semi-structured settings to enter into discussion of commercially sensitive information. Given the diversity of the industry, however, and the efforts invested in ensuring that a broad range of industry representatives was approached for interview, the resulting picture – while multi-faceted – offers a balanced perspective on incumbent interests and sensitivities through triangulation of findings across an appropriately diverse range of sources and research methods.

6. Market and regulatory barriers

6.1 Introduction

We start our analysis by identifying and evaluating cross-border barriers encountered by crowdfunding platforms. The present chapter is thus based on comprehensive field work focused on the experiences of crowdfunding platforms when seeking to grow cross-border business in the EU. This includes, for example, the raising of capital, funding of projects and provision of credit, depending on the nature and scope of the platform in question. In order to arrive at a balanced assessment, it is important to determine whether any difficulties encountered by platforms in expanding their business across borders are principally of a commercial, administrative or regulatory nature. Correspondingly, any frictions working against the further development of cross-border crowdfunding may consist of structural and market barriers, and of regulatory barriers, which we will explore in turn in sections 6.2 and 6.3 below.

Results presented in this chapter will draw on some relevant theoretical background on the subject matter, findings from a review of applicable regulation, and insights gained through online survey work, qualitative interviews and focus group research. It should be noted that the academic literature on the subject matter is still quite limited. This is particularly true as regards the discussion of aspects relating to cross-border crowdfunding business models, which can be of a commercially highly sensitive nature and are subject to rapid ongoing change in many contexts. This is because platforms engage in continuous experimentation of how best to grow their business in what is currently one of the most innovative economic sectors.

Desk research for our study builds on the results of crowdfunding research by European institutions e.g. the Commission's report on crowdfunding of May 2016,[8] the opinions of ESMA[9] and EBA,[10] a number of legal reports which present a comprehensive overview of the crowdfunding regulation in all EU-28 Member States and of the national rules applied in cases of liability claims from crowdfunding transactions. Crowdfunding and banking industry reports have also been considered, as well as reports by public national and international organisations, although few. A small number of academic articles with a cross-border focus are identified in the crowdfunding literature, but these are more focused on the analysis of regulatory barriers in crowdfunding. News items are used for a more up-to-date perspective on the matter.

Desk research both on the market and regulatory context of cross-border crowdfunding was complemented by survey work targeting crowdfunding platforms, and, for the disclosures and safeguards dimension, also drawing on existing user survey data. These quantitative results, together with the preceding desk research, provided the basis for in-depth qualitative follow-on research through interviews and focus groups.

We will follow the methodological progression of data gathering methods from descriptive quantitative analysis to in-depth qualitative analysis also in the discussion, in that we will first discuss the desk research findings, before proceeding to the presentation of and triangulation with qualitative interview data.

[8] Cf. fn3.
[9] ESMA, position paper on crowdfunding (2015), available at https://www.esma.europa.eu/sites/default/files/library/2015/11/2014-smsg-010.pdf
[10] EBA, Opinion of the European Banking Authority on lending-based crowdfunding (2015), available at https://www.eba.europa.eu/documents/10180/983359/EBA-Op-2015-03+(EBA+Opinion+on+lending+based+Crowdfunding).pdf

6.2 Market barriers

The European crowdfunding sector is characterised by its highly heterogeneous nature. In many ways this reflects the range of different starting points of nascent national crowdfunding sectors which have originated in EU Member States over the past decade, largely determined by the incumbent regulatory frameworks as they pertain or may conceivably pertain to crowdfunding as a novel form of technologically mediated market exchange.

In the literature and interviews conducted for this project, there is copious evidence of the fragmented nature of the regulatory environment of crowdfunding across EU Member States. Legal reports, academic research and empirical studies are all testament to the lack of harmonisation in the European crowdfunding industry and support the argument that fragmentation hampers the development of the much-desired pan-European activity. While discussion on the underlying reasons and possible remedies have been ongoing, this has now been the *status quo* for several years amidst concerns that as a result, platforms face unnecessary hurdles in the pursuit of sustainable scale.

Many crowdfunding platforms presently do not engage in sizeable cross-border activity, be it because they are still in a position that allows them to achieve target growth in their local markets, or because they are assessed not to be in sufficient compliance with regulatory requirements applicable to cross-border crowdfunding. At the same time, some platforms evidently can successfully engage cross-border. This is particularly true in securities-based crowdfunding, where latent cross-border funding flows exist and may make up as much as 20% of funds raised for specific projects.

This is borne out by the platform survey that we have conducted for this project, which represents only a snapshot of the overall activity, but a revealing one nevertheless.[11] For almost a third of respondents, cross-border investments amounted to more than 20% of overall funds received. A similar number indicated that cross-border investment accounted for less than 5% of overall funds received. For deal origination, the picture shifted in that most respondents estimated cross-border deal origination to account for less than 20% of business.

[11] The online survey, disseminated to more than 600 crowdfunding platforms of all types and promoted in the press, with a core collection period in July 2017, attracted a relevant response rate from market actors with cross-border activities. Results are interpreted here in the context of the overall research design which draws on evidence from a range of sources and is multi-method-based.

Figure 1: Proportion of cross-border investments received

(ECN Cross-border Crowdfunding Survey 2017)

While some platforms do thus build significant cross-border business, the majority of platforms in general seem less involved than they conceivably could be in a more welcoming regulatory context. For SMEs that are fundraising, prospectus rules usually apply, or there are national exemptions which in general do not allow for active cross-border marketing of securities. Equally, in the case of platforms whose activities resemble financial services in some respects and thus may fall under banking regulation, cross-border activity of either loan-based or securities-based crowdfunding is limited at best.

The complexities that arise as a direct result of diverging regulatory frameworks applying in different Member States can be considerable in a cross-border context. This has to do with the nature of revenue-based crowdfunding as marketplace investing and lending, which at the very least involves three parties (Figure 2): a fundraising party FR that is looking for a loan or seeking equity in various forms, a funder F willing to offer a loan or become an investor, and the online marketplace platform P bringing those two parties together.

Figure 2: Basic crowdfunding set-up (Fundraiser FR, Funder F, Platform P)

In a cross-border context, the complexities arising from the various possible configurations across different regulatory regimes are considerable. If fundraiser,

funder and platform are each in a different country, the crowdfunding platform may need to consider up to three different national sets of rules that are potentially applicable to its operations. If the three parties could be in any of six different countries, this doubling of the number of nations already creates more than 200 conceivable constellations of different combinations of applicable legal rules, or n^3 in general (which, where n = 28, exceeds 20,000 different constellations). These are theoretical escalations of the potential complexity of cross-border crowdfunding, but they illustrate the significance of regulatory heterogeneity for the EU27/28 and the real potential for escalating compliance costs for crowdfunding platforms looking to expand their business across borders. Regulatory governance is thus a prime determinant of the cross-border barriers that platforms face and we will explore the implications from the current level of heterogeneity across the EU in depth in the next section (6.3).[12]

Before doing so, however, it is equally important to consider the potential market barriers to cross-border crowdfunding. Of the non-regulatory barriers encountered by platforms, there are those that relate to the market microstructure of crowdfunding itself as a business practice, in the shape of online marketplace-mediated contracting between fundraiser and funder.

In addition to these barriers, there are others more closely related to wider structural features of the institutional context of the crowdfunding sector at both national and international level. One way to define these structural frictions is to address them against the backdrop of an ongoing process of digitalisation of financial transactions and their social context. We will discuss each of those barriers in turn, starting in the next section (6.2.1) with digitalisation before moving on to informational friction (6.2.2). The following table once more summarises the key infrastructure and information market barriers in order to facilitate the following comparison to regulatory barriers, which we shall discuss in terms of legal uncertainty, thus adding a third dimension of relevant barriers to the cross-border development of crowdfunding.

	DIGITALISATION	TRANSACTION COSTS
MARKET BARRIERS	Lack of trust Data privacy Electronic identity User readiness	Information Measurement Market making

Table 1: Market barriers

6.2.1 Digitalisation

Ongoing processes of digitalisation have begun pervading economic and social life among ever greater proportions of populations globally. Digitalisation in the financial

[12] It is important to bear in mind that the basic crowdfunding set-up depicted in Figure 2 is in a range of instances a significant simplification of the underlying commercial constellations, which may involve a range of different special purpose vehicles arising from the specific design of project finance, extend to securitised loan portfolios, or involve additional intermediaries including traditional incumbents such as banks, as well as various forms of secondary market.

services has rightly been flagged as important in the EU agenda. In its recent discussion paper called "The EU and its partners – Banks and investors in a digital world",[13] the Swiss Finance Council stresses the importance of digitalisation in delivering a successful Capital Markets Union and in enabling further investments for growth and jobs, whilst ensuring appropriate levels of consumer and investor protection. It argues that if digitalisation can drive integration by making borders less relevant it can ultimately make Europe economically stronger and more united.

However, there is concern about the fact that there does not seem to be a well-developed and internationally coordinated regulatory strategy for the digital transformation of financial services by the EU institutions. Four obstacles have been identified that prevent the achievement of a truly digital investment experience that could enable unfettered access to capital across borders:

- Cybercrime and lack of trust in the use of cyber technologies for financial transactions. Security of assets and identity will be fundamental for ensuring users' trust and confidence in the use of crowdfunding platforms for raising/investing capital;[14]
- Data privacy and protection is one of the key issues in an ever more connected world. Also, the portability of data needs to be clarified, i.e. the circumstances under which data can be transferred freely and securely across borders; significant headway is underway in the form of the roll-out of the General Data Protection Regulation (GDPR) but this needs to firm up in corresponding cultures on the ground;[15]
- Confirming identity is a challenging hurdle. The development of a digital identity/e-ID that can be used in all EU Member States could make financial transaction across borders seamless, faster and more secure. The key success factor, also in sight of the EU eIDAS Regulation, is transportability (currently it remains up to individual Member States to define the terms of access to the online authentication of government e-IDs by the private sector); the challenges along this road are well recognised – progress is underway although largely through opt-in mechanisms;[16]
- Users' understanding of new technologies is underdeveloped, and differs greatly between jurisdictions and language groups, thus hampering the provision of cross-border services.[17] This point is particularly vividly illustrated through the *World Economic Forum's* Networked Readiness Index, which ranks countries not just by 'hard' infrastructure dimensions but also education and skills dimensions.[18] Differences between EU countries on this index can be significant, with several EU countries trailing in the second quartile while others make up half of the top 10.

This last point is of considerable concern to platforms seeking to expand into markets beyond those that are most developed in the EU in terms of crowdfunding, where they

[13] Swiss Finance Council, The EU and its Partners: Banks and Investors in a Digital World, available at https://www.swissfinancecouncil.org/images/Swiss_Finance_Council_Discussion_Paper_2017.pdf

[14] Rau, P. R. (2017). Law, Trust, and the Development of Crowdfunding. Available at SSRN: https://ssrn.com/abstract=2989056

[15] Cf. Zerlang, J. (2017). GDPR: A Milestone in Convergence for Cyber-Security and Compliance. *Network Security* 2017:8-11.

[16] Cf. Gomes de Andrade, N. N., Monteleone, S., Martin, A. (2013). Electronic Identity in Europe: Legal Challenges and Future Perspectives (e-ID 2020), *JRC Scientific and Policy Report 25834;* Gomes de Andrade, N. N. (2012). Regulating Electronic Identity in the European Union: An Analysis of the Lisbon Treaty's Competences and Legal Basis for eID. *Computer Law and Security Review* 28: 153-162.

[17] Swiss Finance Council, fn13 above.

[18] Baller, S., Dutta, S, Lanvin, B. (2016). *The Global Information Technology Report 2016*. World Economic Forum, http://reports.weforum.org/global-information-technology-report-2016/

often still face much less developed awareness of and trust in internet-based financing solutions. This was also reflected in some of the interviews with platform executives that we conducted:

> *The alternative financing solutions have been coming here with a slight delay. If you take a look at more developed or advancement markets such as the United States or the UK, or take [...COUNTRY] as an example as well, for instance, then people are still on the verge of understanding that these alternative solutions can offer much better speed, can give you access to money much faster and provide much more simplicity and transparency. On the other side, the alternative investment options are also very, very feasible and people day by day are becoming keener and more of the people are becoming interested in giving them a try and realising that this actually works and it's something that leaves them better off.*
>
> (Head of Operations, Lending Platform)

This quote nicely illustrates the fact that while regulatory and commercial barriers certainly are very relevant for crowdfunding platforms seeking to expand their operations in a cross-border context, the technical and social infrastructure and norms also need to keep pace with these developments. Within the EU, there are considerable differences between individual countries in terms of IT infrastructure and the prevailing norms and attitudes both among local entrepreneurs and retail investors and lenders when it comes to revenue-based crowdfunding solutions.

6.2.2 Transaction costs

Market barriers find their origin in the nature of crowdfunding as a process bringing a range of 'funders' and 'fundraisers' together in novel ways through online marketplaces. While these new forms of market intermediation open the possibility of significant efficiency gains where traditional forms of intermediation are less well placed to offer solutions, they are nevertheless susceptible to a range of market imperfections which ultimately find their origin in underlying information asymmetries between funders and fundraisers.

Information asymmetries are therefore at the core of current economic analyses of crowdfunding.[19] Crowdfunding promises significant benefits in terms of access to finance and additional or alternative screening of funding opportunities with the potential to yield competitive returns. At the same time, these potential benefits face the risk of drawbacks in the form of private information on the part of fundraisers, notably moral hazard, given that the economic incentives of funders and fundraisers diverge. Successful development of crowdfunding therefore rests on the implementation of mechanisms that ensure agency costs arising from those market imperfections are kept sufficiently low for the considerable benefits of crowdfunding to be realised. This warrants a closer look at some of the more important information asymmetries and how they may be overcome.

It is useful in this context to approach the various kinds of frictional barriers in the crowdfunding sector through the economic concept of transaction cost.[20] Transaction

[19] Strausz, R. (2017). A Theory of Crowdfunding: A Mechanism Design Approach with Demand Uncertainty and Moral Hazard. American Economic Review 107.6.

[20] Cf. Klaes, M. (2008). Transaction Costs, History Of. In Lawrence Blume and Steven Durlauf (Eds), The New Palgrave Dictionary of Economics, 2nd ed., Vol. 8, pp. 363-367. London, Palgrave Macmillan.

costs, narrowly defined, relate to any direct charges that arise whenever one engages in market transactions. This includes the various kinds of fees that crowdfunding platforms charge their users, for example, which in a number of ways are similar to traditional brokerage charges. It also includes taxation, which we will briefly revisit below as part of the narrow definition of transaction costs.

Alongside these narrowly defined dimensions of transaction costs, there are also more general aspects of market exchange that are encompassed by this concept. These relate to the information costs of establishing the relevant details of a particular transaction, or to the measurement costs that one incurs when checking the quality of a traded item, or to the contracting and enforcement costs that one incurs when striking a deal and checking that its terms are executed as specified and agreed.

Reducing these informational, measurement and contracting costs of transactions, which as such have direct resource implications for market participants, also has the potential of removing market inefficiencies, which is something that benefits the market overall. On an even more general level, therefore, transaction costs refer to the costs implicit in a given governance structure. For example, if these institutional transaction costs are on the increase across Europe because of a significant degree of fragmentation in the regulatory context of crowdfunding then the costs resulting from this friction are the foregone gains that crowdfunding platforms could conceivably have realised for the wider European economy as part of a more integrated Capital Markets Union.

In the remainder of this section, we will revisit key transaction cost dimensions as they relate to the development of cross-border crowdfunding: the information costs implicit in the basic crowdfunding setting depicted in Figure 2 above, the measurement costs arising from fragmented market data, and the costs of exchange arising from offering online marketplaces to fundraisers and funders. On the latter, we offer both conceptual insight and insight directly drawn from the experiences made by platforms in their day-to-day operations, which we address separately under a heading looking at the practical implications of information asymmetries.

We conclude our discussion of the market transaction costs of crowdfunding with the question of taxation. While, strictly speaking, taxation is a regulatory rather than a market matter, it is important to also address it here since any barriers arising from it in the context of cross-border crowdfunding are not just questions relating to how the economy overall is governed and what it is that crowdfunding platforms have licence to do or are prevented from doing within existing regulatory rules and frameworks. Taxation directly shapes the commercial outlook and incentive space of crowdfunding entrepreneurs and in this regard, needs to be acknowledged as a structurally relevant factor in the composition of markets frictions and barriers alongside the other transaction cost dimensions discussed here, as the importance attached to it by platform decision makers demonstrates.

Taken together, these various dimensions of the transaction costs of crowdfunding offering a comprehensive insight into the market barriers to the cross-border development of crowdfunding:

a) Information costs

One of the challenges of SME funding is information asymmetries between capital suppliers and capital seekers. In general, these asymmetries are also relevant in terms of barriers and it will be useful to consider the wider context at this stage, as a prerequisite for facilitating access to finance for SMEs and ultimately a financial

integration, as part of the CMU plan, ideally has to overcome these information barriers.[21]

Information asymmetries hinder effective matchmaking between SMEs and capital providers. Before investment, asymmetric information can give rise to adverse selection,[22] with higher-quality projects self-selecting away from platforms that carry out more thorough due diligence, thus allowing low-quality (i.e. lower risk on average) projects to be better differentiated from high-quality ones and to obtain better financing terms. After investment, asymmetric information can give rise to moral hazard, with funds not being used as intended at the outset.

Information asymmetry affects both the capital supply side and the capital demand side.[23] On the capital supply side, information asymmetry exists regarding information about the issuer and the financial asset itself, information about supply and demand on the market for the relevant financial asset and successful evaluation of the aforementioned information. There is a proven lack of standardised, verifiable and accessible credit information about SMEs that creates a significant barrier for alternative finance providers to invest in European SMEs.[24]

Case Study 1: Lendahand

Lendahand				
Location: ***Netherlands***	Countries active: *BE, FI*	Year Founded: *2014*	Regulatory framework: *AFM-regulated activity; MiFID*	Main products: *Loans; Debt instruments*
Market and Regulatory Barriers: The use of a MiFID licence does not seem to make the cross-border experience easier. The different national regulatory regimes do not allow for the full passporting of the licence in the Member States – especially in Germany and the UK – and they imply high compliance costs as well. What the regulators could do better is put effort into simplifying the authorisation and compliance process. It is proposed that this could be achieved with the establishment of a pan-European crowdfunding regulatory framework that all crowdfunding stakeholders will have to comply with. The industry, for its part, should come together, share its experience, identify the problems and their solutions that could be adopted by policymakers. ECN is offered as				

[21] Considerable empirical research has been undertaken on the matter, domestically and at European level. See Commission SWD (2015) 184 final, 'Economic Analysis … on Building a Capital Markets Union', September 2015, 43-45; Commission SWD (2015) 98 final, 'European Financial Stability and Integration', April 2015, 200-22; Breedon Review, 'Boosting Finance Options for Business' (2012), available at http://www.brodies.com/sites/default/files/pages/boosting%20finance%20options.pdf

[22] On adverse selection, see Agrawal, Ajay, Christian Catalini, and Avi Goldfarb. "Some simple economics of crowdfunding." *Innovation Policy and the Economy* 14.1 (2014): 78; Akerlof, George A. "The market for "lemons": Quality uncertainty and the market mechanism." *The quarterly journal of economics* (1970): 488-500.

[23] Schammo, Pierre (2017). "Market Building and the Capital Markets Union: Addressing Information Barriers in the SME Funding Market." *European Company and Financial Law Review,* 14(2).

[24] Cf. Commission SWD (2015) 184 final, 43-44.

an example of a network that can facilitate this initiative. However, it is estimated that a possible harmonisation in Europe will take a long time, leaving room for the industry to operate in a legal void.
Last, technological advancements are believed to disrupt the market and hopefully speed up the regulation. Advanced KYC procedures and electronic means of identification are offered as an example of such technological advancements that can revolutionise the crowdfunding sector.

On the capital demand side, SMEs usually lack financial education on alternative sources of finance. SMEs struggle with acquiring the necessary financial literacy that is required when they seek external bank and non-bank finance, as well as the confidence to approach finance providers and present themselves and their business[25]. This knowledge gap limits the use of alternative financing options for SMEs.

b) Measurement costs

In a traditional capital markets context, informational asymmetries are typically addressed by way of disclosure rules. In the context of SME finance, the problem is that the information available is insufficient and it is costly for SMEs to invest in producing or acquiring it. In addition to this, in a cross-border setting harmonisation of disclosure regulations cannot be taken for granted and in practice can exhibit considerable fragmentation.[26] From an informational perspective, therefore, improvement of SME data availability and harmonisation of national disclosure regimes seems desirable while availability of or access to standardised verifiable credit information for assessing the creditworthiness of SMEs is restricted for platforms (and other early stage investors), which risks creating additional barriers to investments in European SMEs.[27]

In a regulated financial market setting, information asymmetries are addressed through EU disclosure requirements. This no longer applies once one is one step beyond regulated financial markets, where EU Member States follow different approaches and rules to address information barriers in their national markets. This creates additional hurdles for platforms and investors with cross-border ambitions.

Case Study 2: Seedrs

Seedrs				
Location: ***UK***	Countries active: UK, PT, NL, DE	Year Founded: *2012*	Regulatory framework: *FCA regulated; MiFID*	Main products: *Equity; Fund equity;*

[25] Minutes of the CMU workshop on advisory support for SME access to finance (Brussels, 12-13 September 2016) noting that 'research confirms a lack of awareness and understanding of alternative finance among entrepreneurs' and '… SMEs should be better prepared to dialogue with alternative lenders and investors…', available at https://ec.europa.eu/info/system/files/160912-minutes_en.pdf.
[26] See Sebastiaan N. Hooghiemstra and Kristof de Buysere, p. 148; Com SWD (2016), p.154, Crowdfunding in the EU Capital Markets Union, 22-24; O.Gajda, T.Aschenbeck-Florange, T.Nagel, Review of Crowdfunding Regulation.
[27] Commission, 'Green Paper: Building a Capital Markets Union' COM (2015) 63 final, p. 10.

				Convertible equity

Market and Regulatory Barriers:

The platform actively markets its products to entrepreneurs in the UK and Europe. In Europe, it has established representative offices in Portugal, the Netherlands and Germany, which use the Seedrs brand for marketing to project owners.

Other than the regulatory hurdles of its financial services business, technological developments remain a challenge in terms of operational efficiency when expanding cross-border. The platform is aiming to partner with new fintech stakeholders to gain access to faster payment systems and integrations following the liberalisation of the Payment Services Directive. For now, it is working with traditional banks, but their services are not deemed sufficiently flexible for the platform's needs within its business model.

Seedrs has encountered additional challenges in identity verification in cross-border settings. Here it must be clarified which electronic verification methods can be used by the financial services industry (e.g. paper evidence vs. electronic evidence, biometrics). It remains costly to adjust the platform's operations to different national aspects.

Similarly, the platform has encountered difficulties in accessing comparable database information regarding "Know Your Customer" data across Member States. Domestic database providers offer easy access to information locally, but in a cross-border setting, access to information becomes more difficult due to the lack of consistency of database models and the lack of uniformity of data requirements.

In principle, these informational barriers in the SME funding market could be addressed either by harmonising national disclosure requirements and mechanisms, or through enhanced availability of market data and information sharing.[28]

The harmonisation of the national disclosure requirements and mechanisms was identified as a key element in the development of cross-border crowdfunding at the expert panel organised (for this study) in Brussels. Notably, the working groups acknowledged information asymmetries as a common barrier in their cross-border operations and proposed the adoption of a common standardised information template by all EU Member States. The base template could be extended with more information, upon investor request, after they have registered with the platform (for example through a QA, or by providing CEO contact information).

Information barriers could also be addressed by way of a market-driven dissemination of information. The key market players that can generate such information are banks[29] and credit bureaus such as the British credit reference agencies[30] and finance

[28] Ibid, p.23.

[29] Information (credit data) can be shared through credit registers that are maintained by public authorities such as central bank. The data can be shared thus reducing the informational asymmetries and informational monopolies in favour of them. Also, the Commission addressed the role of banks in providing feedback to SME customers or in advising them on alternative finance options, see Commission (EC), 'Capital Markets Union: First Status Report' SWD (2016) 147 final, April 2016, 6.Ibid, p.14.

[30] Information sharing can also take place by establishing privately owned credit bureaus or credit reference agencies (UK).

platforms.[31] In other words, the role of such bureaus is to collect financial and non-financial information from various sources and use this data to offer information services to their clients.

c) Platform perceptions and the cost of market making

Another way to address informational barriers is by way of intermediation, as we know it in the context of the typical capital markets scenario.[32] The role of financial intermediaries is to facilitate the process of capital raising by matching capital suppliers and capital seekers. They seek to achieve this by providing relevant market information and through offering infrastructure and expertise in support of investment decisions, thus reducing information costs. In this way, intermediaries may contribute to market transparency and efficiency.[33]

Platforms, although they do not formally have the legal status of financial intermediaries, perform similar functions. They stand in between capital suppliers and capital seekers and in doing so they facilitate the crowdfunding process. This is a current point of contention, where some platforms feel that while they are not financial intermediaries in the traditional sense, they nevertheless perform a function altogether not that different from traditional brokers, a perception that is admittedly not widely shared currently among non-platform stakeholders and regulators. If transactions happen *through* a platform but not *on* the platform, strictly speaking:

> *This is … one of the bits that is still unclear. One country is fine with that, another country requires that we are in fact in the middle. As we see it, brokerage institution that is recognised all over Europe would be really feasible and a good solution.*
>
> (Head of Operations, Lending Platform)

As intermediaries, crowdfunding platforms contribute to making the SME market more transparent and thus viable in a cross-border setting. They could do so by adopting measures such as bringing on board sophisticated investors, screening projects, and being transparent about projects in the process of collecting funds, past performance of projects that have been funded and the platforms' own business models.

Informational asymmetries in practice

There are some significant hurdles that stand in the way of platforms being able to give their advice freely in this regard. Such legislative measures are certainly well-intentioned and meant to protect investors in circumstances of significant informational asymmetries, which is a topic pursued at greater depth in the next

[31] Finance platforms are another player in the SMEs information market in UK. UK recently adopted the Small Business, Enterprise and Employment Act 2015 (SBEE Act), [SI 2015/1946], providing for the establishment of private sector finance platforms. See for example, https://www.fundingoptions.com/.

[32] Scholes, Myron, George J. Benston, and Clifford W. Smith. "A transactions cost approach to the theory of financial intermediation." *The Journal of Finance 31.2 (1976)*, 215-231; Leland, Hayne E., and David H. Pyle. "Informational asymmetries, financial structure, and financial intermediation", *The journal of Finance 32.2 (1977*), 383. Also Agrawal, Ajay, Christian Catalini, and Avi Goldfarb, p.81.

[33] Gilson, Ronald J., and Reinier H. Kraakman. "The mechanisms of market efficiency." *Virginia Law Review* (1984), 613.

section. Nevertheless, ambiguities around what counts as 'guidance' and what as 'advice' have been observed to have led to a situation where platforms are reluctant to play a more proactive role in many circumstances where the investor may benefit from this:

> *I think in terms of regulating, this is also one of the problems is that investor protection legislation is so complicated also and also we have different rules for different sectors, for example on advice, there's no coherent definition of financial advice, (….) insurance but also insurance based investment products and on a retail investment on savings accounts so indeed also with digital platforms, the boundaries- we see with other methods of advice- the boundaries between advice under MiFID and guidance is very, very blurry.*
>
> (Senior Financial Services Officer, EU Association)

Where information asymmetries give rise to concerns regarding investor protection and other safeguards, these may establish a prima facie case for regulatory response. Equally, they may help bring forth non-market institutions that are focused on rebalancing the underlying asymmetries. This has happened in the European crowdfunding sector at both national and European level, in that a number of industry bodies and crowdfunding associations have formed, which among their other activities have begun to work towards more widely agreed industry standards.

This may go as far as establishment of codes of conduct by national crowdfunding associations, with which platforms should be obliged to comply.[34] A small number of associations within EU Member States, such as the UK, France, the Netherlands and Germany have such rules in place. Compliance with them is not mandatory, but there is anecdotal evidence that members of the associations do at least engage somewhat with regard to reporting and transparency. However, none of these industry codes aims at cross-border business and they solely focus on national frameworks.

These national-level concerns are also reflected at European level through initiatives pursued by the European Crowdfunding Network (ECN) through a number of core objectives, including the development and promotion of ethical and professional standards within the crowdfunding industry. It is one of the ECN's objectives to work towards the wider adoption of an adequate self-regulatory framework, including guiding principles in the form of a code of conduct[35] and a Charter of Crowdfunders' Rights.[36]

On balance, in the financial sector, regulation will always play a key role in establishing and ensuring a functioning market with an adequate level of safeguards and disclosures. Yet it is clear that platforms themselves, to the extent that they can serve as marketplaces, can potentially aid regulatory developments through early self-regulation and transparency. But this would require credible and enforceable quality and transparency standards as well as level playing fields, neither of which we could identify within this study. When raising this issue with interviewees, responses varied, but feedback indicated that convergence should aim to cover key performance indicators for the industry, conflict of interest rules and platforms' remuneration.

[34] ECN, Framework for European Crowdfunding, 2012, p.36, available at http://eurocrowd.org/2012/10/29/european_crowdfunding_framework/.
[35] http://eurocrowd.org/about-us/code-of-conduct-2/
[36] http://eurocrowd.org/about-us/charter-of-crowdfunders-rights/

Taxation

It has become clear from our data gathering that taxation, as one of the key direct transaction costs in an increasing number of crowdfunding settings, is a great barrier to cross-border investments. Particularly, the panel in the Expert Workshop advocated the need for no discrimination in tax incentives on risk capital in cross-border investments. However, it was acknowledged that harmonisation at an EU level is unlikely to happen without a discussion about the sovereignty of EU Member States. Plus, technically, a tax benefit cannot be offered in a Member State when there is no liability for tax contribution in that Member State.

Case Study 3: Invesdor

Invesdor				
Location: ***Finland***	Countries active: *DK, NO, SW, UK*	Year Founded: *2012*	Regulatory framework: *Crowdfunding Act; MiFID*	Main products: *Mini-bonds*
Market and Regulatory Barriers: The costs associated with regulatory compliance have created a significant burden on the platform's operations. Specifically, there has been an increase of around 50% in legal and accounting costs because of MiFID compliance. Taxation is another significant burden to the platform's cross-border operation. Having different tax structures in every Member State makes cross-border business difficult. For example, a harmonised approach as to what is tax-deductible and what is a tax benefit, leaving room for national variations limited to a percentage range, would make a noticeable difference in cross-border crowdfunding. Finally, technological developments are a big milestone in building an effective regulatory framework. For example, KYC models that make the screening of investors more efficient, the improvement of payment processes on the platform and a European digital authentication (e.g. the Estonian e-residency) would ensure the path towards completely unfettered digital cross-border business.				

The Commission's efforts to address tax barriers to European investments have been wide-ranging. Its extensive economic analysis on weaknesses and market failures of the European financial markets identifies such barriers and supports the need for action in the context of the CMU initiative.[37] Plus, its recent study on tax incentives for venture capital and business angels to foster the investment of SMEs and start-ups takes a step further by making policy recommendations and promoting best practices across EU Member States.[38] It is, last but not least, a common belief among the

[37] See fn24, SWD (2015) 184 final, 77-79.
[38] Final Report on the Effectiveness of tax incentives for venture capital and business angels to foster the investment of SMEs and start-ups (2017) available at https://ec.europa.eu/taxation_customs/sites/taxation/files/final_report_2017_taxud_venture-capital_business-angels.pdf

industry and other stakeholders that despite the inherent challenges, the convergence of the tax treatment of contributions is pivotal in the creation of the CMU.[39]

6.3 Regulatory barriers

Having reviewed market barriers, we will now proceed to take a closer look at regulatory barriers to cross-border crowdfunding. When looking at cross-border frictions in the crowdfunding sector, market dynamics are not only affected by the kinds of transaction costs discussed in section 6.2.2 above. There is a further source of transaction costs that is more directly attributable to the institutional and governance context of the crowdfunding sector, where complexities arising out of a significantly fragmented regulatory landscape play an important role.

We therefore now extend our analysis to the regulatory sources of market uncertainty that in a number of situations create challenges to platforms as they seek to appreciate which rules are applicable in any specific setting (6.3.1). We then develop the underlying regulatory origins of these uncertainties more systematically by examining different kinds of regulatory fragmentation attributable to 'inbound' and 'outbound' constellations of cross-border crowdfunding (6.3.2-4).

The picture resulting from our comparative legal analysis is a complex one, with significant evidence that all 28 national regulatory frameworks develop myopically along 28 different trajectories. This already implies considerable cross-border complexity purely on combinatorial grounds. Our legal analysis also shows that while European rules display an intent to tackle the underlying regulatory heterogeneity at national level, existing rules and frameworks are in many ways not well adapted to supporting crowdfunding specifically, as their origin can be found in addressing cross-border challenges of more mainstream financial instruments and dimensions.

A significant focus of the remainder of this section consists not only in developing key findings of the legal analysis in more detail, but also in drawing on our rich research design and approach in order to triangulate our findings from this extensive desk research with results of our qualitative research. More specifically, we find both from our survey work and from our extensive in-depth interviews and focus groups that the regulatory complexity that emerges from the comparative legal analysis is borne out by the real-life experiences of crowdfunding platform executives. This prompts us not merely to refer to the regulatory complexities associated with cross-border crowdfunding, but to capture the effect of these complexities on the sector through the concept of legal uncertainty. We discuss this in several mutually reinforcing dimensions, and we return to it in the analysis of results from our qualitative research in section 6.3.5 that focus on platform perceptions of those uncertainties and their direct effect on cross-border activity.

For more specific implications of the regulatory barriers that we discuss, together with more detail on proposed changes to European legislation in this regard, we refer the reader to Section III of the detailed legal report included in Annex 1.

[39] See Ibid 29, p. 20; AFME, Accelerating Capital Markets Union: AFME' s response to the CMU Mid-Term Review consultation, 16 March 2017, available at https://www.afme.eu/globalassets/downloads/consultation-responses/afme-cmu-accelerating-capital-markets-union.pdf

6.3.1 Legal uncertainty in cross-border crowdfunding

Empirical studies carried out by the industry and the Commission provide considerable evidence of regulatory fragmentation and its impact on the crowdfunding market.[40] They show that divergent national regulatory approaches across EU Member States create a divergent regulatory landscape at the European level and do not appear to have promoted cross-border activity. Notably, "the level of intra-EU Member State activity lagged below the level of activity both of EU platforms supporting non-EU projects, and of non-EU platforms supporting EU projects." [41]

We analyse the effect of this fragmentation through the lens of the considerable legal uncertainty to which it gives rise, and which has direct implications as a cost driver and in terms of lost cross-border market growth. To better define the legal uncertainty arising from this fragmentation it is useful to distinguish between three sources of legal uncertainty: Uncertainty originating in national crowdfunding regulations; uncertainty arising out of otherwise well-intended EU legislation; and uncertainty relating to national laws applicable to crowdfunding.

	COMPLEXITY	UNCERTAINTY
REGULATORY BARRIERS	Fragmentation Divergence Applicability Practicality	National CF regulation EU legislation National applicable laws

Table 2: Regulatory barriers

We discuss these regulatory barriers in more detail below in sections 6.3.3-6 but it is worthwhile to expand in more detail on these kinds of legal uncertainty to allow the subsequent discussion to make most effective use of the key sources of uncertainty that we have identified, and which capture the behavioural effects of the underlying regulatory complexities that arise in cross-border constellations. We do this, therefore, first by means of a taxonomy of three kinds of uncertainty, before tracing these kinds of uncertainty in the context of a simple analytical scheme that we introduce to more transparently distinguish inbound from outbound cross-border crowdfunding business.

Legal uncertainty due to national crowdfunding regulations

Reports prepared by the European Crowdfunding Network and Osborne Clarke, e.g. the Review of Crowdfunding Regulation 2013, 2014 and 2017, and the CrowdFundRES Report (dated December 2015) by Osborne Clarke provide a comprehensive overview of the crowdfunding regulation in all 28 EU Member States.[42] As part of this study an

[40] Empirical studies by Crowdsurfer, Ernst & Young, Crowdfunding: Mapping EU markets and events (2015); ESMA, Investment-based crowdfunding - Insights from regulators in the EU (2015).
[41] Ibid., Crowdsurfer, Ernst & Young, p.75.
[42] See O. Gajda, T. Aschenbeck-Florange, T. Nagel, Review of Crowdfunding Regulation - Interpretation of existing regulation concerning crowdfunding in Europe, North America and Israel, available at in its latest version at http://eurocrowd.org/wp-content/blogs.dir/sites/85/2017/10/ECN_Review_of_Crowdfunding_Regulation_2017.pdf; Tanja

in-depth analysis of the six target countries was executed by Osborne Clarke encompassing additional legal analysis and market barriers. Additionally, the current legislation in all 28 EU Member States was reviewed and relevant updates included, based on the separately published *ECN Review of Crowdfunding Regulation 2017*.[43] Two of the most important sources of fragmentation are the prospectus rules and the rules related to the provision of investment services. There are different prospectus requirements across EU Member States[44] and different exemption thresholds.[45] Also, many EU Member States including Belgium,[46] Germany[47] and Sweden,[48] have had experience of investment-based crowdfunding using forms of participation which are not considered investment products falling under national regulation, meaning that platforms do not need a licence from the national supervising authority to intermediate in relation to those securities.[49]

Legal uncertainty resulting from EU legislation

Not only do national regulations applicable to crowdfunding differ significantly, but so do national interpretations of EU legislation transposed in EU Member States, notably the Prospectus Directive regarding public offerings of securities and the MiFID Directive regarding the provision of financial services related to financial instruments. Whether an equity crowdfunding platform falls under any MiFID investment activities/services or MiFID and Prospectus transferrable securities depends in particular on the national interpretation given by financial market authorities.[50] The interpretations differ on a country-by-country basis. These differing interpretations regarding investment activities/services and transferable securities and the definition of financial instruments (based on MiFID), allow for platforms to fall outside the scope of MiFID. Furthermore, where crowdfunding platforms operate within the scope of MiFID, the current EU-regime might offer a degree of investor protection. However, where platforms operate outside MiFID, investor protection is left to national discretion (cf. Chapter 5). In the crowdfunding context, then, the overall result of otherwise well-

Aschenbeck-Florange, Alexander Dlouhy, Review of Crowdfunding Regulation & RES Market Developments, available at http://www.crowdfundres.eu/wp-content/uploads/2016/06/CrowdFundRES-Crowdfunding-RES-Regulation-in-EU.pdf

[43] ECN Review of Crowdfunding Regulation 2017: Interpretations of Existing Regulation Concerning Crowdfunding in Europe, North America and Israel, European Crowdfunding Network, http://eurocrowd.org/2017/10/26/ecn-review-crowdfunding-regulation-2017/

[44] Ibid 9 (CrowdFundRES Report), for example in Sweden "[t]he vast majority of all projects...on the platforms are private limited liability companies and are therefore not required to provide a prospectus...", p.451.

[45] Ibid, there are different prospectus thresholds for Germany p.183, Italy p. 246, France p. 164.

[46] Ibid, "...the [Belgian] Act of 25 July 2014 exempts the persons or institutions carrying out intermediation for public offerings falling within the scope of the Crowdfunding Exemption [which includes offerings from EUR 100,000 to EUR 300,000 and an investment limit of EUR 1,000 per project] from the obligation...of the Prospectus Act, to be licensed as a credit institution or investment firm" (p. 24).

[47] Ibid, "Until then [the enactment of the Retail Investors' Protection Act (Kleinanlegerschutzgesetz) in 2015], subordinated profit-participating loans (partiarische Nachrangdarlehen) were not classified as investment products" p. 177.

[48] Ibid, "...equity-based platforms that intermediate share transfers are mainly not required to apply for any licence or registration...which can result in increased fraud and low consumer protection as the Crowdfunding market expands", p.446, 447.

[49] ESMA, Advice - Investment-based crowdfunding, p.14, available at https://www.esma.europa.eu/sites/default/files/library/2015/11/2014-1560_advice_on_investment-based_crowdfunding.pdf

[50] Hooghiemstra, Sebastiaan N., and Kristof de Buysere. "The Perfect Regulation of Crowdfunding: What Should the European Regulator Do?" *Crowdfunding in Europe* (2015): 145; Heminway, Joan MacLeod. "What is a Security in the Crowdfunding Era." *Ohio St. Entrepren. Bus. LJ 7* (2012): 335.

intended EU regulation is legal uncertainty when operating cross-border and lack of scalability where platforms do not passport their national licence in the EU.[51]

Legal uncertainties relating to national laws applicable to crowdfunding

Finally, legal uncertainty can be caused by divergent civil and company law rules.[52] Civil law rules apply to any contractual relationship, including crowdfunding. EU Member States have different rules regarding, for example, grounds for breach of contract, or tort, sanctions or procedural rules for such disputes. Therefore, platforms cannot avoid the costs of obtaining local legal advice in each of the EU Member States where they plan to provide their services. The divergence in company laws relates to rules on public offerings of securities, such as different thresholds in prospectus exemptions, which as such are not solely tied to legal uncertainties arising at European level, and formalities for company registrations or for equity raises and share issues. Hence, it is becoming very burdensome for crowdfunding platforms to develop a pan-European crowdfunding business when they have to comply with a different legal regime each time, i.e. the regime of each EU Member State they want to offer services to.

6.3.2 Inbound versus outbound complexities of cross-border crowdfunding

Having discussed legal barriers in terms of three different kinds of legal uncertainty that hinder cross-border platform business, we now shift our analysis to the regulatory specifics of the horizontal dimensions of this uncertainty by transposing the basic crowdfunding set-up of Figure 2 above to the cross-border case. Regulatory barriers to cross-border crowdfunding may generally occur in one of the two following constellations, which we refer to here as 'inbound' versus 'outbound' cross-border crowdfunding.

Figure 3: Inbound crowdfunding via non-domestic platform P

[51] Ibid 15, p. 28.
[52] FG Lawyers/CrowdfundingHub, Crowdfunding Crossing Borders – An Overview of Liability Risks Associated with Cross-Border Crowdfunding Investments, available at https://drive.google.com/file/d/0B7uykMX1rDrWU3BRZTBMNzFwLVE/view

Inbound crowdfunding describes a situation in which, from the point of view of a national regulator, a non-domestic crowdfunding platform addresses local funders or presents a local fundraiser (company/project initiator) on its platform. This could be, for example, a French crowdfunding platform (i) addressing Dutch investors or (ii) presenting an investment opportunity in a Dutch Company/Project Initiator (mainly to French investors).

In contrast to the inbound cross-border setting, outbound cross-border crowdfunding refers to a situation where a domestic crowdfunding platform seeks to address foreign (EU) investors or presents a foreign (EU) fundraiser to domestic funders (lenders/investors). This could be, for example, an Austrian crowdfunding platform (i) addressing German investors or (ii) presenting an investment opportunity in a German Company/Project Initiator and addressing Austrian investors.

Figure 4: Outbound crowdfunding via domestic platform P'

In both the inbound and outbound cases, domestic licensing rules and prospectus requirements must be considered, which we will now discuss separately: first for the inbound case in the next section (6.3.3), followed by the outbound case in section 6.3.4., highlighting particularly illustrative examples for specific constellations from the comprehensive comparative work undertaken by Osborne Clarke for the present study. Additional compliance issues for inbound and/or outbound crowdfunding relating to the AIFM Directive and PSD I/II are considered in section 6.3.5 as examples of the impact of other EU regulation on cross-border crowdfunding. Section 6.3.6 triangulates these findings with results from our qualitative research.

6.3.3 Compliance requirements for inbound cross-border crowdfunding

Non-domestic crowdfunding platform addresses local investors: Licence obligations

In 27 Member States, there is a licence requirement for foreign crowdfunding platforms addressing national investors. In most of these Member States, foreign crowdfunding platforms that are licensed under MiFID are able to benefit from the EU passporting regulation and conduct business in other Member States without applying for an additional local licence. In France, however, the instruments which may be offered are limited to those the national crowdfunding platforms can facilitate, and

some Member States require an additional notification under national law when passporting their MiFID licence.

More significantly, however, cross-border barriers occur mainly in Member States where there is no EU passporting capability. There are many reasons for this. For example, MiFID only comprises transferable (equity or debt-based) securities, while investment-based crowdfunding is not limited to those securities but may also comprise specific debt-based non-security instruments such as subordinated loans. Perhaps more importantly, P2P-Lending does not make use of (debt) securities at all. Therefore, there is no applicable European-level regulation and only the national regulation applies.

Furthermore, in some Member States, investment-based crowdfunding may partly fall outside the scope of MiFID; for example if, in a given Member State, no clear information is available on whether there is an existing market outside the scope of MiFID. This is the case, for example, in countries where financial instruments used for investment-based crowdfunding cannot fully qualify as securities, e.g. shares in a private company or profit-participating loans. In those Member States the following problem can occur: If the crowdfunding platform holds a MiFID licence and intends to address a national market where the national financial instruments fall outside the scope of MiFID, it is uncertain whether the MiFID licence is also sufficient for providing financial services with regard to those financial instruments (not covered by MiFID), such as brokering of shares in a limited liability company (*GmbH*) or subordinated profit-participating loans (*partiarische Nachrangdarlehen*) in Germany.

Similarly, according to Swedish law MiFID is not applicable to equity Investment-based crowdfunding platforms, and in Belgium, the national law specifies that crowdfunding platforms cannot provide regulated investment services, except for providing investment advice and receiving and passing on investment orders. Thus, they cannot offer services relating to the placing of financial instruments, with or without firm commitments. As a result, licensed crowdfunding platforms fall outside the scope of MiFID. This is due to the fact that the national law specifies that crowdfunding platforms may commercialise investment instruments. The mere commercialisation of investment instruments is not considered a placement service. In parallel, the Crowdfunding Platform Act suppressed an exemption introduced in 2014 providing that persons or institutions carrying out intermediation for public offers falling within the scope of the "Crowdfunding Exemption" are exempted from the obligation to be licensed as a credit institution or investment firm. However, if crowdfunding platforms wish to offer (non-exempted) financial services regarding financial instruments then they will require MiFID licensing.

These national level uncertainties with regard to the (full) applicability of MiFID and its passporting options and additionally the possible need for an additional local licence constitute the main cross-border barriers that crowdfunding platforms face.

A range of further constellations can be identified which equally give rise to these kinds of legal uncertainties, and one further such scenario shall be mentioned here: the situation in Poland. In Poland, foreign crowdfunding platforms will not be regulated under national law if the investors participate in crowdfunding projects by obtaining shares in a limited liability company, but may be regulated if the shares belong to a joint-stock company or a limited joint-stock company. Therefore, a licence requirement for the foreign crowdfunding platform mainly depends on the crowdfunding model and structure adopted by such crowdfunding platform. It may be possible that neither national law nor MiFID applies to a crowdfunding platform; in such a case, there is no licence requirement at all.

Non-domestic crowdfunding platform addresses local investors: Prospectus obligations

In most Member States there is a general prospectus requirement for foreign Companies/Project Initiators when national investors are addressed. However, there are certain exemptions that might apply under differing requirements. In Sweden, for example, there is no prospectus requirement for foreign Companies/Project Initiators offering non-transferable securities to Swedish investors. In contrast, a prospectus must be published when transferable securities are offered to Swedish investors. Nevertheless, the Companies/Project Initiators must comply with the information requirements under the Swedish Marketing Practices Act. In addition, there is a prospectus requirement for P2P-Lending crowdfunding platforms.

Non-domestic crowdfunding platform addresses local investors: Further obligations

In addition to the licence requirement, there can be differing information obligations (e.g. tiered prospectus and corresponding information obligations) and compliance obligations (e.g. qualification as accredited investor) according to national Member States' law. In some Member States, the lack of an explicit legal framework for crowdfunding hinders cross-border activities of crowdfunding platforms. This is particularly true for P2P-Lending: The legal framework for P2P-Lending is normally either unclear, falls under national consumer credit laws (e.g. Denmark, Estonia, Finland, Gibraltar and Lithuania) or crowdfunding platforms based on the Lending-Model need to obtain a banking or payment services licence according to national law.

Non-domestic crowdfunding platform presents local fundraiser: Licence obligations

In 13 Member States, there are no licence requirements for foreign crowdfunding platforms addressing local companies/projects. For example, in Belgium, Croatia and Germany the regulation does not apply since the crowdfunding platform does not address the local market/local investors. In Hungary, the services/investment opportunities offered on a foreign crowdfunding platform constitute a service provided to Hungarians on a cross-border basis and therefore potentially trigger Hungarian licensing requirements in relation to either or both the crowdfunding platform and/or the Company/Project Initiator seeking funding.

In some Member States, there are some exemptions from the general licence requirement, such as in Latvia, Romania and Sweden, whereas in Sweden there is no requirement for a foreign crowdfunding platform to passport its MiFID licence for any equity investment-based crowdfunding activity. However, Lending-based crowdfunding platforms need to passport their licence and report cross-border activity to the competent authority of the home Member State where the company is authorised. Similarly, in Romania a licence requirement may be applicable to the foreign crowdfunding platform if it provides services related to debt-based securities (e.g. bonds). If the Company/Project Initiator does not offer (debt-based) securities, but other investments like equity-based securities (shares) or loans, there is no licence requirement.

Non-domestic crowdfunding platform presents local fundraiser: Prospectus obligations

In 10 Member States, there is generally no national prospectus requirement for local Companies/Project Initiators that are presented on a foreign crowdfunding platform. The case of Sweden is instructive in that there is no prospectus requirement for Companies/Project Initiators that offer non-transferable securities under Swedish law. Equity crowdfunding is not subject to any prospectus requirement under Swedish law and is not subject to any supervision by the S-FSA, since securities that are offered on crowdfunding platforms (both public and private limited liability companies) do not fall within the definition of transferable securities. In 15 other Member States, however, there is a prospectus requirement for national Companies/Project Initiators on foreign crowdfunding platforms.

6.3.4 Compliance requirements for outbound cross-border crowdfunding

Domestic crowdfunding platform addresses non-domestic funders: Licence obligations

In 11 Member States, there is generally no licence requirement for crowdfunding platforms addressing foreign (EU) investors, although in some cases a notification requirement may exist. In Germany and Slovakia there might be a local licence requirement if the offer has a sufficient link to the local market in addition to links with other foreign investors' markets. In the other Member States, there is a general licence requirement for national crowdfunding platforms addressing foreign (EU) investors, while in Gibraltar, both investment-based crowdfunding platforms (under MiFID) and lending-based crowdfunding platforms (under consumer protection laws) need a licence.

Domestic crowdfunding platform addresses non-domestic funders: Prospectus obligations

In 20 Member States, there is no prospectus requirement when crowdfunding platforms address foreign (EU) investors. Some countries, such as Austria, require a disclaimer, stating that the Austrian market is excluded from the offer. However, it is very likely that the prospectus requirements of the investors' national law will apply with their local information and compliance obligations. In 8 Member States, there is a general prospectus requirement when a crowdfunding platform addresses foreign (EU) investors, but exemptions can apply.

Domestic crowdfunding platform presents non-domestic fundraiser: Licence obligations

In 24 Member States, there is generally a licence requirement for a national crowdfunding platform addressing foreign Companies/Project Initiators, whereas in three Member States there is no licence requirement for a crowdfunding platform addressing foreign (EU) Companies/Project Initiators: Bulgaria (for non-resident crowdfunding platforms), Cyprus (as long as no Cyprus investors are approached), and Sweden.

Domestic crowdfunding platform addresses non-domestic fundraisers: Prospectus obligations

In 19 Member States, there is a general prospectus requirement when a crowdfunding platform addresses foreign (EU) Companies/Project Initiators, while in 10 Member States there is no national prospectus requirement when a crowdfunding platform presents foreign (EU) companies/projects to local investors. The case of Italy is interesting as lending-based crowdfunding activity is allowed only in compliance with the limits set forth by the Bank of Italy. Even in the event of lending being requested through a foreign crowdfunding platform in another EU country, such limitation may apply to Italian Companies/Project Initiators.

6.3.5 More general impact of EU regulation

Having discussed the specific effects of the MiFID and Prospectus directives on the various inbound and outbound constellations noted above, it is now also necessary to take a look at other regulatory frameworks at European level. This relates in particular to the AIFM-Directive and to PSD I/PSD II. Again, national differences in interpretation and implementation, as well as gold-plating, can lead to the rise of cross-border barriers to crowdfunding.

In many cases the Company/Project Initiator seeking funding is a start-up, and thus it is in almost every case an operating company that falls outside the scope of the AIFM-Directive. In relation to this, the AIFM-Directive cannot have a harmonising effect on the cross-border crowdfunding market. However, typical project companies (especially those in the real estate or renewables sectors that are established to finance a single project) could fall under the AIFM-Directive since they do not qualify as operating companies.

Having said this, the AIFM-Directive may affect equity-based forms of crowdfunding as part of investment-based crowdfunding, if the platforms create holding companies to regroup shareholders into a single target company to simplify the relationships with the project holder ('Pooling Entity'). As regards equity-based forms of crowdfunding, the legal situation is clear, and thus the AIFM-Directive has a harmonising effect on the cross-border crowdfunding market. However, the AIFM-Directive may also be applicable to the lending-based model in some Member States (e.g. Luxembourg). This poses a high risk for foreign Companies/Project Initiators when entering these national markets without fulfilling the AIFM-based requirements (which can lead to committing a crime), which again leads to uncertainty and therefore to a cross-border barrier.

Investments by means of subordinated loans or other debt-based investments such as credit claims as commercially comparable investments (wirtschaftlich vergleichbare Anlagen) resulting from P2P Lending structures can generally be structured as non-AIF investments. But in practice, AIFM-Directive regulation has little relevance for crowdfunding in any Member State, as most companies try to avoid or bypass the application of the AIFM-Directive regime due to its extensive regulation.

Finally, as regards payment systems, according to the PSD I/II any transfer of funds through the operator of a crowdfunding platform may generally constitute payment services, i.e. money remittance services, and this therefore has an impact on the (structuring of) crowdfunding platforms. There are stark differences in the

interpretation of the Payment Services Directive as national authorities have different opinions concerning the definition of money remittance services.

6.3.6 Platform perceptions of regulatory barriers

Having outlined a range of legal uncertainties that, in combination, pose significant barriers to the further development of cross-border crowdfunding due to the considerable range of specific technical issues that they raise, we now turn to a discussion of how platforms perceive and react to this regulatory uncertainty.

There is widespread disappointment that regulatory measures intended to facilitate cross-border business and capital market integration have not come to fruition in terms of how they are implemented on the ground across different Member States.

MiFID passporting, for example, is often mentioned by respondents as being frustrated by divergent local implementations which de facto has led platforms, even those who hold a MiFID licence, to set up new offices in other EU Member States without being able to rely on the passport option:

> *[W]e have been in contact with the regulators in Belgium, France, in Spain, in Germany and in the UK, in Sweden, in Finland and a couple more. Basically, what we understand is that there are totally no harmonisation whatsoever so there's just one country, Luxemburg, who basically said to us (your) passport and you are welcome to start and then say, ten to fifteen countries that we contacted, they all told us a totally different story which was very hard for us. … [I]n practice all the regulators (based around) local ways of interpreting crowdfunding regulation, they have their own crowdfunding regulation, some of them don't, some of them do, and the crowdfunding regulation differs. If there is crowdfunding regulation, it differs between the countries so it's a really…a very difficult and complicated area.*
>
> (CEO, Securities Platform)

> *I've had fifteen, twenty calls for meetings with lawyers from [EU country] and we still don't understand what is going on. And I think one of the top lawyers in [EU country], we spoke to [them] a lot, [they are] still a bit bedazzled by how the whole regulation works. So [they] can't give us a straight answer whether we can passport our licence, [they think] not but maybe, maybe exemplifies a bit how hard it is to operate in that regulatory environment.*
>
> (CEO, Securities Platform)

Platforms report that due to the complexities involved, expanding in other countries is often a costly undertaking, bearing in mind the size and turnover of many sector incumbents, for whom these costs can be a real barrier. It seems even with the best advice it is not always possible to clarify requirements and platforms can be forced into operating in ambiguous ways out of necessity, or subjected to considerable regulatory uncertainty or compliance risk:

> *I think for us, [operating] the marketplace platform is in a way the easy part. I think for us the hard part is opening [in] new countries for lending and there I think you are facing big regulatory challenges and of course it depends on the*

market, so that's why we need offices in the respective countries. It's mostly call centres and accounting and the like, but there you have each European country is very different. (…) The biggest challenge is going through those regulatory issues to open [in] those countries. There are certain countries where you can't have, let's say, short-term, unsecured lending or where you need to have a banking licence. So those are then the obstacles that we are looking at.

(CEO, Lending Platform)

Relevant data on actual costs are difficult to establish. We therefore largely draw on interviews and focus groups, but complemented by some higher-level insight developed from our market survey, which allowed for a better snapshot across a variety of platforms with diverging business models. Depending on the complexity of operational deal origination and investor marketing, compliance costs can be more than 20% of total operational costs in cross-border business.

Figure 5: Estimation of operational cost of regulation in financial terms

(ECN Cross-border Crowdfunding Survey 2017, Annex 4)

Nevertheless, it is important to emphasise that platforms by and large welcome regulation. For many, cross-border harmonisation would reduce frictions and facilitate further expansion and thus better functioning capital allocation across the EU. It is also worth mentioning the wider point that regulation, in a newly forming market, can act as a powerful reputational signal that may reassure both sides of the market, persuading new business to engage:

We don't really want to be treated as peer-to-peer or something that is not regulated or is somewhere moving in the grey area.

(CFO, Lending Platform)

No, [regulation] really hasn't made our life more difficult for a simple reason that when we started there was no regulation but we didn't want to be censored in our activities so we did it by some sort of non-existent regulation but it was the one that made sense that was close to existing regulations for financial instruments, intermediations and other kinds of financial activities. So we applied

> *what we could and found that was accurate from regulations for instance, investment funds and so on and so forth. So when the regulation came and said, 'Okay, these will be your obligations', we already covered 95% of them so it wasn't really a problem to apply them. What the regulation did is competition and it put in light a new activity and made it possible for others to enter the market much more easily.*
>
> (CFO, Lending Platform)

At the same time, to some of the early moving platforms, who had to set up and grow their domestic cross-border operations in the absence of clearly defined regulatory contexts, greater harmonisation might be less decisive a factor in future growth, although they do accept that it would increase the competitiveness of the sector.

7. User disclosures and safeguards in a cross-border context

7.1 Introduction

In the following sections of this chapter we present and describe safeguards and disclosures for funders and fundraisers via crowdfunding with financial returns. Specifically, we aim to:

- identify and evaluate the disclosures and safeguards applicable to different categories of users of services offered by platforms (investees, investors, borrowers, lenders);
- perform comprehensive field work on and documentation of experience with measures in national law that provide for the protection of investors and lenders in cross-border situations;
- provide an overview of the obligations of platforms and project owners that are found in Member States' civil law frameworks, and that also apply to cross-border situations; and
- identify and evaluate an in-depth analysis with regard to disclosures and safeguards that are not mandated by regulation but that crowdfunding platforms have adopted individually or through market-led initiatives, self-regulation, industry codes of conduct etc.

We analysed three different sources of information: existing regulation, codes of conduct, and information on individual platforms. We thus follow a top-down approach, first by providing the general regulatory context within which platforms are operating, second by describing the main features of the national codes of conduct per Member State and third by looking at the specificities of several individual platforms, always from a "safeguards and disclosures" perspective and, where applicable, in relation to the dimensions of cross-border crowdfunding.

This third point is of great importance and interest, since it allows us to identify the numerous different approaches that the platforms might choose to follow, and how each individual approach is linked with safeguards and disclosures; consequently, emphasis is placed upon describing platforms' policies that are either directly or indirectly linked with safeguards and disclosures for funders and fundraisers.

Figure 6: Application of disclosures/safeguards for the protection of investors and fundraisers

(ECN Cross-border Crowdfunding Survey 2017, Annex 4)

The choice of the analysed platforms was made by a combination of different criteria, including size, cross-border activity, availability of information and specific aspects that are of interest from our perspective. In keeping with the overall focus of this study, our analysis concentrates on the six key EU Member States (the UK, France, Germany, the Netherlands, Italy and Spain), identified for this study.

Our desk research driven data gathering strategy as outlined above and presented in the next section (7.2), while comprehensive in its own right, has some limitations in its reliance on the range of secondary sources consulted. We address this by adding a second dimension of analysis through the collection of qualitative information by way of interviews with individual platforms and focus groups. The area of safeguards and disclosures was a significant part of these interviews and focus groups, where platforms were asked to express their opinions on this specific area. We present the findings of this strand of analysis in section 7.3.

Even so, on this basis the analysis would refer mainly to the "supply" side of crowdfunding with financial returns, since the main sources of information, apart from the regulatory frameworks, are national codes of conduct, the publicly available information on the platforms' websites, and qualitative data from the platforms as gathered through interviews. To redress this, we have also more closely considered the "demand" side of crowdfunding as represented by individual funders (retail investors/lenders). We have been able to access a unique database of answers from such users of crowdfunding with financial returns, where specific questions are being asked regarding the effect of regulation on cross-border activities. We therefore add, as a third dimension of analysis, an investigation of users' perceptions of whether and how regulation may support the development of cross-border crowdfunding. We present the results from this third strand of analysis in section 7.4 below.

After having thus conducted a comprehensive analysis on the "demand" and the "supply" side of crowdfunding in the context of safeguards and disclosures, we synthetically summarise the main findings and conclusions of these analyses in the final section of this chapter, considering the similarities and differences across the individual countries, at all three levels of the desk research (regulation, code of conduct and individual platforms), while taking into account both qualitative

information from interviews and insights from users' perceptions of safeguards and disclosures regulation.

Case Study 4: CrowdCube

CrowdCube				
Location: ***UK***	Countries active: *ES, FR, NL, UK*	Year Founded: *2011*	Regulatory framework: *FCA regulated activity; MiFID*	Main products: *Equity; mini-bonds*
Disclosures & Safeguards: For the protection of the funders, the platform undertakes due diligence on the fundraising companies, which involves credit checks, bankruptcy checks, money laundering checks on the directors and checks on the good standing of the company. The same due diligence process is followed for all fundraising companies (UK and EU). For the protection of the fundraising companies, the platform undertakes investor appropriateness checks, whereby investors are categorised as retail, sophisticated and high-net-worth. The same UK-compliant checks are carried out for all European investors. Moreover, the same appropriateness checks aim to protect the funders by having a 10% investment limit set for investors that have declared themselves as unsophisticated. This approach is preferred over having the platform impose investment limits imposed on investors, since there is little evidence that investors are not aware of the investment risks.				

7.2 Regulatory assessment

We collected data from the six target countries and present here the results of a comparative analysis across all three levels of data gathering: section 7.2.1 will look at existing regulation, section 7.2.2 will look at codes of conduct, and finally section 7.2.3 will look at individual platforms. Under each heading, we will summarise cross-country similarities and differences respectively.

7.2.1 Existing regulation

To facilitate the comparative analysis, this sub-section discusses regulatory dimensions of disclosures and safeguards under the following four themes: Categorisation of funders, Assessment of funder competence, Due diligence, and Disclosures to funders from fundraisers.

Categorisation of funders

A first conclusion of the analysis is that there are substantial differences in how national authorities approach funders, in the context of safeguards. Three of the countries analysed categorise potential investors according to their wealth and/or experience, whereas the remaining three do not categorise funders. Specifically, in the UK, potential investors are categorised as professional investors (those who take regulated advice), high-net-worth or sophisticated investors, and retail investors

(those who confirm they will invest less than 10% of their net assets). In Italy, potential investors are categorised as professional investors by law, professional investors on demand and retail investors.

Figure 7: Investment ceilings mandated by national law or voluntary?

(ECN Cross-border Crowdfunding Survey 2017, Annex 4)

In Spain, potential investors are categorised as accredited and non-accredited. Non-accredited investors are limited to investing €3,000 per project or a maximum €10,000 per year. Platforms must inform accredited investors about the risks of investing money through crowdfunding and require a statement from non-accredited investors which states that they have been warned about the risks of their investment and that their investment does not exceed the threshold of €10,000 in a one-year period. On the contrary, France, Germany and the Netherlands do not categorise potential investors, though maximum investment limits of €10,000 are in place in Germany and France (for lending only).

Assessment of funder competence

National regulators also ask for appropriateness tests to be taken by potential investors, but the way this process is implemented differs among countries. In the UK, funders who do not take regulated advice (retail investors) should take an appropriateness test and commit to investing no more than 10% of their net investable assets. In France, platforms are obliged to subject potential investors to suitability tests measuring experience, resources and other aspects. Access to a platform's services is allowed only if a potential investor passes these tests. In Germany, platforms are obliged to perform an appropriateness test for all potential investors, while in Italy the appropriateness test is for retail investors only. In Spain, platforms are obliged to evaluate the experience and knowledge of potential investors and verify that they can take their own investment decisions. In the Netherlands, platforms are required to conduct a test to examine whether potential investors have sufficient knowledge and experience to understand the risks involved.

Due diligence

Existing regulations do refer to due diligence, but substantial differences are evident in the implementation of the due diligence procedure. In the UK, platforms do not have to follow a specific due diligence procedure, but they must disclose information to potential funders on any due diligence procedure that is undertaken. In France, platforms are obliged to predefine the due diligence criteria they follow. In Spain and Italy, platforms must inform potential funders about the due diligence process they follow. In Germany, platforms are restricted from performing and sharing due diligence under the Crowdfunding Exemption, but are required to publish relevant information to investors to enable their informed decision making.

Disclosures to funders from fundraisers

Platforms are expected to follow certain procedures regarding the information flow from fundraisers to funders. Common basic information is that fundraisers are obliged to disclose information to funders concerning their identity and business in a fair and not misleading way. However, there are differences in the way these disclosures are filed and the information disclosed. France and Italy have designed a template which must be filed by fundraisers. In Germany, if no prospectus is required, fundraisers are obliged to file a three-page fact sheet in which they disclose information about their business. As regards the remaining three countries (UK, Spain and the Netherlands) the regulators authorise platforms to check the completeness and accuracy of information provided by fundraisers.

7.2.2 Codes of conduct

In this section, we focus on industry codes of conduct with national reach, often aligned with local laws. We therefore exclude the professional code of conduct of the European Crowdfunding Network[53] as well as its Charter of Crowdfunders' Rights[54], its Key Performance Indicators[55] and its Charter for ICO/ITO[56], even though it is used and applied by platforms within the six countries reviewed. Four out of the six analysed countries have industry codes of conduct. The only two countries where no industry code of conduct exists are Italy and Spain, which are also the two smallest markets of the six examined.

Where a code of conduct exists, platforms have the option of becoming a member of these associations and adopting their code of conduct. All existing codes focus mainly on funder protection and are specifically geared towards delivering transparent and simplified information concerning the projects and the platforms.

The French code seems primarily to focus on the main procedures followed by the platform: the due diligence, selection and remuneration processes. In the UK, the code focuses on the money invested and the transactions' transparency even when a platform ceases to operate (segregated client accounts, transparent transaction information). The UK code is the only one that mentions the platform's obligation to offer a cooling-off period. The German code presents several similarities with the UK code with regards to the management of money and transactions, the clarity of terms

[53] http://eurocrowd.org/about-us/code-of-conduct-2/
[54] http://eurocrowd.org/about-us/code-of-conduct-2/charter-of-crowdfunders-rights/
[55] http://eurocrowd.org/about-us/code-of-conduct-2/key-performance-indicators/
[56] http://eurocrowd.org/about-us/code-of-conduct-2/ico-charter/

and conditions, IT systems security and the platform's staff, but it additionally highlights data protection issues. The Dutch code is a largely a mix of the provisions of the UK (professional staff, IT systems, complaint handling and data about platforms' activities) and French codes (selection process, clear risk warnings).

7.2.3 Individual platforms

All platforms must follow regulations as a bare minimum. They can also choose to follow an industry code of conduct, should one exist. Therefore, the minimum legal requirements and the respective behaviour as described by the national codes can be perceived as a level playing field for all platforms. In addition to this, however, individual platforms have taken a series of interesting initiatives in response to their regulatory context as described above. We review here noteworthy individual platform characteristics and approaches regarding safeguards and disclosures.

Safeguards

Platforms are obliged by law to follow specific guidelines regarding safeguards. However, most platforms set additional safeguards to become more competitive and attractive. Perhaps one of the most attractive safeguards is the existence of a secondary marketplace where investors can trade their investments. Some platforms operate secondary markets where funders have the option to liquidate their investments. Another interesting feature is some platforms' use of a nominee structure. The nominee structure is a safeguard that is not required by any national law, and under which platforms hold and manage the assets of their clients (funders) on businesses funded through the platform after an investment is completed. Finally, several platforms apply a credit rating process which is helpful for funders. This procedure works best for lending-based crowdfunding as credit rating is directly related to interest rates.

Disclosures

National laws require disclosures from both platforms and fundraisers and these mainly refer to general information about the platform's activity and the fundraiser's identity and business. Most platforms, however, ask for additional information from fundraisers. In some cases, fundraisers are asked to disclose additional information about the major shareholders of the business, in order to inform potential funders about the shareholder composition and to prevent possible conflicts of interest. These disclosures are usually applied during the due diligence process. Some platforms have been trying to tackle the important issue of information flow after a successful funding, and ask fundraisers to disclose information about the financial condition and the performance of their business, after the funding of the business, and at certain intervals (e.g. semi-annually or annually).

7.3 Platform and market insights on disclosures and safeguards

The collection of qualitative information via interviews with individual platforms, focus groups and an expert panel was a key dimension of the methodological approach of this study. The area of safeguards and disclosures was a significant aspect of these methods of data collection, where platforms were asked to express their opinions on this specific area.

This section discusses platforms' opinions and general input on safeguards and disclosures and respective cross-border issues. In terms of format, in the specific context of the questions raised, we identify ten key areas of interest of platforms (listed here in no particular order):

- Current national regulatory frameworks;
- Due diligence;
- Risk warnings;
- Redress;
- Information disclosures to funders;
- Availability and standardisation of market data;
- Financial literacy;
- Voluntary measures;
- Specific cross-border measures;
- Industry codes of conduct and self-regulation.

We discuss individual platforms' views and summarise the main findings emerging in relation to these ten areas. Expert panel input is also presented, where applicable. For the majority of issues discussed, we can identify significant differences regarding what platforms perceive as relevant issues and how they approach them. In the paragraphs that follow, we discuss these similarities and differences in greater detail.

Current national regulatory frameworks

One of the first questions asked that platforms express their opinions about the current national regulatory framework they must follow. Most of the platforms replied that the national regulatory frameworks are reasonable, and no material changes are needed. One platform noted that the standards are very high, but that these high standards are conducive to the creation of investor trust and should not be lowered. Platforms were also asked to discuss whether following the national regulatory framework is burdensome, namely in terms of how many people they employ and what this means in terms of costs. Most of the platforms mentioned that abiding by the national regulatory framework is relatively costly; one platform provided a detailed description of the personnel they need to employ and their respective job descriptions:

> *I think the regulatory burden, it goes beyond – we have five people on compliance, three people on infosec and those teams are beginning to grow. We have four lawyers, we have a few more people in, what we call 'operational risk' but beyond…then you have what we call first-line controls, like a team that does quality control of all the customer calls that are there, another team that does the quality control of the underwriting teams, another team that does quality control of collections and recoveries so there are multiple checks and balances in that sense. But I think, when you work in the world of financial services we have, my belief is that we – all of us…everybody in the company should know the law, particularly as it applies to their job*.

(CEO, Lending Platform)

The regulatory framework has proven to be burdensome for the platforms, but most of them support the high standards set by their national regulators, agreeing with the importance of consumer protection and increasing the trust of consumers towards the industry.

One platform also discussed the relative difference on the weighting of regulation towards the funder vs. the fundraiser, mentioning that the level of understanding of the risk exposure on the fundraiser's side is much higher when compared to the funder's side, adding that, generally, consumers can far more easily understand what a loan is than what P2P investment is.

The two counterparties in a crowdfunding transaction are viewed as two distinct parts, which complicates things in a regulatory context. One interviewee specifically said:

> *They seem still determined to regulate it as if the borrowers and the lenders are two distinct separate groups of people rather than parties to a deal. Counter-parties. So, the tension between borrower-protection and lender protection is only increasing really. And you'll see different staff examining whether borrowers are being protected, as opposed to the staff who are considering whether lenders are protected*.

(Expert, Consultant Solicitor)

The interviewee's statement offers a different regulatory approach regulators could take towards borrowers and lenders. Specifically, the consultant suggests that instead of viewing them as different parts of a deal, they should be viewed as two parties that both are willing to come to a deal. This approach could eventually lead to different ways of designing regulation that could facilitate the transaction and would perhaps be less onerous for platforms.

On the specific issue of cross-border activity, one platform gave topical examples, mainly referring to limited availability of information across countries. For example, information about directors is different in Spain and in the UK: it can be difficult to gather information about their credit history and personal bankruptcy or their involvement with previous companies. The same interviewee also referred to the lack of coordination of the national company laws, for example notary rules.

The lack of cross-border activity was also discussed in the consumer representatives focus group (hereafter: consumer representatives)[57] in which it was mentioned that there is very limited cross-border activity in terms of financial products and services in general, and not only in the crowdfunding area; they added that there is no single market for financial services and that most consumers are looking to their national

[57] This focus group was organised around consumer protection, bringing together consumer experts and representatives such as consumer and investor protection groups.

banks or national investment players when they wish to take out financial services, perhaps because of the lack of EU product regulation.

In the specific area of crowdfunding, the consumer representatives mentioned that one of the main problems of low cross-border activity was the fragmented landscape of national regulations. It was highlighted that, to some extent, the European Commission missed an opportunity to regulate the industry earlier, ahead of the Member States, and that this translated into a missed opportunity to create a market that could support cross-border activities. According to the consumer representatives, a possible solution to enhance cross-border activity while simultaneously protecting consumers could be the establishment of an EU financial user protection authority that is cross-border, that looks at the protection of consumers, not necessarily for crowdfunding alone but also across other services and products.

One of the interviewed platforms suggested that, even in the current fragmented regulatory state of play, and even if no pan-European framework exists in the short term, there could still be a way forward. The platform noted that the national regulators would have to trust each other, work together and create a much more harmonised regulatory approach, giving the European Supervisory Authorities (i.e. ESMA) a prominent role to play. Furthermore, national coordination remains key, because even with the same regulation, differences in implementation would still be expected at the national level.

The issue of national consumer protection laws was discussed in the expert panel meeting, where platforms mentioned that a major issue for operating cross-border is the lack of clear and standardised rules regarding consumer protection. For some European countries, the applicable rules are not clear enough and there are no guidelines available to achieve a deeper understanding, therefore leaving some space for interpretation, which can result in investment risks that platforms are not willing to cover. This was in line with the consumer representatives, who mentioned that there should be more convergence of rules across borders for the whole European Union.

Lastly, it was mentioned in the expert panel that the main issue linked to consumer protection laws is that regulators base their reasoning on an incorrect assumption, namely that regulation needs to protect consumers who are "stupid" and "naïve" people who are not able to make conscious and intelligent choices regarding their investments and who are cheated by financial institutions. According to one platform, this assumption underlies the form and templates to be completed in some countries: these forms include questions that are not deemed suitable to specific consumers' situations.

The analysis above clearly shows that these different approaches to consumer protection by different countries reduce the clarity as to how platforms should deal with the issue in a cross-border context and how to adapt to the national regulatory requirements, and that in some extreme cases platforms question the appropriateness of the tools provided and fail to comprehend the regulatory approach.

Case Study 5: Lendix

Lendix				
Location:	Countries active:	Year Founded:	Regulatory framework:	Main products:

France	*ES, FR, IT*	*2014*	*Crowdfunding Intermediary; PSD*	*Debt*
Disclosures & Safeguards: The platform applies a strict process of due diligence, which has resulted in only 1% of the submitted projects being published on the website. Ensuring a low default rate of the projects is key for its reputation and for ensuring it is trusted by private investors and by institutional investors that support the investment fund. The platform offers three types of guarantees for borrowers: query responses within 48 hours, a known interest rate before the acceptance of the loan and, finally, a funding guarantee once the project is uploaded on the platform; i.e. the investment fund invests in all projects and if necessary tops up the portion not taken up by the community of private investors at the end of the funding period. Financial maturity questionnaires are also used to assess the lenders' level of financial literacy. Although not as thorough as a MiFID form, these questionnaires ensure that the lenders have the knowledge and maturity to understand their investment decisions.				

Due diligence

In general, platforms inform consumers about the main principles of their due diligence process, but they do not share details of the due diligence with consumers. Some lending platforms stated that they share the method applied in their screening in general, but they do not explain individual ratings. Equity platforms noted that they present the main financial figures on the project page of the website instead, from which consumers can conduct their own analyses.

One equity platform clarified that, even though they follow a very deep and detailed pre-screening process (avoiding the term due diligence in official communication), they do not transfer all their information for legal reasons:

> *We do due diligence on all the deals that we are having on the platform, we are really looking at the companies, into the team members, into the competitive situation and so on. We do that but for legal reasons we cannot communicate that we are doing all of this otherwise we might run into liability also for any information that the start-up company is then providing on a platform or not, from an official point, official communications, for legal reasons we have to say we're not looking into any of these at all but of course in reality we do, very thoroughly. The information that we're having, we are not allowed to share this information and again with the investor for the same reasons […].*
>
> (Managing Director, Securities Platform)

This approach is in line with that of other interviewees, who mentioned that qualitative information is of high importance in their due diligence. Specifically, one platform said that they ask to meet with representatives from the target company in person and hear them talk about the business.

Overall, platforms said that they do not share their due diligence process with funders, and that in some cases they call it a pre-screening to prevent fraud, rather than due diligence:

> *No. We are not, quite correct, we are not sharing this with our investors* […] W*hat we do on our side is, to prevent fraud, to make sure that the companies are in good standing at the point when they come to the platform and to have the mechanisms where we can support and get the reporting from the companies through the whole period, this is what we are doing*.
>
> (Managing Partner, Securities Platform)

Due diligence was also discussed in the expert panel and most of the discussion focused on due diligence processes and the respective difficulty of implementing these processes in a cross-border environment. For example, one platform considered direct communication (i.e. a telephone call) as the only way to get up-to-date and correct information from project owners, but this process was highlighted as extremely time-consuming by another platform. A third platform underlined how digital identities could greatly help in this regard, always considering the respect of IPR and privacy issues.

The consumer representatives also discussed due diligence, but from a specific angle. One consumer representative referred to the artificial software used for the interfaces and how that software is making automated decisions by algorithms, expanding the issue to the whole financial industry, including crowdfunding. The questions that were raised were a) who is controlling these algorithms; b) which data should be included; and c) whether we should limit the data for the algorithms to make sure that consumers are not discriminated against.

Risk warnings

A consensus across all platforms has emerged about the fact that risk warnings are important. Some platforms stated that they include warning signals everywhere on their websites and try to maximise the visibility of these, others mentioned that they publish warnings on every page of their website and inform the investors as best they can. Platforms also mentioned that they use a series of different communication channels to raise awareness in this area. Specifically, they always show risk warnings in their social media posts, reminding consumers that they might lose their capital in these investments.

The interviews revealed that the utmost importance of risk warnings is mainly regulatory-driven. One platform specifically said:

> *The [regulatory] approach for consumer protection is […] always to make one hundred, two hundred, three hundred percent sure that people know what the risks are and this is very deeply rooted in our regulation; you have to have risk warnings everywhere that you can lose all of your money*.

(Managing Director, Securities Platform)

However, some of the platforms questioned the effectiveness of over-emphasising risk warnings. One declared that although they believe in the importance of risk warnings not only for crowdfunding, but for every financial product, they also wonder about their effectiveness when "*nobody reads them*". On a similar note, another platform noted that legal liabilities and ramifications are often quite complex and people find it difficult to fully understand them.

Redress

With regard to redress in case of insolvencies, platforms' answers were negative. One platform explained that much of the process in the event of insolvency is the regulator's responsibility, where the regulator has organised a standardised process and consumers are directed to the people responsible for this process, should something go wrong.

Others mentioned that they may not offer any redress, but focus more on the insolvency process. One stated that they have an efficient debt-collection process in the event that the loan goes to default, and another described in detail how they address this issue:

> *Well, what we always do is we're trying to smooth the process for the investors as much as possible because there's usually a way of insolvency proceedings following the failure of a start-up so what we're doing is we're contacting the insolvency administrator, providing him or her with a list of all the investors, making sure that the administrator has all the information required to contact our crowd investors*.
>
> (Managing Director, Securities Platform)

Finally, an additional different approach was suggested. One platform stated that they did not think that the consumers should be redressed if loans default or when an individual campaign fails, since risk is inherent when making these investments, and compensated with potentially high returns. The platform also added that the investor should certainly be protected as much as possible, but the protection should be against the risk of platform failure, and not project failure.

However, the possibility of redress, specifically collective redress, was raised as a highly relevant aspect by the consumer representatives.

Information disclosure to funders

Project information disclosure was also discussed with platforms. Most use the usual disclosures on projects:

> *We have a template about the team, like what they've done before, like financials – a few years forecast and the balance sheet and audited accounts, the use of money, what are you going to use the money for that you are raising and then about this technical solution or service that they are doing, so pretty basic stuff*.
>
> (Chairman, Securities Platform)

One platform discussed disclosure in terms of alignment:

> *The kind of disclosure which delivers alignment is disclosure which is credible and credible means third party verified and standardized*.
>
> (CEO, Analyst)

Following this principle can help transcend national boundaries and there should not be any regional obstruction in this regard. Although it still requires a certain process of standardisation, it can then be cross-border and international.

Lastly, another interviewee said that disclosure is more important than risk warnings. They noted that if the platforms could clearly demonstrate specific information to the funders, for example what the historic track record looks like, this information would then allow investors to better understand the risk, which is more relevant than any risk warning.

Figure 8: Would you invest with the same confidence through platforms established in another EU Member State?

	YES, I already do invest through platform(s) established in a country different from my country of residence.	YES, I would invest with the same confidence.	I would invest some money through foreign platforms, but not as much as through domestic ones.	NO, I would not invest through foreign platforms	No response
Equity	20.25%	36.08%	31.01%	11.39%	1.27%
Lending	12.66%	15.35%	34.34%	36.23%	1.42%

(ECN Report on Disclosures & Safeguards, Annex 4)

Availability and standardisation of market data

Platforms generally understand the importance of standardisation in calculations, in the context of comparing platforms, but this issue goes beyond individual platforms, as it requires co-operation at industry level, which is even more complicated when taken at cross-border level; however, few were actively involved in such activities.

The lack of standardisation was also raised and thoroughly discussed with the consumer representatives. In practice, every platform can calculate the yields according to their own specific criteria and, as a result, there is evidence that the potential return of products has been overrated by some platforms. European-wide information and disclosure standards are important. Comparison websites could also be created to help consumers make better decisions.

However, platforms mentioned that they have received many requests from companies that were looking for software or websites comparing different crowdfunding platforms based and active in Europe. One platform suggested that this issue should not be approached by legislation, but rather based on supply and demand, so that the main function of this tool should be to help investors and companies make informed market choices.

Financial literacy

There were mixed responses on financial literacy. Some platforms mentioned that financial literacy is quite limited in general and that they put a lot of effort into educating the public, in various ways. One explained that they post blog entries about

thematic issues and run events in which they educate consumers about basic principles, for example how bonds work. Another maintains a blog with articles on their investment model and platform operations, and hosts an active online forum where investors can direct their questions to the platform's analysts and investees.

Others mentioned that funders were generally well-educated. One platform stated that most (even up to 90%) of their investors are experienced investors, while another added that the public that is investing online is already somewhat educated in relevant financial products. Others noted that their portfolio of lenders has at least a minimum of familiarity and maturity in financial investment, while yet others added that most of the questions they deal with are administrative and not related to understanding financial concepts.

One interviewee conducted a survey among their investors to learn more about the people that invest on their platform. According to their results, 95% of users had relevant investment experience, and they went on to say:

> *Not only a little investment experience but a very big part of it.*
>
> (Managing Director, Securities Platform)

They found that their users had been investing in various platforms for several years, and had thus been involved in a continuous learning process, which had lead them to acquire high levels of financial literacy. Similar opinions were also mentioned in the expert panel meeting. In line with these findings, a regulatory body that participated in the expert panel stated that they had not yet received a single complaint from consumers and/or investors, but also underlined how the market is still too young to evaluate whether people are aware of its risks.

Finally, the issue of financial literacy is a bigger problem that is not restricted to crowdfunding, and that goes beyond the responsibility of the individual platforms. It was pointed out that the public educational system could help considerably, if financial education were included in the regular school curriculum.

The consumer representatives also discussed the topic of financial literacy, unanimously and strongly agreeing on the fact that financial education should not be considered a solution to every problem in retail finance and that the financial literacy argument should not replace the accountability of individual platforms.

Voluntary measures

Several platforms mentioned that they just comply with the minimum measures required by the regulators, with one specific platform adding that their national regulator's requests are rather extensive, so they do not need to apply any further measures.

One provided its motivation for not applying further measures in addition to those that the regulator demands:

> *No, it's a waste of time. Because the regulators say 'why are you [going too] far?' [Additional measures] are not meaningful […] You have to use the rules and not reinvent rules. Or you have a problem with acceptance*.
>
> (CEO, Securities Platform)

This implies that the platforms may face additional regulatory hurdles of potential rejections of any additional measures they decide to take. However, this specific problem was mentioned only once and might not be widespread with national regulators.

On the other hand, some platforms declared that they apply additional rules on top of those prescribed by regulation, especially regarding higher levels of detail on the investment opportunity. Moreover, one platform added that they cooperate with national consumer organisations to collect feedback. They subsequently modify their rules on what kind of information they will provide, by adapting to suggestions and feedback thus received.

Specific cross-border measures

Most platforms apply the same rules domestically and cross-border on safeguards and disclosures. This is largely a result of platforms being focused on active investor marketing in their home markets only, where they are regulated, while they leave cross-border fund inflows to word of mouth promotion.

However, there were a couple of platforms that noted that they do differentiate the rules they follow when it comes to cross-border activity. This is certainly true for those platforms that have set up subsidiaries in other markets under local regulation. Each of their subsidiary websites will therefore adjust safeguards and disclosures as necessary to local rules.

However, platforms apply additional measures for investors coming from outside the EU, even though these investors are only a small fraction of their total number of funders:

> *I mean, for external investors, when they are coming from the Eurozone they are in the same way as domestic investors, we are doing additional controls and additional vigilance when it comes obviously from overseas, if they are coming from the Middle East, if they are coming from south-east Asia, if they are coming from the US basically we simply refuse them. So yes, we have additional measures when you come from obviously…*
>
> (Managing Director, Real Estate Platform)

When funders come from different countries, some platforms display a warning that the official contracts will be based on the law of the country where the project originates, clarifying that funders are investing in a project that is not based in their country and that different rules may apply.

Industry codes of conduct and self-regulation

Platforms generally have a positive opinion about codes of conduct and industry bodies. Code of conduct rules, best practice rules and industry bodies are good practice and a very important part of self-regulation and professionalisation. Codes of conduct are also perceived as useful for new entrants to markets, as they provide guidance and help increase investor confidence. On the other hand, during the expert panel discussions, the efficiency of codes of conduct in general was questioned, given the extensive and complex national regulations, and the conclusion was that respecting regulation is more important than a code of conduct.

The discussion framed the problem around the implementation of codes of conduct, as these are often too generic. The ethical aspects of self-regulation beyond legal requirements were also raised, with one platform suggesting that different sets of ethics across Member States would not be a realistic representation of the market, and that a pan-European code of conduct would be preferable.

The consumer representatives spoke out against self-regulation in the absence of legal requirements. They stated that they have never seen a functioning self-regulation system, and that self-regulation simply represents a delay in the development of real regulation. At the same time, it was argued that early self-regulation could also be useful in developing meaningful regulation.

The resulting picture emerging from stakeholder views

Key insights emerging from the qualitative information collected by interviews, focus groups and an expert panel are therefore as follows:

- There is a consensus among the platforms we interviewed that national regulatory frameworks might be relatively burdensome, but at the same time they support the high standards set by the national regulators, which reflect the importance of consumer protection and are a means of increasing the trust of consumers towards the industry;
- In general, platforms share the main principles of their due diligence process, without offering complicated details;
- Most of the platforms highlight the importance of risk warnings, and use a series of different communication channels to raise awareness in this area (i.e. on all pages of their websites, via social media communication strategies, blogs and forums etc.), but there are a few platforms that question the efficiency of risk warnings;
- None of the interviewed platforms offers direct redress, but there are a few platforms that help funders through the process of insolvency proceedings. The importance of redress is highlighted by the consumer representatives;
- Platforms see information disclosures about the project as very important and apply the usual disclosures on projects;

- Platforms understand the importance of standardisation and of the existence of comparison tools, but also mention that this issue should not lie in the field of regulation. The consumer representatives also underline the importance of standardisation and comparison tools;
- There were mixed responses on financial literacy. Some platforms stated that funders seem to be aware of the general knowledge required in crowdfunding with financial returns; however, some other platforms said that financial literacy is quite limited and that they put a lot of effort in educating the public;
- Most of the platforms see the national regulatory framework as adequate; there are, however, a few platforms that go beyond what the legal framework prescribes;
- Most platforms do not apply different rules for cross-border participants, except in specific situations (i.e. funders coming from outside the EU);
- As regards self-regulation, the consumer representatives warn that self-regulation may not work and it simply delays real regulation. Industry codes of conduct are perceived by platforms as important initiatives in ethics, and particularly important for new entrants.

7.4 User perceptions of cross-border crowdfunding regulation

To present an analysis of users' perceptions of whether and how regulation can aid the development of cross-border crowdfunding, we used existing data from a unique database of answers from users (funders only) of crowdfunding with financial returns, where specific questions are being asked about the impact of regulation on cross-border activities. The survey was designed and implemented by Nikos Daskalakis in the context of a cooperation between two expert groups of the European Commission: the Financial Services Users Group (FSUG) and the European Crowdfunding Stakeholders Forum (ECSF).[58]

The analysis presented here focuses on the responses to questions that are directly related to users' perceptions of the regulatory aspects of safeguards and disclosures, as well as the effect of regulation on cross-border activity from the users' perspective.

Looking at the "demand" side of crowdfunding as regards various aspects of regulation and cross-border activity leads to some interesting conclusions. First, on average, one in four respondents are not aware of how the platforms are regulated, and this figure is higher among users of equity platforms (29% versus 24%). Furthermore, equity crowdfunding respondents seem to be more open to investing in projects and platforms from another country; but this result should be viewed with caution, since sampling differences may seriously affect responses. However, the overall pattern emerging from the cross-border section of the survey indicates that irrespective of the type of platform, at least 70% of respondents would invest through platforms

[58] The purpose of the survey was threefold: a) to measure benefit and risk perceptions of users of crowdfunding with financial returns; b) to explore past use of crowdfunding and intentions for future use and compare; and c) to explore certain regulatory issues (e.g. level of awareness and approval of regulation, regulation and trust in the industry, effects of regulatory restrictions, effects of regulation on cross-border activity). The respondents to the survey were registered users on crowdfunding platforms with financial returns. The survey took place between May 2015 and January 2016. The final sample consists of 158 respondents to the equity crowdfunding questionnaire (43% from Germany, 20% from Finland, 15% from Italy and the remaining 22% from other countries) and 632 respondents to the P2P Lending questionnaire (59% from the UK, 15% from Finland, 7% from Italy and the remaining 19% from other countries).

established in other EU Member States (20% of equity investors and 13% of P2P lending respondents already did). A noticeable result here is the comparatively high proportion of lending respondents who indicated they would not invest through a foreign platform (36% versus 11%). These response rates remained unchanged if respondents were asked to consider whether they would invest in foreign projects through their domestic platform.

8. Cross-border platforms: Current practices and innovative potential

The European crowdfunding sector is characterised by a great diversity of approaches and business models. This is now well-documented on the aggregate level.[59] Equally well-documented is the diversity of platforms. For the return-based part of the sector, which is the focus of the present study, the diversity ranges from those oriented towards consumer or business lending, via securities-based and debt-based funding models, to real estate models and invoice trading.

Our research adds a greater granularity of just how diverse – even within any of these general categories – the underlying business, operational and marketing models are. These keep adapting as the market, practices and technologies develop, so that only a snapshot can be provided at any point in time.

When it comes to business models, it is also important to bear in mind the overall methodological caveat that has been expressed above, especially given the fact that the information on business models relates to some of the commercially most sensitive aspects of platform operations. It is fair to say and understandable in this context, that incumbents, while keen to offer transparency about their way of operating, also find themselves in competitive situations and will therefore only share details with some caution.

8.1 Introduction

A first wave of cross-border expansion already happened a few years back, either by acquisition of local competitors or by organic growth. While a number of these expansions ended in failure, notably Europe's first listed lending platform, Trustbuddy, which filed for bankruptcy in 2015[60] after expanding into multiple countries, others survived. But even large players, such as Funding Circle, have been facing difficulties. A recent news report states that the company closed its Spanish operations in 2017 and has rebooted its German and Dutch operations with a new team and approach. All three markets were acquired only in 2015.[61]

But there have also been lessons learned, as one platform states:

> *…[it] was actually largely for commercial reasons and operational reasons as opposed to the regulation really [that we were not successful] but each territory was different. […] and it was really a sort of period of testing these markets and the joint ventures with people on the ground in these territories was quite a cost-effective […] there were other challenges, whether they were operational or just not having enough deal-flow in those territories. It was a good period of learning for us but now I think we're realised it does take a lot of investment to grow any sort of company in different markets and in different territories, you need very, very good people on the ground who you are working closely with […] setting up local language websites which, again, that's a further degree of*

[59] Wardrop, R., Zhang, B., Rau, R., & Gray, M. (2015). Moving Mainstream: The European Alternative Finance Benchmarking Report. Cambridge, UK: University of Cambridge.
[60] https://www.ft.com/content/8342ca10-71a2-11e5-ad6d-f4ed76f0900a
[61] https://www.crowdfundinsider.com/2017/07/119293-funding-circle-germany-takes-fresh-start/

> *complexity, if the regulations and markets are not right it's not worth investing in that technology and infrastructure.*
>
> (General Counsel, Securities Platform)

While it is typical for a dynamic young sector to have many platforms still in the start-up phase, it is also the case that some of the pioneers have now been operating for 10 years and have displayed sustainable resilience already, having been tested by at least one economic downturn. We have an increasing, though still small, number of platforms being profitable.

> *[…] where we come from, the international outlook has been on our side from day one. So basically, since the very beginning we were executing on establishing international [business]. It's difficult to say that there would be any specific struggles or barriers. Sure, we spent quite a bit of time [with the] local regulatory bodies because what we've done basically was something new. We had to sort of educate and explain what we do and how it works and how it works in line with current legislation, […]. With respect to the business side, I would say […], we very quickly got to the other countries because […] we do not lend ourselves. So [investment] from other countries comes from the [deal originators] who are working [with] in other countries.*
>
> (Co-founder & CEO, Lending Platform)

Platform operations can be small, with fewer than 10 employees, or reach levels of more than 200 staff and be operating with subsidiaries in several European countries. In some instances, they have global investor and/or project reach depending on the business model and financial product offering pursued.

There is a clear perception among crowdfunding platforms, independent of how they are regulated or how they are perceived by the market, that what they provide is a marketplace as a service to trading parties on either side of the market:

> *It's pretty much providing a marketplace, the infrastructure itself where people can... Just like in the stock market, you can go to NASDAQ, invest in Facebook, in Apple, in Snapchat and wherever else. In the long run, it's something similar that we would see with [...(PLATFORM3)]. You can come, you can invest and consumer loans originated by a [...(COUNTRY)] company, mortgage loans originated by a [...(COUNTRY)] company, factoring products … originated by a [...(COUNTRY)] company and so on and so forth. We see it essentially as the infrastructure that provides the marketplace itself for both parties, investors and the loan originators, to deal with one another.*
>
> (Head of Operations, Lending Platform)

The core of most business models is a fee-based revenue model, whereby the funded party and/or the investing party are charged fees for the market making services of the platform, both at the point of onboarding, and maintenance fees. Platforms are also increasingly devising add-on fees for ancillary services such as listing in a secondary market or more flexible payment schedules, as well as higher levels of support or notification. Beyond that, operation can be quite different, and often dictated not just by the kind of crowdfunding that the platform engages in but also by regulatory constraints and requirements.

8.2 General issues in platform operations[62]

Crowdfunding platforms aiming at cross-border transactions need to comply with different sets of national or EU regulation, as already discussed at length in section 6.3 above. As we have seen, the set-up of the platform is the dominant factor here, as well as the EU Member State that the platform is incorporated in and the specific financial deal structure offered. Following on from the regulatory set-up, platforms can operate cross-border to varying degrees. There is no one model that has proven itself beyond doubt and none of the models is without hurdles. Several approaches can be identified across the sector. From the sample we worked with, we can identify at least six different models.

There is widespread concern among platforms that regulatory frameworks exhibit a range of inconsistencies, which create confusion among retail investors because of conflicting frameworks.

For example, a platform regulated by its domestic market conduct authority reports that, because it operates within the exemptions of the Prospectus Directive, it is required to display a prominent banner on its website: "Attention! This investment falls outside [domestic market conduct authority] supervision. No prospectus required for this activity". At the same time, the platform is properly licensed with the domestic market conduct authority and obligated to display this on their website too. This creates a real threat to consistent communication. The platform is doing its best by providing immediate links to explanatory information and a helpline, but any site visitor unfamiliar with the situation is likely to be confused:

> *Some people on our website think we have no licence so it's very confusing for our investors. We're one of the heaviest regulated crowdfunders in [our country] or even in Europe and yet on our website there is a big bar on top of the projects saying 'this actively falls out the supervision of the regulator. That's really confusing and we've been in discussions with the regulator. (It doesn't seem to work)*
>
> (CEO, Securities Platform)

The same platform also points out that some of the basic distinctions that have shaped the perception of policymakers and regulatory authorities as to the basic categories of crowdfunding are considerably more nuanced in practice:

> *The model we've chosen is to get the licence as a broker and one works with loans, the other works with debt-based instruments and then there is other organisations that do now follow one of these two regimes but do their own stuff. For example, they are unregulated so intermediate form, so there are many different forms of regulation, forms of crowdfunding and different forms of crowdfunding are regulated differently. There's debt-based instrument and there's loan-based and basically that is confusing for crowdfunding investors and we've had that situation for a long time [in this country], not seeing that improving, to be honest.*
>
> (CEO, Securities Platform)

[62] This introductory section to the following more detailed analyses of business models offers a broad synthesis and introduction to general features of the crowdfunding sector, partly drawing from survey results, interview data and case study material but also industry common knowledge and informal feedback from respondents. Wherever points of detail assume substantive importance for subsequent points of analysis they are explicitly attributed to specific sources.

The platform is therefore not marketing itself explicitly as a P2P or marketplace lender, or a securities-based crowdfunding provider. Instead, where loans are the relevant instrument the language used draws on lending terminology, and this may also extend to debt-based securities.

This scenario becomes more complex if the platform model is based on facilitating entrepreneurial loans in third countries, where those loans are not contracted directly but issued through an SME or NGO intermediary, or a special purpose investment vehicle (SPV), which is the de facto contracting partner for the crowdfunding investor, who may have invested in a debt-based security. In terms of marketing, platforms are keen to strike a balance between keeping the message simple on the one hand, and ensuring all relevant information is disclosed according to applicable rules and regulations on the other. In their investment decision, retail investors may still be driven by the motivation to contribute to a micro- or meso-finance loan, while their actual transaction is in securities.

Platforms operate under a range of licences and corporate forms, depending on the regulatory context at the time they set up business. On the lending side, some platforms are thus set up and licensed as credit providers. Others are set up as financial advisers, and still others keep the financial side of operations at arm's length, whereby they partner with a licensed payments provider, and themselves focus on technical platform operation and matchmaking. On the securities side, some platforms are set up as broker/dealers while others act as investment advisors, some under specific national regulatory regimes, others under MiFID. In terms of general marketing communications and investor acquisition, there is a variety of different messages regarding how crowdfunding platforms fit into established categories and how they can communicate what they do to the market.

8.2.1 Crowdfunding and traditional finance

Before looking at business models in closer detail, we note the following as regards the overall positioning of crowdfunding models vis-à-vis traditional finance in the eyes of stakeholders themselves, in the context of several practical issues. Overall, lending platforms see themselves as an alternative to the traditional high-street bank, while equity platforms see themselves as transparent, digital market places for investment opportunities in small-sized business as compared to incumbent forms of private risk capital. This has been a motivational factor for the founding partners of a platform operation, and it describes the general ethos of the sector. At the same time, a significant number of senior executives and founders have previous professional experience in traditional finance. Some lending platforms have begun to position themselves vis-à-vis the banking sector in more cooperative ways, which can even extend to consideration of setting up challenger bank structures:

> *We are looking now to stay in front with the customer centricity, we are thinking that we want to offer more products to our customers and we figure the best way to do that is probably to launch a bank.*
>
> (CEO, Lending Platform)

There is some concern among platforms that regulatory requirements are beginning to run counter to the self-declared original motivation of the crowdfunding sector to act as an agent of change seeking to alter the face of retail finance. They note that the

increasing number of requirements that investors must fulfil when signing up to a platform may make them wonder what advantage it has over a traditional high-street bank. Considering that investors must increasingly undergo similar bureaucratic processes with crowdfunding platforms, one platform representative states:

> *Our crowdfunding customers think that working with crowdfunding represents a too big effort, that crowdfunding is, in that sense, losing its charm. Yes, we're a bit frustrated by all the regulations that we have to comply to.*
>
> (CEO, Securities Platform)

There is also some perception that existing retail environments have grown up in support of traditional bank business, with the result that new entrants who follow a different model can be disadvantaged, for example in their ability to access credit data:[63]

> *In many countries, there are good registries but only the banks have rights to access it, no one else so loads of bricks and hurdles.*
>
> (CFO, Lending Platform)

More generally, whereas crowdfunding is often hailed as a disruptive innovation in direct challenge to the traditional banking sector, there is a perception among platforms that the position of the traditional part of the sector is sufficiently entrenched, in continental Europe, to maintain noticeable barriers to entry vis-à-vis disruptive competitors.

8.2.2 Marketplace lending

The lending part of the sector operates under quite different requirements, for example depending on whether the platform is engaged in consumer finance or business finance. Loan-based consumer finance typically concentrates on unsecured loans. Origination is either through established retail channels as personal loan, or as point-of-sale finance.

There is a dimension of personal loans that reaches into business finance when it comes to sole traders, and some platforms pitch to this part of the personal loans market:

> *So the only business loans that would be – anything that would be given to the sole trader and that's regulated like a consumer lending loan so we do not do any SME lending or any business lending but as an individual and you want some money, I will look at it and say 'you want it for a business, that won't stop me from lending to you', and then I would do my credit assessment as I normally do and give you a loan but I'm just looking at you, I'm not looking at how good your business is or is it a good idea or a bad idea but I'm just looking at you as an individual and saying 'will you pay back?'*
>
> (CEO, Lending Platform)

[63] See also the discussion of 'measurement costs' in section 6.2.2 above.

This can also extend to offering personal loans to sole traders in some niche markets against some limited form of security (e.g. a vehicle, if it is a taxi business).

Platforms focused on personal loans typically rely on credit scores, augmented by proprietary algorithms in some cases. For business loans proper, this gives way to due diligence on SMEs that seek to onboard. Depending on the success and reputation of the platform, this can allow it to be highly selective:

> *We do receive a lot of companies that want financing – each month we receive about between one and two thousand companies wanting funding; but, as we accept on average ten companies a month as of today, we can say our selection is quite strict on the risk side.*
>
> (CFO, Lending Platform)

Business lending platforms tend to focus on capital credit to small SMEs, with deal sizes, at the lower end, in the region of €10,000 and depending on the market and the regulatory constraints, reaching into the range of several hundred thousand euros and, in some more limited instances, even more. This is significantly higher than with a typical consumer lending platform, where individual loans can average in the low €1,000s. Among platforms with high deal flow and a well-established investor base, automation is beginning to be used to speed up the funding process once an investment opportunity has cleared due diligence and appears on the website for investment. This is done through the use of automatic lending routines that investors can tailor to their preferences and which, for smaller loans, can be completed almost instantaneously with an immediate decision conveyed to the SME.

In order to be able to offer adequate funding liquidity, one can find both personal and business loan platforms working with institutional investors and funds, the latter sometimes set up by the platforms themselves. Automated matching allows institutional and retail investors to be given parity in investment allocation. Where a retail investor base is exhausted, the gap can then be closed through partnering with an institutional investor. Some platforms use an auction mechanism for the market matching, others are more hands-on in pledging an interest rate and duration to the SME, which is then serviced through the retail and institutional investor base.

8.2.3 Securities-based/equity crowdfunding

Turning from marketplace lending to equity/securities-based crowdfunding, the scale of financing increases while the throughput becomes more limited. In specialised niche markets such as renewable energy crowdfunding, deal flow can more resemble that of bespoke project financing and the capacity of a given platform operation may be limited to campaigning for, at most, a handful of large infrastructure projects at any given time. In comparative terms though, investment volumes are still very much at the low end of the scale.

Unlike lenders, securities-based crowdfunding is de facto business finance, and deal origination is largely focused on SMEs. However, the sources of revenue are similar in kind, if not scale, and again include listing fees and add-on service and maintenance charges. Given the lower deal flow and the focus on business finance, fee structures reflect this, as for example reported by the following respondent:

> *We have a commission, we have a pretty transparent revenue model so we do €5,000 set-up fee which is in two shares, the first pilot is when we sign an agreement that we want to do it together, it's €3,000 for the due diligence part*

> *and then it's €2,000 for preparing the campaign …. And then 5% from the capital which has come through the platform and then we have a monthly or you can also aggregate it yearly, fee for the SPV and the infrastructure for the investor relation part which was €350 per month.*
>
> (CEO, Securities Platform)

On the investor side, one can observe a broad mix of investors. As with marketplace lending, these often comprise small-scale retail investors, in some cases alongside institutional investors, but there is added diversity on the investment side coming from angel and venture capital investment. Drawing boundaries in this regard between private retail investment and professional investors may not always be very meaningful:

> *Where does crowdfunding end and traditional Equity Capital Markets begin? For whatever crowdfunding is, however you define it, we don't have institutions at the moment. We do have the professional investors, the professional business angels, I think the biggest single ticket from a crowdfunding investor, whoever that is, is €250,000 and then (institutional), of course that's millions.*
>
> (Chairman, Securities Platform)

Overall scale is thus presently still in a range below the scope of meaningful institutional involvement in many cases, and where institutional investment plays a role, it tends to come from smaller institutions:

> *We've got quite a few smaller institutions who have signed up in a corporate capacity. But we also have quite a lot of (corporate) investment in our businesses alongside the (crowd) and either businesses are institutions that the business itself has brought, so the investee company already has an institution and would like to combine a crowd (round) with an institution. Or they are an institution that we already know so we might introduce that institution to the investee business.*
>
> (Chief Legal Officer, Securities Platform)

Given the focus on securities, it is more straightforward to accept incoming investment from other countries and many securities-based crowdfunding platforms report a significant international reach, accepting incoming investment from over 60 different countries. In value terms though, for most platforms this does not exceed 20% of business and in general this number appears to be well below 10%.

The actual investment model in securities-based crowdfunding differs according to regulatory constraints that determine the degrees of freedom for this kind of crowdfunding in each Member State. In some legislatures, Germany being a prominent example, securities-based crowdfunding operates through profit-participating loan structures, under which platforms practically emulate the operation of an equity investment so that in many ways the investor experiences it as such. This is in some ways not too dissimilar from certain nominee structures used in other markets. The common feature is that in marketing terms, the platform refers to the investment as equity crowdfunding, while the actual underlying vehicle may be more complex and carefully tailored to the project.

8.2.4 Business models as applied in cross-border transactions

On the basis of the information gathered, none of the solutions analysed was assumed to be flawless by the platforms, though at least one platform believes it has found a

working model that enables relevant cross-border transaction to some degree while scaling operations to profitability. However, most platforms engaging in cross-border activities are experiencing high operational cost and are dependent on further scaling up their activities. In short, the following six general approaches can be identified from the material gathered for this study.

- The platform operates via distinct subsidiaries or businesses in each Member State under local legislation.
- The platform acts via a partner to collect investment from investors outside the home Member State.
- The platform operates under some sort of EU licence (usually MiFID), which in theory allows the platform to have its status as a financial service provider accepted in other EU Member States but operating under the supervision of the regulator in its home Member State.
- The platform pools investments in a special purpose vehicles (SPV) that under national rules can make cross-border investments on behalf of the crowd.
- The platform is allowed under local rules to accept cross-border investments for predominantly local deal-flow.
- The platform focuses on operating a brokering marketplace, accepting cross-border investments under national rules while partnering with locally licensed or approved deal originators in the target Member States.

Table 3: Overview of cross-border business models in use

	Business Model	Approach	Pro	Contra
1.	Operation via distinct business in each Member State under local legislation	A separate legal entity or joint venture run by a local partner is launched or acquired under local regulation in each Member State in which the platform operates	c. Avoids compliance cost under EU regulation (MiFID etc.) d. Provides a local footprint for the platform brand	c. Separate local regulatory approval process can be lengthy (up to 1 year) and thus costly d. Replication of all or some operations on the ground is thus dependent on the local team's ability to create success, at least with deal origination or customer support
2.	Operation via a partner platform to collect investment from investors outside the home Member State	A dedicated partnership with another platform in a different Member State is formed, where the investment opportunity is mirrored by the partner platform either via a special purpose vehicle or directly, if and	c. No need for expansion of operations and expertise into new markets d. No need for additional compliance cost as both partner platforms already operate under the supervision of the	c. Time-consuming to identify a partner platform with trusted professional set-up d. Set-up of SPV at partner-level platform to pool investments and allow for cross-border transaction

		where possible	relevant national regulators	
3.	Operation via EU licence for the platform as a financial service provider	Platforms are MiFID-compliant and passport their national licence into other EU Member States to offer their services cross-border, MTF structures also possible	c. Added value of increased professional management d. Recognition with national regulators and related marketing	c. Costly and time-consuming to set up, plus ongoing compliance cost d. Unclear benefits as some aspects of the platforms operations may remain under national rules and the replication of the home market business model is in most cases not possible cross-border
4.	Operation via special purpose vehicles (SPV)	Platforms structure special purpose vehicles under local regulation that allow the collection of funds (either local only or also from abroad) to make investments locally or cross-border	c. Bundled representation of diverse investor group within the target company d. Investor relations managed via the SPV (usually via the platform)	d. Cost of setting up an SPV e. Additional management needs for the ongoing operations of the SPV f. National restriction regarding co-investments
5.	Accepting cross-border investments (for predominantly local deal-flow)	Platforms that are not restricted by Member State regulation allowing fund inflows to participate in investment opportunities	c. Low cost for set-up d. Better results in web searches	d. No active cross-border marketing of financial services possible e. Uncertainty about what manifests active marketing in regulators' views f. Uncertainty about use of languages due to varying interpretations by Member States
6.	Brokering cross-border investments to local (and other) investors	Platforms that offer investment opportunities to local investors (and others) but refrain from engaging in deal origination and work with local partners in Member States	d. Low-cost set-up for the platform e. Limited regulatory compliance f. Benefits from cooperation with established local partners	c. Focus on the brokerage of transactions restricts quality control in deal origination d. Not applicable for securities

8.3 How platforms currently expand cross-border: Best practices

For platform operators, each of these approaches presents market and operational hurdles which need to be successfully overcome. The decision if and what solution is

possible depends on the national regulation and interpretation of EU rules, but even once a legal solution has been identified, and all compliance issues have been dealt with, significant hurdles to market entry still exist.

Overall, the costs associated with regulatory compliance, both national and European, have created a significant burden on crowdfunding operations. The fragmentation of the national regulatory regimes increases the overall costs. Particularly, even for platforms successfully operating within a number of EU Member States, platforms acknowledge that business would not be viable if an investment and compliance team for each Member State had to be recruited, but that synergies must be created to reduce operating cost.

8.3.1 Operation via distinct business in each Member State under local legislation

Business Model	Approach	Pro	Contra
Operation via distinct business in each Member State under local legislation	A separate legal entity or joint venture run by a local partner is launched or acquired under local regulation in each Member State in which the platform operates	a. Avoids compliance cost under EU regulation (MiFID etc.) b. Provides a local footprint for the platform brand	a. Separate local regulatory approval process can be lengthy (up to 1 year) and thus costly b. Replication of all or some operations on the ground is thus dependent on the local team's ability to create success at least with deal origination or customer support

In this case, a platform operator either founded or acquired a separate legal entity. In some cases, this was achieved through a joint venture run by a local partner, under local regulation, in each Member State in which the platform operates. The separate local regulatory approval process can be lengthy, depending on the business model:

> *The main reason is regulatory, the other is inherent to the business. [Our] business is multi-local and not global as, let's say the Amazon marketplace is, where you could have sellers and buyers from basically anywhere in the world on the platform. As a [platform], you need a local presence to seek companies and then there is the language, culture and the law applying to the contracts so we need a local team in order to develop this activity. While we could potentially passively accept borrowers from other countries, aside from the regulatory constraints, would remain the issue of the applicable law. If we were to recover a specific project in a country we are not yet present, we would have to go to the local court and follow the local judiciary proceedings. Those constraints and complexities mean that if we would need to be present in that country before accepting a project.*

(Director, Lending Platform)

This avoids regulatory compliance costs under EU regulation (MiFID etc.), but increases the operational cost as each local operation needs to comply with national rules and needs to have adequate resources and staff. For back office and systems used, synergies can be created, but deal origination, investor relations and public relations are needed in each separate local operation.

The platform creates a local footprint in the market for the platform brand, which helps both with investor traction and deal origination.

Replication of all or some operations on the ground is thus dependent on the local teams' ability to achieve success with deal origination or customer support, at least. Depending on the local regulation, this might also allow the platform to offer investment opportunities from all local offices to all investors registered on the platform in all Member States. To successfully scale such expansion, a relevant market uptake is needed. In markets with existing competition, a new entrant might find it difficult to secure quality deal flow in competition with established players.

Case Study 6: Companisto

Companisto				
Location: ***Germany***	Countries active: *DE*	Year Founded: *2012*	Regulatory framework: *Investments Products Act (Vermögensanlagengesetz)*	Main products: *profit-participating loans (partiarisches Darlehen); subordinated loans (Nachrangdarlehen)*

Cross-border experience and impact on business:

The platform operates mainly in Germany with a small amount of cross-border activity in Europe. The majority of fund inflows and deal origination comes from Germany**.** There are small percentages of fund inflows (3%) and deal origination (less than 5%) coming from the EU and a small percentage of fund inflows coming from outside the EU (5-7%).

Due to the particularities of the German crowdfunding regime regarding the investment products that can be offered by crowdfunding platforms (mainly profit-participating loans and subordinated loans), cross-border activity for the platform is more challenging than for other platforms in other Member States. Member States that allow for equity to be offered by crowdfunding platforms do not recognise the German profit-participating loan (the main investment vehicle for crowdfunding platforms) as a tradeable security. Consequently, it becomes hard for German platforms to attract deals and investors from other countries. Moreover, the scope of EU legislation applicable to offerings of financial instruments that can also be applied in the context of crowdfunding will not cover the German equity-like profit-participating loan – as it does not qualify as a security – unless there is an explicit provision regarding the German crowdfunding regime in the EU legislation.

The significant operational cost of expanding cross-border needs to be matched by either scaling up the overall funding volume or by increasing individual funding rounds, as the platforms' margins are generally calculated as commission on the transaction value raised. As a result, smaller markets have higher operation (and

regulatory) costs in relation to the potential benefits. The decision to enter a new market requires evaluation of the regulatory environment and of the market potential.

Furthermore, different company laws and finance structures also present hurdles to cross-border operations. National interpretations of the legal requirements as to which legal entities can raise finance through crowdfunding (e.g. public or private companies) and how a security is defined vary significantly across Member States.

8.3.2 Operation via a partner platform to collect investment from investors outside the home Member State

Business Model	Approach	Pro	Contra
Operation via a partner platform to collect investment from investors outside the home Member State	A dedicated partnership with another platform in a different Member State is formed, where the investment opportunity is mirrored by the partner platform either via a special purpose vehicle or directly, if and where possible	a. No need for expansion of operations and expertise into new markets b. No need for additional compliance cost as both partner platforms already operate under the supervision of the relevant national regulators	a. Time-consuming to identify a partner platform with trusted professional set-up b. Set-up of SPV at partner-level platform to pool investments and allow for cross-border transaction

In this model, a dedicated partnership is formed with another platform in a different Member State, where the investment opportunity is mirrored by the partner platform either via a special purpose vehicle or directly. However, platform operators need to develop trust in each other's professional abilities, especially in the deal origination and due diligence executed by one of the platforms, and spend time on structuring the transaction.

This was done successfully by French debt platform Lumo, as the deal originator, with Dutch debt platform OnePlanetCrowd managing a special purpose vehicle for investors in the Netherlands to co-invest alongside the French investors. The cooperation between the platforms helped circumnavigate French regulatory restrictions that prevent Lumo from accepting any investments from non-French citizens. Both platforms were able to benefit from the lack of extra operational cost and effort that would have been required to set up a separate subsidiary. Any replication of this model is dependent on potential partners and requires adequate deal flow.

It is unlikely to serve as a model for other platforms, but is a possible structure for platforms operating several subsidiaries across Europe. It contains further restrictions regarding the use of special purpose vehicles (see below).

Case Study 7: Lumo

Lumo				
Location: ***France***	Countries active: *FR*	Year Founded: *2012*	Regulatory framework: *Conseil en investissement participatif (CIP)*	Main products: *Debt/Loan; Subordinated convertible loan*
Innovative Business Model: In April 2017, Lumo and OnePlanetCrowd launched a campaign to fund the solar park Torreilles, located near the city of Perpignan in southwestern France. The two platforms have developed a solution to remove the barriers to cross-border crowdfunding in Europe. This makes it possible for both French and Dutch citizens to participate in a European project that contributes to energy transition. The project is in France, the developer is based in Ireland, the crowdfunding deal-originating platform is from France and the second platform from the Netherlands. A German bank has made a €20 million loan to fund the project in parallel to the crowd. The funding of the project was successful. But the business model is only partly replicable under the same conditions in other countries. Generally, bigger projects and higher volumes of projects are needed. Other barriers include the different regulatory regimes, the language and cultural barriers (lack of knowledge of the local market).				

8.3.3 Operation via EU licence for the platform as a financial service provider

Business Model	Approach	Pro	Contra
Operation via EU licence for the platform as a financial service provider	Platforms are MiFID-compliant and passport their national licence into other EU Member States in order to offer their services cross-border, MTF structures also possible	a. Added value of increased professional management b. Recognition with national regulators and related marketing	a. Costly and time-consuming to set up, plus ongoing compliance cost b. Unclear benefits as some aspects of the platforms operations may remain under national rules and the replication of the home market business model is in most cases not possible cross-border

Some platforms are MiFID-compliant and passport their licence into other EU Member States in order to offer their services cross-border. A main benefit of this approach is the added value of increased professional management and prudential behaviour of the platform. It also helps with recognition with national regulators and marketing activities. For smaller platforms, the cost and compliance-related efforts are high.

Overall, the direct benefits remain unclear as some aspects of the platforms' activities may remain under national rules, especially consumer protection laws, prospectus rules and taxation. And while passporting the MiFID licence into all 28 EU Member States is possible, national regulation frequently restricts the opportunities to carry out all aspects of crowdfunding, as not all regulation is structured around the platform operations. The replication of the business model – and deal structuring – of crowdfunding platforms cross-border is especially hindered by bespoke national crowdfunding regimes and different national interpretations of prospectus rules.

> *No [we do not use our MiFID license], we could do but we have chosen not to because of the uncertainty that exists between passporting businesses and the individual regulatory structures within each individual country. So, all the investors come to was on a reverse solicitation basis, so we don't market to them.*
>
> (Director Legal, Equity Platform)

Taxation is another significant burden to platforms' cross-border operation. Having different tax structures in every Member State makes cross-border business difficult. For example, a harmonised approach as to what is tax-deductible and what is a tax benefit, leaving room for national variations limited to a percentage range, would make a noticeable difference in cross-border crowdfunding. The lack of harmonisation of tax incentives for risk capital investors further limits cross-border investments.

Case Study 8: WiSEED

WiSEED				
Location:	Countries active:	Year Founded:	Regulatory framework:	Main products:
France	*FR*	*2008*	*AMF General Regulations for operating as PSI – Investment services advisor (Prestataire de services d'investissement); Crowdfunding Act, CIP – Crowdfunding investment advisor (Conseil en investissement participatif)*	Equity; bonds
Cross-border activity and impact on business: The platform operates in France with 1% cross-border fund inflows from Belgium, Switzerland, Luxemburg, and Asia. Its deal origination is France-based, though its regulatory status as an investment services advisor allows it to carry out cross-border crowdfunding.				

However, high compliance costs on the national market make expansion, with its increased operational cost, unattractive for the time being. For the platform, the cost of hiring staff (in communication, IT and compliance) and the actual time spent to make sure that the platform complies with regulation is significant. On top of such costs, there are also the payment service provider fees. Overall, some 30% of the working hours are spent on regulatory matters.

Technological developments are a huge milestone in building an effective regulatory framework. For example, KYC models that make the screening of investors more efficient, the improvement of payment processes on the platform and a digital authentication such as the Estonian e-residency or possibly an equivalent EU citizenship would ensure the path towards completely unfettered digital cross-border business.

To limit the regulatory restrictions, platforms chose to expand into countries that have a similar regulatory regime, a regulator that is open and understands the market, a market with a cultural and/or geographic proximity and a market with sufficient growth potential. In the end, platforms still have a need for local operations and are opening offices or subsidiaries on the ground in each Member State of operation to manage deal origination, investor relations and marketing.

> *Our [other Country] business is growing very rapidly. The [Country] market is already, in some ways, getting mature. So, the growth of international markets is really important and I think - this is very much an estimate without any formal projections – but we can certainly look to grow our business so that 10 or 20% of our business is from around Europe in the next two years and beyond that, hopefully much more. But some of the regulators around Europe need to catch up first and open their markets.*
>
> (General Counsel, Equity Platform)

Several platforms are currently MiFID-licensed, though not all are active cross-border due to the operational cost the expansion – the setting up of a new office and team – would bring with it. Furthermore, even if platforms are MiFID-compliant, this does not necessarily mean they are able to expand cross-border due to the significant operational cost and lack of local expertise in other markets, and also due to additional restrictions that national regulation imposes.

8.3.4 Operation via special purpose vehicles (SPV)

Business Model	Approach	Pro	Contra
Operation via special purpose vehicles (SPV)	Platforms structure special purpose vehicles under local regulation that allow the collection of funds (either local only or also from	a. Bundled representation of diverse investor group within the target company b. Investor relations managed via the SPV (usually via the	a. Cost of setting up an SPV b. Additional management needs for the ongoing operations of the SPV c. National restriction regarding co-

	abroad) in order to make investments locally or cross-border	platform)	investments

Some platforms structure special purpose vehicles under local regulation that allow the collection of funds in order to make investments, both locally and cross-border. The ability for the SPV to invest cross-border depends on the local regulation. The model increases both cost and operational requirements for the platform due to the setting up of the SPV and its additional management needs.

The bundled representation of a diverse investor group within the target company results in clearer management of the investor interests and allows for investor relations to be managed via the SPV – which in turn is usually managed by the platform. However, there are also some restrictions on the applicability of the SPV model within national regulation that might make its use for cross-border or other transactions difficult.

> *Now I talked about our very conscious decision not to market to investors elsewhere in Europe. The options that we have is either we do a true cross border crowdfund and we have investment operations across Europe but we effectively have to comply with twenty-eight potentially crowdfunding regulations and applications of prospectus directives across the way, which is just not cost-efficient and makes completely no sense for an online platform. Or, we do what we're doing now and limit ourselves really to [Country], with some access elsewhere, but not having the option to push up the growth. So that is a real obstacle both in terms of prospectus stuff and individual crowdfunding rules. […] it would not be cost-effective, it would not be a viable business model for us if we had to have individual investment and compliance staff and regulatory costs in each of the member states.*
>
> (Director Legal, Equity Platform)

For example, national regulation under the CIP status does not allow cross-border crowdfunding in France, while the latest amendment of the crowdfunding regulation in Germany prohibits the involvement of the platform in the SPV, which may lead to platforms having to adapt their business model. In other countries, the national regulation does not restrict crowdfunding platforms from offering pooled investments in SPVs and the model can be cost effective.

The bespoke crowdfunding regimes and the securities legislation of the individual Member States remain significant obstacles to cross-border transactions with SPVs. The incompatible implementation by individual Member States of European directives, especially the Prospectus Directive, causes high administrative costs for platforms. The lack of standardised rules across Member States results in higher operational cost for deal origination, especially in countries where a platform does not yet have a physical presence.

The fragmentation of crowdfunding regimes across the 28 EU Member States and the different applications of the Prospectus Directive, and the resulting administrative costs, are essentially what prevent platforms from marketing their products cross-border.

8.3.5 Accepting cross-border investments

Business Model	Approach	Pro	Contra
Accepting cross-border investments (for predominantly local deal-flow)	Platforms that are not restricted by Member State regulation allowing fund inflows to participate in investment opportunities	a. Low cost for set-up b. Better results in web searches	a. No active cross-border marketing of financial services possible b. Uncertainty about what manifests active marketing in regulators' views c. Uncertainty about use of languages due to varying interpretations by Member States

Platforms that are not restricted by Member State regulation regarding cross border fund inflows are in general able to let investors from other Member States (and beyond) participate in investment opportunities.. However, in order to exploit this opportunity, platforms need to generate relevant publicity about their activities so as to attract investors from other Member States. In general, the set-up and operating costs are low to none. Relevant adaptations to their website can also increase platforms' searchability on the internet. However, due to EU regulation, in most cases the marketing of the platforms' services or the investment offerings cannot be marketed cross-border.

> *[…] I mean the reason why we're having [Country] is exactly what you mentioned: it's the same language, they are from – from the cultural point of view they are very close to [us] and the markets are also very much linked. […] I think the key for getting investors from other European countries is offering deals so investment opportunities from other European countries. When you are not doing this, you will not see big numbers of foreign investors being active so the only possibility to really grow your investor [base] from a different European country is [by] offering deals from other countries […]. I do not really expect, to be honest, […] a lot of crowdfunding platforms that are strong in one of these big markets, trying to enter one of the other markets because the competition on the ground is probably already too strong […].*
>
> (Managing Director, Equity Platform)

For platforms not licensed under EU regulation, this creates uncertainty as to what manifests active marketing in other regulators' views; for some, simply translating a website into another language could be interpreted as active marketing. The varying interpretations of national regulators have ensured that platforms are careful about how to promote the opportunities to invest or raise funds.

> *We have been testing [marketing] and still are trying out different approaches, whether there's free money if you start the account, we used to have that – if you start the investor will get five Euros to start with and then we have some other incentives or whatever so there are different approaches, or approaches we are constantly testing and improving*.

(CFO, Lending Platform)

Additional marketing is usually restricted and thus platforms rely on word of mouth. There are, of course, things that are not restricted that a platform can do to enhance its visibility, but the impact remains less significant.

8.3.6 Brokering cross-border investments to local (and other) investors

Business Model	Approach	Pro	Contra
Brokering cross-border investments to local (and other) investors	Platforms that offer investment opportunities to local investors (and others) but refrain from engaging in deal origination and work with local partners in Member States	a. Low-cost set-up for the platform b. Limited regulatory compliance c. Benefits from cooperation with established local partners	1. Focus on the brokerage of transactions restricts quality control in deal origination 2. Not applicable for securities

There are platforms that offer investment opportunities in loan portfolios to investors across several Member States. They refrain from engaging in deal origination and work with local partners in Member States. This allows them to focus on operating a marketplace and keeps the set-up and operating cost low. This also helps with regulatory compliance. This cooperation with established local partners can create benefits in terms of deal value and volume of origination. The focus on the brokerage of transactions restricts quality control for the platform to ensuring it works with relevant partners.

> *It depends on market by market and it depends on what side of the marketplace we cover. [If] it's on the loan originator's side then basically the first step we do is legal due diligence on the loan origination side and to understand if we need any sort of specific permissions or anything to deal with the consumer or business loans from the respective country as a marketplace. Of course, the loan originators, they do have their own sort of regulatory licence in place for lending but we of course have to check if we need anything.*

(CEO, Lending Platform)

This model does not work with securities, so for the time being is seen only with loan portfolios. Restrictions on marketing financial services are also an issue here and marketing outside of the home Member State has to be by word of mouth. New markets need to have relevant growth potential and an existing non-bank or alternative finance sector, as cooperation with local partners remains vital. In this way, platforms operating under this model provide liquidity. Therefore, market potential hinges on the existing actors already in the market.

8.4 Cross-border business: Remaining challenges

The fragmentation of crowdfunding regimes across the 28 EU Member States and the resulting administrative costs are essentially what prevent platforms from marketing products to investors outside their home markets today. Crowdfunding platforms are exploiting a multitude of options to establish some form of cross-border market activity.

While there are a few platforms that can claim to have reached operational and financial sustainability in their cross-border operations, this has been achieved by selecting markets that allow the platforms' specific models to be marketed at reasonable compliance cost as well as markets with comparatively low entry points and with sufficient demand for the product on offer. The potential to replicate these platforms' approaches is questionable, as they largely stem from the regulatory environment in their home markets.

In the larger markets, increasing competition is putting additional pressure on platforms to deliver high value services at a viable price. Platforms need to focus their efforts both on remaining competitive in existing markets and on creating a competitive advantage in any new markets it might enter. This is costly and time-consuming, and requires direct access to local networks and market knowledge.

The necessity of analysing a new market, its laws, taxation and business conduct requires a significant upfront investment platform. Due to the varying national approaches, best practices can only develop very slowly, as platforms from the same Member State expand cross-border into the same new markets. The investment of time and money to assess a new market is:

> *Quite a lot. It would depend on whether there is an existing regulation or not of course. The first thing that we do is to identify and select a law firm which has experience in our business and will be able to accompany us through either getting a licence or putting in place the necessary legal* framework*. There are many aspects such as the ways to shape and to conform the different contracts to the local regulation, the taxes aspect both for the lenders, for the borrowers and the contractual relationship we can have with partners, the advertising you can and cannot do, it starts with the way to set up a company, with the employment rules so many, many legal aspects that need to be considered to ensure that we can actually start operating. So, it's quite an investment.*
>
> (Director, Lending Platform)

We did not find conclusive proof that any model discussed here would lead to success. For now, there seems to be a mix of geographic and regulatory arbitrage behind the decision-making process of the platforms. The ability to reach scale in the home market, which in general should equate to better financial results, and thus larger investment in growth, is a clear advantage in cross-border expansion. However, platforms in Member States with small markets claim they will not be able to reach scale.

It is significant that platforms have experienced the problem of being fully MiFID-compliant, yet not being able to the expand their services into other EU Member States because interpretations of the legal framework of crowdfunding within Member States subsequently could not be reconciled. In this regard, comparable legal

frameworks at a Member State level, or the acceptance of the legal framework of one Member State by another, might be helpful.

The issue of high taxes applied on revenue and returns remains a barrier to stimulating investment in most Member States. Tax netting of gains and losses at a minimum, and potentially other incentives, should be more seriously considered as a solution if risk investment in SMEs by crowd investors is intended to play a part in fuelling the economy and creating employment and growth. Moreover, variations in company laws and finance structures across Member States also present hurdles to cross-border operations. National interpretations of the legal stipulations as to which legal entities can raise finance through crowdfunding (e.g. public or private companies), and how a security is defined, vary significantly across Member States.

Cultural and language barriers have not been addressed as part of this study beyond the reference to their general structural relevance for our discussion in section 6.2 above. They clearly remain an integral aspect of the challenges faced by the Capital Markets Union and warrant further study. In crowdfunding, it is important for a platform to understand each Member State market it wants to serve and to offer its services and products in the local language. This is important in order to foster consumers' trust in the products as well as for consumer protection. But it is also important for individuals, projects and SMEs raising finance. On the other hand, regulators and policymakers also need to understand this new market, change their understanding of how financial services are conducted and seek alternative scenarios to adequately address changing risks and opportunities.

> *Yes, it would be great if we could have a unique legislation for Europe, […] if you could use one regulator's legislation, one [model] tailored for all the (countries) […] but] with two or three more countries, the market is (not) going to be European because we still think that culture issues are going to be relevant […]. So, as a conclusion, it's the only point – if we are used to European regulators, is that the issue is not about the law, it's about how regulators deploy that law. In […(COUNTRY)] we have the risk that these regulators have been talking to banks all their lives, their fathers…all of their lives talking to banks and they still talk to banks, so the problem for the FinTech […] will be that the regulators are influenced by these banks. […] And [if] we think that FinTech, that marketplace lending, it's a model that is good, it would be good for the European regulators to have this model to grow and if you want to help this model to grow you have to [create trust] into the system, […].*
>
> (CEO, Invoice Trading Platform)

Even if the regulatory rules were more straightforward and harmonised, platforms and investors might feel more confident if the SME screening and the assessment of the project could be carried out locally with relevant local market knowledge. Platforms can address this by creating simple and transparent products (within the regulatory framework). But regulators and policymakers also need to create frameworks that, while honouring long standing local traditions and practice, adapt to a European mind-set that enables innovative financial services across the European Union.

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European Commission

Identifying market and regulatory obstacles to cross-border development of crowdfunding in the EU

Annex A1

Report on Regulatory Barriers to Cross-border Crowdfunding

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Introduction

Crowdfunding still is relatively new and business models are evolving. However, in recent years there has been ongoing development in the Crowdfunding market across the world, leading to significant attention from both national and European supervisory authorities. While pursuing broadly similar aims, the national laws and regulations can vary considerably, which appears to hinder the emergence of a cross-border market.

The **FISMA** Report "*Identifying market and regulatory obstacles to the cross-border development of crowdfunding in the EU"* provides a comprehensive description of the current state of Crowdfunding as well as the regulatory landscape and the main (regulatory) barriers to Crowdfunding in 28[1] countries covering all 28 member states of the European Union ("**EU**"), along with Gibraltar (in the following collectively referred to as "**Member States**").

In order to achieve this, specialists from each country provided information in the ECN Crowdfunding Review 2017 ("**ECN Crowdfunding Review 2017**") regarding recent developments in the market and the current Crowdfunding regulation.

The ECN Crowdfunding Review 2017 focusses on the 'financial returns' models – 'investment-based crowdfunding' and 'lending-based crowdfunding' – as distinct from the 'donations or rewards' model (neither of which is covered by the FISMA Report). In terms of the European Commission ("**EC**") as well as European authorities – these being the European Securities and Markets Authority ("**ESMA**") and the European Banking Authority ("**EBA**") – investment-based Crowdfunding ("**Investment-based Crowdfunding**" or "**Investment-based Model**") comprises companies ("**Companies**") or project initiators ("**Project Initiators**") issuing equity, debt or contractual instruments to crowd-investors ("**Investors**"), typically through an online platform ("**Crowdfunding Platform**") (although this is not always the case).[2] Lending-based Crowdfunding (also known as peer-to-peer lending) involves Companies or individuals seeking to obtain funds from the public through Crowdfunding Platforms in the form of a loan agreement.[3] ("**Lending-based Crowdfunding**", "**P2P-Lending**" or "**Lending-based Model**") (Investment-based Crowdfunding and Lending-based Crowdfunding together also "**Crowdfunding**").

Furthermore, each country's experts outlined the regulatory barriers to cross-border Crowdfunding in terms of their country's market, distinguishing between 'Inbound' and 'Outbound' barriers and the impact of EU regulations such as the AIFM Directive, MiFID/MiFID II and PSD/PSD II.

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[1] Please note that we have also included information on the Crowdfunding regulation and cross-border barriers of Gibraltar, which forms part of the EU.
[2] European Commission, Commission Staff Working Document, "Crowdfunding in the EU Capital Markets Union", SWD (2016) 154 final, 3 May 2016, page 32.
[3] European Commission, Commission Staff Working Document, "Crowdfunding in the EU Capital Markets Union", SWD (2016) 154 final, 3 May 2016, page 32 f.

Based on information provided in the ECN Crowdfunding Review 2017, Osborne Clarke Germany ("**OC**") analysed and informally assessed the Crowdfunding regulation and the regulatory barriers to cross-border Crowdfunding in the Member States and developed the key points for this FISMA Report with regard to Crowdfunding regulation and cross-border barriers which may serve as a basis for guidelines or recommendations to potentially harmonise Crowdfunding regulation in Europe.

Market analysis has indicated six principal markets in Europe: France, Germany, Italy, Netherlands, Spain and UK. In this context, a further emphasis was put primarily on those markets and their regulatory landscapes and an in-depth assessment was conducted – involving consumer protection and tax law in addition to Crowdfunding supervisory law – providing further key facts on Crowdfunding regulation and cross-border (regulatory) barriers within the six main market countries.

The aim of the FISMA Report at hand is to identify cross-border (regulatory) barriers, give guidance for Crowdfunding stakeholders and perhaps eventually serve for the development of EC policy recommendations.

I. Informal assessment of all 28 Member States

1. Summary of Crowdfunding regulation

1.1 Main facts regarding Crowdfunding regulation

1.1.1 General observations

- there are still some Member States where there appears to be little or no Crowdfunding market (neither Investment-based Model nor Lending-based Model)

  → e.g. Croatia, Cyprus, Hungary

- Crowdfunding-specific regulation has boosted the Crowdfunding market in some countries

  → e.g. France, Italy, UK

- in many Member States there is a fairly newly established and/or currently developing debt Investment-based Crowdfunding market alongside an equity Investment-based Crowdfunding market

  → e.g. Bulgaria, Denmark, Lithuania, Czech Republic, Estonia, Finland, Germany, Ireland, Netherlands, Poland

- 11 Member States are implementing/have implemented specific Crowdfunding regulation

  → Austria, Belgium, Finland, France, Germany, Italy, Lithuania, Netherlands, Portugal (entering into force during 2017), Spain, UK

  – 5 of these 11 Member States have structured their Crowdfunding regulation by including a "Crowdfunding Exemption" into their existing legal frameworks which exempts Crowdfunding from (some or most of) the general financial regulation

    → Belgium, France, Germany, Italy, Spain

  – the other 6 Member States opted for other solutions

    → Austria (in September 2015), Finland (in September 2016) and Lithuania (in December 2016) addressed Crowdfunding with a specific Crowdfunding Act providing for a legal framework for the Investment-based Model as well as the Lending-based Model and provisions for Crowdfunding stakeholders (e.g. Crowdfunding Platforms, Companies/Project Initiators and in some cases the Investors)

    → in the Netherlands, Portugal (entering into force during 2017) and the UK the specific Crowdfunding regulation (that applies in addition to the regular regulation) is mainly left to administrative provisions published by the respective financial supervisory authorities (AFM/CMVM/FCA)

- in the other 17 Member States without specific Crowdfunding regulation, regular financial services regulation applies

  → Crowdfunding often does not fit properly into existing regulatory regimes

  → this often leads to a comparatively strict regulation of Crowdfunding which then results in national market barriers

- some Member States have taken or plan steps to implement specific Crowdfunding regulation

  → Hungary, Latvia, Romania, Sweden and Ireland

  → other Member States (e.g. Slovakia and Luxembourg) instead await the driving force to develop specific regulation to come from the European Union

- in nearly every Member State with no specific regulation the need for Europe-wide harmonised Crowdfunding regulation is emphasised, to adapt Crowdfunding to the legislation and to boost the market

  → Polish institutions alone do not see any need for action since Crowdfunding is not developed yet in Poland

- some Member States have established specific tax incentives in favour of Crowdfunding

  → e.g. Belgium and France

- there are great differences in the interpretation of the Payment Services Directive (PSD): the national authorities have different opinions concerning the definition of money remittance services

  → e.g. in the Netherlands the interpretation is very liberal, whereas in Germany it is stricter

1.1.2 Lending-based Crowdfunding

- in Hungary, Luxembourg and Gibraltar there is no P2P-Lending market

- in some Member States, provision of loans and credit is very highly regulated, although only a very small P2P-Lending market exists, if any

  → e.g. Greece, Hungary, Luxembourg and Gibraltar

  → in Ireland there is only a very small P2P-Lending market to consumers, due to the extensive regulation, but a very large P2P-Lending market to companies, which is not directly regulated

  → Sweden's legislator has a mostly positive attitude towards Crowdfunding as an alternative source of funding, whereas Latvian authorities seem to have a hostile position to P2P-Lending Crowdfunding Platforms, at least

- correspondingly, the current legal situation of P2P-Lending is often neither satisfactory nor clear

  → in some states, banks need to be involved in the P2P-Lending process (e.g. Germany)

  → whereas e.g. in Belgium there are no major hurdles to Lending-based Crowdfunding, other than those deriving from a national threshold

- in Finland and Lithuania (amended) consumer protection law is applicable to Lending-based Crowdfunding

- in some Member States the Consumer Credit laws apply to P2P-Lending via a Crowdfunding Platform as it intermediates the loans.

  → e.g. Croatia, Czech Republic, Denmark, Finland, Gibraltar, Ireland, Latvia, Lithuania, Netherlands

1.1.3 Licence obligations

- almost all Member States have some kind of authorisation, licence or registration requirement for Crowdfunding Platforms providing investment services (mainly investment brokering)

  → therefore, in nearly all of the evaluated Member States, Crowdfunding does not function outside any sort of legal framework or state supervision

  → the only (partial) exception is Sweden, where no licence is required for equity-based Crowdfunding (only for debt-based Crowdfunding)

- with its specific regulation for Crowdfunding, France has created two of its own legal statuses for Crowdfunding Platforms (broadly concerning investment brokering and investment advice)

- Belgium addresses Crowdfunding Platforms with a specific Crowdfunding *Platform* Act providing a legal framework for licensing those and the use of financing vehicles

- The Netherlands has a very broad understanding of transferable securities pursuant to MiFID: irrespective of a limitation on transferability by contract or by a company's articles of association, a share or certificate of a share of a private or public Dutch limited company will be classed as a transferable security; whereas in Germany or Poland the interpretation of securities is quite narrow, and shares in limited liability companies are not considered securities

1.1.4 Prospectus regulation

- in almost all Member States there is a prospectus requirement (mainly for securities[4]) in principle, unless a variety of exceptions applies

[4] Transferable securities are defined in MiFID as 'classes of securities which are negotiable on the capital market, with the exception of instruments of payment'

- only Portugal has no prospectus requirements for Crowdfunding in general until the specific Portuguese Crowdfunding regulation is in place (during the course of 2017)

- many Member States grant an exemption (based on European law)[5] in case of the offering of securities when:

  → an offer of securities is addressed to qualified Investors; and/or

  → an offer of securities is addressed to fewer than 100/150 natural or legal persons per Member State, other than qualified Investors; and/or

  → an offer of securities is addressed to Investors who acquire securities for a large amount of money (EUR 100,000; Luxembourg: EUR 50,000) per Investor, for each separate offer

  e.g. Belgium, Bulgaria, Cyprus, Denmark, Estonia, Finland, Gibraltar, Hungary, Lithuania, Luxembourg, Romania, Slovakia

- in some Member States there is a distinction between a general exemption from (securities) prospectus requirements and an explicit Crowdfunding exemption

  → e.g. Germany (for debt-based subordinated profit-participating loans), Austria

- amount of (general or Crowdfunding) exemption thresholds from a prospectus requirement is very diverse

  → general exemption (securities prospectus): e.g. Bulgaria, Estonia, Germany and Lithuania (no prospectus below EUR 100,000 within 12 months); Austria (no prospectus below EUR 250,000 within 12 months); Greece (no prospectus below EUR 500,000 within 12 months); Czech Republic (no prospectus below EUR 1,000,000 within 12 months); Denmark (no prospectus below EUR 1,000,000 within 12 months, plus special prospectus requirement between EUR 1m and EUR 5m)

  → explicit Crowdfunding exemption: EUR 300,000 in Belgium; EUR 1.5m in Austria (plus simplified prospectus requirement between EUR 1.5m and EUR 5m); EUR 2.5m in Germany (specific debt-based investment products); EUR 2.5m in Sweden and the Netherlands; EUR 5m in Italy/UK/Finland/Lithuania

[5] Prospectus Directive 2003/71/EC.

- some Member States have implemented tiered prospectus requirements, whereas there are simplified prospectus requirements between a certain range of collected funds

  → e.g. Austria (between EUR 1.5m and EUR 5m) and Slovenia (between EUR 100,000 and EUR 5m)

- the scope of exemption from prospectus requirements is also very diverse in the EU, e.g.

  → exemption in Italy is only applicable to particular equity investments

  → exemption in France is only applicable to specific equity and lending instruments

  → exemption in Belgium raises the threshold for the investment from EUR 100,000 to EUR 300,000 if the investment per Investor per project is capped at EUR 1,000 and the Investors are not limited to 150 natural or legal persons

  → exemption in Austria is applicable to alternative financing products and (partly) to bonds or stocks

  → exemption in Germany is limited to a specific type of (debt) financial instrument (subordinated loans)

1.2 Summary of the current regulation of Crowdfunding

Summary / Country	Regulation of Crowdfunding	
	Specific regulation	**General requirements**
Austria	✓	Austria addresses Crowdfunding with a specific Crowdfunding Act (Alternative Financing Act). Crowdfunding Platforms presenting alternative finance products (e.g. shares with no absolute repayment claim and no reserve liability) need a licence. The legal situation regarding the issuing of subordinated loans (not profit-participating) to Investors is currently unclear – but still the most popular financial instrument in Austria is offered by means of Investment-based Crowdfunding. There is no prospectus requirement for alternative financing products, which do not exceed a total investment amount of EUR 1.5m. Simplified prospectus requirements apply between EUR 1.5m and EUR 5m and if bonds or stocks are issued with a total amount exceeding EUR 250,000 per year. Full prospectus requirements apply for all other products.
Belgium	✓	Belgium addresses Crowdfunding Platforms with a specific Crowdfunding *Platform* Act providing a legal framework

		for licensing those and the use of intermediating financing vehicles. Licensed Crowdfunding Platforms or investment firms do not require a prospectus for offers for a total amount of less than EUR 300,000, with a maximum investment of EUR 5,000 per person and per project. In 2015 the Belgian Government introduced tax incentives in favour of Crowdfunding.
Bulgaria	✘	There is no explicit legal framework for Crowdfunding, but a number of other laws are applicable by analogy. The operator of Crowdfunding Platforms may be required to be licensed or registered either as a financial or a credit institution. There is a prospectus requirement for companies which publicly offer securities to Investors with a threshold of EUR 100,000 per issuer within 12 months.
Croatia	✘	No significant developments with respect to the regulatory framework relating to the use of Crowdfunding. No market relevance and no attempts by the legislator or the regulators to address the needs of the Crowdfunding industry in particular. No legislative or other regulatory developments affecting the regulation of Crowdfunding and no active local Crowdfunding Platforms.
Cyprus	✘	An investment licence is needed for investment services for Crowdfunding Platforms. There is no specific Crowdfunding exemption. A requirement for the issuance of a prospectus applies for the offering of transferable securities to the public within the definition of the MiFID regulation. No prospectus required where total consideration is less than EUR 5,000,000 calculated over a period of 12 months. There is no Crowdfunding Platform in Cyprus using the Investment-based Model or Lending-based Model.
Czech Republic	✘	The Lending-based Model is generally a non-regulated activity. Nevertheless, under the new Consumer Credit Act a Crowdfunding Platform needs a trader licence and falls under the supervision of the Czech National Bank. Investing in return for a share in the profits or revenue generated by a Company/Project Initiator is defined by the AMCIF as a form of collective investment and corresponds most closely to the definition of an investment fund under the AMCIF. Even as an intermediary, a Crowdfunding Platform might need a licence under the Capital Markets Act if it is providing investment services. New Corporations Act enables more flexible structure of Companies/Project Initiators using equity Investment-based Models. There is a prospectus requirement for offering of investment securities, exemptions apply under threshold of EUR 1,000,000 within 12 months.
Denmark	✘	No amendments to existing regulation were necessary to advance the application of Crowdfunding in Denmark. The aim is to create a fintech lab within the Danish FSA, which

		will make it easier for digital start-ups to navigate within the financial regulation. There is a licensing requirement for Crowdfunding Platforms. Further, there is a prospectus requirement for offering of securities. Threshold: EUR 1,000,000 per issuer within 12 months. The Lending-based Model is the most popular model. In case of Lending-based Model there are requirements to the loan agreement pursuant to the Danish Act on Credit Agreements.
Estonia	✘	Creditors and Credit Intermediaries Act imposes a licence obligation on creditors and credit intermediaries for the Lending-based Model. This applies to those Crowdfunding Platforms which are providing or intermediating credit to consumers. Moreover, there is a non-binding soft self-regulation regarding Crowdfunding Platforms which was drafted by a cluster organisation, FinanceEstonia, together with important market players. There is a prospectus requirement for public offering of securities. Exemptions apply, e.g. if the number of Investors is fewer than 150 per EEA country or the total amount of investments is less than EUR 100,000.
Finland	✓	Finland has a special Crowdfunding law since September 2016, the Finnish Crowdfunding Act, laying down provisions on acquiring, offering and professionally mediating Crowdfunding using the Lending-based Model and Investment-based Model. A new national regulation was implemented for Lending-based Crowdfunding ("P2P-Lending") and such activities now fall under the scope of consumer protection provisions and registration requirements under the Finnish Consumer Protection Act. Mediating Investment-based or Lending-based Crowdfunding requires registration. Authorisation is needed to act as a credit institution if repayable funds are received from the public. For offering securities, prospectus obligations exist. There is an exemption if securities are offered in Finland in an amount less than EUR 5m.
France	✓	Creation of 2 optional statuses (the first alternative is more costly and stringent, e.g. the status as a credit institution or a MiFID-based investment service provider), subject to the control and disciplinary powers of the *Autorité des Marchés Financiers* ("**AMF**") and the *Autorité de contrôle Prudentiel et de Résolution ("**ACPR**"):* – "CIP" – *conseil en investissement participatif* (Crowdfunding investment advisor), including offering of new instruments (convertible bonds, preferred shares with voting rights attached and interest-bearing notes or registered, non-negotiable securities (Minibons));

		– "IFP" – *intermédiaire en financement participatif* (Crowdfunding investment intermediary) for straight loans, among other things. Crowdfunding activities opened to "PSIs" – *prestataire de services d'investissement* (investment services advisors). Specific Crowdfunding exemptions: Ordinary shares and/or preferred shares of *sociétés par actions simplifiées* (more flexible type of limited liability company by shares – often used for venture capital) with specific provisions in their by-laws can be offered on Crowdfunding Platforms to the public. General cap applying to CIPs and PSIs for public offering on Crowdfunding websites of ordinary shares, preferred shares, bonds (either convertible or non-convertible bonds) for a maximum raised amount of EUR 2.5m per year.
Germany	✓	As a general rule, a licence under the German Banking Act (*Kreditwesengesetz*) is required when "financial services" are offered, which among other things includes the brokering of financial instruments. "Financial instruments" within the meaning of the German Banking Act (*Kreditwesengesetz*) include securities (shares in stock corporations, shares in collective investment undertakings (*Investmentvermögen*) and debt securities including participation certificates), investment products (*Vermögensanlagen*) (e.g. shares in other legal entities, registered bonds and subordinated participation loans (*partiarische Nachrangdarlehen*) and shares in collective investment undertakings (*Investmentvermögen*). If securities are offered, there is no exemption from the licensing requirement. If investment products (*Vermögensanlagen*) within the meaning of the Investment Products Act (*Vermögensanlagengesetz*) e.g. subordinated profit-participation loans (*partiarische Nachrangdarlehen*) or shares in collective investment undertakings (*Investmentvermögen*) are offered publicly, only a licence under section 34f of the German Trade, Commerce and Industry Regulation Act (*Gewerbeordnung*) for the platform operator is required. Companies/Project Initiators issuing securities or investment products (*Vermögensanlagen*) to Investors can be subject to a prospectus requirement. There are two different prospectus regimes in Germany. If securities (e.g. shares in stock corporations or debt securities) are offered, there is a requirement to publish a prospectus approved by BaFin under the German Securities Prospectus Act (*Wertpapierprospektgesetz*). If investment products (*Vermögensanlagen*) are offered (e.g. silent partnerships or subordinated profit-participating loans (*partiarische Nachrangdarlehen*)) there is in contrast a requirement to publish a prospectus

		approved by BaFin under the German Investment Products Act (*Vermögensanlagengesetz*). In 2015 a specific Crowdfunding regulation (Retail Investors' Protection Act - Kleinanlegerschutzgesetz) entered into force. In order to avoid excessive burdens resulting from preparing an (expensive) prospectus, the Retail Investors' Protection Act (*Kleinanlegerschutzgesetz*) provides for an exemption from the prospectus requirement for the offering of subordinated profit-participating loans (*partiarische Nachrangdarlehen*) ("**Crowdfunding Exemption**"). According to this Crowdfunding Exemption, a lighter regulation shall apply if the total offering amounts to EUR 2.5m max. and the offering is limited to subordinated profit-participating loans (*partiarische Darlehen*). Prospectus requirement for offering of securities or investment products with a general threshold: EUR 100,000 per issuer within 12 months. Crowdfunding Exemption for certain investment products (e.g. subordinated loans) under specific conditions: up to EUR 2.5m. When Crowdfunding Exemption is used Company/Project Initiator only needs a three-page fact sheet (*VIB*).
Greece	✘	Special law since 2016 enabling the public offering of (equity) securities through Crowdfunding Platforms without a prospectus. Crowdfunding Platforms need to be licensed. The provision of loans or other credits (P2P-Lending) can be performed only by licensed credit institutions and certain financial institutions. There is a general prospectus requirement, but no prospectus is required for the public offer of securities through Crowdfunding Platforms operated by duly licensed firms under specific requirements.
Gibraltar	✘	Where a Crowdfunding Platform offers securities to the public, an authorisation under the Financial Services (Investment and Fiduciary Services) Act for "controlled activities" is required. Additional licensing may be required from Government in respect of money lending (loans EUR 200 – EUR 75,000), if activity falls within the scope of the Financial Services (Consumer Credit) Act 2011. There may be a prospectus requirement for the offering of securities to the public, but also certain exemptions (e.g. offers addressed only to qualified Investors, offers addressed to fewer than 150 persons (other than qualified Investors) per Member State etc.).
Hungary	✘	There is no regulatory regime specifically addressing Crowdfunding in Hungary. Any Crowdfunding structure has to be assessed based on the currently applicable financial/investment regulatory laws of Hungary. Neither the Investment-based Model nor the Lending-based Model has any presence in the Hungarian market. Crowdfunding under both may require a licence or be structured so as to eliminate/limit the risk of triggering licensing requirements.

		There is a prospectus requirement for the offering of securities and certain other financial instruments (e.g. shares, bonds, certain derivatives) with a threshold of EUR 100,000.
Ireland	✘	There is no explicit legal framework for Crowdfunding, but a public consultation was launched on 21 April 2017 regarding the potential regulation of Crowdfunding in Ireland. However, a Crowdfunding Platform could potentially be required under Irish law to obtain a banking licence if it is engaged in deposit-taking from customers. It is therefore very important that any Crowdfunding Platform does not engage in the regulated activity of a "banking business" without the necessary authorisation. Furthermore, Crowdfunding Platforms should also take care to avoid using any brand name or trading name that could create the impression that they are engaged in some form of banking business The Prospectus Directive (2003/71/EC) was implemented in Ireland by means of the Prospectus Regulations 2005. The Prospectus Regulations set out the requirements for prospectuses relating to securities offered to the public or admitted to trading on a regulated market within the EU. It applies to Crowdfunding Platforms where they facilitate the offering of securities to the public through the Investment-based Model or the Lending-based Model.
Italy	✓	Investment-based Crowdfunding is limited only to: (a) innovative start-ups; (b) innovative SMEs; (c) collective investment undertakings and investment companies which invest primarily in innovative start-ups and in innovative SMEs (Law 221/2012 and Law 33/2015). Crowdfunding activity can be performed only by authorised entities (such as banks and investment companies) and by platform managers expressly authorised by the Italian financial services authority CONSOB. There is no specific regulation for Lending-based Crowdfunding. There is an exemption from prospectus requirements for public offers of (equity) shares or of stocks of innovative start-ups and innovative SMEs made through an authorised Crowdfunding Platform which do not exceed the overall amount of EUR 5,000,000.
Latvia	✘	Draft legislative amendments aimed at regulating Crowdfunding might be submitted to the Latvian Parliament in 2017. Pursuant to the Financial Instrument Market Law ("FIML"), anyone intending to provide investment services in Latvia commercially or on a scale which requires a commercially organised business undertaking requires a licence from the Latvian financial services authority FCMC. Where an online Crowdfunding Platform facilitates the offering of financial instruments, most likely, the operator of the Crowdfunding Platform will be deemed to be providing investment services within the meaning of the FIML and therefore will require a licence

		from the FCMC. This applies only for equity Investment-based Crowdfunding. In addition, debt Investment-based Crowdfunding is not considered an investment service under the FIML. Nonetheless, according to the most recent developments FCMC has been considering treating the services offered by existing Lending-based Crowdfunding Platforms operating in Latvia, which are described as investment services under the FIML. In the opinion of the FCMC, the investment services provided by the Crowdfunding Platform operators could be, for example, execution of orders on behalf of clients, dealing on own account, and operation of multilateral trading facilities (depending on the exact model chosen). P2P-Lending does not fall under any of the regulated types of activity. However, the FCMC first requested the Crowdfunding Platforms to cease issuing loans to consumers and publicly declared that due to the lack of regulation the Investors who invest in loans offered on the Crowdfunding Platform would not be protected by any of the financial schemes of protection existing in Latvia. The most recent development is that the FCMC has been considering whether these P2P-Lending Crowdfunding Platforms should obtain investment firm licences under the Financial Instrument Market Law (implementing MiFID I).
Lithuania	✓	The Lithuanian Law on Crowdfunding came into force on 1st December 2016. The law eliminated regulatory obstacles in Lithuania on establishing and running debt and equity Investment-based Crowdfunding Platforms. Companies/Project Initiators are now allowed to raise capital through Crowdfunding Platforms using one of four different instruments: (i) simple loan agreement; (ii) issue of debt securities (i.e. bonds); (iii) issue of equity securities (i.e. shares); or (iv) assignment of claim rights deriving from already concluded agreements. Only legal entities are allowed to act as operators of Crowdfunding Platforms. Before starting their activities, operators must be included in a Public List managed by the National bank of Lithuania. The operator of a consumer P2P-Lending Crowdfunding Platform is required to be listed on the Public List of P2P Consumer Lending Platform Operators administered by the Bank of Lithuania only. Consumer P2P-Lending in Lithuania falls under regulation of consumer credit. Offerings of (equity and debt based) securities through a Crowdfunding Platform below EUR 5m in a 12-month period do not fall under any prospectus requirement. In this case the light prospectus regime applies, where Companies/Project Initiators must prepare an information document, which must be approved by the Crowdfunding Platform. The same applies for business P2P-Lending. Furthermore, the prospectus requirement is not applicable to consumer P2P-Lending since an individual is seeking to borrow funds through the P2P-Lending

		Crowdfunding Platform and the Law on Consumer Credit applies. Borrowing limits are set in compliance with the creditworthiness assessment requirements. When entering into a credit agreement the creditworthiness not only of a borrower, but also of his/her spouse shall be assessed.
Luxembourg	✘	There is no specific regulation regarding Crowdfunding Platforms, but other laws apply. If a Crowdfunding Platform offers investment or banking services the law on the financial sector is applicable and a licence is required. Under the Investment-based Model, a Crowdfunding Platform could be considered an investment advisor, a broker in financial instruments, a commission agent, an investment firm operating a Multilateral Trading Facility or a credit institution, or possibly a professional carrying out lending activities (Lending-based Model). Investors could also be considered to be providing banking or lending services for which a licence could in theory be required. There is a prospectus requirement for offers of securities to the public and admission to trading of securities on a regulated market exceeding EUR 100,000 within 12 months.
Malta	✘	There is no regulatory framework which specifically regulates Crowdfunding. Malta's national competent authority is considering setting up a local framework for the regulation of Investment-based Crowdfunding. Investment-based Crowdfunding Platforms may be subject to licence requirements. As far as a public company is concerned, offers of securities of less than EUR 5m are exempt from prospectus requirements. It has not yet been indicated whether a full prospectus will be required.
Netherlands	✓	The regulatory framework for Crowdfunding is split into equity and lending models. In general, every Crowdfunding Platform needs a licence for facilitating financial instruments. For Crowdfunding Platforms facilitating non-transferable loans there is a local dispensation regime based on a dispensation for mediating in attracting repayable funds. An issuer that offers transferable securities (such as (equity) shares or (debt) bonds) to the public must take into account the prospectus rules. There is a prospectus requirement exemption for offers of transferable securities to the public below EUR 2.5m within 12 months. There is an information-document and warning-banner requirement remaining.
Poland	✘	Poland has not yet adopted any regulations that specifically concern Crowdfunding in any of its models, but other laws, such as the Polish Civil Code, apply. Since mid-2016, the Polish Ministry of Economic Development has been working on a new kind of company – the simple joint-share company – aiming to make this new type of company a convenient start-up vehicle that could also be used for raising capital through certain types of (equity-

		based) Investment-based Crowdfunding. Certain types of Crowdfunding-related activities may trigger the application of financial regulations. Companies/Project Initiators that make a public offering of securities to Investors may be obliged to prepare and publish a prospectus under Polish law. The notion of 'securities' does not include shares in a limited liability company, but it does apply to shares in a joint-stock company. Below EUR 100,000 there is no prospectus requirement.
Portugal	✓	Crowdfunding Platforms in Portugal that offer services under Lending-based Models and Equity-based Models must be registered with the Securities Exchange Commission (CMVM) and are subject to the supervision of the CMVM. There are *inter alia* financial requirements, e.g. minimum share capital and civil liability insurance. No prospectus will be required, except for the key information for Crowdfunding Investors. Investment limits of EUR 3,000 per offer and EUR 10,000 of total Crowdfunding investment per year generally apply to Investors, up to a maximum amount of EUR 1,000,000, which can be collected by the Company/Project Initiator. These limits are not applicable to companies, to individuals with an income of EUR 70,000 per year or more or to qualified Investors (i.e. qualified Investors pursuant to MiFID). The maximum amount in the event that only Investors mentioned in the preceding sentence invest in the Company/Project Initiator in this case is EUR 5,000,000.
Romania	✘	Currently there is no specific regulation in force with regards to Crowdfunding. A law project regarding participatory financing development is in legislative process. Public offering of securities and trading of shares of a company on regulated markets is subject to the approval of a prospectus. Any public offering of securities is subject to prospectus requirements.
Slovakia	✘	Crowdfunding Platforms need a licence under the Securities and Investment Services Act. There is no explicit exemption for Crowdfunding Platforms from the licensing requirements. However, there are a number of general exemptions that might apply. Any public offering of securities is subject to prospectus requirements. Nevertheless, various exemptions are granted by the Securities and Investment Act (in line with the Prospectus Directive), such as in the case of an offer solely addressed to qualified Investors. The general threshold is EUR 100,000 per issuer within 12 months.
Slovenia	✘	Financial services and transactions related to offerings of securities provided by a Crowdfunding Platform trigger a licence requirement by the Securities Market Agency. Intermediary services with respect to consumer credit and other loan agreements (P2P-Lending) require a licence from the Bank of Slovenia or the Securities Market Agency.

		There is a prospectus requirement for offers of securities with the threshold of EUR 100,000 in the European Union within 12 months. Simplified prospectus requirements apply for offerings of securities below or equal to EUR 5,000,000 in the European Union within 12 months.
Spain	✓	Crowdfunding Platforms operating the Investment-based Model as well as the Lending-based Model are newly regulated by Spanish legislation implemented in 2015. A CNMV authorisation is required for Investment-based Models and Lending-based Models. There is a financial and general requirement for an entity to obtain authorisation as a Crowdfunding Platform without any exemptions. There is a prospectus requirement for offers of public stock, share and bond offerings, which does not apply below the threshold of EUR 5m provided that it is exclusively targeted at accredited Investors (e.g. financial institutions, certain companies, small and medium-sized enterprises and companies and even certain individuals). If it is targeted at non-accredited Investors this fixed limit will be set at EUR 2m.
Sweden	✘	There is no Crowdfunding regulation yet. The Swedish Securities Market Act regulates financial trading of securities, including investment brokering, financial advising and prospectus rules. A licence to conduct financial services is required for Crowdfunding Platforms. As long as the Crowdfunding Platforms mainly serve as an active or passive intermediary of the share transfer of private and/or public limited liability companies, they do not need to register or apply for a licence. There is an obligation to prepare a prospectus for transferable securities stated in the Swedish Financial Instruments Trading Act. Below EUR 2,500,000 within a period of twelve months there is an exemption from the prospectus obligation.
United Kingdom	✓	The Securities Model (Investment-based Crowdfunding) generally and especially entails conducting regulated securities business, for which an authorisation is required. For the Lending-based Model, the regulated activity of "operating an electronic platform in relation to lending" was introduced in April 2014 and also entails an authorisation requirement. For the Securities Model, FCA rules restrict the promotion of "non-readily realisable securities" to certain categories of retail Investor. There is a prospectus requirement for offering of transferable securities with a threshold of EUR 5m per issuer within 12 months. Proposed EU Commission changes will permit Member States to impose an exemption from the requirement to produce a prospectus for domestic offers of up to EUR 10m, and for non-domestic offers, a maximum raise of EUR 500,000 – although this may be subject to change given the European Parliament's current agreed position. For the Securities Model, where profit share is not channelled through a standard corporate

		issuer/shareholder relationship, investment may be characterised as a collective investment scheme.

2. Summary of regulatory barriers to cross-border Crowdfunding

Regulatory barriers to cross-border Crowdfunding may occur in the two following constellations referred to as "**Inbound**" and "**Outbound**".

Inbound refers to a foreign Crowdfunding Platform addressing local Investors or presenting a local Company/Project Initiator on its Crowdfunding Platform. An example of this would be a French Crowdfunding Platform (i) addressing Dutch Investors or (ii) presenting an investment opportunity in a Dutch Company/Project Initiator.

Outbound refers to a Crowdfunding Platform addressing foreign (EU) Investors or presenting a foreign (EU) Company/Project Initiator to local Investors. An example of this would be an Austrian Crowdfunding Platform (i) addressing German Investors or (ii) presenting an investment opportunity in a German Company/Project Initiator and addressing Austrian Investors.

2.1 Inbound

2.1.1 Foreign Crowdfunding Platform addresses local Investors

2.1.1.1 Licence obligations

- in 27 Member States there is a licence requirement for foreign Crowdfunding Platforms addressing national Investors

  → Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Gibraltar, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Portugal, Slovakia, Slovenia, Spain, Sweden, UK

- in most of these Member States, foreign Crowdfunding Platforms that are licensed under MiFID are able to benefit from the EU passporting regulation and conduct business in the other Member States without applying for an additional local licence

  → e.g. in Cyprus, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Gibraltar, Hungary, Italy, Lithuania, Malta, Slovenia

  → in France the instruments which may be offered are limited to those the national Crowdfunding Platforms can facilitate

  → however, some Member States require an additional notification under their national law, when passporting their MiFID licence

- however, cross-border barriers occur mainly in Member States where there is no EU passporting capability, for which there can be a number of reasons

  → MiFID only comprises transferable (equity or debt-based) securities; Investment-based Crowdfunding is not limited to those securities (but also comprises specific debt-based non-security instruments such as subordinated loans)

  → P2P-Lending does not make use of (debt) securities at all. Therefore there is no European regulation and only the national regulation applies

- in some Member States, Investment-based Crowdfunding (partly) falls outside the scope of MiFID (in several Member States no clear information is given on whether there is an existing market outside the scope of MiFID)

  → e.g. in Croatia, Cyprus, Germany and Netherlands the financial instruments used for Investment-based Crowdfunding cannot (fully) qualify as securities, e.g. especially shares in a private company or profit-participating loans

  → in those Member States especially, the following problem can occur: if the Crowdfunding Platform holds a MiFID licence and intends to address a national market where the national financial instruments fall outside the scope of MiFID, it is uncertain whether the MiFID licence is also sufficient for providing financial services with regard to those financial instruments (not covered by MiFID) – e.g. brokering of shares in a limited liability company (*GmbH*) or subordinated profit-participating loans (*partiarische Nachrangdarlehen*) in Germany

  → according to Swedish law, MiFID is not applicable to equity Investment-based Crowdfunding Platforms

  → in Belgium, the national law specifies that Crowdfunding Platforms cannot provide regulated investment services, except for providing investment advice and receiving and passing on investment orders. Thus, they cannot offer services relating to the placing of financial instruments, with or without firm commitments. As a result, licensed Crowdfunding Platforms fall outside the scope of MiFID. This is due to the fact that the national law specifies that Crowdfunding Platforms may commercialise investment instruments. The mere commercialisation of investment instruments is not considered a placement service. In parallel, the Crowdfunding Platform Act suppressed an exemption introduced in 2014 providing that persons or institutions carrying out intermediation for public offers falling within the scope of the "Crowdfunding Exemption" are exempted from the obligation to be licensed as a credit institution or investment firm. However, if Crowdfunding Platforms wish to offer (non-exempted)

financial services regarding financial instruments then they will require MiFID licensing

→ this national uncertainty with regard to the (full) applicability of MiFID and its passporting options and additionally the possible need for an additional local licence constitute the main cross-border barriers faced by Crowdfunding Platforms

- some Member States, on the other hand, seem to expand the scope of application of MiFID whereby instruments other than securities within the meaning of MiFID are also eligible for the MiFID EU passport

  → in Austria, the legal situation is divided into alternative finance products and investment products: an investment product grants an absolute guaranteed favourable return, an alternative finance product does not

  Investment products: As a rule, a licence for conducting commercial investment consulting is mandatory in Austria. If conducted only temporarily and occasionally, the activity has to be indicated to the local trade authority. If conducted permanently, the Crowdfunding Platform needs to be licensed by submitting the necessary certificates of competence to the trade authority

  Alternative finance products: If the foreign Crowdfunding Platform holds a licence as a credit institution from another EU member state, it does not need to apply for an additional local licence

  → the Netherlands has a very broad understanding of securities, where in addition to stock, also shares of a limited liability company, for example, that may be restricted by the articles of association with regard to their transferability, fall under the MiFID definition of "securities" (Germany and Poland, on the contrary, have a narrow national definition of "securities" within the meaning of MiFID)

- in two other Member States, it is uncertain whether the national licence requirement applies to foreign Crowdfunding Platforms

  → in Latvia, the national licence requirements might apply, depending on whether the Crowdfunding Platform falls within the scope of the respective law. The obligations to obtain a specific licence or to provide notification of an existing licence are highly uncertain and fact-specific

  → in Poland, foreign Crowdfunding Platforms will not be regulated under national law if the Investors participate in Crowdfunding projects by obtaining shares in a limited liability company, but may be regulated if the shares belong to a joint-stock company or a limited joint-stock company. Therefore, a licence requirement for the foreign Crowdfunding Platform mainly depends on the Crowdfunding model and structure adopted by such Crowdfunding Platform. It may be

possible that neither national law nor MiFID applies to a Crowdfunding Platform; in such a case there is no licence requirement at all

- in Romania, there is simply no licence requirement for any foreign Crowdfunding Platform when addressing national Investors

2.1.1.2 Prospectus regulation

- in all but two Member States, there is a general prospectus requirement for foreign Companies/Project Initiators when national Investors are addressed

  → Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Gibraltar, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Romania, Slovakia, Slovenia, Spain, UK

  However, there are certain exemptions that might apply under differing requirements

  → in Sweden, there is no prospectus requirement for foreign Companies/Project Initiators offering non-transferable securities to Swedish Investors. In contrast, a prospectus must be published when transferable securities are offered to Swedish Investors. However, the Companies/Project Initiators must comply with the information requirements under the Swedish Marketing Practices Act. In addition, there is a prospectus requirement for P2P-Lending Crowdfunding Platforms

  → in Portugal, there are generally no prospectus requirements for Crowdfunding Platforms (after the adoption of new Crowdfunding-specific regulation in 2017)

2.1.1.3 Further information and compliance obligations

- in addition to the licence requirement there are (often) differing information obligations (e.g. tiered prospectus and corresponding information obligations) and compliance obligations (e.g. qualification as accredited Investor) according to national Member States law

- in some Member States the lack of an explicit legal framework for Crowdfunding hinders cross-border activities of Crowdfunding Platforms

  → this is particularly true for P2P-Lending: The legal framework for P2P-Lending is normally either unclear, falls under national consumer credit laws (e.g. Denmark, Estonia, Finland, Gibraltar and Lithuania) or Crowdfunding Platforms based on the Lending Model need to obtain a banking or payment services licence according to national law

2.1.2 Foreign Crowdfunding Platform presents local Companies /Project Initiators

2.1.2.1 Licence obligations

- in 13 Member States there are no licence requirements for foreign Crowdfunding Platforms addressing local Companies/Project Initiators

  → Austria, Belgium, Bulgaria, Croatia, Cyprus, Denmark, Estonia, Finland, France, Germany, Latvia, Lithuania, Netherlands, Portugal, Slovenia

  → e.g. in Belgium, Croatia and Germany the regulation does not apply since the Crowdfunding Platform does not address the local market/local Investors

  → e.g. in Bulgaria, the foreign Crowdfunding Platform must instead be listed

- in some other Member States, there is a licence requirement for foreign Crowdfunding Platforms addressing local Companies/Project Initiators

  → e.g. Greece, Italy, Ireland, Luxembourg, Malta, Slovakia, Spain, UK, Hungary

  → in Hungary, the services/investment opportunities offered on a foreign Crowdfunding Platform constitute a service provided to Hungarians on a cross-border basis and therefore potentially trigger Hungarian licensing requirements in relation to either or both the Crowdfunding Platform and/or the Company/Project Initiator seeking funding

  → in some of those Member States there are some exemptions from the general licence requirement, such as in Latvia, Romania and Sweden

    → in Sweden, there is no requirement for a foreign Crowdfunding Platform to passport its MiFID licence for any equity Investment-based Crowdfunding activity. However, Lending-based Crowdfunding Platforms need to passport their licence and report cross-border activity to the competent authority of the home Member State where the company is authorised

    → in Latvia, there is a general exemption for the offering of securities that do not qualify as financial instruments for national Crowdfunding Platforms that can be transferred to foreign Crowdfunding Platforms

    → in Romania, a licence requirement may be applicable to the foreign Crowdfunding Platform if it provides services related to debt-based securities (e.g. bonds). If the Company/Project Initiator does not

offer (debt-based) securities, but other investments like equity-based securities (shares) or loans, there is no licence requirement

→ no information on Czech Republic and Poland

2.1.2.2 Prospectus regulation

- in 12 Member States there is generally no national prospectus requirement for local Companies/Project Initiators that are presented on a foreign Crowdfunding Platform

  → Belgium, Cyprus, Denmark, Estonia, Finland, France, Italy, Netherlands

  → Austria and Germany; here it depends on whether local Investors are addressed; a disclaimer stating that the local market is excluded from the offer should be implemented

  → in Sweden, there is no prospectus requirement for Companies/Project Initiators that offer non-transferable securities under Swedish law. Equity Crowdfunding is not subject to any prospectus requirement under Swedish law and is not subject to any supervision by the S-FSA, since securities that are offered on Crowdfunding Platforms (both public and private limited liability companies) do not fall within the definition of transferable securities.

  → in Portugal, there are generally no prospectus requirements for Companies/Project Initiators (after the adoption of new Crowdfunding-specific regulation in 2017)

- in 14 other Member States, there is a prospectus requirement for national Companies/Project Initiators on foreign Crowdfunding Platforms

  → Bulgaria, Croatia, Greece, Gibraltar, Hungary, Ireland, Lithuania, Luxembourg, Malta, Romania, Slovakia, Slovenia, Spain, UK

- no information on Czech Republic and Poland

2.2 Outbound

2.2.1 Crowdfunding Platform addresses foreign (EU) Investors

2.2.1.1 Licence obligations

- in 10 Member States, there is generally no licence requirement for Crowdfunding Platforms addressing foreign (EU) Investors

  → Austria, Bulgaria, Croatia, Czech Republic, Lithuania, Poland, Romania, Sweden (notification requirement)

  → in Germany and Slovakia, there might be a local licence requirement in case the offer has a sufficient link to the local market in addition to links with other foreign Investors markets

- in 18 Member States, there is a licence requirement for national Crowdfunding Platforms addressing foreign (EU) Investors

  → Belgium, Cyprus, Denmark, Estonia, Finland, France, Greece, Hungary, Ireland, Italy, Latvia, Luxembourg, Malta, Netherlands, Portugal, Slovenia, Spain, United Kingdom

  → In Gibraltar, both an Investment-based Crowdfunding Platform (under MiFID) and a Lending-based Crowdfunding Platform (under consumer protection laws) need a licence

2.2.1.2 Prospectus regulation

- in 20 Member States, there is no prospectus requirement when Crowdfunding Platforms address foreign (EU) Investors

  → Austria (disclaimer, stating that the Austrian market is excluded from the offer), Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Finland, France, Germany (also disclaimer reasonable), Greece, Italy, Lithuania, Luxembourg, Netherlands, Poland, Portugal, Slovenia, Sweden, United Kingdom

  → however, it is very likely that the prospectus requirements of the Investors' national law will apply with their local information and compliance obligations

- in 8 Member States, there is a general prospectus requirement when Crowdfunding Platforms address foreign (EU) Investors, but exemptions can apply

→ Estonia, Gibraltar, Hungary, Ireland, Latvia (Malta: EU prospectus regulation applicable), Romania, Slovakia, Spain

2.2.2 Crowdfunding Platform presents a foreign (EU) Company/Project Initiator to local Investors

2.2.2.1 Licence obligations

- in 24 Member States, there is generally a licence requirement for a national Crowdfunding Platform addressing foreign Companies/Project Initiators

  → Austria, Belgium, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Gibraltar, Hungary, Ireland, Italy, Latvia, Luxembourg, Malta, Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain, United Kingdom

- in 3 Member States, there is no licence requirement for a Crowdfunding Platform addressing foreign (EU) Companies/Project Initiators

  → Bulgaria (for non-resident Crowdfunding Platforms), Cyprus (as long as no Cyprus Investors are approached), Sweden

2.2.2.2 Prospectus regulation

- in 19 Member States, there is a general prospectus requirement when a Crowdfunding Platform addresses foreign (EU) Companies/Project Initiators

  → Austria, Belgium, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Gibraltar, Ireland, Hungary, Latvia, Luxembourg, Malta (EU prospectus regulation applicable), Netherlands, Romania, Slovakia, Spain

- in 10 Member States, there is no national prospectus requirement when a Crowdfunding Platform presents foreign (EU) Companies/Project Initiators to local Investors

  → Bulgaria, Croatia, Greece, Italy, Lithuania, Poland, Slovenia, Sweden (for equity-based Crowdfunding), Portugal, United Kingdom

    → in Italy, Lending-based Crowdfunding activity is allowed only in compliance with the limits set forth by the Bank of Italy; even in the event of lending being requested through a foreign Crowdfunding Platform in another EU country, such limitation may apply to Italian Companies/Project Initiators

2.3 Impact of EU regulation

The AIFM-Directive[6] as well as the PSD I[7]/PSD II[8] and the corresponding implementing national laws can affect Crowdfunding. National differences in interpretation and implementation, as well as gold-plating, can lead in particular to the rise of cross-border barriers for Crowdfunding.

- in many cases the Company/Project Initiator seeking funding is a start-up, and thus it is in almost every case an operating company that falls outside the scope of the AIFM-Directive

  → in relation to this, the AIFM-Directive cannot have a harmonising effect on the cross-border Crowdfunding market

  → however, typical project companies (especially those in the real estate or renewables sectors that are established to finance a single project) could fall under the AIFM-Directive since they do not qualify as operating companies

- however, the AIFM-Directive may affect equity-based forms of Crowdfunding as a part of Investment-based Crowdfunding since the AIFM regime applies to Crowdfunding operations if the Crowdfunding Platforms create holding companies to pool Investors in an entity (in most cases in order to simplify the relationship with the Company/Project Initiator) ("**Pooling Entity**")

  → as regards equity-based forms of Crowdfunding, the legal situation is clear, and thus the AIFM-Directive has a harmonising effect on the cross-border Crowdfunding market

  → however, the AIFM-Directive may also be applicable to the Lending-based Model in some Member States (e.g. Luxembourg)

  → this poses a high risk for foreign Companies/Project Initiators when entering these national markets without fulfilling the AIFM-based requirements (which can lead to committing a crime), which again leads to uncertainty and therefore to a cross-border barrier

  → investments by means of subordinated loans (*Nachrangdarlehen*) (or other debt-based investments, i.e. credit claims as commercially comparable investments (*wirtschaftlich vergleichbare Anlagen*)) resulting from P2P-Lending structures can generally be structured as non-AIF investments

[6] Directive 2011/61/EU.
[7] Directive 2007/64/EC.
[8] Directive 2015/2366/EU.

- in practice, AIFM-Directive regulation has little practical relevance for Crowdfunding in any Member State, as most companies try to avoid or bypass the application of the AIFM-Directive regime due to its extensive regulation

- according to the PSD I/II, any transfer of funds through the operator of a Crowdfunding Platform may generally constitute payment services, i.e. money remittance services, and this therefore has an impact on the (structuring of) Crowdfunding Platforms

- there are stark differences in the interpretation of the Payment Services Directive (PSD): the national authorities have different opinions concerning the definition of money remittance services

II. In-depth assessment of main Crowdfunding markets

The main Crowdfunding markets in the European Union comprise the following Member States: France, Germany, Italy, Netherlands, Spain and the United Kingdom. The main Crowdfunding markets were assessed in the framework of an in-depth analysis taking consumer protection law and tax law into consideration in addition to Crowdfunding regulation and identifying the particular regulatory barriers Crowdfunding faces in the six Member States.

1 France

1.1 Main facts of regulation

1.1.1 Crowdfunding regulation

Since October 2014, two different specific statuses have been implemented for Crowdfunding Platforms. The Crowdfunding Platform can be structured in the form of a "*Conseil en investissement participative*" ("**CIP**") and in the form of an "*intermédiaire en financement participative*" ("**IFP**"). CIP is a Crowdfunding investment advisor and IFP a Crowdfunding investment intermediary.

In addition, a "*prestataire de services d'investissement*" ("**PSI**" – investment services advisor) (qualifying under MiFID) may also offer instruments to the crowd on dedicated platforms.

CIPs are those platform operators which provide investment services in securities (ordinary and preferred shares), and other debt instruments (straight bonds, convertible bonds and Minibons) on an internet website complying with specifications set forth by the *Autorité des Marchés Financiers* ("**AMF**") Regulation.

IFPs are legal entities facilitating contact, through a website, between people carrying out projects and people financing such projects by way of straight loans (interest-bearing or otherwise) or donations, within conditions and limits set forth in Article D. 548-1 of the French monetary and financial Code ("**CMF**").

1.1.1.1 Investment-based Crowdfunding

a) Licence obligations

Investment-based Crowdfunding is mainly operated by CIPs. The two above-mentioned statuses are optional since the Crowdfunding Platform operators can also register or be licensed, if they meet the relevant statutory criteria, as PSIs or credit institutions which imply far more costs and constraints.

CIPs cannot receive funds from Investors (except for their remuneration) and are not authorised to receive securities from issuing companies. They shall be legal entities established in France.

For CIPs no licence is required to carry out their activities, but CIPs are placed under the supervision of the AMF and are subject to registration obligations.

Therefore, a CIP has to meet the following requirements:

CIPs shall

- be registered with the ORIAS (the register for intermediaries in banking operations and payment services),
- provide certain moral guarantees,
- be members of an AMF-accredited association which controls their activities (if the association is not accredited, specific control procedures are implemented) in compliance with the AMF Regulation,
- subscribe specific insurance policies (minimum guaranteed amount shall be EUR 400,000 per covered damage instance and EUR 800,000 each year covered by the insurance, this being mandatory as from 1 July 2016),
- comply with the legal good conduct rules set forth in the CMF (as amended) and the AMF Regulation and
- ensure that their clients' interests are protected and that they receive an adequate level of information to appreciate the risks connected to their investment.

To be registered as CIPs with the ORIAS, platforms must join AMF accredited associations, which shall control the professional capacity of their members. But to date, no such association has yet been accredited by the AMF. In this case, the registration is managed by the AMF.

CIPs do not benefit from a European passport in relation to their activities and are not subject to any statutory provision as to a minimum share capital.

Caps on offerings

Offerings of shares and bonds on CIP and PSI platforms are capped at EUR 2.5m per issuer per year.

Offers exceeding EUR 1m and reaching up to EUR 2.5m may not be made for shares or *convertible* bonds representing more than 50% of the issuer's capital. This limitation does not apply to holding companies.

It must be borne in mind, that the EUR 1m per issuer per year cap does not apply to *straight* bond issuances.

b) Prospectus regulation

As in many other countries, French issuing companies have the obligation to publish a prospectus for the public offering of shares and bonds.

While this is a general principle, there is a prospectus exemption applying to Crowdfunding activities of CIPs and PSIs.

Therefore, the offering of equity and debt instruments according to the Investment-based Model by a CIP or a PSI on its Crowdfunding website is not considered a public offering and is thus not subject to a prospectus requirement, if the offering amount is lower than EUR 2.5m per issuer over a 12-month period.

If there is no obligation to publish a prospectus, the CIP or PSI has to provide the Investors with an adequate level of information on its website. This information has to be in a language accessible to a lay person. It should, *inter alia*, contain information about the risk associated with the investment and the organisation and management of the beneficiary of the investment.

It is important to note that a PSI or CIP may no longer take a share in the companies/projects they organise sponsoring for. So it is no longer possible to collect proxies for general shareholders' meetings from the Investors, as the platform no longer has any seats on the board of directors.

1.1.1.2 Lending-based Crowdfunding

a) Licence obligations

Crowdfunding Platforms that (*inter alia*) facilitate project financing by means of the Lending-based Model (straight loans, whether interest-bearing or otherwise), may register as IFPs.

IFPs are legal entities which are not necessarily established in France, putting in contact, through a website (Crowdfunding Platform), people carrying out projects and people financing such projects by way of straight loans (interest-bearing or otherwise).

An IFP may also be a banking and credit institution, a payment institution, an electronic currency establishment, a PSI or a CIP.

As to lenders, an exception to the banking monopoly has been established, so that individuals and legal entities can lend money to Companies/Project Initiators on IFP platforms. The limit of one loan per project should be noted.

To operate as a IFP, a platform shall:

- be registered with the ORIAS,
- provide certain moral guarantees,
- subscribe specific insurance policies (minimum guaranteed amount is EUR 250,000 per covered damage instance or EUR 500,000 per year, covering at least two damage instances per year); and
- abide by a good conduct code provided in the CMF.

Only in the event that the IFP wishes to implement transfer of funds between lenders and borrowers, with the consequence that it would be acting as a payment establishment, would it need to be authorised by the "*Autorité de contrôle prudential"* ("**ACPR**"–the French banks and insurance companies regulator).

Furthermore, in this case, the IFP would need to hold a licence as a payment institution under a simplified regime. It would be necessary for its share capital to amount to at least EUR 40,000.

In consequence of the simplified regime, the IFP is only subject to an adverse prudential regime and is only able to receive a maximum payment amount set to EUR 3m per month.

Prior to 30 June of every year, an annual report shall be published by the IFP Crowdfunding Platform regarding the previous calendar year's operations.

The template loan and interest-free straight loan agreements, selection criteria for the projects on the part of the Crowdfunding Platform, possible waiver option for the lenders, etc. shall be available to the public.

Caps on offerings

A Company/Project Initiator cannot borrow more than EUR 1m per project on an IFP Crowdfunding Platform (interest-bearing loan or otherwise).

A single lender may not lend more than EUR 5,000 per year and per project in interest-free loans. There is currently no limitation set on the duration of such interest-free loans.

Conversely, a single lender may not lend more than EUR 2,000 per year and per project in interest-bearing loans. These shall have a maximum duration of seven (7) years and may not be granted at usury rates.

b) Prospectus regulation

According to the national report, in the case of Lending-based Crowdfunding, no prospectus is required provided the lenders do not act in a professional or commercial capacity.

1.1.1.3 Further applicable regulation

Other common regulations to which the operator of a Crowdfunding Platform may be subject include:

- Anti-terrorism control regulations;
- Anti-money laundering regulations;
- Consumer credit acts and regulations;
- Financial canvassing (*démarchage financier*) regulation (prohibited for IFPs and very strictly limited for CIPs);
- Information privacy regulations.

Special attention should be paid to the AIFMD and the Payment Services Directive.

AIFMD regime

The AIFMD regime generally does not apply to Crowdfunding Platforms in France.

Projects within the scope of the AIFM directive would most likely be presented on a CIP platform. But they do not generally "collect" the funds raised by the project holders, since they are prohibited from doing so under their specific regulatory regime. These projects are operated by operating companies or project companies, not by the CIPs themselves.

Therefore, the AIFMD regime shall not apply to most Crowdfunding Platforms.

Payment Services Directive

Any platform proposing payment services will be acting as a Payment Services Provider. Thus, an IFP that is within the scope of the Payment Services Directive shall at least be licensed as a payment establishment by the ACPR or be registered as the agent of a

Payment Services Provider. The minimum capital of the IFPs shall amount to at least EUR 40,000.

1.1.2 Consumer protection law

This regulation has in fact been designed to protect consumers, especially in terms of the caps on amounts of funds to be raised on a project-by-project basis/to be lent by the crowd, due diligences of the Platform ahead of offering the funding of a project on their website, information obligations to the crowd and checks as to crowdfunders' solvency.

Furthermore, French regulations might also apply. The "Consumer Law" which amended the French Consumption Code is especially worthy of mention. Generally, the Consumer Law aims to promote the idea of "*reasonable credit*", notably by regulating advertising for credit agreements, activities relating to mortgage repurchase, credit consolidation and revolving, and by requiring lenders to assess the creditworthiness of a borrower. Businesses must provide pre-contractual information that is detailed, clear and transparent to consumers. Furthermore, the Consumption Code lists what information must be provided in remote selling contracts, such as pricing and the payment obligation.

In addition, the "Law on confidence in the digital economy" ("*Loi pour la confiance dans l'économie numérique"*) requires online service providers to provide consumers with pre-contractual information and imposes a general rule of transparency on their terms and conditions, and terms of use. Moreover, there is the "Law on unfair contract terms" which introduced a list of terms presumed to be unfair under French law.

1.1.3 Taxation

There is no specific tax regime governing French Crowdfunding, except for the specific provisions referred to below which can apply to Crowdfunding investments/Platforms.

Individuals who lend money to professionals on Crowdfunding Platforms (Lending-based Crowdfunding) shall be able to compensate for potential financial losses resulting from a payment default in the calculation of the income tax they shall bear. This had a positive impact on French Crowdfunding in 2016.

The same treatment also applies to Minibons. Individuals who lend money to professionals through Minibons will have the right to compensate for potential financial losses resulting from a payment default.

For shares, it should be noted that French regulations promoting the financing of French small and medium companies (*Petites et Moyennes Entreprises* – "**PME**"), provide for

- tax credits to Investors amounting to 18% of the invested amount (within the overall limit of EUR 50,000, i.e., EUR 9,000 per year), and

- the possibility for the Investors to opt for wealth tax (impôt sur la fortune) credit amounting to 50% of the investment (within the overall limit of EUR 90,000, i.e., EUR 45,000 per year).

Bond interests are subject to the general tax option on gains from fixed-income investment (*produits de placement à revenus fixe*), i.e. interest received by individuals domiciled in France is subject to progressive income tax in the year following its receipt after being subject, for the year of receipt, to a withholding tax ("advance payment") of 24%, plus social contributions on investment income levied at a rate of 15.5%.

1.1.4 Conclusion

The new regulation should prove more tailored to the Crowdfunding market's needs and further evolution. Based on communication from the major actors of the sector in France, there is great enthusiasm being shown by operators now that they can carry out their activities in a legal framework where they are not exposed to criminal sanctions for dealing in an unregulated sector.

Crowdfunding operators in France have already witnessed a fast and steady development of additional Crowdfunding Platforms to keep up with the demand of the French public at large, following the enactment of the new regulations (especially with new clean energy investment schemes).

Although Crowdfunding Platform operators have gladly welcomed the implementation of the CIP and IFP statuses, commentators already anticipate that, when experiencing growth, Platforms will want to develop their activities in other fields and will very probably apply for pre-existing regulatory statuses (PSI, credit institutions, etc.) which will offer more business opportunities. Indeed, a number of Platforms have already opted for PSI status.

1.2 Main facts of identified cross-border barriers

1.2.1 Regulation

Where IFP, CIP or PSI Crowdfunding Platforms address French Investors or Investors domiciled in France (especially by using the French language on the Platform), French regulations will apply to the Crowdfunding Platform (status/registration, information to be provided to the Companies/Project Initiators and to the Investors, and compliance obligations) and the Company/Project Initiator seeking funding.

a) Inbound

If a foreign Crowdfunding Platform addresses Investors in France or wants to present French companies/projects on its Platform, the Crowdfunding Platform may potentially operate under two hypotheses where, in any event, it will have to comply with French offering (prospectus) and banking monopoly regulations.

In the event that the foreign Crowdfunding Platform addresses French Investors, it has the benefit of the EU Passport, if it is certified as a PSI by the French ACPR in its home EU state. Alternatively, the foreign Crowdfunding Platform may register a French subsidiary as a CIP or PSI.

Crowdfunding Platforms that offer straight loans (whether interest-bearing or otherwise) will simply have to comply with the French offering regulations and banking monopoly rules.

Crowdfunding Platforms that offer loans other than straight loans (e.g. bonds, convertible bonds), and equity might be able to access the French market provided they hold a MiFID licence and have a French subsidiary and that they comply with general French offering/prospectus regulations.

In the event that the foreign Crowdfunding Platform addresses French Companies/Project Initiators and targets French Investors, reference is made to the above.

If the Crowdfunding Platform is targeting French Companies/Project Initiators but is offering the securities/instruments to foreign Investors and not French Investors, the foreign Crowdfunding Platform will most likely be subject to the laws and regulations of the territories in which the securities/instruments are offered.

b) Outbound

In this situation, a French Crowdfunding Platform addresses foreign (EU) Investors or presents a foreign (EU) Company/Project Initiator to national Investors.

The CIPs/PSIs must in any case operate a website under strict regulation of the AMF, i.e., present the information to the Investors using "clear and comprehensive language. The English language is unlikely to be considered "clear and comprehensive" for Investors/Lenders based in France.

In the event that a Company/Project Initiator only addresses foreign Investors, the Company/Project Initiator does not target the French market/French Investors. The French prospectus regulation is – as a general rule – not applicable.

With the exception of the dedicated Crowdfunding exemptions, French prospectus regulations establish a prospectus requirement only in the event that the financial products are offered in France. If CIPs/PSIs intend to operate on foreign markets, they will have to comply with local laws and regulations.

A CIP/PSI may offer on its website securities issued by a foreign Company/Project Initiator as long as the Crowdfunding Platform is able to comply with its duty to act in the best interest of the Investors, in particular with regard to:

- the selection of projects;
- the quality and the completeness of the information provided about the issuer; and

- the ability of the CIP/PSI to confirm the adequacy/relevancy of the contemplated investment to the financial capacities of the Investor.

It should be remembered, however, that since the French CIP status is a domestic status, CIPs are not authorised to offer their services in countries other than France.

IFPs may offer their services outside French territory as long as they comply with local laws and regulations on Crowdfunding activities.

The laws of the foreign country may apply in addition to the above-mentioned French regulation as to how the offering shall be organised.

1.2.2 Consumer protection law

a) Inbound

In general, the most important barrier for the consumer protection law is the complexity of rules. In particular, French consumer protection law might be applicable as well. This leads to a high degree of uncertainty.

b) Outbound

The same is also true in an outbound case. There is uncertainty relating to the applicable consumer law (national/foreign).

1.2.3 Taxation

As already described, the French taxation law is very complex. A highly differentiated tax regime is always a barrier which hinders cross-border activities.

1.2.4 Conclusion

With the growing number of countries implementing specific Crowdfunding regulation, it is becoming more burdensome for European market participants to develop a pan-European Crowdfunding offering and for foreign and EU-based Crowdfunding Platforms to enter into other domestic markets.

In particular, regulatory and other practical or factual barriers hinder cross-border activities of Crowdfunding Platforms from a French perspective:

- French Crowdfunding Platforms cannot passport local licences within the EU; and
- foreign Companies/Project Initiators might face different (or even multiple) local prospectus regimes in the event that they approach French Investors and also Investors from their (EU) home country.

2 Germany

2.1 Main facts of regulation

2.1.1 Crowdfunding regulation

2.1.1.1 Investment-based Crowdfunding

With regard to German Crowdfunding regulation the term "Investment-based Crowdfunding" includes a variety of financial products such as:

- equity-based Crowdfunding, e.g.
  - equity securities in stock corporations;
  - non-security equity investment products (*Vermögensanlagen*) such as silent partnerships, shares in limited liability companies;
- debt-based Crowdfunding, e.g.
  - debt securities in the form of order bonds (*Ordnerschuldverschreibungen*), bearer bonds (*Genussscheine*), (corporate) bonds (*(Unternehmens-)Anleihen*) or
  - non-security debt investment products (*Vermögensanlagen*), especially subordinated profit-participating loans (*partiarische Nachrangdarlehen*);

a) Licence obligations

Pursuant to the German Banking Act (*Kreditwesengesetz*), anyone intending to provide financial services in Germany commercially or on a scale which requires a commercially organised business undertaking requires a written licence from BaFin. The provision of "financial services" includes, among other things:

- the brokering of business involving the purchase and sale of financial instruments or their documentation (investment brokering);
- the purchase and sale of financial instruments in the name of and for the account of others (contract brokering); and
- the placement of financial instruments without commitment to take up those instruments (placement of financial instruments).

"Financial instruments" within the meaning of the German Banking Act (*Kreditwesengesetz*) include:

- securities (shares in stock corporations, shares in collective investment undertakings (*Investmentvermögen*), debt securities including participation certificates);

- investment products (*Vermögensanlagen*) (shares in other legal entities such as limited liability companies, limited partnerships, civil law partnerships or silent partnerships (*stille Beteiligungen*), participation rights (*Genussrechte*) with regard to profits in those legal entities, shares in trust assets (*Treuhandvermögen*) and registered bonds, subordinated profit-participating loans (*partiarische Nachrangdarlehen*) and – as a rule – other investments that grant a repayment claim and a claim for interest);

- shares in collective investment undertakings (*Investmentvermögen*).

German Companies/Project Initiators seeking funding by means of Crowdfunding almost exclusively use subordinated profit-participating loans (*partiarische Nachrangdarlehen*).

Exemptions from the licensing requirement

If securities are offered, no exemptions are available from the licensing requirement.

However, as already mentioned, most German Crowdfunding Platforms facilitate the offering of subordinated profit-participating loans (*partiarische Nachrangdarlehen*) and can therefore benefit from a statutory exception to the licensing requirement if they fulfil the following conditions:

- only investment brokering (*Anlagevermittlung*) or investment advice (*Anlageberatung*) is conducted;

- only investment products (*Vermögensanlagen*) within the meaning of the Investment Products Act (*Vermögensanlagengesetz*) or shares in collective investment undertakings (*Investmentvermögen*) are publicly offered for the first time;

- no acquiring of ownership or possession with regard to funds or shares of customers takes place (unless a specific licence to do so has been obtained).

Where these requirements are met, the operator of the Crowdfunding Platform only needs a licence under section 34f of the German Trade, Commerce and Industry Regulation Act (*Gewerbeordnung*). This licence is restricted to Germany only and does not allow for any (EU) passporting.

Additional regulatory requirements pursuant to German Financial Investment Brokerage Regulation (*Finanzanlagenvermittlungsverordnung*)

Furthermore, Crowdfunding Platforms must comply with the following ongoing obligations pursuant to the German Financial Investment Brokerage Regulation (*Finanzanlagenvermittlungsverordnung*) if they have obtained a section 34f licence:

- status information sheet (*Statusinformationsblatt*) which the Investor must receive before the first investment and which must *inter alia* contain detailed information about the Crowdfunding Platform and about financing costs, risks and conflicts of interest;

- appropriateness test (*Angemessenheitsprüfung*) of Investors regarding previous investments of Investors and their knowledge of and experience with financial investments.

b) Prospectus regulation

Companies/Project Initiators issuing securities or investment products (*Vermögensanlagen*) to Investors can be subject to a prospectus requirement. There are two different prospectus regimes in Germany. If securities (e.g. shares in stock corporations or debt securities) are offered, there is a requirement to publish a prospectus approved by BaFin under the German Securities Prospectus Act (*Wertpapierprospektgesetz*). If investment products (*Vermögensanlagen*) are offered (e.g. silent partnerships or subordinated profit-participating loans (*partiarische Nachrangdarlehen*)) there is, in contrast, a requirement to publish a prospectus approved by BaFin under the German Investment Products Act (*Vermögensanlagengesetz*).

The general prospectus requirement regarding securities does not apply – *inter alia* – where the offering of securities meets the following criteria:

- sale price does not exceed EUR 100,000 within a time period of 12 months;

- offer addresses not more than 150 Investors per country in the European Economic Area; or

- price per share amounts to minimum EUR 100,000 per Investor.

The general prospectus requirement regarding investment products (*Vermögensanlagen*) does not apply where the offering of investment products (*Vermögensanlagen*) meets the following criteria:

- sale price does not exceed EUR 100,000 within a time period of 12 months;

- offering is of up to 20 shares of the same investment product (*Vermögensanlage*) or

- price per share amounts to minimum EUR 200,000 per Investor.

Companies/Project Initiators offering subordinated profit-participating loans (*partiarische Nachrangdarlehen*) are – as a rule – also subject to the prospectus requirement under the Investment Products Act (*Vermögensanlagengesetz*) since subordinated profit-participating loans (*partiarische Nachrangdarlehen*) are – since the Retail Investors' Protection Act (*Kleinanlegerschutzgesetz*) has entered into force in 2015 – also covered by the Investment Products Act (*Vermögensanlagengesetz*).

The Retail Investors' Protection Act (*Kleinanlegerschutzgesetz*) provides for extended requirements regarding the prospectus, including restricted validity of prospectuses of 12 months and extra requirements for additions to prospectuses during and after the offering ("ad-hoc disclosure obligation") until complete redemption.

Crowdfunding Exemption from prospectus requirement

However, in order to avoid excessive burdens resulting from preparing an (expensive) prospectus, the Retail Investors' Protection Act (*Kleinanlegerschutzgesetz*) provides for an exemption from the prospectus requirement for the offering of subordinated profit-participating loans (*partiarische Nachrangdarlehen*) ("**Crowdfunding Exemption**"). According to this Crowdfunding Exemption, a lighter regulation shall apply if the following (cumulative) conditions are met:

- maximum total offering: EUR 2.5m;
- offering only of profit-participating loans (*partiarische Darlehen*), subordinated loans (*Nachrangdarlehen*) or commercially comparable investments (*wirtschaftlich vergleichbare Anlagen*);
- total amount for each Investor per investment product (Vermögensanlage) of one issuer (company/project) is restricted as follows:
  - up to EUR 1,000: no restrictions
  - more than EUR 1,000: cash deposits or financial instruments of the Investor must exceed EUR 100,000 or maximum investment up to two monthly net incomes
  - EUR 10,000: absolute maximum investment per Investor that is not a corporation
  - corporations, i.e. stock corporation (*Aktiengesellschaft*), limited partnership by shares (*Kommanditgesellschaft auf Aktien*) and limited liability company (*Gesellschaft mit beschränkter Haftung*): no restrictions
- marketing via online platforms that must have a licence under the German Trade, Commerce and Industry Regulation Act (*Gewerbeordnung*), under the German Banking Act (*Kreditwesengesetz*) or the German Securities Trading Act (*Wertpapierhandelsgesetz*).

If these requirements are met, no prospectus is required. Instead, only a three-page fact sheet (*VIB*) must be provided to the Investors to inform them about the company/project. The fact sheet (*VIB*) must contain:

- the most relevant information about the company/project and the issued investment product (*Vermögensanlage*);
- information about risks, inter alia, in the form of typographically emphasised warning notices on the first page.

There are no limitations on advertising of investment products (*Vermögensanlagen*). Instead, advertisements must contain some specific warning notices which shall illustrate the risks that may arise from the investments.

2.1.1.2 Lending-based Crowdfunding

Also since the implementation of the Retail Investors' Protection Act (*Kleinanlegerschutzgesetz*), a bank also needs to be involved in this process in Germany. The bank grants the loan to the borrower and then splits and assigns the loan to the crowd (lenders).

a) Licence obligations

In general, the operator of a Crowdlending (P2P-Lending) platform, as well as the operator of a Crowdfunding Platform, only needs a licence under the German Trade, Commerce and Industry Regulation Act (*Gewerbeordnung*). Compared to a licence under the German Banking Act (*Kreditwesengesetz*) this is a relatively straightforward matter.

In the most common business model, the bank grants the loan to the borrower and then splits and assigns the loan to the crowd (lenders). In this case only, the bank requires a licence under the German Banking Act (*Kreditwesengesetz*) for providing financial services.

In the other common business model, the Crowdfunding Platform brokers loans between potential borrowers and Investors using an intermediary owned by the Crowdfunding Platform. If the bank grants the loan to the borrower and transfers the split repayment claim arising from the loan agreement to the intermediary, the Crowdfunding Platform does not require a licence, because the intermediary only assigns the partial claims to the crowd (lenders). If the bank does not split the repayment claim and transfers it as a whole to the intermediary, the intermediary might need a licence for granting of loans to the crowd (lenders), but this also depends on the specific legal transaction.

Since the business model not involving a bank or intermediary could lead to authorisation requirements of the Investors as financiers and the borrowers, it does not really exist in Germany.

b) Prospectus regulation

Since the wording of the Retail Investors' Protection Act (*Kleinanlegerschutzgesetz*) was not clear concerning the categorisation for offering credit claims by P2P-Lending Platforms, BaFin confirmed that credit claims are classified as commercially comparable investments (*wirtschaftlich vergleichbare Anlagen*). Therefore, credit claims are also subject to the prospectus requirements under the Retail Investors' Protection Act (*Kleinanlegerschutzgesetz*) regardless of whether the concrete business model of the platform involves an intermediary or not.

However, P2P-Lending Platforms can also make use of the Crowdfunding Exemption for the offering of credit claims as commercially comparable investments (*wirtschaftlich vergleichbare Anlagen*).

2.1.1.3 Further applicable regulation

Other common regulations to which the operator of a Crowdfunding Platform may be subject include the German Trade, Commerce and Industry Regulation Act (*Gewerbeordnung*), the German Act on Money Laundering (*Geldwäschegesetz*), the German Securities Trading Act (*Wertpapierhandelsgesetz*) and the Consumer Credit Regulation (*Vorschriften für Verbraucherdarlehensverträge*).

Furthermore, according to the Capital Investment Act (*Kapitalanlagegesetzbuch*) the Alternative Investment Fund Manager Directive ("**AIFMD**") regulation of funds and fund managers applies when there is an alternative investment fund ("**AIF**") managed by an alternative investment fund manager ("**AIFM**"). The Retail Investor's Protection Act (*Kleinanlegerschutzgesetz*) does not affect this regulation.

German AIFMD regulation does not apply to operating companies outside the financial sector which do not invest in accordance with a defined investment policy. In the view of BaFin, companies are operating companies if they operate the facility or production themselves within their day-to-day business. In general, "typical" start-up companies fall outside the scope of German AIFMD regulation since they fulfil the requirements of an operating company outside the financial sector in general.

However, essentially typical project companies (especially in the real estate or renewables sectors) could be subject to AIFMD regulation. In the view of BaFin, so-called project companies (companies that are established to finance a single project) cannot generally qualify as operating companies.

In contrast, investments by means of subordinated loans (*Nachrangdarlehen*) (or other debt-based investments) can generally be structured as non-AIF investments.

Another regulation to which the operator of a Crowdfunding Platform may be subject is the German Payment Services Supervisory Act (*Zahlungsdiensteaufsichtsgesetz*).

Any transfer of funds through the operator of a Crowdfunding Platform generally constitutes money remittance services (*Finanztransfergeschäft*) within the meaning of the German Payment Services Supervisory Act (*Zahlungsdiensteaufsichtsgesetz*), which implements the Payment Services Directive (II) in Germany. Such transfer of funds could occur if the Investors pay their investment amounts to the operator of the

Crowdfunding Platform who then passes the funds to the Company/Project Initiator. In order to avoid further licensing requirements, the operator of a Crowdfunding Platform could cooperate with a bank or a licensed payment institution for the handling of payments rather than acting as an intermediary itself. Another alternative solution is that the Company/Project Initiator simply collects the funds from the Investors on their own bank account.

2.1.2 Consumer protection law

Due to the fact that at least some Investors in Crowdfunding are likely considered consumers, a Company/Project Initiator is obliged to take a number of consumer protection provisions into account. A consumer (*Verbraucher*) means any natural person who enters into a legal transaction for purposes that are predominantly outside his/her trade, business or profession. An entrepreneur (*Unternehmer*) means a natural or legal person or a partnership with legal personality who or which, when entering into a legal transaction, acts in exercise of his/her or its trade, business or profession.

Irrespective of a Crowdfunding project's nature, there are a number of specific consumer protection rules in Germany which are applicable when Crowdfunding Platforms and Companies/Project Initiators interact with consumers in a Crowdfunding campaign.

With regard to distance and off-premises contracts the German Civil Code (*Bürgerliches Gesetzbuch*) requires the fulfilment of a number of specific information obligations by both the Crowdfunding Platform and the Company/Project Initiator being financed.

To the extent the Crowdfunding Platform is considered a credit provider or a credit intermediary in case of Lending-based Crowdfunding, it should adhere to the specific provisions as laid down in the German Civil Code (*Bürgerliches Gesetzbuch*). These provisions do not apply to the Company/Project Initiator as it will not be considered a credit provider or a credit intermediary. With regard to non-gratuitous consumer credit agreements the German Civil Code (*Bürgerliches Gesetzbuch*) requires various obligations to be fulfilled in order to protect the consumer. These specific provisions include stipulations relating to the provision of precontractual information and content requirements of the credit agreement.

In case such information should not be provided at the right point in time and in the correct format, the spectrum of possible consequences includes potential cease and desist letters (from consumers, consumer protection authorities or competitors), significant extension of the withdrawal period and even invalidity of the contract concluded.

Furthermore, non-compliance with regard to these information obligations is deemed to be an unfair commercial practice within the meaning of the provisions of the law against unfair competition (*Gesetz gegen den unlauteren Wettbewerb*). Cease and desist letters might be issued and – if the illegal commercial practice was permitted with intent or negligently – breaches might lead to liability for damages (e.g. attorney's fees).

2.1.3 Taxation

There are no specific rules in Germany which govern the (corporate) income and/or trade tax treatment of Crowdfunding. Neither does the harmonised value-added tax law ("**VAT law**") provide for specific provisions. Consequently, the tax consequences for the Investor and the Company/Project Initiator being financed will, in effect, for the most part be governed by the general rules for the taxation of return on loans and on shares in a corporation, i.e. on equity.

In Germany, income from a business is subject to corporate or income tax (depending on the legal form of the business) and trade tax. Corporate tax is levied at a rate of 15% on both domestic and foreign corporations. Income tax applies to individuals with a progressive tax rate up to approx. 45%. Church tax may apply in addition to this.

Income from capital may be qualified as income from a business and be taxed accordingly, or it may fall within the special provisions for capital income.

Partnerships are transparent for corporate and income tax purposes. Consequently, all assets, liabilities and income are allocated to the partners in proportion to their partnership interest and are taxed accordingly.

Trade tax is a municipal tax with tax rates varying between 7% and approx. 17%, with an average of 15%. For trade tax purposes, partnerships are not transparent.

2.1.4 Conclusion

In summary, both models – the Investment-based Model and the Lending-based Model – require (as a general rule) a licence from BaFin or a lighter local, not passportable licence from a local authority.

Moreover, Companies/Project Initiators issuing securities or investment products (*Vermögensanlagen*) to Investors can be subject to a prospectus requirement. If they meet certain requirements, they can benefit from the special Crowdfunding Exemption especially in the event that subordinated profit-participating loans (*partiarische Nachrangdarlehen*) or credit claims as commercially comparable investments (*wirtschaftlich vergleichbare Anlagen*) are offered, with the consequence that no prospectus is required.

There are a number of specific consumer protection rules in Germany which are applicable when (foreign) Crowdfunding Platforms and (foreign) companies/projects interact with consumers in a Crowdfunding campaign. Consumer protection law should be taken into account at every stage of Crowdfunding, e.g. in building the Platform as well as in preparing, presenting and executing a campaign.

There are no specific rules in Germany which govern the tax treatment of both Investment-based and Lending-based Crowdfunding. The complexity of the (corporate) income tax rules and the lack of transparency which result from the non-harmonisation of (corporate) income tax law might create an obstacle that prevents Investors from cross-border investing.

2.2 Main facts of identified cross-border barriers

2.2.1 Regulation

From a practical point of view, the security regulation (Prospectus Directive and the corresponding Securities Prospectus Act (*Wertpapierprospektgesetz* – WpPG), which implements the Directive, as well as the upcoming Prospectus Regulation) are – on the whole – irrelevant for the German Crowdfunding sector since almost all funding in the German Crowdfunding market is made by means of subordinated profit-participating loans (*partiarische Nachrangdarlehen*). This is due to the fact that there are currently no Platforms presenting companies/projects offering securities (*Wertpapiere*).

According to BaFin, German financial regulation applies in the event that German Investors are approached by (foreign) financial actors (such as issuers of financial instruments or brokers, etc.). In this regard, BaFin follows a marketing-focussed approach (*vertriebsbezogener Ansatz*). In concrete terms, this means that foreign financial actors not having their place of business or residence in Germany are also encompassed by German regulation if they approach German Investors – which mainly depends on the (German) language used by the Crowdfunding Platform.

a) Inbound

In the event that a foreign Crowdfunding Platform addresses German Investors German regulatory law can apply to the Crowdfunding Platform (mainly licence, information and compliance obligations) and/or the Company/Project Initiator seeking funding (mainly prospectus and information obligations).

The applicable regulatory law (and its extent) depends on whether the Crowdfunding Platform has a (passportable) MiFID licence in another EU member state. In Germany, MiFID was mainly implemented in the Securities Trading Act (*Wertpapierhandelsgesetz* – WpHG) (mainly regarding the trading of securities (*Wertpapiere*) and related obligations) and the German Banking Act (*Kreditwesengesetz* – KWG) (mainly regarding possible licence requirements). Other than the scope of MiFID, the scope of the German Banking Act (*Kreditwesengesetz*) covers – *inter alia* – investment products (*Vermögensanlagen*) within the meaning of the German Investment Products Act (*Vermögensanlagengesetz*). In detail, the scope of the German Investment Products Act (*Vermögensanlagengesetz*) covers

- all kinds of shares of companies (also shares in limited liability companies (*GmbH*), entrepreneurial companies (*UG (haftungsbeschränkt)*) and limited partnerships (*GmbH & Co. KG*) and

- (since the Retail Investors' Protection Act (*Kleinanlegerschutzgesetz*)) subordinated profit-participating loans (*partiarische Nachrangdarlehen*) as well as credit claims as commercially comparable investments (*wirtschaftlich vergleichbare Anlagen*).

Therefore, the scope of the German Banking Act (*Kreditwesengesetz*) is wider than the scope of MiFID since it also covers non-tradable investment products (*Vermögensanlagen*).

As a general rule, a foreign Crowdfunding Platform with a foreign MiFID licence can conduct business in Germany without applying for a licence and without having a presence in Germany – so-called "notification procedure" pursuant to section 53b German Banking Act (*Kreditwesengesetz*).

However, if a Crowdfunding Platform holds a MiFID licence and intends to address German Investors it is unclear whether the MiFID licence is also sufficient for providing financial services with regard to financial instruments not covered by this MiFID licence – e.g. brokering of shares in a limited liability company (*GmbH*), subordinated profit-participating loans (*partiarische Nachrangdarlehen*) or – with regard to P2P-Lending – credit claims as commercially comparable investments (*wirtschaftlich vergleichbare Anlagen*). To date, BaFin has not developed any administrative practice with regard to this issue. For this reason, it cannot be excluded that a Crowdfunding Platform with a foreign MiFID licence might additionally need a (local) German licence in order to be allowed to offer all kinds of company shares as well as subordinated profit-participating loans in Germany.

Generally, a foreign Crowdfunding Platform might be subject to other German regulation in exceptional cases (e.g. the German Securities Trading Act (*Wertpapierhandelsgesetz*). It is not subject to the German Act on Money Laundering (*Geldwäschegesetz*).

In the event that a foreign Crowdfunding Platform has no MiFID licence, the Crowdfunding Platform must – in principle – apply for a licence according to section 32 of the German Banking Act (*Kreditwesengesetz*) if the Crowdfunding Platform targets the German market for the purpose of offering financial services.

In the event that the Crowdfunding Platform intends to broker only profit-participating loans (*partiarische Darlehen*), subordinated loans (*Nachrangdarlehen*) or commercially comparable investments (*wirtschaftlich vergleichbare Anlagen*) (e.g. credit claims with regard to P2P-Lending) the local licence according to section 34f German Trade, Commerce and Industry Regulation Act (*Gewerbeordnung*) may be sufficient.

For a foreign Company/Project Initiator which addresses German Investors, the German prospectus regimes are applicable since the foreign Company/Project Initiator is offering investment opportunities in Germany.

The applicable prospectus regime depends on whether the foreign Company/Project Initiator offers transferable securities (which is often the case in foreign (EU) countries such as France) or other financial products, which are most likely investment products within the meaning of the German Investment Products Act (*Vermögensanlagengesetz*).

In the event that the foreign Company/Project Initiator intends to benefit from the Crowdfunding Exemption, it is limited to offering subordinated profit-participating loans (*partiarischen Nachrangdarlehen*) or credit claims as commercially comparable

investments (*wirtschaftlich vergleichbare Anlagen*) since only these investment products (*Vermögensanlagen*) may benefit from the Crowdfunding Exemption.

In a situation where a foreign Crowdfunding Platform addresses German Companies/Project Initiators, BaFin will (most likely) come to the conclusion that German regulatory law does not apply if the investment opportunities are not presented in German language.

b) Outbound

In the event that a German Crowdfunding Platform addresses foreign Investors (e.g. a German Platform addresses French Investors), German regulatory law will most likely not be applicable. However, if there are several further indicators – e.g. German contact persons and details or investment opportunities are clearly adjusted to German regulatory law and English language is used – it is assumed that the German market is being approached. Therefore, BaFin might come to the conclusion that German regulatory law is applicable (including licensing and prospectus requirements for the Crowdfunding Platform).

However, taking all criteria into account, BaFin will (most likely) come to the conclusion that German regulatory law is not applicable in this case. This is particularly true if only foreign Investors are addressed and only foreign (e.g. French) language is used.

In the event that a German Crowdfunding Platform presents foreign Companies/Project Initiators to German Investors, German regulatory law is applicable. This is due to the fact that German Investors are being approached and, as a main criterion, German language will be used. Therefore, BaFin will come to the conclusion that German regulatory law will be applicable. As a consequence, the regular German regulation (a licence obligation) applies to the Crowdfunding Platform.

For a foreign Company/Project Initiator, the German prospectus regimes are also applicable since the foreign Company/Project Initiator is offering investment opportunities in Germany.

The applicable prospectus regime depends on whether the foreign Company/Project Initiator offers transferable securities (which is often the case in foreign (EU) countries such as France) or other financial products, which are most likely investment products (*Vermögensanlagen*) within the meaning of the German Investment Products Act (*Vermögensanlagengesetz*).

In the event that the foreign Company/Project Initiator intends to benefit from the Crowdfunding Exemption, it is limited to offering subordinated profit-participating loans (*partiarische Nachrangdarlehen*) or credit claims as commercially comparable investments (*wirtschaftlich vergleichbare Anlagen*) since only these investment products (*Vermögensanlagen*) may benefit from the Crowdfunding Exemption.

In addition to the German regulations, the Company/Project Initiator might face (local) prospectus requirements of its home (EU) country, e.g. if its home (EU) country/financial regulation authority follows a different approach than BaFin

(marketing-focussed approach). In this case, the prospectus requirements of the home (EU) country and also the German regulations might apply to the Company/Project Initiator, which might lead to double regulation.

2.2.2 Consumer protection law

A number of consumer protection rules have to be taken into account at any stage of a Crowdfunding campaign. The complexity of the rules and the legal consequences are one of the most significant barriers to Crowdfunding in principle as well as to cross-border Crowdfunding.

These rules not only affect the content and structure of the agreements in place, they also have a significant impact on processes on the Crowdfunding Platform. In addition, the consequences of potential breaches of legal regulations are severe and can therefore significantly affect the economic success of a Crowdfunding business.

Another barrier with regard to cross-border Crowdfunding is that different laws might be applicable. In general, parties may choose the law applicable to a contract. However, such a choice must not have the result of depriving the consumer of the protection afforded to him or her by provisions that cannot be derogated from by agreement by virtue of the law which, in the absence of choice, would have been applicable. Thus, irrevocable provisions of consumers' local consumer protection law are applicable although the contract might be governed by a different law.

Therefore, the mere existence of very detailed and restrictive consumer protection regulation creates significant barriers when setting up and executing any type of Crowdfunding business. Processes turn out to be very complex due to the number of obligations and requirements, and user friendliness, efficiency and profitability are negatively affected by the companies' need to comply with the regulation – especially given the fact that the regulation is strictly enforced by consumer protection authorities, competitors and other market participants.

a) Inbound

In the event that the Crowdfunding Platform and the Company/Project Initiator being financed are based outside of Germany and the Investor is a German resident ("Inbound Situation"), German consumer protection law is likely to apply as the protection standard provided by German law is comparatively high.

b) Outbound

In the event that the Crowdfunding Platform and the Company/Project Initiator are based in Germany and the Investor is non-German ("Outbound Situation"), German consumer protection law is not necessarily required to be applied although the contract might be governed by German law. A choice of law must not have the result of depriving the consumer.

2.2.3 Taxation

The complexity of the (corporate) income tax rules and the lack of transparency which result from the non-harmonisation of (corporate) income tax law might create an obstacle that prevents Investors from cross-border investing.

a) Inbound

Whether the Investor's return will be taxable in Germany in a situation in which the Investor is tax-resident abroad, but the Crowdfunding Platform and the Company/Project Initiator being financed are tax-resident in Germany ("Inbound Situation"), will in particular depend on the form of the investment. Generally, Germany requires non-residents to pay tax on their German-sourced income. However, German taxing rights might be excluded or reduced due to the application of a double taxation treaty.

b) Outbound

In a situation in which the Company/Project Initiator being financed is tax-resident abroad, but the Investor and the Crowdfunding Platform are tax-resident in Germany ("Outbound Situation"), German tax implications for the Investor are for the most part the same as for a mere domestic situation. This is due to the fact that Germany taxes its residents on their worldwide income.

In the event that a double taxation treaty applies, Germany will give credit for (withholding) tax levied abroad in line with the respective treaty provisions. Otherwise, the Investor might be granted a unilateral tax relief for foreign taxes in the form of a tax-credit or a deduction from income.

If the Investor has become a silent partner and the silent partnership qualifies as a co-entrepreneurship, from a German tax law perspective, the Investor's share in the profits will generally be considered business income from a foreign permanent establishment. Consequently, German taxing rights with respect to the income would be excluded in the event of the application of a double taxation treaty, i.e. the income would not be taxable in Germany.

2.2.4 Conclusion

The following (regulatory and other practical or factual) barriers particularly hinder cross-border activities of Crowdfunding Platforms from a German perspective:

- wide scope of application of German regulatory law with BaFin following its marketing-focussed approach (*vertriebsbezogener Ansatz*)

- inbound as well as outbound: frictions regarding the scope of the MiFID licence and local (German) licences with regard to covered financial instruments and usage of the EU Passport which (at a minimum) leads to uncertainty among Crowdfunding market participants – especially the unresolved question of whether subordinated profit-participating loans

(*partiarische Nachrangdarlehen*), which are predominantly used in Germany, are covered by the MiFID licence/can be offered in the host (EU) country

- foreign Crowdfunding Platforms face factual and practical barriers when applying for local licences in Germany (no base in Germany and proof of expertise)

- German Crowdfunding Platforms cannot passport local licences within the EU

- almost any investment in companies/projects by means of Crowdfunding in Germany is made through subordinated profit-participating loans (*partiarische Nachrangdarlehen*) which are not covered by MiFID/MiFID II or the European prospectus regulation. Therefore, German Crowdfunding Platforms do not have access – in particular – to the European prospectus regulation

- the same applies to usual structures of start-ups that are structured as limited liability companies/entrepreneurial companies which do not fall under MiFID/MiFID II or the European prospectus regulation, since they do not constitute transferable securities or equal financial instruments. Therefore, almost the whole German Crowdfunding market is excluded from the possibilities offered by the European prospectus regulation (EU Passports, etc.) and is restricted to the local prospectus regulation

- foreign companies/projects might face different (or even double) local prospectus regimes in the event that they approach German Investors and also Investors of their home (EU) country

Consumer protection law should be taken into account at every stage of Crowdfunding, e.g. in building the Platform as well as in preparing, presenting and executing a campaign.

The complexity and the lack of transparency of (international) taxation are also barriers to cross-border Crowdfunding. Closely connected to this is the risk of double taxation due to qualification conflicts.

3 Italy

3.1 Main facts of regulation

3.1.1 Crowdfunding regulation

3.1.1.1 Investment-based Crowdfunding

a) Licence obligations

Equity Crowdfunding – as a category of Investment-based Crowdfunding – is mainly regulated by

- Law no. 221 of 17 December 2012 (Law 221/2012) and
- CONSOB Regulation of 26 June 2013 no. 18592 as further amended by the CONSOB decision no. 19520 dated 25 February 2016 (CONSOB Regulation).

The regulation on Equity Crowdfunding has been expanded by

- the Decree Law no. 76 dated 28 June 2013, also known as "*Decreto Lavoro*" (duly implemented by the Law no. 99 dated 9 August 2013) and
- the Decree Law no. 3 dated 24 January 2015 (known as "*Investment Compact*" and duly implemented by the Law no. 33 dated 24 March 2015), which introduced the possibility of access to Equity Crowdfunding also for innovative SMEs (originally granted only to innovative start-ups) and has granted to such companies some of the facilitations already provided for innovative start-ups by Law 221/2012.

Companies eligible for Crowdfunding campaigns

Under Italian law, the possibility for companies to raise equity funds through a Crowdfunding campaign is limited only to:

- innovative start-ups – innovative start-ups are companies (in general joint stock companies (*Società per azioni*) and limited liability companies (*Società a responsabilità limitata*)) which: (i) are not listed on a regulated market; (ii) have started their activity by no more than 60 months; (iii) have their registered office in Italy or a branch or a production facility in Italy; (iv) have a total maximum turnover of EUR 5,000,000; (v) have as their exclusive company object either the manufacturing and marketing of innovative products or services which are highly innovative. Moreover, to be considered an innovative start-up, a company must also comply with at least one of the following three requirements: (i) expenses relating to R&D must be equal to or greater than 15% of the higher between

turnover and cost of production; (ii) some of the employees must be graduates with three years of research experience or with university research experience; (iii) the company must own IP rights to industrial patents, biotech, new plant-related kind or original software code;

- innovative SMEs - innovative SMEs, on the other hand, are companies (in general joint stock companies (*Società per azioni*) and limited liability companies (*Società a responsabilità limitata*)) which (i) are not listed on a regulated market, but which can have their shares traded on MTF; (ii) have their registered office in Italy or a branch or a production facility in Italy; (iii) have independent firm revision of the last available balance sheet. In addition, to be considered an innovative SME, a company must also comply with at least two of the following three requirements: (i) expenses relating to R&D equal or above the 3% of the higher between turnover and cost of the production; (ii) some of the employees must be graduates with three years of research experience or with university research experience; (iii) the company must own IP rights to industrial patents, biotech, new plant-related kind or original software code;

- investment funds and investment companies (holdings) which invest primarily in innovative start-ups and/or in innovative SMEs.

The law, in order to promote investment in innovative start-ups and SMEs, also provides for specific derogations from some of the provisions of the Italian Civil Code, such as the possibility to cover losses which affect the corporate capital within two years (instead of one year) and the possibility for limited liability companies to issue specific classes of quotas provided with different rights and, for innovative start-ups only, exemption from the application of the bankruptcy laws.

Crowdfunding Platforms

According to the Italian Consolidated Law on Banking (Legislative Decree of 24 February 1998 no. 58 - *Testo unico delle disposizioni in materia di intermediazione finanziaria* – the TUF) Crowdfunding activity may be performed only by authorised entities (such as banks and investment companies) and by Platform managers expressly authorised by CONSOB and enrolled in a special register held by CONSOB itself. As of today, there are 21 entities authorised to manage an online Equity Crowdfunding Platform, two of which are MiFID-licensed. Once the Platform's manager is duly authorised to perform the activity, the online Platform goes live and the investors start looking into the investment projects.

In order to be registered on the special register held by CONSOB, the Platform managers must fulfil the following requirements:

- be a joint stock company, a limited liability company or a cooperative;

- have the registered and administrative office in Italy or, for companies based in any EU Member State, have a branch in Italy;

- have as their company object the management of an online platform for raising capital for innovative start-ups, innovative SMES, collective investment bodies and companies which invest primarily in innovative start-ups and in innovative SMEs;

- have controlling shareholders, directors and auditors that fulfil the integrity and professional requirements established by CONSOB.

Such Platforms may not, in any case, hold sums or financial instruments pertaining to third parties. In this respect, TUF expressly provides that for the subscription or purchase and subsequent sale of quotas representing the capital of an innovative start-up or innovative SME constituted in the form of a limited liability company:

- the subscription or purchase may be carried out through a bank or financial intermediary, which carries out the subscription or purchase of the stocks in its own name or on behalf of the subscribers that subscribe to the bid via the Crowdfunding Platform;

- within 30 days from the close of the bid, authorised intermediaries shall notify the Companies Register of their ownership of stocks on behalf of third parties, incurring the relevant cost thereof; in this regard, the subscription conditions published on the Platform must expressly provide that, should the subscription to the bid be successful and should the Investor decide to make use of the alternative regime referred to the section above, this shall imply the concurrent and mandatory grant of a mandate to the appointed intermediaries so that they may:

  – register the stocks/units in their own name or on behalf of the subscribers, providing adequate proof of the latter's identity and the shares owned;

  – issue a confirmation certificate on behalf of the subscriber, proving ownership of the stocks; said confirmation certificate is needed only to legitimise the corporate rights, refers to the subscriber by name, is not transferable to third parties even on a temporary basis, for any reason, and does not constitute a valid instrument to transfer ownership of the stocks;

  – allow the subscribers that make application to subsequently sell the stocks pursuant to the bullet point below;

  – grant subscribers the right to apply, at any time, for the relevant stocks to be registered directly in their name;

- the subsequent sale of stocks/units pursuant to bullet point above is carried out by simply annotating the transfer in the registers held by the intermediary; the subscription and transfer do not result in costs or fees for the buyer or seller; the subsequent certification issued by the

intermediary for the purposes of exercising corporate rights replaces and covers the formalities referred to the Italian Civil Code.

There is no exemption applicable to Equity Crowdfunding activity which permits the management of an online Crowdfunding Platform by an entity which has not been granted one of the above-mentioned licenses.

Equity Crowdfunding campaigns tend to last between one and three months. Some Crowdfunding Platforms have decided to team up with networks of investors such as business angels, seed investors or family offices which may invest along with the crowd investors to increase the size of the overall investment of a single campaign (some equity campaigns have already closed with a total collection over EUR 1m).

Neither the aforementioned entities nor Crowdfunding Platforms are obliged to profile any Investors with respect to any obligations resulting from MiFID if the single investment of the Investor is below EUR 500 and its overall investments during the year are below EUR 1,000.

Investors are therefore allowed to invest their money without any further specific limitations in terms of amount invested in a single transaction or overall during the year, even if the CONSOB recommendation to the Crowdfunding Platforms operating in Italy is to force the Investors to strongly diversify their investment portfolio.

b) Prospectus regulation

According to the Italian law, public offers of shares or stocks of innovative start-ups and innovative SMEs made through an authorised online platform which do not exceed the overall amount of EUR 5,000,000 are not subject to the duty to publish a prospectus.

Further, Italian regulation also provides that:

- public offers conducted via an online Crowdfunding Platform must also be underwritten for at least 5% by professional Investors;
- if the majority shareholders of the innovative start-up or innovative SME transfer their own equity to third parties, the underwriters shall have the right to withdraw from the company or co-sell their shares or quotas.

Moreover, according to CONSOB Regulation 18592/2013, the Crowdfunding Platforms are only required to provide to the public a short investment memorandum giving information on the offering company (name, registered office, structure, name and role of the directors and auditors, description of the shareholdings), on the characteristics of the offer (type of shares or stocks offered, timing, relevant rights, etc.), and on the risks related to the offer.

3.1.1.2 Lending-based Crowdfunding

a) Licence obligations

In November 2016, the Bank of Italy finally adopted a resolution in accordance with which Lending-based Crowdfunding – this being P2P and P2B lending activity (called social lending in Italy) – has been officially recognised (Bank of Italy resolution 584/2016). Lending-based Crowdfunding was thereby declared not to be prohibited by the restrictions requiring that only banks or professional lenders provide credit to individuals or companies. In Italy, the following models of lending activities are currently allowed: social lending, peer-to-peer lending, peer-to-business lending and invoice trading subject to certain terms and conditions.

In particular, this type of lending activity has been permitted on condition that:

- the amount of funds is not significant (please note that the Bank of Italy has provided neither a definition nor any criteria to determine the relevant threshold);

- the acquisition of funds is determined following specific and personalised negotiation between the lenders and the borrowers (please note that the Bank of Italy has not given any specific instructions regarding such negotiation activities. It is, however, considered acceptable for the parties to decide upon the amount of the lending (for the borrower, the overall amount to be requested and for the lenders, the relevant part of such amount that they intend to lend) and to expressly agree upon the specific conditions of the lending, e.g. duration, amortisation plan and interest rate).

For those online Crowdfunding Platforms willing to open and manage payment accounts, the Bank of Italy has imposed the requirement to apply for a Payment Service Provider ("**PSP**") or Electronic Money Issuer ("**EMI**") licence or request to passport a similar licence granted by another European supervisory authority in the relevant home Member State.

There are many lending platforms currently operating in collaboration with an EU-based PSP or an EU-based EMI, by using the possibility of being appointed as agent by the licensed entity taking care of the management of the payment accounts, and thus by using a licence already granted to another financial intermediary. There are 12 lending platforms operating in Italy either as licensed PSPs or agents of a PSP/EMI licensed entity.

There are no specific restrictions for lenders with reference to the amount they can lend in a single project or in total (over a year), albeit the recommendation of the Bank of Italy to Crowdfunding Platforms operating in Italy is to force the lenders to strongly diversify their lending portfolio. Many platforms suggest that the lenders use automatic matching systems and some platforms adopt bidding models in order to complete the funding.

Some platforms have financial partners (usually an Alternative Investment Fund – AIF) co-investing with the lenders in order to support the completion of the loan requests by the borrowers.

Please note that under the Italian Consolidated Banking Act, the Bank of Italy has the power to reject the licence request not only due to nonfulfillment of formal requirements but also if, as a result of an assessment of the business, it may deem that the company applying for the licence has insufficient technical and/or financial capabilities.

Peer-to-Business Crowdfunding Platforms may be required to enrol in the register of credit mediators (in Italian "*Mediatori Creditizi*") if lenders admitted to lend through the Crowdfunding Platform are banks or financial intermediaries authorised to lend money to enterprises or individuals.

b) Prospectus regulation

After reviewing the Italian report, we assume that there is no prospectus regulation in Italy which applies to Lending-based Crowdfunding.

3.1.1.3 Further applicable regulation

Further possible regulations in the context of Investment-based Crowdfunding and Lending-based Crowdfunding are the Italian Money Laundering Law, the Italian Data Privacy law and the Consumer Code.

In contrast, the Italian AIFMD regime does not apply to Crowdfunding due to the fact that Crowdfunding Platforms do not raise capital from Investors for their own business and on a specific investment policy.

3.1.2 Consumer protection law

Mandatory provisions apply to the relevant agreements if the Investor is considered a consumer. According to Italian legislation, micro-enterprises are considered consumers. A "micro-enterprise" under Italian law is a company or legal entity which has fewer than 10 employees and less than EUR 2m turnover or less than EUR 2m of total assets.

The provisions stated by the Italian Consolidated Law on Banking and by the relevant Bank of Italy Regulation on transparency of financial transactions, as well as further provisions contained in the Legislative Decree no. 11 dated 27 January 2010, shall be applied in full with respect to agreements entered into with consumers, while some of them shall be derogated from in agreements executed with corporate clients. Moreover, specific further provisions stated by the Consumer Code (Legislative Decree 206/2005) shall be applied where an agreement is executed with a consumer.

Specifically, this means that:

- the agreement must in any case be drafted in written form and a copy delivered to the Investor;
- it is necessary to provide specific pre-contractual information regarding the Payment Services Provider or Electronic Money Issuer providing the

services (and regarding the relevant agent), the main conditions of the services provided and the main characteristics of the service,

- the costs of the services provided and the interest rate applicable to the financing.

According to the Bank of Italy Regulation on transparency of financial transactions, it is necessary before entering into a binding agreement to provide to the client a Fact Sheet containing all the relevant necessary pre-contractual information, as well as a summary of the main terms and conditions of the relevant agreement.

3.1.3 Taxation

In Italy, there are no specific rules governing the tax treatment of Crowdfunding.

The tax consequences for the Investor and the Company/Project Initiator being financed in the Investment-based Crowdfunding Model or the Lending-based Crowdfunding Model will, in effect, generally be governed by the general rules for the taxation of the return on shares in a corporation, i.e. on equity (dividends, capital gains), and on loans (interest), respectively.

In Italy, corporate taxation is subject to IRES (24% as of 2017) and to IRAP (3,9% variable on a regional basis), while taxation on individuals is subject to IRPEF with a progressive tax rate up to 43%.

Usually, income from capital is qualified as income from a business and taxed accordingly, but for individuals who do not conduct business activities it may fall within the provisions for capital income.

3.1.4 Conclusion

Investment-based Crowdfunding is subject to its own specific regulatory regime, which is fully applicable and in force as of June 2013; the entering into force of this regulation has allowed significant development of the relevant market.

Lending-based Crowdfunding, either in peer-to-peer or peer-to-business form, is not yet subject to a specific "light" regulation which could support a significant growth of the relevant markets. Platforms must carefully review which authorisation must be sought pursuant to the Italian Consolidated Law on Banking and/or the Consolidated Financial Law in order to operate in Italy.

The above-mentioned consumer protection regulations might apply to Crowdfunding Platforms and regulate the contractual relationships. They affect the information obligation and certain formal aspects and shall level the interests of both consumers and Crowdfunding Platforms on the one hand and between Companies/Project Initiators and Crowdfunding Platforms on the other hand.

In Italy, there are no specific rules governing the tax treatment of Crowdfunding, which is why general tax law is applicable to Investors and/or Companies/Project Initiators seeking funding in Italy.

3.2 Main facts of identified cross-border barriers

3.2.1 Regulation

a) Inbound

In accordance with the applicable Italian laws, foreign Equity Crowdfunding Platforms cannot directly operate in the Italian market without first obtaining the relevant authorisation by CONSOB, unless the Platform is granted a MiFID licence which will allow the performance of the activity in Italy through the establishment of a local branch, or directly without any establishment of a local branch, or through an agent established in Italy, and unless the relevant provisions of the Italian Consolidated Law on Banking and of the CONSOB regulation are respected.

The above-mentioned rules are also applicable with regard to foreign projects published on foreign Crowdfunding Platforms, due to the fact that such Crowdfunding Platforms are not allowed to address their activity towards Italian Investors.

In any case, companies that are willing to offer equity (even through a Crowdfunding Platform) have to comply with the relevant prospectus requirements (and/or with the relevant exemptions).

The same considerations apply in relation to foreign Equity Crowdfunding Platforms addressing Italian Companies/Project Initiators.

In the event that a foreign Lending-based Crowdfunding Platform addresses Investors in Italy, the following applies: According to the Italian Consolidated Law on Banking, a PSP or an EMI authorised in an EU Member State is allowed to provide payment services in Italy:

- through the establishment of a local branch, in accordance with the right of freedom of establishment; or
- directly without any establishment of a local branch, in accordance with the right of freedom of provide services; or
- through an agent established in Italy.

In compliance with the above provisions, PSPs and EMIs are also entitled to provide payment services without any further authorisation.

Foreign Companies/Project Initiators are also allowed to publish a request for financing through a Lending-based Crowdfunding Platform. In this respect they (as well as the Crowdfunding Platform operating in Italy) have to comply with the mandatory provisions

of Italian law regarding Lending-based Crowdfunding (as detailed above) and regarding lending granted by consumers.

The same considerations apply in relation to foreign Lending-based Crowdfunding Platforms addressing Italian Companies/Project Initiators.

b) Outbound

In accordance with Italian law, Italian Equity Crowdfunding Platforms that have obtained the relevant authorisation from CONSOB cannot directly perform their activity in other countries. Such activities, in fact, are not subject to the principle of mutual recognition.

Italian Companies/Project Initiators are in theory allowed to publish a project on an EU Equity Crowdfunding Platform, in accordance with the relevant EU Member State's applicable laws and regulations.

The same considerations apply in relation to Italian Equity Crowdfunding Platforms addressing foreign Companies/Project Initiators.

An Italian Lending-based Crowdfunding Platform which addresses foreign Investors is allowed to provide payment services in any other EU Member State in three different ways. Pursuant to the applicable laws, a PSP or an EMI which is duly authorised in Italy is allowed to provide payment services in any other EU Member State:

- through the establishment of a local branch, in accordance with the right of freedom of establishment; or
- directly without any establishment of a local branch, in accordance with the right of freedom of provide services; or
- through an agent established in such other Member State.

Although nothing is said in the relevant regulation concerning the fact that the Lending-based Crowdfunding activity is allowed in Italy only in compliance with the limitations set forth by the Bank of Italy, these limitations also apply to Italian Companies/Project Initiators in the case of lending requested through a foreign Crowdfunding Platform in another EU Member State.

3.2.2 Consumer protection law

a) Inbound

In the Inbound situation (the Investor is located in Italy, but the Crowdfunding Platform and the Company/Project Initiator are not) the consumer protection provisions are mandatory and, as such, are applicable whenever Lending-based Crowdfunding activities are offered to an Italian Investor. In light of this, the fact that the Crowdfunding Platform has been authorised by Italy or by another EU member is not relevant at all.

b) Outbound

In the Outbound situation (the Investor is not located in Italy, but the Crowdfunding Platform and the Company/Project Initiator are), mandatory provisions of consumer protection law which are in force in the country where consumers are located, will be applied.

3.2.3 Taxation

a) Inbound

In the Inbound situation (the Company/Project Initiator is tax-resident abroad, but the Investor and the Crowdfunding Platform are tax-resident in Italy), the following applies:

In the context of the Lending-based Model, a withholding tax could be applied by the non-Italian resident borrower according to its country rules and according to the double taxation treaty rules.

The lender income on interest should be taxed in Italy according to the ordinary rules.

For dividends and capital gains in the context of Investment-based Crowdfunding, the following applies:

Due to the "worldwide taxation" principle applicable in Italy, for Italian residents, incomes coming from abroad are generally taxed in the same way as domestic incomes. Even in this case double treaties could modify the taxation regime.

b) Outbound

In the Outbound situation (the Investor is tax-resident abroad, but the Crowdfunding Platform and the Company/Project Initiator being financed are tax-resident in Italy), the following applies:

In the context of Lending-based Crowdfunding, a withholding tax of 26% of the amount of any interest paid by the borrower to the lenders has to be paid by the borrower, acting as withholding agent, by deducting the relevant amount from the gross amount of the due interest; the reimbursement of the capital is instead untaxed. The withholding tax could be reduced according to the application of the double taxation treaty.

For dividends and capital gains in the context of Investment-based Crowdfunding, the following applies:

On dividends paid to non-resident Investors, a withholding tax of 26% must be applied. According to double treaties the withholding rate could be reduced to 5-15%.

In case of the application of a double taxation treaty, capital gains resulting from the transfer of the shares will generally not be subject to tax in Italy and will be taxed in the state of residence of the transferor, i.e. the Investor.

3.2.4 Conclusion

In consideration of the above, foreign equity Investment-based Crowdfunding Platforms cannot directly operate in the Italian market without the prior authorisation of CONSOB, unless the Platform is granted a MiFID EU licence. This passportable licence will allow the performance of the activity in Italy (i) through the establishment of a local branch, (ii) directly without any establishment of a local branch, or (iii) through an agent established in Italy. Accordingly, Italian equity Investment-based Crowdfunding Platforms that have been licensed by CONSOB cannot directly perform their activity in other Member States.

As far as Lending-based Crowdfunding activity is concerned, a PSP or an EMI duly authorised in an EU Member State is allowed to provide payment services in Italy through the establishment of a local branch, or directly without any establishment of a local branch, or through an agent established in Italy. Under the same conditions, a PSP or an EMI duly authorised in Italy is also allowed to provide payment services in any other EU Member State.

With reference to consumer protection law, Italian laws are mandatory if the Crowdfunding activities are addressed to an Italian consumer. Such mandatory provisions do not constitute any specific barrier to Crowdfunding activities in Italy, but they shall be applied whenever an Italian consumer is involved.

Taxation of Crowdfunding depends on many factors. The combination of these factors leads to a great number of situations subject to different taxations. This complexity and the lack of transparency of (international) taxation are one of the taxation barriers to cross-border Crowdfunding. Closely connected with this is the risk of double taxation due to qualification conflicts.

4 Netherlands

4.1 Main facts of regulation

4.1.1 Crowdfunding regulation

4.1.1.1 Investment-based Crowdfunding

The Netherlands Authority for the Financial Markets (*Autoriteit Financiële Markten*, the **AFM**) has introduced a new Crowdfunding framework as of 1 April 2016. The new Crowdfunding framework:

- doubles the investment limits applying to Investment-based (i.e. loan-based and equity-based) Crowdfunding Platforms to EUR 40,000 (equity-based) and EUR 80,000 (loan-based), respectively. The investment limits apply to any retail Investor investing through a Crowdfunding Platform supervised by the AFM.

- requires Investment-based (i.e. loan-based and equity-based) Crowdfunding Platforms to conduct an Investor test in order to assess whether the investment is sound (*verantwoord*) for this particular retail Investor. These Investor tests need to be developed by the Crowdfunding Platforms themselves and must assist the Investor to determine whether (s)he has sufficient knowledge, experience and a sound financial position to make the investment.

This Crowdfunding framework is not part of the Dutch financial supervision laws which are mainly laid down in the Dutch Financial Supervision Act (*Wet op het financieel toezicht*, **Wft**) and decrees promulgated thereunder. The AFM imposes the Crowdfunding framework by attaching administrative regulations as part of a licence as an investment firm under Directive 2004/39/EC (MiFID) or a dispensation to mediate in redeemable funds (loan-based).

a) Licence obligations

Equity-based and debt-based (bonds and notes) based Crowdfunding Platforms require a MiFID licence from the AFM (for transmitting orders or as a placing agent) but do not always have to also comply with the local dispensation regime.

MiFID licence

When a Crowdfunding Platform mediates between Investors and Companies/Project Initiators that issue financial instruments, such Crowdfunding Platform will be regarded as providing MiFID investment services under Article 2:96 Wft and will require a licence from the AFM as an investment firm.

"Financial instruments" within the meaning of the Wft include:

- shares or similar transferable equity instruments or rights (*effecten*);
- non-security collective investment participation rights (*rechten van deeleneming, niet zijnde een effect*); and
- transferable bonds or similar negotiable debt instruments (*obligaties*).

When a Crowdfunding Platform mediates between Investors and Companies/Project Initiators that issue shares or certificates of shares, or acts as an intermediary by bringing together Investors and Companies/Project Initiators that issue bonds or notes, such Crowdfunding Platform will be regarded as providing MiFID investment services under Article 2:96 Wft and will require a licence from the AFM as an investment firm.

To determine whether the Platform is involved in issuing shares, certificates of shares, bonds or notes, the definition of 'transferable securities' as defined in Article 4 of the MiFID as implemented in Article 1:1 Wft is used:

i) a share or similar transferable equity instrument or right, or

a negotiable bond or similar negotiable debt instrument, or

any other negotiable instrument issued by a legal entity, company or institution which entitles the holder to a security as described under (a) upon such instrument being exercised or converted or which instrument can be settled in funds.

In an AFM policy rule on transferability the AFM binds itself to a very broad interpretation of transferability to include any method that allows for a legal or economic transfer of a share, a certificate of a share or the rights connected to a share or instrument. This means in practice that, irrespective of a limitation on transferability by contract or by a company's articles of association, a share or certificate of a share of a private or public Dutch limited company will be classed as a transferable security.

However, other than with securities being shares or certificates of shares, the AFM in practice takes a slightly less stringent approach for debt-based instruments. For loan agreements that are not legally designed to be transferable, the AFM is likely to consider such loan agreements as not transferable (in which case the dispensation regime will apply, see below). It also means that to qualify for a licence as an investment firm, a Crowdfunding Platform must design the loan agreements it mediates in expressly as bonds or as notes.

Providing investment services is defined in Article 1:1 Wft and includes, among other things, the service of receiving and transmitting orders of clients in relation to one or more financial instruments in the pursuit of a profession or a business and the service of placement of financial instruments without a firm commitment when these are being offered by the issuer in accordance with the prospectus rules and regulations under the Wft.

To meet the licence requirements, a Crowdfunding Platform must comply with various requirements as laid down in Article 2:99 Wft. These requirements include but are not limited to:

- an adequate policy ensuring sound and prudent business conduct, including with respect to funds that may flow through it;
- the daily policy makers (the board or management) meeting the integrity and suitability criteria of the AFM;
- any supervisory board members or non-executive board members meeting the integrity and suitability criteria of the AFM;
- a declaration of no objection provided by the Dutch Central Bank (*De Nederlandsche Bank*, **DNB**) in respect of every entity or person with a qualified holding in the Crowdfunding Platform.
- the minimum own funds requirement.

Dutch dispensation regime

The dispensation regime regarding Investment-based Crowdfunding does not apply for investments in equity but does apply for all investments in debt, such as bonds or subordinated loans.

If a Crowdfunding Platform is mediating by bringing together lenders and borrowers that attract non-transferable loans, such Platform requires a dispensation for mediating in attracting repayable funds from the AFM.

Non-transferable loans are private subordinated loan contracts agreed between a crowdfunder (Investor) and a borrower (Company/Project Initiator). As they are private, the loan contracts are not considered transferable and thus do not qualify as a financial instrument.

These rules are largely aimed at protecting Investors against investing in fraudulent or financially weak companies through Crowdfunding Platforms without knowing the risks associated with such investments upfront. To that extent, the Crowdfunding Platforms must:

- analyse the borrowers it places offers for on its website;
- attach certain risk categories to borrowers' projects and match the risk with suitable interest rates; and
- warn the Investors in various ways of the risks associated with borrowers' projects.

This has to be done by the Crowdfunding Platform in such a way that the Investor is able to make an informed investment decision based on the information provided by the Crowdfunding Platform.

In addition, Investors that are consumers have the ability to unwind their investment decision within a 14-day period. Alternatively, a consumer Investor must actively confirm its investment to the Crowdfunding Platform after it has initiated an investment through the website of the Crowdfunding Platform.

Other regulatory requirements that apply to dispensation holders are the following:

- The daily policy makers (board and management) of the Crowdfunding Platform must meet the suitability and integrity test of the AFM. The same applies to the supervisors of the daily policy makers (such as non-executive board members or other supervisory council members). The tests are largely the same as for investment firm licence holders and are based on the criteria the AFM has bound itself to under the Policy Rule on Eligibility 2012 (*Beleidsregel Geschiktheid 2012*) of the AFM and DNB.
- The Crowdfunding Platform must maintain transparent governance structures. This means that the Crowdfunding Platform may not be connected to persons in a formal or factual control structure which is

opaque to the extent that it constitutes or may hamper proper and adequate supervision by the AFM of the Crowdfunding Platform.

- The Crowdfunding Platform must have a complaints procedure through which Investors can effectively handle complaints.

- The Crowdfunding Platform must have a business conduct policy that guarantees sound and controlled business conduct by the Crowdfunding Platform. This includes – amongst other things – safeguarding the Investors' funds as described below, incident reporting to the AFM and incidents record keeping.

- The Crowdfunding Platform must safeguard the funds that flow through it, even if the Crowdfunding Platform goes bankrupt. Crowdfunding Platforms must use a foundation (*stichting*) that has the sole purpose of holding the Investor's funds and, to the extent applicable, security packages connected to the loans. This segregates the Investor's funds from the Crowdfunding Platform's estate in case of bankruptcy.

- Crowdfunding Platforms must comply with certain monitoring obligations, allowing the AFM to track the Crowdfunding Platforms' activities.

New requirements that came into effect on 1 April 2016 are:

- The business conduct of the Crowdfunding Platform;

- Integrity tests for the board or management of the Crowdfunding Platform;

- Transparent governance structures of the Crowdfunding Platform;

- Mandatory handling of complaints in respect of all stakeholders of the Crowdfunding Platform (including lenders and borrowers).

The requirements that apply as of 1 April 2016 have brought the dispensation regime much closer to the MiFID regime. One of the aspects that sets the MiFID regime apart from the dispensation regime is the minimum own funds and solvability requirements that apply to investment firms.

Dispensation for the Dutch ban on commissions

The decree of 2016 further introduces a dispensation for the Dutch ban on receiving commissions by a Crowdfunding Platform that operates under a MiFID licence. The general ban on commissions prohibits MiFID Crowdfunding Platforms from receiving compensation from borrowers (or other third parties). However, the compensation received from borrowers for a successful project is generally the main source of revenue for Crowdfunding Platforms, as is demonstrated by Crowdfunding Platforms that do not qualify as investment firms under MiFID. The Dutch Minister of Finance has recognised this lack of a level playing field between investment firms and dispensation holders that

act as Crowdfunding Platforms and has created a dispensation for the ban on commission for investment firms that operate as Crowdfunding Platforms.

b) Prospectus regulation

A Company/Project Initiator that offers transferable securities (such as shares or bonds) to the public must take the prospectus rules into account. Under Article 5:2 Wft an issuer (i.e. the Company/Project Initiator) that offers securities to Investors in the Netherlands must publish an AFM-approved prospectus.

An exemption exists for offering transferable securities to the public when the securities that are part of the offer in total stay below the monetary equivalent of EUR 2.5m during a period of 12 months. Moreover, this limit of EUR 2.5m relates to a category of transferable securities. The borrowing Company/Project Initiator can, therefore, collect up to EUR 2.5m in shares or certificates of shares and up to EUR 2.5m in bonds or notes from the public in the Netherlands in the same year. However, any issuance of transferable securities by a borrower's group company must be taken into account, including issuances in other jurisdictions in the European Economic Area.

Irrespective of any exemption from the prospectus obligation, the Investors must be adequately informed. This means that there remains an information document requirement. Accordingly, the document must include, amongst other things:

- the characteristics of the transferable securities; and
- the risks associated with the securities, such that Investors can make an informed decision.

Crowdfunding Platforms that rely on an exemption from the prospectus obligation must display a warning banner on the part of their website that displays offers. The warning banner must also be printed on all offering documents. The warning banner can be downloaded from the AFM website and contains the following text: "*Warning! You are investing outside AFM supervision. No prospectus obligation exists for this activity.*"

4.1.1.2 Lending-based Crowdfunding

a) Licence obligations

Dutch dispensation regime

The dispensation regime also applies for investments via P2P-Lending.

If a Crowdfunding Platform is mediating by bringing together lenders and borrowers that attract non-transferable loans, such Platform requires a dispensation for mediating in attracting repayable funds from the AFM.

Non-transferable loans are private subordinated loan contracts agreed between an Investor and the Company/Project Initiator. As they are private, the loan contracts are not considered transferable and thus do not qualify as financial instruments.

For further information regarding the dispensation regime please see above (4.1.1.1).

b) Prospectus regulation

A Lending-based Crowdfunding Platform does not offer transferable securities (such as shares or bonds) to the public, but offers non-transferable loans, for example. Therefore, the Platform is not subject to the obligation to publish a prospectus under Wft.

Irrespective of the prospectus obligation, the Investors must be adequately informed. This means that there remains an information document requirement. The Company/Project Initiator does have a civil law obligation to provide the Investors with all information required to enable the Investors to make an informed investment decision in an accurate, complete, comprehensible, not misleading and timely manner. The Crowdfunding Platform has a responsibility in this respect as well.

The Crowdfunding Platform needs to provide the minimum required information in a simple, direct and permanent manner, commercial communications should be clearly identifiable as such, and the Crowdfunding Platform needs to be fully transparent as regards the information it obtains from the fundraising entity (Company/Project Initiator) and which is made available on the website of the Crowdfunding Platform in order to enable the Investor to make an informed investment decision. Such information should be accurate, complete and not misleading (including by omission) and it should be presented unambiguously in an easily comprehensible manner and should be easily accessible. The latter responsibility is primarily borne by the fundraising entity (this being the owner of the information, i.e. the Company/Project Initiator).

Although the Crowdfunding Platform – in its capacity as an information society and under limited circumstances only – cannot be held liable for merely passing on information provided by a fundraising entity (Company/Project Initiator), other applicable Dutch laws and regulations could cause the Crowdfunding Platform to face liability risks irrespective of the aforementioned exception. From a regulatory perspective, for example, the Crowdfunding Platform is generally believed to have some degree of duty of care to the Investors to ensure that the fundraising entity (Company/Project Initiator) has complied with the applicable rules and regulations when providing the relevant information to be published on the website of the Crowdfunding Platform.

4.1.1.3 Further applicable regulation

Consumer credit regulation

If a Crowdfunding Platform mediates in offering credits to consumers, in principle the Platform requires a licence to provide consumer credit under Article 2:60 Wft. The definition of consumers in the Netherlands is reserved for people acting outside the course of an occupation or business. This means that sole traders and other natural persons that are acting in the course of their occupation or business are not considered consumers. The fact that a Crowdfunding Platform itself does not originate the consumer

credit funds is not relevant as the act of offering (as opposed to originating) is classed as a regulated activity under Article 1:1 Wft under the definition of offering.

Payment services

Transfer of funds through a Crowdfunding Platform can constitute money remittance services within the meaning of Article 1:1 Wft under payment services (*betaaldiensten*). Such regulated transfer of funds could occur if the Investors pay their investment amounts to the operator of the Crowdfunding Platform who then passes the funds to the Company/Project Initiator. However, DNB has so far showed a liberal interpretation of money remittance services. This is likely to change when PSD2 (the Revised Payment Service Directive) takes effect on 13 January 2018.

In order to avoid licensing requirements, the operator of a Crowdfunding Platform could cooperate with a bank, a licensed payment institution or a licensed electronic money issuer for the handling of payments rather than acting as an intermediary itself.

Mediating in payment services

Crowdfunding Platforms that do contract with a bank, payment institution or electronic money issuer to handle the flow of funds between the Investors and Companies/Project Initiators may still trigger a requirement to obtain authorisation to offer mediation services in respect of payment accounts or electronic money.

The aforementioned does not apply if the Platform is already licensed as an investment firm under MiFID.

AIFMD regime

Certain Companies/Project Initiators (especially in the real estate, infrastructure or renewables sectors) could be subject to the AIFMD regulations. For instance, Companies/Project Initiators might constitute an AIF within the meaning of the Dutch AIFMD regulations if they seek funding in return for a share in the profits or revenue generated by the project as in the equity model and do not conduct operative activities (e.g. the operative activities are outsourced).

In the past year, the AFM has challenged some initiatives that presented themselves as Equity Crowdfunding to trigger AIFMD. This has resulted in the retreat of the initiatives as the Dutch AIFMD regime is much more stringent in order to comply with the Dutch MiFID regime and the exemptions provided under the Dutch AIFMD sub-threshold regime (offerings to fewer than 150 people, offerings with a total value of at least EUR 100,000 per Investor or offerings to professional Investors) are not suitable for typical Crowdfunding projects.

Investments by means of subordinated loans or other debt-based investments can generally be structured as non-AIF investments since the Investors do not share liability for any losses (e.g. Investors receive a fixed interest rate).

Taking repayable funds as a borrower

As a final aspect under the Dutch Crowdfunding regulations, under both variants of the debt Investment-based Model and the Lending-based Model (dispensation and MiFID-regime), the borrowers (Companies/Project Initiators) have to take into account the prohibition on attracting repayable funds in Article 3:5 Wft. Attracting deposits or other repayable funds is defined in the definition of a "credit institution" in Article 4 of the Capital Requirements Regulation, and the prohibition is laid down in Article 3:5 Wft. Deposits or other repayable funds, commonly jointly referred to as "repayable funds" are funds that must be repaid at a certain point in time, for any reason whatsoever, and of which it is clear in advance what nominal amount must be repaid. Examples include borrowing money and issuing bonds. More specifically, borrowers (Companies/Project Initiators) that take loans from the public using a Crowdfunding Platform must stick to the following rules:

- The borrower (Company/Project Initiator) takes the funds for its own account: "for its own account" means – in brief – that the borrower (Company/Project Initiator) does not attract or obtain repayable funds with a view to granting credits or loans with the borrower acting as a lender.

- The borrower (Company/Project Initiator) does not act as a business in whose purpose is taking funds: the borrower (Company/Project Initiator) does not attract repayable funds by acting as a business whose purpose is attracting such funds. The borrower (Company/Project Initiator) can act as a business if it attracts repayable funds on a regular basis and the attracting of repayable funds does not strictly serve to support other principal activities of the borrower.

In brief: if the above conditions are met, a loan can be attracted by a borrower (Company/Project Initiator) in the context of Crowdfunding, without breaching the prohibition on attracting repayable funds.

The prohibition of repayable funds does not apply under the equity model, since funds raised by issuing shares are not repayable, as shares do not entail the obligation to repay the nominal amount.

4.1.2 Consumer protection law

Due to the fact that many Investors are likely considered consumers, a Crowdfunding Platform is obliged to take a number of consumer protection provisions into account. A consumer means any natural person who enters into a legal transaction for purposes that are predominantly outside his/her commercial, business, craft or professional practice. An entrepreneur means a natural or legal person or a partnership who or which, when entering into a legal transaction, acts in exercise of his/her or its trade, business or profession.

Even if a Crowdfunding Platform is provided by a foreign operator or the company/project being financed is not Dutch, Dutch consumer protection law might apply.

Crowdfunding Platforms and Companies/Project Initiators are obliged to provide contact and business information (company name and legal form, geographic address, names of the company's legal representatives, e-mail address, telephone number etc.) as well as information regarding alternative online dispute resolution.

Prior to the transaction, Crowdfunding Platforms and Companies/Project Initiators must provide clear reference to terms and conditions as well as instructions on the exercise of the right of withdrawal. If such information has not been provided at the right point of time and in the correct format, the withdrawal period is significantly extended, with a period of up to 12 months. Prices and costs must be provided clearly and unambiguously. This information must include the total price of the goods or services (inclusive of VAT and other taxes) and potential costs that may be incurred in the future.

Consumers must be informed about the technical steps required to conclude the contract and must be able to spot and correct errors (e.g. "go back" and "edit" buttons). Furthermore, preselected checkboxes for additionally charged services and extras (guarantee agreements, etc.) are prohibited.

To the extent the Crowdfunding Platform is considered a credit provider or a credit intermediary it should adhere to the specific provisions laid down in the DCC. These provisions do not apply to a Company/Project Initiator that has requested funding for its project, as it will not be considered a credit provider or a credit intermediary.

As an act that shall serve the purpose of protecting competitors, consumers and other market participants against unfair commercial practices, the law against unfair competition, called the Unfair Trade Practices Act (*Wet op oneerlijke handelspraktijken*), applies to Crowdfunding at any stage of preparing, presenting and executing a campaign as the Crowdfunding Platform and the Company/Project Initiator will normally be considered an entrepreneur.

4.1.3 Taxation

There are currently no specific rules in the Netherlands governing the corporate income tax ("**CIT**") and/or personal income tax ("**PIT**") treatment of Crowdfunding. Neither does the EU harmonised value-added tax ("**VAT**") legislation provide for specific provisions.

However, on 18 April 2017, the Dutch Ministry of Finance informed the public that the Dutch Tax Authority is preparing a policy rule or document on the taxation of Crowdfunding. This policy is currently in the draft phase and the Dutch Ministry of Finance indicates that it will not be completed in the near future as most of the concepts in the draft policy have yet to be reconciled between other Dutch government departments.

Consequently, for now, the tax consequences of Crowdfunding for the Investor/Lender and the Company/Project Initiator being funded will, in effect, for the most part be governed by the general rules for the taxation of return on shares/equity and loans/debt.

CIT and PIT

A company resident in the Netherlands is in principle subject to Dutch CIT in respect of its taxable amount at a general rate of 25%. The first EUR 200,000 is taxed at 20%. As of 1 January 2018, this threshold will be increased to EUR 250,000.

Individuals resident in the Netherlands are subject to PIT in respect of the worldwide taxable income realised during a calendar year. For the purposes of PIT, taxable income is subdivided into three (3) different types of income, the so-called boxes:

- In box 1, taxable income derived from entrepreneurship/employment and residing is taxed at a progressive tax rate up to 52%.

- In box 2, taxable income derived from a so-called substantial interest is taxed at a rate of 25%. A substantial shareholding is primarily defined as a direct or indirect shareholding representing at least 5% of the total issued share capital of a company or at least 5% of a separate type of shares issued by a company. Profit participation rights (*winstbewijzen*) that represent at least 5% of the annual profits of a company or 5% of what is to be distributed upon liquidation, are also considered a substantial shareholding.

- In box 3, taxable income from savings and investments is taxed at 30%. The taxable income is based on a deemed yield that varies along with the fair value of the individual's net properties (i.e. assets minus liabilities) attributable to box 3 at 1 January of the relevant year. For 2017, the effective rates vary from 0% up to just below 1.61%.

Partnerships can either be considered opaque, but may also have been structured as transparent for CIT and PIT purposes. In the latter case, all assets, liabilities and the income of the partnership are allocated to the partners in proportion to their partnership interests and taxed accordingly.

If the Investor/Lender, the Company/Project Initiator and the Crowdfunding Platform are all tax-resident in the Netherlands ("**Domestic Situation**"), the tax implications of Crowdfunding are as follows. We assume all parties involved to be unrelated, i.e. third parties.

Equity Model

A common configuration of the Equity Model is the acquisition of shares in a corporation or the acquisition of depositary receipts representing the full economic ownership of such shares (*certificaten van aandelen*). In the latter case, if structured properly, for CIT and PIT purposes, such depositary receipts are put on a par with the underlying shares. Therefore, where in the remainder of this chapter reference is made to shares, this includes depositary receipts unless explicitly mentioned otherwise.

Sometimes, an Investor may also be granted equity-like profit-participating rights, or may in fact be investing in a partnership, which may either be transparent or opaque for CIT and PIT purposes.

A return on capital invested in a corporation may take the form of dividends or capital gains if the Investor is granted the position of a shareholder in consideration for the investment.

Investor's perspective

The tax consequences for the Investor will in particular be influenced by its "legal form" and the percentage of shares or profit rights it will acquire.

Dividends/share in profits

If the Investor is a corporation, the results generated with its shareholding will be regularly subject to CIT, unless the investment concerns a qualifying participation to which the participation exemption applies. The latter is the case if the shares represent at least 5% of the nominal paid-in share capital of the investee, assuming the investee is subject to the normal Dutch tax regime. In that case, the Dutch (100%) participation exemption should apply on dividends.

If the Investor is a corporation that has profit participating rights, the results generated with these profit participating rights will be regularly subject to CIT, unless apart from the profit participating rights, the Investor also owns a qualifying participation in the investee. In that case, the participation exemption also applies to the income derived from the profit participating rights.

If the Investor is a corporation which holds a partnership interest in a partnership that is considered to be opaque, the results generated with its partnership interest will be regularly subject to CIT, unless the partnership interest concerns a qualifying participation. This is the case if, via the partnership interest, the Investor shares in the partnership's results to an amount of at least 5%. In that case, again, the participation exemption should apply to any income derived from the partnership interest.

If the Investor is a corporation that acquires a share in the profits of a tax transparent partnership, the CIT treatment of any results derived from such partnership interest depends on the tax treatment of the underlying assets and liabilities of the partnership, to the extent these are to be allocated to the Investor.

If the shares, profit participating rights or partnership interests can be attributed to an active business of the individual, they will be taxed in box 1.

If the shares, profit participating rights or partnership interests in an opaque partnership held by the individual are to be considered a substantial interest, any dividends derived from those shares will be taxed in box 2.

If neither box 1 or 2 are applicable, the shares/profit rights will be taxed in box 3. As mentioned earlier, the PIT rate in box 3 is 30%. The individual Investor who is subject

to tax in box 3 is assumed to realise a deemed yield on his/her taxable basis, which taxable basis is the fair value of his/her net box 3-properties as at 1 January, minus a tax-exempt amount of EUR 25,000. This deemed yield in box 3 is calculated in conjunction with the following three brackets (2017):

- To the part of the taxable basis that does not exceed EUR 75,000, a deemed yield of 2.87% applies;
- To the part of the taxable basis from EUR 75,000 up to and including EUR 975,000, a deemed yield of 4.6% applies;
- To the part of the taxable basis that exceeds EUR 975,000, a deemed yield of 5.39% applies.

Perspective of the investee/project being funded

For the investee any dividend distributions, profit distributions or repayment of capital are not tax deductible for CIT purposes. They do not qualify as business expenses for the paying corporation/investee.

In case of a dividend distribution, the corporation/investee has to retain dividend withholding tax of in principle 15% on account of the Investor. This also applies to profit distributions on profit participating rights or by an opaque partnership. The Investor can, however, settle the dividend withholding tax with its CIT or PIT. Should the Investor not have sufficient CIT or PIT to settle this dividend withholding tax, he/she will receive a refund. If the participation exemption applies to an Investor's investment, dividend distributions are exempt from dividend withholding tax.

Perspective of the Crowdfunding Platform

The fee that the operator of the Platform will receive for acting as an intermediary between the Investor and the business will generally be taxed as income from a business. Usually, the Platform is organised as a corporation. Consequently, its fee is subject to CIT at the normal rates.

Lending Model

The Lending model refers to situations in which the lender grants a loan and receives interest (fixed or profit-linked) as a return on the loan.

Lender's perspective

If the lender is a corporation, the interest on the loan would normally be subject to CIT and would be taken into account on an accruals basis.

Under certain conditions, the loan could qualify as equity. Should this be the case, the income on the loan will be treated as described under the Equity Model. There is generally no difference concerning the tax burden of the return between an ordinary loan with fixed interest and a profit-participating loan. Whether the loan is subordinated

or not, generally does not influence the tax position. However, these elements could have an impact on the qualification of the loan in equity or debt.

If the lender is an individual who grants the loan in the course of his/her business or if the individual also has a substantial interest in the borrower, the interest income would be taxable with PIT in box 1. In all other cases, the loan receivable would be part of the box 3 properties. For the description of the treatment of box 3 income we refer to the Equity Model.

Perspective of the company/project being funded

At the level of the company/project, the interest paid is generally tax-deductible. We would not expect, considering the nature of a Crowdfunding transaction, that Dutch interest deduction restrictions are applicable.

Generally, the Netherlands does not levy withholding tax on interest. However, should the loan be re-qualified in equity, the payments would most likely not be deductible (see under the Equity Model) and 'interest' payments under the loan could be subject to dividend withholding tax.

Perspective of the Crowdfunding Platform

The fee that the Crowdfunding Platform will receive for acting as an intermediary between the Investor and the company/project will generally be taxed as income from a business. It will therefore be subject to CIT.

4.1.4 Conclusion

The past year has seen an increase in Lending-based Model Crowdfunding Platforms getting authorised as investment firms. This may be due to the already discussed dispensation on taking commissions from borrowers, which dispensation was still under construction in last year's report. Another likely reason is that it gives Crowdfunding Platforms the ability to export across borders on the basis of a passport available to MiFID licence holders and not to dispensation regime Crowdfunding Platforms. A final reason is that the MiFID regime is more long-standing and as such more ironed out than the patchwork Dutch Crowdfunding framework that is imposed largely on the basis of administrative regulations and decrees.

Concerning the licence requirements under MiFID, obtaining a declaration of no objection from DNB and meeting the minimum own funds and solvability requirements can be challenging for Crowdfunding Platforms. This also means that this sets the MiFID regime largely apart from the dispensation regime.

Although we have seen an increase in Lending-based Model investment firm Crowdfunding, 48 out of the total of 57 Dutch Crowdfunding Platforms are currently still operating under the dispensation regime by mediating only in non-transferable loans. This means that for the vast majority of Dutch Crowdfunding Platforms, a passport to cross borders with their Platform is not available. Furthermore, the Prospectus Directive

and the upcoming Prospectus Regulation are largely aimed at the Dutch Crowdfunding sector.

4.2 Main facts of identified cross-border barriers

4.2.1 Regulation

Where Dutch Investors are approached by (foreign) financial actors (such as issuers of financial instruments or mediators (Companies/Project Initiators), etc.) the AFM follows a marketing-focussed approach. This also means that foreign financial actors not having their place of business or residence in the Netherlands are encompassed by Dutch regulations if they approach Dutch Investors.

a) Inbound

Dutch regulatory law can apply to a foreign Crowdfunding Platform (mainly licence, information and compliance obligations) and/or a Company/Project Initiator that addresses Dutch Investors (mainly prospectus and information obligations).

The main criterion for the AFM is whether the Dutch language is used to present the investment opportunities. Therefore, in the event that the investment opportunities are presented in the Dutch language, the AFM will (most likely) come to the conclusion that Dutch regulatory law applies.

If a foreign Crowdfunding Platform has a (passportable) MiFID licence it can conduct business in the Netherlands without applying for a licence and without having a presence in the Netherlands (so-called notification procedure/EU Passport). But it cannot be excluded that a Crowdfunding Platform with a foreign MiFID licence might additionally need a (local) Dutch licence in order to be allowed to offer all kinds of company shares as well as subordinated loans in the Netherlands. Generally, a foreign Crowdfunding Platform might be subject to other Dutch regulations in exceptional cases (e.g. the Dutch Act on Money Laundering).

If the Crowdfunding Platform has no MiFID licence and intends to address Dutch Investors the Crowdfunding Platform must – in principle – obtain a dispensation under Article 4:5 Wft to mediate in non-transferable loans or a MiFID licence under Article 2:99 Wft if the Crowdfunding Platform targets the Dutch market in order to mediate in financial instruments targeted by MiFID.

If a foreign Company/Project Initiator addresses Dutch Investors, the Dutch prospectus regime is applicable since the foreign Company/Project Initiator is offering investment opportunities in the Netherlands (provided the offer entails financial instruments/Investment-based Crowdfunding).

If a foreign Crowdfunding Platform addresses Dutch Companies/Project Initiators the AFM will (most likely) come to the conclusion that Dutch regulatory laws do not apply if the investment opportunities are not presented in the Dutch language. As a general rule – since the foreign Crowdfunding Platform will not target the Dutch market/Dutch

Investors – Dutch regulatory laws are not applicable. Therefore, no licence requirements are necessary pursuant to Dutch regulatory laws. Generally, the foreign Crowdfunding Platform might also be subject to other Dutch regulations (e.g. the Dutch Act on Money Laundering).

In the event that the Dutch Company/Project Initiator issues debt-based securities (e.g. bonds) they might – in exceptional cases – be subject to other Dutch regulation.

b) Outbound

Here, only foreign Investors are addressed (e.g. a Dutch Crowdfunding Platform addresses German Investors). Therefore, the AFM will (most likely) come to the conclusion that Dutch regulatory laws are not applicable in this case.

If the Dutch Crowdfunding Platform exclusively addresses foreign Investors and also does not use the Dutch language (but instead uses German, for example), Dutch regulatory laws are not applicable to it. Therefore, the Dutch Crowdfunding Platform will (likely) not have to comply with any licence requirements. It might, however, be subject to other Dutch regulations in exceptional cases (e.g. the Dutch Act on Money Laundering).

In the event that a foreign Company/Project Initiator only addresses foreign Investors (e.g. a French Platform addresses French Investors), the Company/Project Initiator does not target the Dutch market/Dutch Investors. The Dutch prospectus regulation is – as a general rule – not applicable. Generally, there do not appear to be any other particular Dutch regulatory laws being applicable to the Company/Project Initiator here.

If a Dutch Crowdfunding Platform addresses foreign Companies/Project Initiators, Dutch Investors are still being approached through the use of the Dutch language. The AFM will come to the conclusion that Dutch regulatory laws will be applicable, which is why the Crowdfunding Platform has a licence obligation. Additionally, the Crowdfunding Platform might be subject to other Dutch regulations in exceptional cases (e.g. the Dutch Act on Money Laundering).

Dutch prospectus regimes are applicable since the foreign Companies/Project Initiators are offering investment opportunities in the Netherlands. Furthermore, the applicable prospectus regime also depends on whether the foreign Company/Project Initiator offers transferable securities (which is often the case in foreign (EU) countries, e.g. France) or other financial instruments.

In addition to the Dutch regulatory laws, the Company/Project Initiator might face (local) prospectus requirements pursuant to the regulations of its home (EU) Member State, e.g. if the home (EU) Member State/financial regulation authority follows a different approach to the AFM's marketing-focussed approach. In this case, the prospectus requirements of the host (EU) Member State as well as the Dutch regulatory laws might apply to the Company/Project Initiator, which might lead to double regulation. Generally, there do not appear to be any other particular Dutch regulatory laws being applicable to the Company/Project Initiator here.

4.2.2 Consumer protection law

a) Inbound

Under the Rome 1 regulation relating to the law applicable to contractual obligations, parties are free to choose the law governing their contractual obligations. Such choice must not, however, deprive consumers of the protection that would apply by virtue of the law which, in the absence of choice, would have been applicable.

Such rules only apply if the contract has been concluded as a result of the professional party pursuing his/her commercial or professional activities in the country of which the consumer is an inhabitant. Mandatory provisions of local consumer protection laws apply irrespective of whether the contract is governed by a different law.

b) Outbound

If the Crowdfunding Platform and the Company/Project Initiator responsible for the project are based in the Netherlands and the Investor is not a Dutch resident, the resident will be protected by Dutch laws as well as any local mandatory law that would have applied if no choice of law had been made by parties.

c) Consumer protection barriers

As set out above, a number of consumer protection rules have to be taken into account at any stage of a Crowdfunding campaign.

The complexity of the rules and the legal consequences are one of the most significant barriers to Crowdfunding in principle, as well as for cross-border Crowdfunding. These rules not only affect the content and structure of the agreements in place, they also have a significant impact on processes on the Crowdfunding Platform. In addition, the consequences of potential breaches of legal regulations are severe and can therefore significantly affect the economic success of a Crowdfunding business.

Another barrier with regard to cross-border Crowdfunding is that different laws may apply. In general, parties may choose the law governing a contract. However, such a choice must not deprive the consumer of any local mandatory protective laws that cannot be derogated from by agreement.

The mere existence of detailed and restrictive consumer protection regulations provides for significant barriers when setting up and executing any type of cross-border Crowdfunding business. Processes turn out to be complex due to the number of legal requirements, and user friendliness, efficiency and profitability may be negatively affected by the companies' obligation to comply with the regulations.

4.2.3 Taxation

a) Inbound

Whether the Investor's return will be taxable in the Netherlands in a situation in which the Investor/Lender is tax-resident abroad, but the Crowdfunding Platform and the Company/Project Initiator being financed are tax-resident in the Netherlands ("Inbound Situation"), will in particular depend on the form of the investment.

Generally, the Netherlands requires non-residents to pay tax on their Dutch-sourced income. However, Dutch taxing rights might be limited or barred due to the application of a (bilateral) tax treaty for the avoidance of double taxation or an EU Directive.

Equity Model

Dividends

If the Investor becomes a shareholder, i.e. if he/she has acquired shares in a corporation or profit participating rights or participations in an opaque partnership, the foreign Investor will be subject to Dutch dividend withholding tax with regard to any distributed profits. Such tax will be levied at a general rate of 15%. Depending on the legislation in the Investor's country of residence, this dividend withholding tax could be settled with local corporate income tax or personal income tax. The Netherlands will under certain conditions grant a refund of the dividend withholding tax to foreign Investors.

Under certain conditions, if the recipient of the profit distributions is a company which has a shareholding/partnership interest in the distributing entity that would have constituted a qualifying participation had the Investor been a Dutch tax resident, a dividend withholding tax exemption may apply.

Under certain conditions, an individual Investor that holds its shares, profit participating rights or partnership interests in an opaque partnership in the course of his/her business or has a substantial interest, may be subject to PIT as a non-resident tax payer. Also, a non-resident corporate Investor may be subject to CIT in such cases.

Moreover, for any Investor (individual or company) Dutch taxation may be limited due to the application of a (bilateral) tax treaty for the avoidance of double taxation or an EU Directive.

Capital gains

In the event of the application of a double taxation treaty, capital gains resulting from the transfer of the shares, profit participating rights or partnership interests in an opaque partnership will generally not be subject to tax in the Netherlands. Dutch double taxation treaties generally follow the OECD Model which provides for an exclusive taxation right of the state of residence of the transferor (Art. 13 para. 5 OECD-Model Agreement), i.e. the Investor. Exceptions may apply, e.g. if the shares were to be attributed to a Dutch permanent establishment of the Investor, or if the corporation whose shares are sold was to qualify as a "real estate company" in the meaning of Art. 13 para. 4 OECD-Model Agreement.

Share in a profits tax transparent entity

If the Investor becomes a partner through a partnership in a tax transparent entity resident in the Netherlands, which partnership directly operates the business enterprise, the Netherlands will generally take the position that the foreign Investor will receive business income from a Dutch permanent establishment.

As a result, in case of a (bilateral) tax treaty for the prevention of double taxation the Netherlands would claim the exclusive taxing right with respect to any income, i.e. the share in profits, on the basis of provisions similar to Art. 7, 5 OECD-Model Agreement. The respective tax would be levied via assessment.

Lending Model

The Netherlands does not levy a withholding tax on interest; therefore, no Dutch withholding tax should be due on interest paid to an Investor abroad, except if the loan is re-qualified as equity.

In certain situations, a corporate or individual Investor may be subject to CIT or PIT, respectively, for its interest income as a non-resident taxpayer.

b) Outbound

In a situation in which the company/project being funded is tax-resident abroad and the Investor/Lender and the Crowdfunding Platform are tax-resident in the Netherlands ("Outbound Situation"), Dutch tax implications for the Investor are for the most part the same as described above for a mere domestic situation (cf. 6.1). This is due to the fact that the Netherlands taxes its residents on their worldwide income.

In case a double taxation treaty applies, the Netherlands will grant a credit for (withholding) tax levied abroad in line with the respective treaty provisions. Otherwise, the Investor/Lender might be granted a unilateral tax relief for foreign taxes in the form of a tax-credit or a deduction from income.

If the Investor/Lender has become a partner in a tax transparent entity, from a Dutch tax perspective, the Investor's share in the profits will generally be considered business income from a foreign permanent establishment. Consequently, Dutch taxing rights with respect to the income would be excluded in case of the application of a (bilateral) tax treaty for the prevention of double taxation, i.e. the income would not be taxable in the Netherlands.

c) Taxation barriers

As this short outline of taxation has shown, the rules governing the taxation of Crowdfunding are complex and dependent on various factors. The main issue concerns the qualification for tax purposes of the actors (taxpayers) and transactions involved. This complexity and the lack of transparency of (international) taxation are one of the taxation barriers to cross-border Crowdfunding. Closely connected with this is the risk of double taxation due to qualification conflicts.

From the Investor's perspective, an investment is to a notable extent influenced by expectations concerning the return on the investment. Tax is an important factor in this respect. However, if an Investor is not able to reliably calculate such return due to uncertainties with respect to the basis, i.e. the tax rules being applicable in his/her home state and abroad and the interaction between them, and to overcome such uncertainties with a manageable effort, he/she will probably refrain from such investment.

Moreover, the Company/Project Initiator that is to be funded might require the investment not to take the usual form of a loan/share in a corporation for various reasons apart from tax. However, in these situations, there is always a notable risk of double taxation with respect to tax on income due to qualification conflicts. This applies in particular to situations in which tax transparent entities are involved. The risk of double taxation also holds true for new instruments, as their qualification for tax purposes as debt or equity can differ between the states.

In contrast, VAT should not be an obstacle as VAT law is harmonised within the EU. Moreover, the services rendered should qualify as financial services which are VAT-exempt according to the harmonised VAT law.

4.2.4 Conclusion

In conclusion, the (regulatory) barriers deriving from the frictions between European and Dutch regulation as well as the partial European regulation hinder all participants from extending their activities to cross-border situations.

The increasing fragmentation of the European Crowdfunding regulation due to the introduction of national Crowdfunding regulations further aggravates the barriers to cross-border Crowdfunding.

The following measures should be taken on a European legislative/administrative level in order to create a level playing field throughout the EU from a Dutch perspective:

- Regulation of all types of financial instruments used in Crowdfunding (especially including non-transferable financial instruments) and not only securities – with regard to MiFID (II) as well as European prospectus regulation;

- Clarification that a MiFID (II) licence (and the EU Passport) cover all financial instruments covered by the national legislation in the host EU member state when crossing borders.

- Potentially, introduction of a short regulation that connects and otherwise fills the gaps between MiFID (II), AIFMD and CRD4 (in respect of repayable funds) that specifically deals with Crowdfunding under these directives and regulations. The European Venture Capital Fund regulation (EuVECA) can serve as an example in this context.

5 Spain

5.1 Main facts of regulation

5.1.1 Crowdfunding regulation

Since the passing of the Promotion of Corporate Finance Act 5/2015 of 27 April (*Ley 5/2015, de 27 de abril, de fomento de la financiación empresarial*) ("**LFFE**") there have been no developments regarding Crowdfunding regulations in Spain. However, as mentioned, changes to the LFFE are expected to be implemented due to the legal limbo that Real Estate Crowdfunding Platforms are experiencing.

The LFFE regulates the legal framework of P2P-Lending and Investment-based Crowdfunding. The CNMV is the competent body in Spain to authorise and register Crowdfunding Platforms, following a mandatory and binding report by the Bank of Spain in the case of Crowdfunding Platforms that publish projects related to applications for loans, including subordinated profit-participating loans.

Therefore, the following statements are applicable to both Investment-based Crowdfunding and Lending-based Crowdfunding.

a) Licence obligations

Licence under the Promotion of Corporate Finance Act (*Ley 5/2015, de 27 de abril, de fomento de la financiación empresarial* – "LFFE")

The LFFE sets forth a number of requirements for an entity to obtain and maintain authorisation as a Crowdfunding Platform so that it can operate in the Spanish market, which are as follows:

- the entity must have as its exclusive corporate purpose the carrying out of activities that are individual to Crowdfunding Platforms and, where appropriate, the activities of a hybrid payment institution;
- the entity must have its registered office and effective administration and management in the Spanish territory or in another Member State of the European Union;
- the entity must adopt the form of a capital company for an indefinite period;
- the Platform managers must be persons of recognised business and professional repute and possess appropriate knowledge and experience in the areas necessary for the exercise of their functions;
- the entity must have a good administrative and accounting structure or adequate internal control procedures;

- the entity must have adequate means to ensure the secure, confidential and reliable provision of services by electronic means;
- the entity must have an internal code of conduct that addresses potential conflicts of interest and the terms of the participation of directors, officers, employees and representatives in funding applications that are implemented through the Crowdfunding Platform;
- the entity must provide mechanisms so that, in the event of the cessation of its activity, it may continue providing all or part of the services which it undertook to provide to the Crowdfunding projects for which it obtained funding.

At the same time, the LFFE sets out the financial requirements to be met by these Crowdfunding Platforms.

Those requirements which must be provided at all times are:

- social capital fully paid in cash of at least EUR 60,000; or
- professional liability insurance, a guarantee or other equivalent assurance that deals with responsibility for negligence in the exercise of their professional activity, with a minimum coverage of EUR 300,000 for each claim, and a total of EUR 400,000 per year for all claims, or
- a combination of initial capital and professional liability insurance, guarantee or other equivalent assurance which results in a coverage level equivalent to that indicated in the preceding two paragraphs.

When the amount of the financing obtained in the last 12 months for the projects published on the Platform exceeds EUR 2m, the Crowdfunding Platforms must have at least EUR 120,000 of their own resources.

Its total own resources will be increased depending on the total amount of the financing obtained in the last 12 months for projects published on the Crowdfunding Platform.

Exemptions from the licensing requirement

No exemptions from the licensing requirement are provided by the LFFE.

MiFID licence

Since MiFID and MiFID II, *inter alia*, are restricted to transferable securities (and equal financial instruments) these regulations do not apply to the Spanish Crowdfunding market.

Since Spanish Crowdfunding Platforms facilitate (i) the issue or subscription of bonds, ordinary and preferential shares or other securities representing capital, where this does not require a prospectus in accordance with MiFID/MiFID II, (ii) the issue or subscription

of shares in limited liability companies and (iii) applications for loans, including subordinated profit-participating loans, which are not covered by MiFID/MiFID II, the Platforms are not impacted by MiFID/MiFID II.

AIFMD regime

Faced with the normal functioning of public offerings for subscription, the primary market generated by Spanish Crowdfunding presents a relevant singularity consisting of the necessary intermediation of a Crowdfunding Platform. With the regulation of the Crowdfunding Platforms, the LFFE establishes a new intermediary category in the financing market, covering the activity of contacting, in a professional manner, Investors and Companies/Project Initiators, through websites or other electronic means. Crowdfunding Platforms therefore are not considered managers of AIFs.

Payment service directive

The LFFE prohibits Crowdfunding Platforms from exercising the activities reserved to payment institutions and, especially, from receiving funds in order to pay on behalf of Investors or Companies/Project Initiators, unless the Crowdfunding Platform is authorised as a hybrid payment institution in accordance with the Payment Services Act 16/2009 of 13 November (*Ley 16/2009, de 13 de noviembre, de servicios de pago*).

b) Prospectus regulation

In general, public stock, share and bond offerings through Crowdfunding Platforms are not subject to the national provisions of Act 24/1988 of 28 July, on the Securities Market (*texto refundido de la Ley de Mercado de Valores*) ("**LMV**") and therefore do not necessitate a prospectus.

Thus, LFFE highlights that Crowdfunding projects can be implemented by means of issue or subscription of bonds, ordinary and preferential shares or other securities representing capital, where this does not require a prospectus in accordance with the LMV. Under the LMV, the obligation to publish a prospectus shall not apply to any of the following types of offering (which shall not be considered to be public offerings for the purposes of the LMV):

ii) offering of securities exclusively addressed to qualified Investors;

offering of securities addressed to fewer than 150 natural or legal persons per Member State, not including qualified Investors;

offering of securities addressed to Investors who acquire securities for a total consideration of at least EUR 100,000 each, per offering;

offering of securities whose unit nominal value amounts to at least EUR 100,000;

offering of securities amounting to a total of less than EUR 5m in the European Union, which limit shall be calculated over a period of 12 months.

On the other hand, the LFFE sets a fixed limit of EUR 5m as a maximum amount of funds that a Company/Project Initiator seeking funds by means of Crowdfunding can raise on a yearly basis, provided that it is exclusively targeted at accredited Investors (if it is targeted at non-accredited Investors, this fixed limit will be set at EUR 2m). This limit of EUR 5m also corresponds to the maximum limit that, in accordance with the LMV, can allow securities offerings to be exempt from the obligation to publish a prospectus.

A defect affecting this regulation is that there is no adequate coordination between the LMV and the LFFE, given that the LMV establishes the limits on the raising of capital without the need for a prospectus in relation to a single offering, whereas the LFFE fixes the limits on raising capital in relation to a specific Crowdfunding project. Certainly, the LFFE prohibits a Company/Project Initiator from publishing simultaneously more than one project on one Platform, but nothing prevents such a promoter from raising funds for various projects on different Crowdfunding Platforms and, hence, from acquiring substantial amounts of money in a short time.

b) Further applicable regulation

Other common regulations to which the operator of a Crowdfunding Platform may be subject include:

- Act 2/2009 of 31 March on Consumer contracting loans or mortgage and brokerage services for the conclusion of contracts of loan or credit (*Ley 2/2009, de 31 de marzo, por la que se regula la contratación con los consumidores de préstamos o créditos hipotecarios y de servicios de intermediación para la celebración de contratos de préstamo o crédito*);

- Act 16/2011 of 24 June on Consumer credit contracts (*Ley 16/2011, de 24 de junio, de contratos de crédito al consumo*);

- Act 7/1998 of 13 April on General Contracting Terms (*Ley 7/1998, de 13 de abril, sobre condiciones generales de la contratación*);

- Act 1/2007 of 16 November on Protection of Consumers and Users (*Real Decreto Legislativo 1/2007, de 16 de noviembre, por el que se aprueba el texto refundido de la Ley General para la Defensa de los Consumidores y Usuarios y otras leyes complementarias*);

- Act 10/2010 of 28 April on Money Laundering and Terrorist Financing Prevention (*Ley 10/2010, de 28 de abril, de prevención del blanqueo de capitales y de la financiación del terrorismo*);

- Act 15/1999 of 13 December on Personal Data Protection (*Ley Orgánica 15/1999, de 13 de diciembre, de Protección de Datos de Carácter Personal*).

5.1.2 Consumer protection law

Special provisions of Crowdfunding regulatory law (LFFE) and consumer protection rules in Spain are applicable to the activities of the Crowdfunding Platforms and those derived from the relationships between Investors and Companies/Project Initiators.

A consumer means (i) a natural person who operates in a field outside of his/her professional activity and (i) a legal person or entity without its own legal personality that operates on a non-profit basis in a field outside its professional activity.

In order to guarantee the protection of Investors (in particular, non-accredited Investors) the LFFE requires Crowdfunding Platforms to fulfil certain information obligations as regards the admission of the projects and their compliance with all the legal requirements, as well as checking the identity of the Companies/Project Initiators.

Although the publication of a prospectus is not mandatory, it is evident that the legislator wants to ensure that Investors know and understand the workings of the investment channel and that they are fully aware of the risks they face through their participation in Crowdfunding Platforms. Therefore, extensive duties of transparency regarding the nature and operation of Crowdfunding Platforms, as well as the risks they create, are imposed, forcing these Crowdfunding Platforms to advertise certain information which is considered to be essential for the protection of Investors.

In this sense, Crowdfunding Platforms that provide services within the Spanish territory shall include certain basic information and warnings on their website under the heading "Background information for the client" (e.g. warning of the risks and the fees applicable to Investors and Companies/Project Initiators, the recruitment process and the method of billing).

Any Investor who does not meet the accredited Investor requirements will be considered a non-accredited Investor. While accredited Investors do not have any restrictions to their investments in projects, non-accredited Investors have the following limitations:

- they may invest no more than EUR 3,000 in any one project published by one Crowdfunding Platform; and
- they may invest no more than EUR 10,000 over a 12-month period in different projects published by the same Crowdfunding Platform.

In addition, immediately before any payment commitment is made, Crowdfunding Platforms shall ask non-accredited Investors to issue, together with their consent, a statement that they have been warned about the risks of the investment and that their total investments made during the last 12 months do not exceed the threshold of EUR 10,000.

In addition to this basic information, the Crowdfunding Platform must also publish on its website further complementary information, which should be included in an accessible, permanent, updated, free and clearly visible manner. This information should: refer to the basic operation of the Crowdfunding Platform; include the selection

of the Crowdfunding projects; and state how the information supplied by the Companies/Project Initiators is received and dealt with and the guidelines for publication, which should be uniform and non-discriminatory. In the event that the Crowdfunding Platform supplies information on the percentage of defaults, the default rate, profitability or other similar variables, which can provide guidance for making investment decisions, it must also announce how each variable is defined and how the calculations have been made. In any case, the Crowdfunding Platforms must formulate this information in accordance with objective guidelines and avoid any deception, given that the manipulation of the rate of return or the level of risk constitutes a very serious offence.

5.1.3 Taxation

There are no specific rules in Spain related to the tax treatment of Crowdfunding; consequently, the general rules for the taxation of returns on loans and shares in a corporation will be applied.

In Spain, income from a business is subject to corporate income tax, which is levied at a rate of 25%. However, new entities that carry out economic activities will be taxed, in the first tax period in which the tax base is positive and in the next tax period, at a rate of 15%.

Equity Model

A common form of Equity Model is the acquisition of shares in a corporation. A return on capital invested in a corporation may take the form of dividends or capital gains if the Investor is granted the position of a shareholder in consideration for the investment.

Investor's perspective

Dividends and Capital Gains

If the Investor is a corporation which holds at least 5% of the share capital for a minimum period of one year, the dividends or the capital gains will be tax-exempt; otherwise, they will be taxed at the above-mentioned rates.

If the Investor is an individual, dividends will be subject to Personal Income Tax, which is levied at a rate of 19%, 21% or 23% depending on the amount of the dividend or the capital gains.

Perspective of the Companies/Project Initiators being financed

For the business that is being financed, return on equity is not tax-deductible. Therefore, dividends do not qualify as business expenses for the paying corporation.

With regard to dividends, the business does not retain withholding tax on the account of the Investor if the Investor is a company which holds at least 5% of the share capital for a minimum period of one year.

If the Investor is a company which holds less than 5% of the share capital or has held it for less than one year and the Investor is an individual, the business must retain withholding tax (at the rate of 19%) on the account of the Investor.

Perspective of the Crowdfunding Platform

The fee that the operator of the Crowdfunding Platform will receive for acting as an intermediary between the Investor and the Companies/Project Initiators will be taxed as business income, which is subject to corporate income tax at the above-mentioned rate (25%, or 15% for newly created entities).

Lending Model

The Lending Model refers to situations in which the Investor grants a loan and receives interest (fixed or profit-linked) as a return for the investment.

From a Spanish tax perspective, the tax consequences will be the following:

Investor's perspective

If the Investor is a company which grants the loan in the course of its business, the interest will qualify as business income and it will be subject to corporate income tax.

If the Investor is an individual who does not grant the loan in the course of his/her business, the interest qualifies as capital income and is subject to tax at a rate of 19%, 21% or 23%, depending on the amount of interest received.

Perspective of the Companies/Project Initiators being financed

At the level of the Companies/Project Initiators, the return on the debt, i.e. the interest paid, is generally tax deductible, subject to the general restrictions of Spanish tax law, with a minimum amount of EUR 1m.

The Companies/Project Initiators must retain withholding tax on interest, which is levied at a rate of 19%.

Perspective of the Crowdfunding Platform

The fee that the operator of the Crowdfunding Platform will receive for acting as an intermediary between the Investor and the Companies/Project Initiators will be taxed as business income, which is subject to corporate income tax at the above-mentioned rate (25%, or 15% in for newly created entities).

Value-Added Tax

In line with the harmonised EU system, VAT is levied on the supply of goods and services which are rendered by an entrepreneur. In Spain, the standard rate is 21% and the reduced rate is 10%.

Even though the participants in Crowdfunding (Investor, Crowdfunding Platform, Companies/Project Initiators being financed) may qualify as entrepreneurs under VAT law, the transactions should not trigger VAT. Financial services, including the lending of money, any transactions regarding shares or receivables as well as the mediation of such services, are VAT exempt.

Therefore, even though the Investor would also qualify as an entrepreneur under VAT law (aside from the Crowdfunding Platform which generally fulfils the prerequisites of an entrepreneur) and make the investment within the course of its business, any return on his/her investment should not be subject to VAT. The same should apply for the Companies/Project Initiators being financed as regards the issuance of shares or any other debt-instruments.

5.1.4 Conclusion

Under Spanish regulations the Crowdfunding Platform is not a broker or agent of the Companies/Project Initiators (issuer or borrower), but simply a mediator between Companies/Project Initiators and Investors seeking to facilitate transactions. The role of the operator of the Crowdfunding Platform is the management and operation of a primary market for small and medium-sized enterprises from a position of neutrality. The Crowdfunding Platform selects and publishes the projects, and can advise Companies/Project Initiators regarding their advertising and marketing (albeit they are prohibited from making personalised recommendations to Investors on specific projects), as well as managing financing projects discretely and individually.

Given that the Crowdfunding Platform is intended to create a market enabling a meeting point between supply and demand of capital, where Crowdfunding projects are not required to be authorised and, thus, are not reviewed by the Spanish authorities, the control exercised by the CNMV over the Crowdfunding Platform is very limited in comparison to the control exercised over entities subject to financial services regulations. Notwithstanding the foregoing, we can say that this vulnerability of Investors, that is a result of less control being exercised by the CNMV, is compensated by the limitation placed on non-accredited Investors of a maximum of EUR 10,000 in investments made over a period of 12 months.

5.2 Main facts of identified cross-border barriers

5.2.1 Regulation

a) Inbound

Spanish regulatory law is applicable to a foreign Crowdfunding Platform that announces, promotes or attracts Investors in Spain, and/or addresses its services specifically to Investors residing in Spanish territory.

Foreign Companies/Project Initiators seeking funding in Spain are also subject to Spanish regulation. In this context, the LFFE prohibits a Company/Project Initiator from

publishing simultaneously more than one project on one Crowdfunding Platform. Additionally, it sets a fixed limit of EUR 5m as the maximum amount of funds that a Crowdfunding project can raise on a yearly basis, provided that it is exclusively targeted at accredited Investors (if it is targeted at non-accredited Investors this fixed limit will be set at EUR 2m). Finally, LFFE establishes main information obligations regarding the loan or the issue (description of the essential features and associated risks, form, rights and obligations of the parties etc.).

Furthermore, Spanish regulatory law is applicable to a foreign Crowdfunding Platform that announces, promotes or attracts Companies/Project Initiators in Spain, and/or addresses its services specifically to Companies/Project Initiators residing in Spanish territory.

Spanish Companies/Project Initiators are generally subject to Spanish prospectus regulation. The LFFE requires Companies/Project Initiators to be validly incorporated (or, in the case of an individual, to have its tax residence) in Spain or in any other EU Member State.

b) Outbound

Spanish regulatory law is not clear in respect of which regime is applicable to a Spanish Crowdfunding Platform that enters EU markets and therefore addresses foreign Investors.

However, since not only foreign Investors are addressed but also Spanish Companies/Project Initiators, a restrictive interpretation of Spanish regulatory law should be applied. Thus, in this case, a Spanish Crowdfunding Platform could provide services in Spanish territory as it approaches Spanish Companies/Project Initiators; therefore, Spanish regulatory law is (likely) applicable.

5.2.2 Consumer protection

a) Inbound

The law applicable to a contract will be determined according to Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I).

The rules on consumer guarantees and protection against unfair terms established in the Spanish Protection of Consumers and Users Act shall be applicable to consumers and users, whatever applicable law is chosen by the parties to govern the agreement, provided that such agreement has a close relationship with a European Economic Area Member State territory.

Thus, irrevocable provisions of a consumer's local consumer protection law are applicable although the contract might be governed by a different law.

In the event that the Crowdfunding Platform and the Companies/Project Initiators being financed are based outside of Spain and the Investor is a Spanish resident ("Inbound

Situation"), Spanish consumer protection law is likely to apply as the protection standard provided by Spanish law is comparatively high.

b) Outbound

In the event that the Crowdfunding Platform and the Companies/Project Initiators are based in Spain and the Investor is non-Spanish ("Outbound Situation"), Spanish consumer protection law is not necessarily required to be applied although the contract might be governed by Spanish law. In accordance with the above-mentioned provisions, a choice of law must not have the result of depriving the consumer.

c) Barriers with regard to consumer protection law

As stated above, a number of consumer protection obligations have to be complied with at any given stage of a Crowdfunding campaign.

The complexity of the rules is one of the most significant barriers to Crowdfunding in principle as well as to cross-border Crowdfunding. These rules mainly affect the content and structure of the agreements in place and also have significant impact on processes on the Crowdfunding Platform.

5.2.3 Taxation

a) Inbound

In a situation in which the Company/Project Initiator being financed is tax-resident abroad but the Investor and the Crowdfunding Platform are tax-resident in Spain ("Inbound Situation"), Spanish tax implications for the Investor are, for the most part, the same as described above for a mere domestic situation. This is due to the fact that Spain taxes its residents on their worldwide income.

If a double taxation treaty applies, Spain will give credit for (withholding) tax levied abroad in line with the respective treaty provisions. Otherwise, the Investor might be granted unilateral tax relief for foreign taxes in the form of a tax-credit or an income deduction.

b) Outbound

Whether the Investor's return will be taxable in Spain in a situation where the Investor is tax-resident abroad, but the Platform and the Company/Project Initiator being financed are tax-resident in Spain ("Outbound Situation"), will depend, in particular, on the form of the investment.

Generally, Spain requires non-residents to pay tax on their Spanish-sourced income. However, Spanish taxing rights might be excluded or reduced due to the application of a double taxation treaty.

Equity Model

Dividends

If the Investor becomes a shareholder, i.e. if he/she has acquired shares in a corporation, the foreign Investor will be subject to Spanish (corporate) income tax with regard to any dividends received. Such tax will be levied at an ordinary rate of 24% via withholding.

However, if the Investor is an EU-resident corporation which holds at least 5% of the share capital, the dividends will be tax-exempt.

Moreover, for any Investor, the ordinary withholding tax rate could be reduced due to the application of a double taxation treaty

Capital gains

For the application of a double taxation treaty, capital gains resulting from the transfer of the shares will generally not be subject to tax in Spain. Spanish double taxation treaties generally follow the OECD Model which provides for an exclusive taxing right of the state of residence of the transferor.

Lending Model

If the Investor is granting a loan or if he/she is considered to have granted a loan from a tax perspective, the interest will generally be subject to (corporate) income tax.

The tax will generally be levied via withholding at an ordinary rate of 19%, but might in effect be reduced if a double taxation treaty is applied.

c) Taxation barriers to cross-border Crowdfunding

The complexity and the lack of transparency of international taxation are one of the taxation barriers to cross-border Crowdfunding. There is a closely connected risk of double taxation due to qualification conflicts.

5.2.4 Conclusion

The LFFE is not clear regarding the scope of territorial application since it only regulates in detail the regime of provision of services in the Spanish territory, including those services offered by Crowdfunding Platforms registered outside the Spanish territory to Spanish Investors and Companies/Project Initiators.

However, on the contrary, there is no mention as to what happens when Investors and Companies/Project Initiators registered outside the Spanish territory have access to services provided by a Spanish Crowdfunding Platform. In certain cases, this lack of legislation has caused this possibility to be interpreted in a restrictive manner.

6 United Kingdom

6.1 Main facts of regulation

6.1.1 Crowdfunding regulation

In April 2014, the regulator introduced rules to regulate Crowdfunding and has been monitoring the appropriateness of the regulatory regime, including through a review of the regime in February 2015 and, most recently, through a post-implementation review which commenced in July 2016 with the FCA putting out a call for input. The regulator acknowledges that the UK market is now more established and that Crowdfunding has become a more accepted form of raising capital – as a result, now is an appropriate time to consider whether the rules need to be changed to reflect the current scale, status and risk to Investors, or whether the current regime is adequate.

In December 2016, following industry feedback, the FCA published a Feedback Statement (FS16/13) providing interim feedback following its call for input. In the regulator's view, there is evidence of potential Investor detriment and it intends to publish a consultation paper in the first quarter of 2017 proposing new rules. The FCA's focus will be on the Lending-based market although it has concerns across both the Lending-based Model and Investment-based Model sectors.

In relation to Lending-based Crowdfunding, the FCA will consult on:

- additional rules to strengthen Investor protections where there is a Crowdfunding Platform failure;
- additional requirements or restrictions on cross-investment; and
- extending the MCOB lending standards to P2P-Lending Crowdfunding Platforms where the Investor/Lender is not acting by way of business.

In relation to both Lending-based Crowdfunding and Investment-based Crowdfunding, the regulator remains concerned about the quality of communications with potential Investors and as a result, will consult on more prescriptive rules on the content and timing of disclosures it expects to see.

The FCA also intends to report in mid-2017 with the final conclusions of the full (rather than just interim) post-implementation review which is likely to result in additional suggested changes for the regime in the future.

6.1.1.1 Investment-based Crowdfunding

a) Licence obligations

Regulation under the Financial Services and Markets Act 2000 (FSMA)

FSMA requires Crowdfunding Platform operators to obtain authorisation from the FCA in order to conduct regulated activities. Conducting a regulated activity without authorisation is a criminal offence. Regulated activities associated with the Crowdfunding of securities transactions may include:

- bringing about transactions in investments issued by the Company/Project Initiator seeking funding;
- making arrangements with a view to transactions in investments (which captures referral arrangements even where a specific issuer or investment is not identified);
- safeguarding and administering investments (custody); and
- agreeing to carry on a regulated activity.

Less commonly, the Crowdfunding Platform operator could become involved in advising on securities, managing securities or dealing in securities, depending on the business proposition. Where the Company/Project Initiator seeking funding is not a trading company, Platform operators may also need to consider whether they are carrying on the regulated activity of operating a collective investment scheme or managing an alternative investment fund (see below).

b) Prospectus regulation

FSMA requires a prospectus to be published where transferable securities are offered to the public. Most Crowdfunding offers fall within an exemption for offers worth less than EUR 5m in a period of 12 months. As part of the EU Commission's proposals for a new prospectus regime (published in November 2015), it was proposed that Member States be able to legislate to widen this exemption, to require that prospectuses only be published for offers of up to EUR 10m (the adopted prospectus regulation provides for up to EUR 8m) provided that the offer is only made in that Member State. However, any offers with a cross-EEA border element would be restricted to EUR 500k under the proposals (the adopted prospectus regulation provides for EUR 1m).

Section 755 of the Companies Act 2006 also prohibits the offering of shares in a private limited company to the public. The involvement of the Platform can be structured so as to reduce the risk of breach.

6.1.1.2 Lending-based Crowdfunding / P2P-Lending

a) Licence obligations

Regulation under the P2P-Lending Regime

From 1 April 2014, Platforms carrying out the new regulated activity of "operating an electronic platform in relation to lending" became subject to regulation by the FCA under an interim permission regime. Firms with interim permissions which failed to apply for full authorisation between August and November 2015 will have had their permissions

revoked. Since April 2014, firms wishing to operate a P2P-Lending Crowdfunding Platform that have not benefitted from the interim permission regime have been required to apply for full authorisation. This only applies to loans where either:

- the lender is an individual; or
- the borrower is an individual

and either:

- the loan is GBP 25,000 or less; or
- the individual is not borrowing for business reasons.

In this context, "individual" includes a partnership with 2 or 3 partners.

As most P2P-Lending Crowdfunding Platforms target individual lenders, the status of the borrower does not affect the requirement for the Crowdfunding Platform to be authorised. However, the nature of the lending does affect the regulatory regime that will apply to the Crowdfunding Platform, as more extensive rules apply to P2P-Lending Crowdfunding Platforms that facilitate consumer credit.

Variations of the Lending-based Model can also lead to participants being offered units in a UCIS and/or an AIF, although Crowdfunding Platform operators generally try to avoid this because of the associated marketing restrictions. Also note the changes introduced in January 2016 which confirmed that firms carrying on the activity of operating an electronic system in relation to lending are not regarded as operating collective investment schemes.

The main tenets of the P2P-Lending regime (where the loan does not fall within the consumer credit regime described below) are:

- publication of historic performance data on loans;
- arrangements for Investor protection in the event of Crowdfunding Platform failure;
- capital adequacy requirements, based on the higher of a fixed requirement (GBP 20,000 rising to GBP 50,000) and a variable requirement relating to loan volumes;
- client money segregation;
- clear, fair and not misleading communications with lenders;
- an appointed representative regime (similar to the regime for securities Crowdfunding).

Client money rule changes for Crowdfunding Platform operators and the new regulated activity of P2P-Lending advice

On 21 March 2016, the FCA published a policy statement on changes to the FCA Handbook relating, amongst other provisions, to the segregation of client money on Lending-based Crowdfunding Platforms and the new regulated activity of advising on P2P-Lending agreements. The new and amended rules and guidance came into force on 21 March 2016 in relation to the client money provisions and on 6 April 2016 in relation to the advice activity.

Firstly, the revised rules simplified the client money requirements for firms that operate electronic systems in relation to lending and hold money in relation to both regulated and unregulated P2P-Lending. As a result of the changes, firms that hold money in relation to both P2P-Lending and business-to-business (B2B) agreements, are entitled to elect to hold all lenders' monies in relation to this business under the FCA's client money rules if they wish to do so. Firms may then hold P2P and B2B monies together, but segregated from the firm's money, without breaching the client money rules. The FCA decided to provide a transitional provision in relation to the requirement to submit client money and assets return in certain specific circumstances.

Secondly, under the revised rules, the FCA applied its suitability rules to firms making personal recommendations about P2P-Lending agreements and banned commission for advice on P2P agreements given as a personal recommendation. The regulator did not apply the appropriateness test to P2P-Lending agreements sold on a non-advised basis, although the FCA reserved their position to revisit this in future. When the UK government revised the legislation to make the provision of advice to Investors on loans made via P2P-Lending Crowdfunding Platforms a regulated activity, it did not require firms that already held FCA authorisation to advise on investments to have to seek additional authorisation in order to advise on P2P loans. Instead the government ensured that all firms already authorised to advise on investments were eligible to elect to have authorisation to advise on P2P loans automatically conferred upon them.

b) Prospectus regulation

In the UK there is no specific prospectus regulation for Lending-based Crowdfunding.

c) Further applicable regulation

Regulation under the Financial Promotion Regime

The offer of shares, bonds or other securities and the provision of Crowdfunding services relating to securities and P2P-Lending loans will generally constitute a financial promotion, namely an invitation or inducement to engage in investment activity.

Much of the Crowdfunding website's contents will comprise an element of financial promotion. Accordingly, assuming the operator is FCA-authorised (or is the tied agent or appointed representative of an authorised firm), the contents of the website's financial promotions need to comply with the requirements of chapter 4 of the FCA's Conduct of Business Sourcebook to ensure that they are clear, fair and not misleading.

The FCA has also kept a close eye on the financial promotions made by Crowdfunding Platforms, particularly in the context of social media, on which it published specific guidance in March 2015. This guidance recognised the importance of this channel of promotion for firms, although highlighted the importance of "standalone compliance" in any communication (particularly relevant for financial promotions made through Facebook or Twitter) and the need to highlight potential risks to Investors or lenders.

A financial promotion relating to non-readily realisable securities (which does not include P2P-Lending loans or listed securities) cannot be made to a retail investment audience unless the recipients of the promotion fall within certain categories (high net worth Investors, sophisticated Investors, advised Investors or Investors who will not invest more than 10% of their net worth in non-readily realisable securities). For this reason, P2P-Lending Crowdfunding Platforms have a less attritional Investor membership process than Crowdfunding Platforms facilitating the offering of securities.

As mentioned above, this is an area that is likely to be the subject of change during 2017 as the FCA consults following its post-implementation review.

Regulation concerning Unregulated Collective Investment Schemes (UCISs)

Where the profit share being offered to Investors is not channelled through a standard corporate issuer/shareholder relationship (e.g. the Investor receives a contractual entitlement to profits from a project), the investment may be characterised as units in a UCIS. Crowdfunding generally entails the pooling of Investor contributions or the pooling of profits and/or income prior to distribution to the Investor, with no Investor involvement in the day-to-day management of the proposition (or project), the two key components of a "collective investment scheme".

Operating a UCIS and managing an alternative investment fund are regulated activities and must be conducted by an FCA-authorised firm. There is overlap between this regulated activity and the activity of managing an alternative investment fund (see the section on Regulation under the Alternative Investment Fund Managers Directive (AIFMD) regime below). There is potential for either the Crowdfunding Platform operator or the fund-seeking party (Company/Project Initiator) to be a person that would conduct the regulated activity, depending on how the arrangements are structured. The promotion of UCISs is subject to greater restriction than the promotion of shares in a trading company, even when the promotion is communicated or approved by an FCA-authorised firm – for example, the Crowdfunding Platform operator needs to confirm the eligibility of Investors to invest in UCISs before promoting the Crowdfunding Platform, whereas eligibility for investing in non-readily realisable securities only needs to be determined before a direct offer of those investments is made. The potential categories of exempt funder to whom UCISs can be promoted is also narrower than for other non-readily realisable securities.

These UCIS promotion restrictions also apply to other forms of non-mainstream pooled investment, such as shares in a special purpose vehicle.

Regulation under the AIFMD regime

A range of measures implementing the Alternative Investment Fund Managers Directive (AIFMD) came into force in the UK from 22 July 2013, creating a new pan-European concept of "alternative investment fund" that sits alongside the existing UK regime for UCISs. Broadly, most UCISs will constitute alternative investment funds. The AIFMD has added a new layer of regulation on top of the UCIS regime. The AIFMD applies where the investment proposition involves an "alternative investment fund" (AIF), namely:

- a collective investment undertaking;
- which raises capital from a number of Investors; and
- which invests in accordance with a defined investment policy for the benefit of its Investors.

Most UCISs will be AIFs, but the AIFMD is can also apply to a body corporate that falls outside the UCIS regime. Managing an alternative investment fund is a regulated activity that also permits the firm to operate a UCIS. The AIFMD imposes a heavy regulatory burden above and beyond the UCIS regime on fund operators falling within the scope, for example, of the requirement to appoint an independent depositary. However, there is a light touch compliance regime for managers with total assets under management of less than EUR 100m, which most UK-based Crowdfunding Platforms would fall into if they were managing an AIF. Under the limited compliance regime, the fund manager (e.g. the Crowdfunding Platform operator) will generally be required to become authorised as a small authorised AIFM and comply with a limited conduct of business and capital requirements regime.

The light touch regime for small AIFMs does not prohibit the marketing of AIFs to retail Investors in the UK, provided the AIF is not also a UCIS.

In January 2016, the Treasury amended secondary legislation so that firms carrying on the activity of operating an electronic system in relation to lending are not regarded as operating collective investment schemes (though they may still be AIFs under the AIFMD).

Regulation of Payment Services

The transmission of funds between the Investor and the Company/Project Initiator may involve the Crowdfunding Platform operator providing "credit transfer" or "money remittance" services under the Payment Services Regulations 2009 (as amended) (PSRs) implementing the Payment Services Directive in the UK. A Crowdfunding Platform operator will require separate FCA authorisation if it is conducting payment services.

Historically, operators have relied on the exemption for 'commercial agents' but this is unlikely to be possible post 13 January 2018 when PSD2 take effect. The FCA has published draft guidance on this point which, although not yet final, may mean that Lending-based as well as Investment-based Crowdfunding Platforms would not be considered to be providing payment services as a regular occupation or business activity, such that separate authorisation would not be required.

Money Laundering Regulations 2007

The FCA expects all authorised firms, including those operating both Lending-based and Investment-based Crowdfunding Platforms, to have systems and controls in place to mitigate the risk that they are misused for the purposes of financial crime. Therefore, the Crowdfunding Platform operator has to verify the identity of clients.

Please note that the Money Laundering Regulations 2007 will be repealed from 26 June 2017 and new regulations will apply in order to implement 4MLD.

Data Protection

On 25 May 2018, the General Data Protection Regulation (GDPR) will replace the UK's Data Protection Act 1998 (and other laws enacted across all EU member states to implement the EU's Data Protection Directive 1995). The GDPR will apply to all Crowdfunding Platform operators processing personal data in the context of an establishment in the EU, and to those which are not established in the EU but which offer services to data subjects (i.e. individual borrowers or Investors) in the EU.

Crowdfunding Platform operators – as data controllers – must process personal data in accordance with the requirements of the GDPR, which include a requirement to:

- make certain privacy information available to data subjects (usually in the form of a privacy policy);
- keep comprehensive records of processing activities;
- enter into robust contractual arrangements with third parties processing personal data on their behalf (for example, hosting providers);
- take appropriate technical and organisational measures to keep personal data secure (relative to the potential risk); and
- not transfer personal data outside the EEA without ensuring "appropriate safeguards" (for example, by incorporating the European Commission's standard contractual clauses).

Under the GDPR, the UK's data protection authority (the ICO) and all other EU data protection authorities will have the power to issue fines of up to the higher of 4% of worldwide turnover or EUR 20,000,000 for breaches of certain requirements (including the restriction on transferring personal data outside the EEA). There is a lower tier of fine (the higher of 2% of worldwide turnover or EUR 10,000,000) for breaches not falling within the higher tier. The GDPR also includes a right to compensation for data subjects, which, together with a new concept of the "representation of data subjects", could create a significant new class action threat.

d) Impact of Brexit

On 29 March 2017, the UK government triggered the process for exiting the EU. The ramifications for the cross-border development of Crowdfunding into and out of the UK will largely depend on the basis of any transitional arrangements following Brexit as well as the outcome of the negotiations on the UK/EU relationship which will determine what arrangements apply in relation to EU legislation in future once the UK has left.

A snap UK election has been called for 8 June 2017 which means that negotiations with the EU will not begin until later that month at the earliest. If there is a change of UK government, the incoming administration may want to push that date back whilst it gathers its thoughts. The European Commission currently expects that the negotiations themselves will last approximately 18 months (early June 2017 – October/November 2018). There are currently disagreements on the structure of the negotiations: the EU will only commence talks on the future overall framework of the relationship once the withdrawal agreement has been finalised whereas the UK would prefer to negotiate both in tandem given the curtailed timing.

When analysing the potential impact of Brexit on the financial services market, the following scenarios are the ones commonly discussed:

i) full equivalence and passporting: the UK would obtain full equivalence and passporting across the full scope of the single market directives where such equivalence and passporting rights are currently available;

ii) equivalence where the provision already exists but no additional access rights are granted: the UK would become a "third country" and would obtain equivalence across the single market directives and regulations where equivalence is already established. No new access arrangements would be negotiated to compensate for the loss of passporting rights;

iii) third country agreement: the UK would become a "third country" but would not obtain equivalence across the core single market directives. No new access arrangements would be negotiated on a bilateral basis; and

iv) bilateral agreement – these are negotiated with individual Member States to retain access where possible.

In reality, focus has centred on the second and third options – back in January, Prime Minister Theresa May made clear that the UK would not remain a member of the single market after Brexit – as a result, passporting rights will no longer be available. As regards the fourth option, in April, the European Parliament warned that any bilateral arrangement between one or several remaining member states and the UK, in the areas of EU competence, which has not been agreed by the EU27, relating to issues included in the scope of the withdrawal agreement or impinging on the future relationship of the EU with the UK, would be in contradiction with the Treaties. This would especially be the case for any bilateral agreement or regulatory or supervisory practice (or both) that would relate, for example, to any privileged access to the internal market for UK-based financial institutions at the expense of the EU's regulatory framework.

Although it may be possible for some UK firms to continue to access EU markets under scenario 2, firms are neither relying on equivalence determinations being made nor assuming that equivalence would provide a sufficiently certain basis upon which to build a business plan. Firms are putting in place contingency plans and structuring solutions on the assumption that scenario 3 will apply. In both scenarios, the activities of UK (and possibly EU) firms will be disrupted – the extent of the disruption will depend on the way that individual businesses are structured. Clearly, given the uncertainty around equivalence determinations, firms would prefer arrangements to be negotiated that enable EU and UK firms to access each other's markets on the basis that their respective regimes are broadly consistent.

6.1.2 Consumer protection

a) Consumer Credit Laws

The FCA is responsible for regulating consumer lending firms, including P2P-Lending Crowdfunding Platforms. Where a borrower on a Lending-based Crowdfunding Platform is an 'individual or relevant recipient of credit' – defined as a consumer or a sole trader or small partnership (or other unincorporated body) – borrowing less than GBP 25,000 for the purposes of the borrower's business – the credit agreement will be a 'regulated credit agreement' unless a specific exemption applies.

Where the lender is lending in the course of business, the credit agreement will be subject to the full provisions of the Consumer Credit Act 1974 (the CCA) and the lender will need FCA authorisation and to comply with rules in the FCA's Consumer Credit sourcebook (CONC) applicable to lenders. This will be in addition to the requirement that the P2P-Lending Crowdfunding Platform needs authorisation for the activity of 'operating an electronic system in relation to lending' where, amongst other things, the Crowdfunding Platform facilitates persons becoming a lender and borrower under a relevant agreement. If the lending is not done in the course of business (i.e. the lenders are individual, non-institutional Investors, as is very often the case), limited CCA requirements will apply, together with the CONC provisions applicable to P2P-Lending agreements. The lender will not need to be FCA-authorised and so the Crowdfunding Platform (as the FCA-regulated entity) will be responsible for ensuring compliance with any CCA and CONC pre-contractual and information disclosure requirements, as well as ongoing conduct of business requirements (including in respect of arrears, default and recovery).

b) Consumer Rights Act 2015

This Act applies to all consumer contracts which provide a service to the consumer from 1 October 2015, and is predominantly enforced by the Competition and Markets Authority (CMA). The Act applies to P2P-Lending Crowdfunding Platforms as the Crowdfunding Platform is providing the consumer with an opportunity to lend. The Act imposes a statutory duty requiring all services provided to a consumer to be performed with reasonable care and skill, a breach of which could lead to a claim for damages. The Act does not govern the terms and conditions of the consumer contract, but does set out how the contract should be presented i.e. the terms must be plain, clear, intelligible and transparent. If a term is ambiguous, the courts are required to give it a meaning

which is most favourable to the consumer. The courts also have the right to determine whether a term is fair or unfair and, if a term is found to be unfair under the Act, it follows that this is likely to be an offence under the Consumer Protection from Unfair Trading Regulations 2008 as well.

c) Distance Marketing Directive

The Distance Marketing Directive (DMD) requires that most financial services contracts made at a distance (without the simultaneous physical presence of the supplier or intermediary and the customer) give customers the right to cancellation within a set period, without penalty and without giving a reason. There is no right, however, to cancel distance contracts for investments whose price depends on fluctuations in the financial market that are outside the firm's control. This means that, where a platform includes a secondary market, the DMD cancellation rights are not required.

d) Consumer Protection from Unfair Trading Regulations 2008

These Regulations implement the Unfair Commercial Practices Directive (2005/29/EC) into UK law, and (amongst others) prohibit traders from pursuing 'unfair commercial practices'. Their scope is broad in terms of the types of practices that can be caught, but acts, omissions and misleading practices relating to the promotion, sale and supply of goods and services are caught. Any practices and statements of an operator of a Crowdfunding Platform must therefore comply with the Regulations.

e) Potential impact of Brexit

Consumer protection law in the UK can apply independently of other local law in this area in different territories, and often therefore requires operators to adapt models and processes specifically for the UK which can be a barrier to cross-border expansion.

However, as mentioned above, the outcome of the Brexit negotiations will determine what arrangements apply in relation to EU legislation in future once the UK has left the EU and this will obviously have ramifications for the consumer protection law considerations outlined above.

Much of the UK's regulatory regime implements, or is based on, EU legislation and regulation. It will be a major task for UK legislators and regulators to revise existing requirements to take account of Brexit.

Many EU Directives have been implemented in the UK through amendments to primary legislation (for example, the Financial Services and Markets Act 2000), through new secondary legislation and through rules made by the FCA and the PRA. The UK authorities also currently take account of guidelines issued by the ESAs in relation to specific regimes. In addition, UK firms must comply with delegated and implementing regulations made under the Level 1 directives: as these regulations are directly applicable, no additional UK legislation or regulation was needed to bring them into effect. This is clearly also the case for Level 1 regulations such as the capital requirements regulation.

Assuming the UK decides to maintain existing EU frameworks post-Brexit, it will need to:

- Review this implementing law and regulation to ensure that it reflects the outcome of Brexit negotiations. This will likely involve saving legislation to ensure that legislation made under the European Communities Act 1972 remains in force. This saving legislation may be made in or under the "Great Repeal Bill" or through a separate Act of Parliament.

- Introduce legislation or regulation that reflects level 1 regulations and/or the provisions of delegated and implementing regulations relating to the level 1 framework.

- Introduce measures, presumably guidance or rules from the FCA and the PRA, reflecting the guidelines issued by the ESAs.

The UK authorities will need to undertake this exercise for every piece of EU legislation affecting the financial services sector. In a press conference in April 2017, Andrew Bailey, FCA Chief Executive, described the work that the FCA was undertaking to transpose EU legislation into UK legislation:

"The government has asked us to assist on this for that body of European legislation that is within our ambit, as it were, and there is a lot, we are having to have lawyers go through page by page to say … which elements of that, as they are currently written in European legislation, would be inoperable if you just lifted them and dumped them into a UK piece of legislation because obviously they relate to a different institutional organisational structure".

The House of Commons library has published reports on the work needed to transplant existing EU law into UK law and to revise law that has already been transposed to make it effective post-Brexit.

In theory, the UK may choose to use the opportunity of Brexit to change its regulatory regime for financial services: for example, by removing some of the measures that it did not support when they were developed by the EU legislators. If it takes this approach, the task of revising the UK regulatory regime will become more complex still. In practice, there are compelling reasons to suggest that the UK may be unwilling to make major changes to its financial services regulatory regime, at least in the short term:

- The UK regime reflects international policy objectives (at G20/FSB/IAIS/IOSCO/BCBS level) that are supported by the UK government and regulators.

- The UK was heavily involved in negotiating the legislation at EU level and, in many cases, this resulted in existing UK standards being replicated across the rest of the EU.

- The potential need for UK regulation, at least for certain financial services sectors, to be sufficiently similar to EU regulation for the UK to be deemed to be equivalent by the European Commission for UK financial institutions to obtain market access.

- The UK wants to remain a world-leading, competitive financial services hub and consequently it is likely to want to be recognised as having "equivalent" regulatory standards to the EU and the rest of the world.

6.1.3 Taxation

6.1.3.1 General rules (UK resident Investor, Crowdfunding Platform and investment)

Save as set out below, Investment-based Crowdfunding and P2P-Lending are subject to the usual UK taxation, tax relief and anti-avoidance rules that apply to equity and debt. At a high level and for a UK tax resident Investor, therefore:

i) interest payments will be subject to income tax (for individual Investors, currently at 20%/40%/45% depending on the level of income) or corporation tax (for corporate Investors, currently at 19%) in the hands of the Investor;

ii) dividends will be subject to income tax for individual Investors (currently at 7.5%/32.5%/38.1% depending on the level of income) but are generally tax exempt for corporate Investors;

iii) there is no UK withholding tax on the payment of dividends by a UK tax resident company (see below with regarding to payments of interest);

iv) payments of interest are generally tax deductible for UK tax resident borrowers (subject to the new formula-based restriction on interest deductions for corporates and to the transfer pricing rules) but payments of dividends are not tax deductible;

v) any gain realised on the sale of equity is generally subject to capital gains tax for individuals (currently at 10%/20%) and any gain realised on the sale of equity or debt is generally subject to corporation tax for companies (currently at 19%);

vi) some tax reliefs may apply for individual Investors on subscribing for shares in certain circumstances with detailed rules, generally aimed at promoting venture capital and early-stage investments; and

vii) the issue and sale of equity and the advance of credit not subject to UK VAT.

The tax treatment summarised above is subject in all cases to the detail of the relevant tax rules, which may affect the outcome in particular cases, and particularly to anti-avoidance rules both general (including the general anti-abuse rule (GAAR) and principles developed by case law) and specifically targeted.

6.1.3.2 Crowdfunding specific rules

There are currently no specific UK taxation rules that apply to equity Investment-based Crowdfunding. The following special rules apply to P2P-Lending (peer-to-peer loans):

i) Bad debt relief: individual Investors can claim tax relief on irrecoverable debts from peer-to-peer loans through FCA authorised Crowdfunding Platforms to offset against the taxable interest income received on other peer-to-peer loans.

ii) Withholding tax: payments of interest with a UK source are generally subject to 20% withholding tax. The UK government is in the process of changing the withholding tax obligation as it applies to interest on peer-to-peer loans. Pending the change of law, the UK tax authorities have confirmed that interest on loans made through FCA authorised Crowdfunding Platforms are temporarily exempted from UK withholding tax.

iii) Innovative finance ISA: eligible individual Investors are able to hold qualifying peer-to-peer loans and Crowdfunding debentures in an individual savings account (ISA), which means that all returns on the loans are tax exempt (but no relief is given for losses).

6.1.4 Conclusion

The UK financial services regulatory environment is clearly favourable for Crowdfunding generally and there are no barriers to entry that particularly affect the ability for Crowdfunding Platforms to raise finance, particularly through debt securities or P2P loans. The UK market has grown rapidly and as a result, a number of changes and revisions will be made to the regime over the next 12-18 months. Whilst the focus of the FCA will be ensuring that Investor protections are appropriate, the regulator's aim is to continue to ensure that the market in Crowdfunding develops in a sustainable fashion, allowing competitive forces to operate in the interests of consumers.

6.2 Main facts of identified cross-border barriers

6.2.1 Regulation

a) Inbound

Foreign Crowdfunding Platforms carrying on a "regulated activity" in the UK addressing UK Investors will be required to obtain FCA authorisation as an "authorised person" according to the Financial Services and Markets Act 2000. The scope of the FCA authorisation required will depend on the regulated activities being carried on by the Crowdfunding Platform. Crowdfunding Platforms based in Member States other than the UK and authorised under MiFID may be able to exercise passport rights under MiFID without having to obtain authorisation on a country by country basis. Financial promotions directed at UK recipients will also likely be subject to additional conduct of business obligations under the UK financial promotion regime.

If a Crowdfunding Platform from another EU Member State addresses Companies/Project Initiators in the UK these Companies/Project Initiators seeking to raise finance through issuing debt or equity securities must satisfy themselves that they are meeting any requirement to publish a prospectus (or fall within an available exemption). Contravening the prohibition in FSMA of dealing (and other activities) in transferable securities without an approved prospectus is a criminal offence. The Companies Act 2006 also prohibits the offering of shares in a private limited company to the public.

b) Outbound

UK Crowdfunding Platforms targeting non-UK Investors only would not be subject to UK licensing requirements or conduct of business rules provided that the fundraising activity is also taking place outside the UK (i.e. the Companies or Project Initiators seeking to fundraise through the Crowdfunding Platform are non-UK based). The FCA would consider a number of different factors in determining that this would be the case. UK Crowdfunding Platforms are likely to be subject to local licensing and conduct of business requirements (depending on the scope of their activities) and so should carry out due diligence on the regulatory regime of any EU Member State in which they are targeting Investors or Companies/Project Initiators prior to launch.

As mentioned above, UK Crowdfunding Platforms seeking to passport into other EU jurisdictions under their MiFID licence would not need to obtain additional licences, but may be subject to additional conduct of business rules under the host Member State's regulatory regime. UK Crowdfunding Platforms should be aware of EU-based regulation including in relation to data protection, AML and consumer protection, which set out common standards which UK Crowdfunding Platforms will be expected to comply with under local implementing legislation. Similarly, Companies/Project Initiators seeking to raise finance should be aware of any local requirements to issue a prospectus (or conditions which must be met in order to issue shares to the public).

6.2.2 Consumer protection

a) Inbound

A key potential barrier is that mandatory UK consumer protection law will in many cases apply to contracts entered into with UK consumers, regardless of the location or place of establishment of the Crowdfunding Platform. This means that despite any attempt by a Crowdfunding Platform to maintain a uniform Crowdfunding Platform structure and

contractual approach across multiple markets, it is likely that variations will have to be made to cater for UK consumer regulatory requirements.

There is a broad scope of potential consequences and sanctions for breaches of consumer protection law, which may also be enforced across multiple regulators. Consumer protection is a highly regulated area, however, with increasing levels of enforcement, and we are also seeing more cross-border co-operation between differing national regulators.

b) Outbound

The potential barriers to inbound services will apply equally to outbound services, in the opposite direction.

6.2.3 Taxation

a) Inbound

Whether or not non-UK tax-resident Investors are subject to UK taxation on Crowdfunding activities brokered through a UK Crowdfunding Platform into a UK investment will depend on the particular circumstances but relief may be available under the terms of the relevant double taxation treaty.

Non-UK tax resident Investors are only able to claim bad debt relief if they are subject to UK income tax on their P2P-Lending loan income. Provided a peer-to-peer loan is made through an FCA-authorised Crowdfunding Platform, interest payments should still be exempt from UK withholding tax under the interim regime outlined above.

b) Outbound

Since UK tax residents are subject to UK taxation on their worldwide income the tax consequences outlined above will continue to apply to Crowdfunding activities brokered through a non-UK Crowdfunding Platform into a non-UK investment, but relief for tax in the non-UK jurisdiction may be available against the UK taxation.

The UK P2P-Lending reliefs set out above require the peer-to-peer loans to be made through a Crowdfunding Platform authorised by the FCA or equivalent EEA body. Accordingly, their application to outbound investments would need to be considered on a case-by-case basis.

c) Taxation barriers to cross-border Crowdfunding

The UK taxation rules governing cross-border Crowdfunding investments are complex and subject to an ever-increasing body of anti-avoidance law. This complexity may present an obstacle to some Investors, but no more so than a corresponding non-crowdfunded UK equity or debt investment.

6.2.4 Conclusion

On 23 June 2016, the EU referendum took place and the people of the UK voted to leave the EU. Until exit negotiations are concluded, the UK remains a full member of the EU and all the rights and obligations of EU membership remain in force. During this period the UK government will continue to negotiate, implement and apply EU legislation. The outcome of these negotiations will determine what arrangements apply in relation to EU legislation in future once the UK has left the EU and this will obviously have ramifications.

III. Guidance for Crowdfunding stakeholders and/or policy recommendations

1 Policy recommendations

The Crowdfunding regulations of the Member States, and the cross-border regulatory barriers that Crowdfunding stakeholders may face, are numerous and far-reaching. However, the main barriers that Crowdfunding stakeholders will most likely face when crossing borders in the Member States are summarised below. Also outlined further below are regulatory solutions conducive to a harmonised, uniform and strong EU legal framework for (cross-border) Crowdfunding:

- Unclear definition of different Crowdfunding models, e.g. in the case of equity-based Crowdfunding and lending-based Crowdfunding or the use of the term "Investment-based Crowdfunding"

  → the EU might provide clear definitions for the Crowdfunding models and the relevant market parties. These definitions should, however, be flexible enough to include future business models and allow room for national peculiarities in the fast-changing Crowdfunding business

- The definitions of the European regulation are also not coherent

  → some national financial authorities define certain terms in a different way than other authorities (e.g. the concept of "money remittance services" or "securities" within the meaning of MiFID (II))

  → in many Member States, Companies/Project Initiators are structured as limited companies (e.g. *GmbH*) or limited partnerships (e.g. *KG*) whose shares do not constitute "securities" within the meaning of MiFID. Hence, European legislation such as the European prospectus regulation (currently the Prospectus Directive and in future, the Prospectus Regulation) and the European MiFID (II) regulation do not apply to these financial instruments. Instead other (in most cases national) regulation (e.g. in Germany, the Investment Products Act – *Vermögensanlagengesetz* (*VermAnlG*) and section 34f of the German Trade, Commerce and Industry Regulation Act (*Gewerbeordnung*)) apply.

- On the basis of the assessments in this FISMA Report, the greatest obstacle is the fragmentation of European Crowdfunding regulation.

- The "wait-and-see" policy of the European Union regarding the regulation of Crowdfunding encourages the Member States to create their own national laws and may result in a complex patchwork of regulations inside the EU.

- The fragmented regulatory environment for cross-border Crowdfunding is very complicated, and in many cases precludes cross-border Crowdfunding completely. Legal framework harmonisation amongst EU states would enable cross-border investments.

  → Crowdfunding regulation at a European level would be desirable:

  - Standardised licence requirements for Crowdfunding Platforms throughout the EU would especially simplify cross-border activities and could facilitate the ability to passport a licence to another Member State – a "European Licence" with fewer regulatory requirements than a MiFID licence.

  - There are no harmonised ceilings and thresholds in the EU – each Member State has different thresholds for different types of financial products.

  - Harmonisation of prospectus requirements among Member States, e.g. limits for prospectus exemptions, could also improve the process of cross-border activity:

    → there are different prospectus thresholds throughout EU-28 for securities (Germany: EUR 100,000; UK: EUR 5m) – resulting either from EU prospectus regulation regarding securities or local regulation for other financial instruments (e.g. shares in a GmbH)

    → subordinated profit-participating loans or – in case of P2P-Lending –credit claims as commercially comparable investments (*wirtschaftlich vergleichbare Anlagen*) (the prevailing German and Austrian Crowdfunding instrument) which are exempted under specific requirements from prospectus and other requirements in Germany can rarely be offered in other Member States since they are subject to different regulation in other Member States

    → on the other hand, the Equity Crowdfunding typically used in some EU Member States cannot be offered in other Member States due to very low thresholds for prospectus requirements, commonly of EUR 100,000.

    → there are different local information requirements in case of local exemptions from a prospectus requirement:

      → EU-wide introduction of three-page fact sheet with pre-defined content and categories could simplify this

- Especially in case of P2P-Lending, there are huge differences in terms of intermediation of a fronting bank (to exclude deposit business) in some Member States which might be harmonised by means of a European-level regulation.

- Regulation may also lead to more legal certainty. The Crowdfunding Platform operators can be assured of operating their Crowdfunding activities in a legal framework where they are not exposed to criminal sanctions for dealing in an unregulated cross-border sector. Hence, legal framework harmonisation within the EU can enable cross-border investments.

The following measures taken by the European legislator might support a level playing field in the EU-28, as mentioned above:

Licence regulations

- Consistent and uniform European licence for Crowdfunding Platforms which meets the following criteria:

  → passportable throughout the EU

  → the European Crowdfunding licence must be easier to obtain than the MiFID (II) licence

    → e.g. introduction of a requirement for Crowdfunding Platforms to have risk management systems – but no (high) minimum capital requirement

  → ideally it should be a possible opt-in EU framework, enabling both

    → cross-border Crowdfunding under a new EU regime (for multi-national Crowdfunding Platforms or Companies/Project Initiators), and

    → merely local Crowdfunding for local Companies/Project Initiators to be funded under the current national Crowdfunding legislations

Prospectus regulations

- Consistent (prospectus) thresholds throughout EU-28 that mandatorily must include all types of financial products irrespective of whether they are equity-, mezzanine- or debt-based financial products, e.g.:

  → securities (only these are covered by the current European prospectus regime and also the Prospectus Regulation entering into force mainly in 2019),

→ other investment products (e.g. shares in companies (especially limited liability companies, e.g. GmbH), participation rights or mezzanine financial instruments such as subordinated profit-participating loans or – in case of P2P-Lending – credit claims as commercially comparable investments (*wirtschaftlich vergleichbare Anlagen*), etc.)

- Minimum and maximum thresholds fixed by the European legislator
- Possible co-investment of retail Investors and professional Investors (e.g. Business Angels, VC, etc.) (in order to increase the professionalism of Crowdfunding)
- Graded information/prospectus requirements above certain thresholds, such as the following ("Austrian model"):

  → if amount per project is under (prospectus) threshold (e.g. EUR 2.5m), no prospectus is required, only a three-page fact sheet (e.g. VIB)

  → within a specific range (e.g. between EUR 2.5m and EUR 5m), only a "small" or "flattened" prospectus with reduced content is required

  → above an absolute amount (e.g. above EUR 5m), a full prospectus is required

Transparency regulations

- Consistent and uniform transparency and information obligations throughout EU-28 for both Crowdfunding Platforms and Companies/Project Initiators with regard to Crowdfunding
- Binding transparency and information obligations before, during and after investment of Investors, e.g.:

  ➢ registration phase

  → information obligation of Crowdfunding Platform regarding status (e.g. address, contact details, costs and risks in connection with use of Platform, details regarding insurance of Platform, etc.)

  ➢ investment phase

  → information obligation of Company/Project Initiator regarding the project (including e.g. contract(s), T&C, fact sheet or details for Investors as consumers)

  → information obligation of Crowdfunding Platform regarding investment, financial instrument, risks etc.

  ➢ post-investment phase

→ periodic (at least yearly) information obligations about project to be fulfilled by Company/Project Initiator

- Possibility of comparing financial products cross-border, e.g. by means of a standard fact sheet with predefined categories throughout EU-28 with a fixed number of pages (similar to PRIIP but with significantly simpler content and categories)

- Harmonisation of further information and assessment requirements in this regard (e.g. self-assessment regarding minimum wealth or income requirements or appropriateness tests)

European Commission

Identifying market and regulatory obstacles to cross-border development of crowdfunding in the EU

Annex A2

Member States' Profiles on Crowdfunding

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Introduction

This report combines various sources of data and information gathered by desk research. Much of the information and quantitative data might therefore not always be accurate or comparable; the market is fast-moving and in fluctuation. Therefore, we advise the reader to draw careful conclusions about market sizes, number of platforms or other market specifics. The diverse origin of information provenance is likely to include inaccuracies that we had no means of identifying within the context of this report.

We have indicated in the footnotes the source of data and information, where appropriate. Some underlying information was collected by the European Crowdfunding Network in 2016 in the context of the study on "Assessing the potential for Crowdfunding and other forms of alternative finance to support research and innovation". For the report, we have removed all unnecessary information and updated the remaining aspects if and where data was publicly available.

Regarding quantitative data, there are a few private research undertakings ongoing throughout Europe that aim to inform about the state of the market. None of these capture an accurate picture of the developments, but they can be taken as indicative. Given the timeline of this study, we decided to use the TAB database as it offered the most up-to-date and inclusive view of data at the time of publishing for 2016 and beyond. The dataset on TAB is used to calculate the growth rate of Crowdfunding activity across the years 2014-2017 (see graphs by country). The data from TAB on the Crowdfunding activity and volume of successful campaigns per country may not be complete, since it may be the case that the data collection is based partly or wholly on voluntary data sharing by the platforms. TAB does not provide data on all 28 Member States. Hence, the graphs on the Crowdfunding activity are shown only for the countries on which there is data on TAB.

To calculate the growth of Crowdfunding activity in the selected countries we used TAB Track. We filtered our search based on location, type of Crowdfunding and date. With regards to location, we selected the platform location (not campaign location). With regards to the type of Crowdfunding, we selected equity and debt. Debt covers Invoice Trading, loans (P2P), bonds and debentures. We limited our search to the years 2014 to 2017. All data on TAB was last accessed on 3 July 2017.

We also reference findings of the University of Cambridge European Alternative Finance Benchmarking Report, with data up to and including 2015. Their latest data is expected to be published in Q3 2017 and after the finalisation of this study. The interested reader is advised to seek out the latest market data proactively after its publication.

It may be the case that there are discrepancies in the information provided by the different sources, since they use different data gathering processes. For these cases, we chose to outline the different data sources available.

Austria

Overview

Austria's Crowdfunding market seems to be changing from a small market niche to a more serious alternative financing system. This change can be explained by the introduction of a new legal framework, which came into effect on 1 September 2015. Since its introduction, the number of Crowdfunding campaigns and crowd-based models have rapidly increased.

A. Role of alternative finance

Market size

According to the 2nd European Alternative Finance Industry Report from 2016, EUR 12m has been raised in Austria in 2015. Since 2013, when Crowdfunding came up in Austria for the first time, 70 projects have been crowdfunded using the Equity-based Model, with EUR 11.14m.

Well-known crowdfunding platforms include www.conda.at, www.1000x1000.at and www.greenrocket.com. The Austrian Federal Economic Chamber (www.wko.at) coordinates and represents the interests of the Austrian business community on a national and international level. It represents more than 480,000-member companies.

Trend

Since September 2015, there has been a significant increase in the market due to the implementation of the alternative financing law.

Figure: Crowdfunding activity in Austria from 2014 to 2017
Source: TAB

Total Crowdfunding Platforms

In 2015, there were 16 platforms, according to the Austrian Federal Economic Chamber (www.wko.at).

Crowdfunding models

Equity-based Crowdfunding	For 2015, Austria had six active platforms using the Equity-based Model, which raised EUR 8.1m. The growth rate from 2014 to 2015 was 335%. However, the Crowdfunding market in Austria is still in its very early stages compared to overall Austrian investments or other European countries.[1]
Lending Crowdfunding	Lending is the Crowdfunding model that has shown most growth in Austria. There are no exact numbers, but some businesses raised millions of EUR with this model, e.g. the company "Grüne Erde" leveraged EUR 7.7m via their customers.
Other	Balance sheet business lending (EUR 2m in 2015). Real estate Crowdfunding (EUR 0.1m in 2015).

B. Regulatory context [2]

Country / Summary	Austria
Recent developments in crowdfunding regulations	• First national Crowdfunding regulation, the Alternative Financing Act, was implemented as of 1 September 2015. • Situation regarding the allowance of issuing subordinated loans (not profit-participating) to customers remains unclear as they may provide a severe disadvantage. • General situation regarding general licensing requirements of crowdfunding became clearer due to implementation of the Alternative Financing Act.
Current/planned Crowdfunding regulation	

[1] According to desk research of the European Crowdfunding Network, referencing the state of the market in 2016. (link)

[2] S. Schermaier, F. Schönberg: Austria. In: "Review of Crowdfunding Regulation" (2017). European Crowdfunding Network, Brussels. Page 22ff. (link)

General regulation	• If the Crowdfunding Platform provides alternative finance products, a licence for providing securities services according to the Federal Law on the Supervision of Securities is mandatory. • If providing investment products, a licence for providing the business of commercial investment consulting according to Austrian Industrial Code is necessary. • The most popular form of Crowdfunding is issuing subordinated loans, which are usually qualified as investment products.
Prospectus requirement	• No prospectus requirement for alternative financing products, which do not exceed a total investment amount of EUR 1.5m. • Simplified prospectus requirement for alternative financing products with a total investment amount between EUR 1.5m and EUR 5m and if bonds or stocks are issued with a total amount exceeding EUR 250,000 per year. • Full prospectus requirement for all other issued securities and investment products which are not covered by the Alternative Financing Act.
AIFMD regulation	• Only applicable if the project company does not carry out the ongoing business of the facility, i.e., if operational activities are outsourced. • Little practical relevance for Crowdfunding, as most companies try to avoid/bypass the application of the AIFMD regulation because of its extensive regulations and the requirement of a licence from the Financial Market Authority.
Payment service regulation	• Forwarding money collected from investors to the company may constitute money remittance. • A licence from the Financial Market Authority may be required. • Unclear whether this service may be covered by the exemption for commercial agents. • Corporation with a payment service provider/bank is therefore recommended.
Further possible requirements	• Consumer Credit Regulation (Verbraucherkreditgesetz – VKrG). • Consumer Protection Act (Konsumentenschutzgesetz – KSchG).
Regulatory barriers	
Inbound	**Foreign Crowdfunding Platform addressing Austrian investors** • Most Austrian regulatory laws are applicable if Austrian investors are addressed by a public offer according to the Capital Market Act.

	Crowdfunding Platform Alternative finance products • Crowdfunding Platforms licensed as CRR-credit institutions by another EU Member State do not have to apply for an additional licence. • If the crowdfunding platform does not hold a licence from a Member State, it must apply for a licence in Austria. Investment products • Licence for conducting the business of commercial investment consulting in Austria is mandatory. • If conducted only temporarily and occasionally, the activity must be indicated to the local trade authority. • If conducted permanently, the Crowdfunding Platform needs to be licenced under the freedom to provide services by submitting the respective certificates of competence to the trade authority. *Foreign company/project* Prospectus requirement according to the Capital Market Act. • General rule determines that issuing securities or investment products requires a full prospectus according to the Capital Market Act. Alternative Financing Act • If the product issued is covered by the Alternative Finance Act, drawing up a prospectus is not required. • Investors need to be provided with a standardised information sheet which contains information on the product and the company. **Foreign Crowdfunding Platform addressing Austrian companies/projects** *Crowdfunding Platform* Alternative finance products • Licensing as a securities service provider according to the Industrial Code is not necessary since the service is not provided in Austria. Investment products • Business of commercial investment consulting is not conducted in Austria and therefore licensing requirements according to the Industrial Code do not apply.

	Austrian company/project • As Austrian investors should not be approached, the prospectus requirement as well as other obligations under the Alternative Financing Act do not apply. • A disclaimer, stating that the Austrian market is excluded from the offer, should be provided to ensure that Austrian regulatory laws are not applicable.
Outbound	**Austrian crowdfunding platform addressing foreign investors** Only foreign investors should be approached in this situation *Crowdfunding Platform* Alternative Finance products • Licensing as a securities service provider according to the Industrial Code is not necessary since the service is not provided in Austria. Investment products • Business of Commercial Investment Consulting is not conducted in Austria and therefore licensing requirements according to the Industrial Code do not apply. *Austrian company/project* • As the offer is not addressed to Austrian investors, there is no public offer according to the Capital Market Act and therefore the prospectus requirement according to the Capital Market Act and the Alternative Financing Act is not applicable. • To ensure that Austrian investors are excluded from the offer, a disclaimer is recommended. **Austrian crowdfunding platform addressing foreign companies/projects** As the offer addresses Austrian investors, Austrian regulatory requirements apply to their full extent. *Crowdfunding Platform* Alternative finance products • Crowdfunding Platforms need a licence according to the Federal Law on the Supervision of Securities, in order to be allowed to act as a securities services provider. Licence is granted by the Austrian Financial Market Authority. Investment products • The business of commercial investment consulting is conducted in Austria.

	• Crowdfunding Platforms need a licence according to the Industrial Code. • The operator of the platform must meet several regulatory requirements and he is obliged to prove his/her qualification before conducting the business. *Foreign company/project* Prospectus requirements • Requirements according to the Capital Market Act (if applicable) and information obligations according to the Alternative Financing Act must be met. • General rule determines that issuing securities or investment products requires a full prospectus according to the Capital Market Act. Alternative Financing Act • If the product issued is covered by the Alternative Finance Act, drawing up a prospectus is not required. • Investors need to be provided with a standardised information sheet which contains information on the product and the company.
Impact of EU regulation	
Prospectus regulations	• Most Crowdfunding Platforms act under the regime of the Alternative Financing Act; no prospectus requirement applies if the total investment amount does not exceed EUR 1.5m. • Only minor practical relevance.
AIFM Directive	• The Alternative Investment Fund Manager Act may be applicable if project companies do not operate the facility themselves and the ongoing business of the respective project is not handled by the company seeking funding. • Crowdfunding Platforms try to avoid application of the AIFMD. • Insignificant practical relevance for crowdfunding in Austria.
MiFID/MiFID II	• Only applicable to transferable securities. • Does not have any practical relevance for Crowdfunding in Austria.
PSD/PSD II	• Activity of Crowdfunding Platform may be qualified as remittance service and therefore a licence according to Payment Services Act is required. • Unclear whether Crowdfunding may be subsumed under the exemption for commercial agents. • External payment service provider should be used to fulfil licensing requirements.

C. Disclosures & safeguards

No professional industry association exists. To foster the professional and transparent development of the local market, it might be advisable for a national Crowdfunding association to establish a Code of Conduct with which platforms should be obliged to comply. Examples exist in a number of countries, such as the UK, France, Germany or the Netherlands. Alternatively, the open adoption of the European Crowdfunding Network Code of Conduct and its Charter of Crowdfunders' Rights by market players could help in markets without a critical mass of platforms.

Platforms themselves, to the extent that they can serve as marketplaces, have the potential to aid regulatory developments through early self-regulation and transparency. But this will require credible and enforceable quality and transparency standards as well as level playing fields. Any such initiative should aim to cover key performance indicators for the industry, conflict of interest rules and platform remuneration. However, regulation will always play the main role in establishing and ensuring a functioning market with an adequate level of safeguards and disclosures.

D. Support policies

Overview

Recently, more and more regions in Austria have begun to launch Micro Funds for SMEs, including services related to Crowdfunding. For instance, in April 2016, the City of Graz launched the EUR 5,000 "Crowdfunding Cheque", which can be used by entrepreneurs and SMEs for consultation and support (e.g., a video) related to Crowdfunding.

Market Supervision

FMA - Finanzmarktaufsicht[3]

Crowdfunding models

Fund-matching initiatives	The ÖHT (Austrian Tourismbank) will start a Crowdfunding Platform, www.we4tourism.at, for tourism projects. Most probably fund-matching projects funded through Crowdfunding and co-funded by the tourism bank will be supported on this platform.
State aid	The City of Graz launched the EUR 5,000 "Crowdfunding Cheque" in April 2016. It can be used by entrepreneurs and SMEs for consultation and support (e.g., a video) related to Crowdfunding.
Crowdfunding guidelines for entrepreneurs/investors	- The Chamber of Commerce has published a guide on Crowdfunding.

[3] FMA – Finanzmarktaufsicht (link)

	- The Ministry for Research and Economy has published a study for the tourism industry. - Wolfgang Gumpelmaier-Mach, a Crowdfunding expert, has launched an information portal.

Belgium

Overview

Despite its late start, the Belgian Crowdfunding market evolved quickly and Crowdfunding has become a viable alternative financing tool. While it is primarily dominated by local platforms, some international players have an impact on the market. Belgium is the largest market for Invoice Trading compared to other European countries.

A. Role of alternative finance

Market size

With EUR 37m funds collected through Crowdfunding, Belgium is the 7th largest Crowdfunding market in Europe (in 2015). The Market Volume Per Capita is EUR 3.26m.[4]

Trend

In Belgium, the size of the Crowdfunding market increased over the past years, as can be seen from the chart below by research firm TAB, but also from other independent research, such as that of the University of Cambridge.[5]

Figure: Crowdfunding activity in Belgium from 2014 to 2017
Source: TAB

[4] Zhang, B. et al (2016): "Sustaining Momentum. The 2nd European Alternative Finance Industry Report". Cambridge University (link)
University of Cambridge reports a rise from EUR 2.5m in 2014 to EUR 37m in 2015, Figures 2014: Wardrop, R., Zhang, B., Rau, R., Gray, M. (2015): "Moving Mainstream. The European Alter-native Finance Benchmarking Report" (link). Figures 2015: Zhang, B. et al (2016): "Sustaining Momentum. The 2nd European Alternative Finance Industry Report". Cambridge University (link).

Total Crowdfunding Platforms

In 2014, six platforms were active, according to a European Commission study[6]; eight, according to the local trade association.

Crowdfunding models

Equity-based Crowdfunding	Approximately EUR 2.5m is raised by equity-based Crowdfunding.[7]
Lending Crowdfunding	In 2015, approximately EUR 4.5m.[8]
Other	- Balance sheet business lending (EUR 2m in 2015). - Real estate Crowdfunding (EUR 0.1m in 2015).

B. Regulatory context[9]

Country / Summary	Belgium
Recent developments in Crowdfunding regulation	• **2014:** first Crowdfunding legislative initiative (the "Crowdfunding Act") increasing the threshold of the "prospectus exemption" to EUR 300,000 and EUR 1,000 per investor. • **2015:** the Belgian Government introduced tax incentives in favour of Crowdfunding. • **End 2016:** The Crowdfunding Platform Act comprehensively regulates the licensing of Crowdfunding platforms and the use of financing vehicles. It further increases the thresholds of the Crowdfunding exemption for licensed Crowdfunding platforms in the prospectus law to EUR 300,000 per project and EUR 5,000 per investor.
Current/planned Crowdfunding regulation	
General regulation	Licensing: • Licensed platforms may not provide regulated investment services, except for providing investment advice and receiving and passing on investment orders. • The definition of placement services has been narrowed to emphasise the fact that a placement service entails

[6] European Commission (2015) Crowdfunding: mapping EU markets and events study. 30 September (link).
[7] "Current State of Crowdfunding in Europe", CrowdfundingHub, 2016 (link)
[8] « Le marché du crowdlending belge triple en 2015 », Look&Fin, 2015 (link)
[9] A. Wochenmarkt.: Belgium. In: Review of Crowdfunding Regulation (2017). European Crowdfunding Network, Brussels. Page 54ff. (link)

	assisting the client during the entire process, including managing financial flows. • The Prospectus Act (Article 56) now specifies that platforms may commercialise investment instruments. • Licensed platforms will act outside of the scope of MiFID. Otherwise they will require MiFID licensing. This is the case for the offering of not-exempted financial services regarding tradeable securities (e.g., for pure-equity Crowdfunding). • Most platforms will only require licensing as an Alternative Service Provider (the light regime put in place by Belgium), avoiding MiFID licensing. <u>Banking monopoly:</u> • Only credit institutions (and the like) are authorised to collect deposits and other repayable funds from the public in Belgium. Crowdfunding platforms may not receive or hold monies or financial products from their clients or be indebted to their clients (Article 17). • Funds must be collected by either the issuer or payment institutions licensed to manage payments. Adequate protection must be put in place to guarantee that the collected funds cannot be used for any purpose other than reimbursing the investor (if the fundraising venture fails) or investing in the project (in the case of success).
Prospectus requirement	Applies to offers of investment instruments. **General Exemption:** • offers below EUR 100,000. • offers addressed to fewer than 150 natural or legal persons other than qualified investors; • total consideration per investor and per offer is more than EUR 100,000, calculated over a period of 12 months. **Crowdfunding Exemption:** • for a total consideration of less than EUR 300,000; • with a maximum investment of EUR 1,000 per person and per project. **Crowdfunding Platform Exemption:** • Licensed platforms or investment firms do not require a prospectus for offers for a total consideration of less than EUR 300,000 with a maximum investment of EUR 5,000 per person and per project. • Cooperatives in Belgium benefit from a distinct prospectus exemption.
AIFMD regulation	• Usually not applicable to average start-up. • Operating companies are not AIFs. Project companies (financing vehicles) may be AIFs.

	• However, the Crowdfunding Platform Act specifies that financing vehicles cannot be undertakings for collective investments and may not have a defined investment policy. Financing vehicles as defined under the Crowdfunding Platform Act will fall outside the scope of the AIFMD. • In addition, Belgium has opted to implement less stringent rules for "small" AIFMs. • If one uses an investment vehicle that does not comply with the restriction of the Crowdfunding Platform Act, then that vehicle might qualify as an AIF if it has a defined investment policy. However, it may benefit either from exemptions under AIFMD or, in the worst case, from the "lighter regime".
Payment service regulation	• Transfer of funds through a crowdfunding platform constitutes money remittance services. License required from the Belgian National Bank. • The Crowdfunding Platform Act specifies that licensed Crowdfunding platforms may not provide payment services, as they may not hold funds from investors. • However, financing vehicles could qualify as providing payment services if they provide money remittance services. Cooperation with payment service provider required. Most Belgian platforms avoid the cost of a payment services provider by having the funds wired directly by the investor into the funded company's account.
Further possible requirements	• Book VI Market Practices and Consumer Protection of the Code of Economic Law (formerly The Act on Market Practices and Consumer Protection); • Money Laundering Provisions (Act of 11 January 1993 as amended); • Privacy legislation (mainly Act of 8 December 1992); • Consumer Credit Legislation (Now Book VII of the Code of Economic Law).
Regulatory barriers	
Inbound	**Foreign Crowdfunding Platform addressing Belgian investors** Belgian investors are approached; thus, the Belgian regulatory framework applies. <u>Crowdfunding Platform:</u> • Licensing obligations • Persons from another Member State of the EEA may provide Alternative Finance Services in Belgium if they are licensed in their Member State to provide "similar services". Prior to acting in Belgium, they must be licensed by the FSMA, which will enter into contact with the controlling authority of the Member State from which they originate.

	• Passported foreign licensed investment firms and credit institutions are exempted from control by the FSMA and may directly offer Alternative Finance Services in Belgium. • If a foreign platform does not benefit from a MiFID license to provide financial services and it is not licensed in an EEA country to provide services similar to Alternative Financial Services, then the platform will be entitled to make offers in Belgium only if it registers as a Belgian platform (and thus establishes itself in Belgium). <u>Foreign Company/project:</u> Prospectus Regulation A foreign company seeking funds will fall within the scope of the Prospectus Act if it offers investment instruments in Belgium. The foreign company may benefit from some exemption: • If the offer qualifies as non-public (it is addressed to fewer than 150 persons, or the total consideration per investor and per offer is more than EUR 100,000, calculated over a period of 12 months); • Under the Crowdfunding exemption, if the offer is for a total consideration of less than EUR 300,000, capped at threshold of EUR 1,000 per person per project. Under the Crowdfunding platform exemption, if the offer is made through a licensed platform, then a higher threshold of EUR 5,000 per investor applies. Other Financial Regulations • If a foreign platform offers a project or company through a financing vehicle in Belgium, the provisions of the Crowdfunding Platform Act regulating financial vehicles apply. **Foreign crowdfunding platform markets: Belgian companies/projects abroad** Given the marketing approach, it is unlikely that the fact that a Belgian company or project is marketed through a foreign platform will trigger the application of Belgian financial regulation. <u>Crowdfunding Platform:</u> • No licensing will be required. No application of Belgian financial regulations to that platform. <u>Belgian Company or Projects seeking funds</u> (abroad) through a foreign platform: • As the offer is not addressed to Belgian investors, the Belgian prospectus regulation will not apply. Normally no other financial regulations will apply to the Belgian company or project.
Outbound	**Belgian crowdfunding platform addressing foreign investors** Here, only foreign investors are addressed (e.g., a Belgian platform addresses French investors).

	Crowdfunding Platform: • Belgian licensed platforms remain subject to the same information obligations and safeguards when they approach foreign investors. • Licensing obligations • The regulatory framework governing licensed Platforms remains applicable when they approach foreign investors. • Moreover, a Belgian platform which intends to operate abroad must inform the FSMA of its intention (and thus do so prior to addressing foreign investors). Other financial regulations • As licensed Belgian Crowdfunding platforms can only offer a limited range of financial services — i.e., they are limited to providing investment advice and receiving and passing on investment orders — there is only a very limited range of financial regulations that can apply. However, they remain subject to the mini MiFID regime set out by the Crowdfunding Platform Act and other regulations which may apply as they are active in Belgium. Company or Projects: Prospectus regulation • If the offer in this hypothesis is not addressed to Belgian investors, the Belgian prospectus regulation will not apply. Other financial regulations • Generally, no specific financial regulations will apply to the companies or projects offered abroad. **Belgian Crowdfunding Platform offering foreign companies/projects** Under this scenario, Belgian investors are approached with an offer relating to the foreign company or project -> Belgian regulations do apply. Crowdfunding Platform: Licensing obligations • The Belgian platform is subject to the Crowdfunding Platform Act and requires licensing if it approaches Belgian investors. Other financial regulations • Licensed Crowdfunding platforms can only offer a limited range of financial services, i.e., they are limited to providing investment advice and receiving and passing on investment orders. Company or Projects: Prospectus regulation • The foreign company or project promoted by the Belgian platform is subject to the Belgian Prospectus Act if investment instruments are offered to Belgian investors. This

	will be assumed if the offer is made through a Belgian licensed platform. • The Crowdfunding platform exemption (or Crowdfunding exemption) may be available. • Moreover, the foreign company/project might face (local) prospectus requirements pursuant to regulation in its home (EU) country. Other financial regulations • Except for traded securities, foreign companies or projects offered on a Belgian crowdfunding platform are not subject to other Belgian financial regulations. • However, if the foreign project or company is a financing vehicle (as defined), the special protective provisions of the Crowdfunding Platform Act apply if participation through that vehicle is offered in Belgium.
Impact of EU Regulation	
Prospectus regulation	• The Belgian Prospectus Act has a broader scope than the Prospectus Directive, as it regulates (1) the offer of investment instruments (and not only transferable securities) but also (2) the offer of securities under the Prospectus Directive threshold. Thus, only a very limited (to non-existent) part of the Belgian Crowdfunding market is regulated by the harmonised European legislation implemented into Belgian law.
AIFM Directive	• The AIFM Directive will have a limited impact on the Belgian Crowdfunding market, as financing vehicles as defined under the Crowdfunding Platform Act will not have a defined investment policy and thus will fall out of scope. • Only if an investment vehicle used falls outside the scope of the Crowdfunding Platform Act, e.g., it has a defined investment policy, can this vehicle be subject to the harmonised part of the AIFM Directive. • Obviously, if an investment in such a vehicle is offered outside Belgium, it may come into conflict with local interpretation of the AIFM Directive.
MiFID/MiFID II	• The Belgian Crowdfunding market mainly uses debt investment instruments and, only exceptionally, tradeable securities. Consequently, MiFID and MiFID II have a very limited potential application to the Belgian Crowdfunding market. This was further secured by the fact that the Crowdfunding Platform Act strictly limits the number of investment services a licensed platform can offer. • Only for MiFID licensed firms acting cross-border will MiFID regulation have an impact. This is the exception rather than the rule.
PSD/PSD II	• The Crowdfunding Platform Act specifies that licensed Crowdfunding platforms may not provide payment services, as they may not hold funds from investors.

	• However, investment vehicles could qualify as providing payment services if they were to provide money remittance services. Most Belgian platforms avoid the cost of a payment services provider by having the funds wired directly by the investor into the funded company's account. • To the extent that financing vehicles, companies or projects use payment services providers, it is obvious that the Payment Service Directive has an impact on the financing of Crowdfunding projects.

C. Disclosures & safeguards

The Belgische Crowdfunding Federatie[10] is engaging with local platforms but does not have relevant information on its public website. To foster the professional and transparent development of the local market, it might be advisable for a national Crowdfunding association to establish a Code of Conduct with which platforms should be obliged to comply. Examples exist in several countries, such as the UK, France, Germany or the Netherlands. Alternatively, the open adoption of the European Crowdfunding Network Code of Conduct and its Charter of Crowdfunders' Rights by market players could help in markets without a critical mass of platforms.

Platforms themselves, to the extent that they can serve as marketplaces, have the potential to aid regulatory developments through early self-regulation and transparency. But this will require credible and enforceable quality and transparency standards as well as level playing fields. Any such initiative should aim to cover key performance indicators for the industry, conflict of interest rules and platforms remuneration. However, regulation will always play the main role in establishing and ensuring a functioning market with an adequate level of safeguards and disclosures.

D. Support policies

Overview

In 2013, the European Commission launched a consultation to explore the added value of potential EU action here.

The market is supervised by the local regulator, the Financial Services and Markets Authority (FSMA).

Crowdfunding models

Tax benefits	The tax shelter for Crowdfunding, which came into force on 1 July 2015, provides tax incentives for both Equity-based and Lending-based Crowdfunding schemes. For Equity-based Crowdfunding personal income tax reduction.

[10] The Belgische Crowdfunding Federatie (link)

	For equity investments in start-ups, personal income tax reduction has been set up, while for Lending-based Crowdfunding, a tax exemption on interest from loans to start-ups has been put in place.[11]
Crowdfunding guidelines for entrepreneurs/investors	The European Commission has published a guide on Crowdfunding (link).
Other support measures for fundraisers	Due to the high number of regulations on the subject, the FMSA has published an online guide to help project developers and platform owners to identify the right legal scheme for their specific case.

[11] Osborne Clarke Germany (2016): Review of Crowdfunding Regulation & Market Developments. In: "CrowdFundRES - Unleashing the Potential of Crowdfunding for Financing Renewable Energy Projects". Deliverable 3.1 (PU) (link)

Bulgaria

Overview

In Bulgaria, Crowdfunding is a relatively new and not very widely used tool for fundraising. Nevertheless, some use is being made of the international outreach of large Crowdfunding Platforms, especially by entrepreneurs in the technological field.

A. Role of alternative finance

Market size

Currently there are around 30 projects that aim at collecting funds for companies, activities and social causes through Crowdfunding, but they are all hosted on non-Bulgarian platforms (Indiegogo and Kickstarter).

The Central and Eastern European online alternative finance market includes transaction volumes from the following countries: Albania, Armenia, Austria, Belarus, Bosnia and Herzegovina, Bulgaria, Croatia, Czech Republic, Estonia, Georgia, Hungary, Kosovo, Latvia, Lithuania, Macedonia, Moldova, Montenegro, Poland, Romania, Serbia, Slovakia, Slovenia and Ukraine.

During the period 2013-2015, the alternative finance industry in this region underwent an average annual growth rate of 179%. Online alternative finance has gone from EUR 11m raised in 2013 to EUR 33m raised in 2014, representing a year-on-year growth rate of 191%. From 2014-2015, the pace of growth in the region accelerated by 167%, from EUR 33m to EUR 89m.[12]

Total Crowdfunding Platforms

To date: four active platforms

Crowdfunding models

Equity-based Crowdfunding	No data
Lending Crowdfunding	No data

B. Regulatory context [13]

Country / Summary	Bulgaria
Recent	In recent years, several platforms of the peer-to-peer (P2P) type have

[12] Zhang, B. et al (2016): "Sustaining Momentum. The 2nd European Alternative Finance Industry Report". Cambridge University (link)

[13] N. Boteva and V. Kamenov: Bulgaria. In: "Review of Crowdfunding Regulation" (2017). European Crowdfunding Network, Brussels. Page 85ff. (link)

developments in Crowdfunding regulation	been developed in Bulgaria. The most famous of them are Iuvo, Klear, Mintos and Twino. These platforms use different types of funding and a different pattern of action. For example, some of them, like Iuvo, Mintos and Twino, use originators, i.e., financing by borrowers from a non-banking sector. The other types of platforms are characterised by lending money first and then looking for projects through which to repay the money.
Current/planned Crowdfunding regulation	
General regulation	• There are no explicit legal regulations for crowdfunding. As a result, some of the current legislation should be applied by analogy, namely: Credit Institutions Act; Law on Payment Services and Payment Systems; Public Offering of Securities Act; Markets in Financial Instruments Act; Law on the Activities of Collective Investment Schemes and Other Collective Investment Undertakings; Commercial Law; Law on Measures against Money Laundering; Currency Act. • The operator of the platform may be required to be licensed/registered by the Bulgarian National Bank as either a financial institution or a credit institution in accordance with, respectively, the Law on Credit Institutions and the Law on Payment Services and Payment Systems. • Further to the change to the Public Offering of Securities Act in 2016, it is stipulated that this change shall not apply to commercial offers for securities issued by companies whose purpose is the collective investment of funds raised through a public offering of securities which operates on the principle of risk spreading. This means that, provided such conditions are agreed in the case of Crowdfunding, the Public Offering of Securities Act will not be applied for Crowdfunding, which again highlights the need to introduce special legislation in the field of Crowdfunding in Bulgaria. • According to the Markets in Financial Instruments Act, enforcement and establishment of collateral on the cash and financial instruments of clients for the obligations of the investment intermediary is not allowed. • According to the Law on Measures against Money Laundering, notification related to suspicion of money laundering or of the presence of criminal assets may also take place electronically with qualified electronic signature or an access certificate issued by the State Agency for National Security. • The provisions of commercial law can be applied to Crowdfunding about the legal form of the companies, the governing bodies, the distribution of profits and many other issues. • According to the Currency Act, there is no obligation to file a report within 30 days of receipt of funds from abroad.

Prospectus requirement	• Prospectus requirement for companies which publicly offer securities to investors. • Threshold: EUR 100,000 per issuer within 12 months.
AIFMD regulation	• Regarding the management of alternative investment funds (AIFs), a chapter was adopted in the Law on Collective Investment Schemes and Other Undertakings for Collective Investments in 2013 which provides for detailed regulation of the activity of the fund managers, including their registration/licensing, requirements for their organisation, and terms and conditions in the case of trans-border management. The competent body which shall regulate and supervise the activities of AIFs and their managers shall be the Financial Supervision Commission. • From 2016, individuals who manage venture capital funds or social entrepreneurship funds and wish to use the EuSEEC or EuSEF designation for alternative investment schemes are registered by the Commission pursuant to, respectively, Article 14 of Regulation (EU) No 345/2013 or Article 15 of Regulation (EU) No 346/2013. Pursuant to the Law on Collective Investment Schemes and Other Undertakings for Collective Investments, Crowdfunding financing shall not fall within the scope of the Directive's application. It shall apply to closed-end investment companies only, as far as the special investment purposes companies are excluded from the scope of application of the Directive.
Payment service regulation	• Transfer of funds through operator may constitute money remittance service. In future, the operator of the platform may be required to be licensed/registered by the Bulgarian National Bank either as a financial or a credit institution in accordance with, respectively, the Law on Credit Institutions or the Law on Payment Services and Payment Systems.
Consumer credit regulation	• At present, lending agreements, including between related parties or between a local and a foreign entity, are subject to a registration under the Currency Act in a special register at the Bulgarian National Bank.
Further possible requirements	• The Commerce Act • The Law on Measures against Money Laundering • The Currency Act
Regulatory barriers	
Inbound	**Foreign Crowdfunding Platform addressing Bulgarian investors** → identify their clients and the transactions executed for their account with the Financial Supervision Commission *Crowdfunding Platform* - If the platform has a foreign MiFID licence it can generally conduct business in Bulgaria without a local licence - If the platform has no such licence, it must obtain a local one *Foreign company/project*

	→ Public Offering of Securities Act applicable for prospectus requirements **Foreign Crowdfunding Platform addressing Bulgarian companies** → any foreign person offering securities on the Bulgarian market should be listed in the Register of Public Companies and Other Issuers of Securities *Crowdfunding Platform* - Needs to be listed in Register of Public Companies and Other Issuers of Securities - other Bulgarian regulations may be applicable (see above) *Company/project* - Public Offering of Securities Act applies for the publication of the prospectus in Bulgarian and for the registration of the respective foreign legal entity
Outbound	**Bulgarian crowdfunding platform addressing foreign (EU) investor** *Crowdfunding Platform* - No requirement for registration of a Bulgarian issuer in a foreign country, according to the Public Offering of Securities Act - The issuer must meet the legislative requirements in that other State *Company/project* - Public Offering of Securities Act shall apply only when the Crowdfunding activity takes place in the territory of Bulgaria **Bulgarian Crowdfunding Platform addressing foreign companies/projects** *Crowdfunding Platform* - The Public Offering of Securities Act is to be applied as far as the activity is to be performed in Bulgaria *Company/project* - Bulgarian law does not apply; MiFID II has not yet been implemented in Bulgaria
Impact of EU Regulation	
Prospectus regulation	No or almost no impact on Crowdfunding in Bulgaria.
AIFM Directive	No or almost no impact on Crowdfunding in Bulgaria.
MiFID/MiFID II	No or almost no impact on Crowdfunding in Bulgaria.
PSD/PSD II	May be applicable to platform operators in Bulgaria.

C. Disclosures & safeguards

No professional industry association exists. To foster the professional and transparent development of the local market, it might be advisable for a national Crowdfunding association to establish a Code of Conduct with which platforms should be obliged to

comply. Examples exist in several countries, such as the UK, France, Germany or the Netherlands. Alternatively, the open adoption of the European Crowdfunding Network Code of Conduct and its Charter of Crowdfunders' Rights by market players could help in markets without a critical mass of platforms.

Platforms themselves, to the extent that they can serve as marketplaces, have the potential to aid regulatory developments through early self-regulation and transparency. But this will require credible and enforceable quality and transparency standards as well as level playing fields. Any such initiative should aim to cover key performance indicators for the industry, conflict of interest rules and platforms remuneration. However, regulation will always play the main role in establishing and ensuring a functioning market with an adequate level of safeguards and disclosures.

D. Support policies

Overview

During future development of the financial market in Bulgaria, a specific legislative approach should be applied.[14]

Market Supervision

Ministry of Finance of the Republic of Bulgaria.[15]

E. Additional insights

In order to create a flourishing environment for Crowdfunding in Bulgaria, it is important for policy makers to:

- support programmes and initiatives such as educational and training courses for improving citizens' financial literacy, and promote awareness and knowledge on investment opportunities and alternative financing (including Crowdfunding) amongst citizens and local businesses;
- support the development of instruments for alternative financing to provide opportunities for small businesses and social entrepreneurs to finance their innovative initiatives and products;
- develop an appropriate regulatory framework which guarantees the rights of Crowdfunding Platform users, focusing on operational and financial transparency practice, financial control, and security of information and payments; such a framework will be needed as the popularity of Crowdfunding Platforms and other forms of alternative financing increases.

The regulatory framework needs to be developed through a wide consultation with organisations active in supporting businesses and social enterprises, as well as other relevant stakeholders.[16]

[14] Review of Crowdfunding Regulation, ECN, 2014 (link)
[15] Ministry of Finance of the Republic of Bulgaria (link)
[16] CASI policy brief for Bulgaria (link)

Croatia

Overview

In Croatia, the use of Crowdfunding be a big challenge. This is due to a minor general awareness of Crowdfunding itself, low use of the internet for online purchasing of goods, and poor development of and mistrust in the e-business. Despite these facts, there is a clear interest in Crowdfunding in Croatia, as the number of campaigns supported, started or successfully funded goes up every year.

A. Role of alternative finance

Market size

Domestic Crowdfunding campaigns raised EUR 1.5m in 2015. Funds were mainly collected through reward-based Crowdfunding Platforms.[17]

Trend

There is a slow progress in the amount of campaigns backed, started or successfully produced and funded each year by Croatians. The number of supporters of local campaigns rose to 7,673 in 2015, compared to 6,636 in 2014.

Last year (2016), 63 projects were launched on different Crowdfunding Platforms, and only 23 of them collected the required amount. The conventional wisdom is that it is enough to launch a campaign and that success will come itself, which often leads to failures.[18]

In previous years, the biggest focus of Croatian crowdfunders had been in the field of gaming, music and film, whilst in 2015 there was a significant change, with more than 10% of campaigns coming from the field of community causes. We believe that a significant role was played here by the Crowdfunding Academy, co-founded by the UNDP Croatia and the social enterprise Brodoto.

Total Crowdfunding Platforms

In 2016, there were 3 active platforms in Croatia: Croinvest.eu, Croenergy and Čini pravu stvar.

Crowdfunding models

Equity-based Crowdfunding	EUR 0.37m has been raised with Equity-based Crowdfunding.[19]
Lending Crowdfunding	The Croatian Consumer Credit Act (*Zakon o potrošačkom kreditiranju*) may be applicable to the extent that it can be used as a vehicle for providing consumer credit. The principle stated on the

[17] "Current State of Crowdfunding in Europe", CrowdfundingHub, 2016 (link)
[18] Crowdfunding HR (link)
[19] "Current State of Crowdfunding in Europe", CrowdfundingHub, 2016 (link)

	platforms is merely that the investor loans money to the project holder in the form of an interest-free or interest-bearing investment loan, which must be repaid within a set time frame.[20]

B. Regulatory context [21]

Country / Summary	Croatia
Recent developments in Crowdfunding regulation	• No legislative or other regulatory developments affecting the regulation of Crowdfunding. • No active local Crowdfunding Platforms
Current/planned Crowdfunding regulation	
General regulation	• No regulatory practice • Certain types of equity model and lending model are potentially subject to a regulated regime under local securities and investment funds laws. → HANFA and/or CNB authorisation and registration required • Depending on the structure, donations/rewards model is not subject to financial services regulation
Prospectus requirement	• Prospectus requirement for offering of securities transferable on capital markets • Threshold: EUR 5m EU-wide per issuer within 12 months
AIFMD regulation	• Legislation only recently implemented; no regulatory practice • Typical start-up company seeking funding for regular operations should generally not constitute an AIF • Crowdfunding structure could constitute an AIF if it includes profit share arrangements other than in a commercial company • Depending on the structure, funding by non-transferable loans or contributions under donations/rewards model should not entail an AIF

[20] Osborne Clarke Germany (2016): "Review of Crowdfunding Regulation & Market Developments". In: "CrowdFundRES - Unleashing the Potential of Crowdfunding for Financing Renewable Energy Projects". Deliverable 3.1 (PU) (link)

[21] B. Babic and I. Basaric: Croatia. In: "Review of Crowdfunding Regulation" (2017). European Crowdfunding Network, Brussels. Page 105ff. (link)

	→ Crowdfunding Platforms are likely not AIFM
Payment service regulation	• Transfer of funds through operator may constitute money remittance service → Ministry of Finance/CNB authorisation required • Exemption for "commercial agents" likely to apply to operators of Crowdfunding Platforms
Consumer credit regulation	If consumer borrowers are permitted on a platform (lending model), a consumer credit licence is generally required → implications for the form and content of the lending agreements
Further possible requirements	• Croatian Act on Prevention of Money Laundering and Financing of Terrorism • Croatian Act on Protection of Personal Data • Croatian Companies Act
Regulatory barriers	
Inbound	**Foreign Crowdfunding Platform addressing Croatian investors** → Croatian law generally applicable *Crowdfunding Platform* If the platform has a foreign MiFID licence it can generally conduct business in Croatia without a local licence If the platform has no such licence, it must obtain a local one *Foreign company/project* → Croatian law generally applicable **Foreign Crowdfunding Platform addressing Croatian companies** → Croatian law generally does not apply *Crowdfunding Platform* Croatian licencing requirements not applicable Other Croatian regulations may be applicable, but only in relation to transferrable securities *Company/project* → Croatian prospectus and other requirements apply
Outbound	**Croatian crowdfunding platform addressing foreign (EU) investors** *Crowdfunding Platform* Croatian financial regulatory law does not apply *Company/project* Company or project not subject to Croatian prospectus and other regulatory requirements **Croatian Crowdfunding Platform addressing foreign companies/projects**

	Crowdfunding Platform Croatian licencing and other requirements concerning the platform apply *Company/project* Croatian law does not apply
Impact of EU Regulation	
Prospectus regulation	No or almost no impact on Crowdfunding in Croatia.
AIFM Directive	No or almost no impact on crowdfunding in Croatia.
MiFID/MiFID II	No or almost no impact on crowdfunding in Croatia.
PSD/PSD II	May be applicable to platform operators in Croatia.

C. Disclosures & safeguards

No professional industry association exists. To foster the professional and transparent development of the local market, it might be advisable for a national Crowdfunding association to establish a Code of Conduct with which platforms should be obliged to comply. Examples exist in a number of countries, such as the UK, France, Germany or the Netherlands. Alternatively, the open adoption of the European Crowdfunding Network Code of Conduct and its Charter of Crowdfunders' Rights by market players could help in markets without a critical mass of platforms.

Platforms themselves, to the extent that they can serve as marketplaces, have the potential to aid regulatory developments through early self-regulation and transparency. But this will require credible and enforceable quality and transparency standards as well as level playing fields. Any such initiative should aim to cover key performance indicators for the industry, conflict of interest rules and platforms remuneration. However, regulation will always play the main role in establishing and ensuring a functioning market with an adequate level of safeguards and disclosures.

D. Support policies

Overview

Concerning Croatia, attention should be paid to the increasing interest in Crowdfunding as a potential tool to finance innovative projects. However, there are currently mixed results. There are no strategic or programmatic initiatives that directly tackle Crowdfunding.[22,23]

Market Supervision

[22] Tregner-Mlinaric, Anita; Repo, Petteri; and Kaisa Matschoss (2015), "Crowdfunding in Sustainable Innovation".
[23] CASI Policy Briefs. CASI-PB-6.2015 EUROPE (link)

The best fit in the future development of specific regulation for Crowdfunding practices is likely to be the Croatian Financial Services Supervisory Agency (HANFA).

E. Additional insights

Best practice initiatives

Crowdfunding Academy

Crowdfunding Academy is a non-formal educational programme on developing Crowdfunding campaigns, aimed at training cooperatives, municipalities and cities, start-up companies, entrepreneurs, craftsmen and all citizens with interesting and innovative projects. It is organised by the United Nations Development Programme (UNDP) in Croatia, the social enterprise BRODOTO and Green Energy Cooperative (ZEZ).

Policy measures

Legislation should recognise Crowdfunding as a specific mode of financing and should provide basic regulation of Crowdfunding activities, which would be compatible with major markets where Croatian projects seek funding or are likely to do so in the future (i.e., the EU and the US). Legislators should recognise the fast development of Crowdfunding in Croatia and abroad, and should not overburden it with administrative or legislative requirements. The focus should be on the regulation of equity Crowdfunding and lending, as donations and sponsorship, which are provided in exchange for specific perks, often fall outside the scope of business transactions. The development of programmes which could support Crowdfunding (e.g., through education) should also be explored, as well as the potential of Crowdfunding to provide additional resources to projects in R&D, culture, sustainability, etc.

Cyprus

Overview

In Cyprus, the Crowdfunding industry is under-developed. In 2016, a few initiatives came up which might help the industry to evolve.

A. Role of alternative finance

Market size

With only one Crowdfunding Platform currently existent in the country, the Cyprian market is still evolving. The platform "We Hug a Cause" operates based on donation or Rewards-based Crowdfunding, and involves campaigns supporting charitable causes or the promotion of innovative ideas. Only two campaigns were hosted in the past and neither of them was successful.

Trend

It seems that the market began to establish itself in 2016. The "Crowdfunding Cyprus" conference was organised by KPMG and the Anirot Development Organisation. It aimed at encouraging the development of national regulation and the growth of Equity-based and Lending-based Crowdfunding. The speakers and panellists included the platform founders, Crowdfunding experts, professionals from the banking sector and government officials.
No Crowdfunding data for Cyprus has been provided by TAB.

Total Crowdfunding Platforms

In early 2017, only one platform was active in the country: www.wehug.org

Crowdfunding models

Equity-based Crowdfunding	Regulated by the Investment Services and Activities and Regulated Markets Law, Law 144(I)/2007 ("MiFID Law"), which puts into practice the Markets in Financial Instruments Directive 2004/39/EC ("MiFID Directive").[24]
Lending-based Crowdfunding	There are no active lending platforms at the moment. This might be due to the strict regulation. Under the Business of Credit Institutions Law 66/1997 (the "Business of Credit Institutions Law"), it is prohibited for any person, other than a licensed credit institution, to engage in the business of

[24] Osborne Clarke Germany (2016): "Review of Crowdfunding Regulation & Market Developments". In: "CrowdFundRES - Unleashing the Potential of Crowdfunding for Financing Renewable Energy Projects". Deliverable 3.1 (PU) (link)

	taking deposits or other repayable funds from the public, unless it has been previously authorised by the Central Bank of Cyprus. Therefore, the development of lending platforms seems unlikely.[25]
Others	EUR 15m for Invoice Trading. EUR 12.7m for real estate Crowdfunding, EUR 3m for Debt-Based Securities. EUR 0.4m for Balance Sheet Business Lending, and EUR 0.2m for profit sharing Crowdfunding.

B. Regulatory context [26]

Country / Summary	Cyprus
Recent developments in Crowdfunding regulation	There have been no developments in Cyprus regarding Crowdfunding regulation, which remains largely under-developed.
Current/planned Crowdfunding regulation	
General regulation	**Equity Model/Lending Model** • If investment services are offered or investment activities are performed by the crowdfunding platform as regards financial instruments (e.g. shares, units in collective investments, etc.), an investment license must be granted following the prior authorisation of the Cyprus Securities and Exchange Commission (CySEC); • Financial instruments under MiFID include transferable securities (i.e., securities which are negotiable on the capital market), money-market instruments, units in collective investment undertakings, and derivative instruments for the transfer of credit risk, as well as options, futures, swaps, forwards which may be settled physically or in cash, etc. Subordinated or profit-participation loans to companies are not, as a general rule, regarded as investment products per se. • MiFID Law does not include a specific Crowdfunding exemption within its scope, but it does provide several other exemptions.

[25] Osborne Clarke Germany (2016): "Review of Crowdfunding Regulation & Market Developments". In: "CrowdFundRES - Unleashing the Potential of Crowdfunding for Financing Renewable Energy Projects". Deliverable 3.1 (PU) (link)

[26] P. Labroupoulos, D. Papoutsis and A. Trakkidi: Cyprus. In: "Review of Crowdfunding Regulation" (2017). European Crowdfunding Network, Brussels. Page 117ff. (link)

	• Where applicable, the MiFID Law imposes a variety of capital, organisational and conduct-of-business requirements, with the aim of ensuring that client assets are protected, conflicts of interest are avoided, and the platform acts in the interests of the clients or investors. • With regard to the lending model in particular, the Business of Credit Institutions Law 66/1997 may be of more relevance. Under the Business of Credit Institutions Law, it is prohibited for any person, other than a licensed credit institution, to engage in the business of taking deposits or other repayable funds from the public unless it has been previously authorised by CBC. It would seem unlikely for a Crowdfunding Platform, having adopted the lending model, to fall into the above definition that would trigger a banking licensing requirement by the CBC, if the platform does not hold money for own account and therefore does not perform the activity of holding deposits and simultaneously granting credit to others for own account. **Donations or Rewards Model** • No investment or banking licensing requirements would be applicable to this type of Crowdfunding.
Prospectus requirement	**Equity/Lending Model** • A requirement for the issuance of a prospectus applies for the offering of securities to the public. The scope, application and exemptions follow those of the relevant EU Prospectus Directive. • The prospectus cannot be published unless approved by the CySEC. • Prospectus Law applies only where instruments are transferable securities within the definition of the MiFID Law, transposing the MiFID Directive. • Prospectus Law shall not be applied, inter alia, to: - securities included in an offer where the total consideration of the offer in the European Union is less than EUR 5m, calculated over a period of 12 months; - an offer of securities addressed solely to qualified investors (as defined in the MiFID Law); - an offer of securities addressed to fewer than 150 natural or legal persons which are not qualified investors per Member State; - an offer of securities with total consideration in the European Union of less than EUR 100,000, which value shall be calculated over a period of 12 months as to the securities offered during this period. • Prospectus shall contain all information which, according to the specific nature of the issuer and the securities being offered, is necessary in order to enable investors to

	comprehensively evaluate the assets, liabilities, financial position, profits and losses and prospects of the issuer and of any guarantor, and of the rights attaching to such securities. • Any type of advertisements relating to an offer to the public of securities or to an admission to trading on the Cyprus Stock Exchange (CSE) or on another regulated market, that takes place in Cyprus, shall, inter alia, state that a prospectus has been or shall be published and indicate the location where investors are able to obtain it, or how investors shall be able to have access to its full text. • Donations or Rewards Model • Prospectus requirements will not be applicable for this type of crowdfunding.
AIFMD regulation	• In case a Crowdfunding Platform constitutes an AIFM operating an AIF, such AIFM and/or the AIF must be licensed by CySEC under the AIFMD. • Operating companies are unlikely to be considered as falling within the scope of the relevant legislation. • An AIF is any collective investment undertaking (other than UCITS) including the investment compartments thereof, which, collectively: - raises capital from a number of investors, with a view to investing it in accordance with a defined investment policy for the benefit of those investors; and - does not require authorisation pursuant to the Open-ended Undertakings for Collective Investments Law of 2012, pursuant to Law 78(I)/2012 or pursuant to the legislation of another Member State which harmonises Article 5 of the Directive 2009/65/EC (the "UCITS IV Directive"). • Where the AIF is internally managed, the initial capital required is EUR 300,000. • Where the AIF is externally managed, the external manager would have to have an initial capital of EUR 125,000. • AIFs may be marketed to professional and retail investors, subject to the observance of further requirements. **Project Company seeking funding** Equity Model • Project companies might qualify as AIFs if they seek funding from investors in return for a share in the profits or revenue generated by the project as in the Equity Model.

	Lending Model • Investments by means of subordinated loans, or other debt-based investments, may be structured as non-AIF investments for the reason that the investors do not share liability for any losses. Donations or Rewards Model • This type of crowdfunding contains no collective investment undertaking such as an AIF. Crowdfunding Platform: • If the platform does not raise capital from the public for its own business, it will not qualify as an AIF. • If the platform does not manage the relevant company or project being the underlying investment, it will not qualify as an AIFM.
Payment service regulation	• The transfer of funds through a Crowdfunding platform could constitute a money remittance service, which would trigger the obligation for licensing by the Central Bank of Cyprus. • Thresholds of initial capital range from EUR 20,000 to EUR 125,000 depending on the services being offered. • PS Law excludes from scope, inter alia, payment transactions from the payer to the payee through a commercial agent authorised to negotiate or conclude the sale or purchase of goods or services on behalf of the payer or the payee.
Further possible requirements	• The E-Money Law, Law 81(I)/2012; • The Distance Marketing of Financial Services Law, Law 242(I)/2004; • The Consumer Credit Law, Law 106(I)/2010; • The Prevention and Suppression of Money Laundering Activities Law, Law 188(I)/2007; • The Processing of Personal Data (Protection of Individuals) Law 138(I) 2001;
Regulatory barriers	
Inbound	**Foreign Crowdfunding Platform addressing Cyprus investors** • Crowdfunding Platform *The platform holds a MiFID license in another EU Member State* The applicable regulatory framework will depend on whether or not the Crowdfunding Platform holds a MiFID license (and therefore a passport) in any other EU Member State. The MiFID Law will be applicable to an EU-based Crowdfunding Platform addressing investors resident or domiciled in Cyprus if it engages in Investment-based Crowdfunding relating to financial instruments as defined in the said Law. EU passport will be applicable to a Crowdfunding Platform holding a

	MiFID license. It is unclear whether a MiFID license held by a foreign Crowdfunding Platform will suffice also for providing financial services relating to financial instruments or products not covered by the MiFID license — e.g., shares in a private company or subordinated profit-participating loans. *The platform has no MiFID license* If the Crowdfunding Platform intends to address investors resident or domiciled in Cyprus, local regulation will be applicable. Other financial regulation may be applicable, depending on the activities conducted by the EU Crowdfunding Platform seeking to provide services in Cyprus (e.g., the Payment Services Law, the E-Money Law, the Business of Credit Institutions Law, etc.), with relevant passport provisions also being applicable. • Foreign company/project A foreign company (which would be the company seeking funding through a Crowdfunding Platform) purporting to offer transferable securities (within the meaning of MiFID) to the public in Cyprus would have to adhere to relevant provisions of the Cyprus Prospectus Law. Assuming the foreign company already has a prospectus approved by the competent authority of its home Member State, prospectus passport provisions would be applicable. The Cyprus Securities and Stock Exchange Law, Law 14(I)/1993, may be applicable depending on whether the foreign company purports to admit its securities to trading on the CSE. The Anti-Money Laundering Law will not be applicable. **Foreign Crowdfunding Platform addressing Cyprus companies** • Crowdfunding Platform To the extent that services are not being offered in Cyprus and Cyprus investors are not approached, Cyprus regulation will not apply, and the Crowdfunding Platform need not adhere to Cyprus licensing requirements. In case the foreign Crowdfunding Platform does not purport to offer any services in Cyprus, no additional Cyprus financial regulation shall be applicable. • Cyprus company/project To the extent that the Cyprus company seeking funding through a foreign Crowdfunding Platform purports to issue securities to the public in Cyprus, the Cyprus Prospectus Law will be applicable. Therefore, if such securities are not purported to be issued in Cyprus, the Cyprus Prospectus Law will not be applicable. Cyprus companies seeking funding through Crowdfunding Platforms should comply with the Cyprus Companies Law, Cap. 113, which sets out several requirements in relation to the issue of shares and debentures of a Cyprus Company, including that only public

	companies (i.e., non-private companies with more than 7 members) can offer shares and/or debentures to the public. Where the securities being issued by the Cyprus Company are listed on the Cyprus Stock Exchange, additional listing requirements pursuant to the Cyprus Securities and Stock Exchange Law, Law 14(I)/1993, as well as the Market Abuse Regulation (Regulation (EU) No. 596/2014), may be applicable. It is highly unlikely that the securities of a Cyprus Company seeking funding through a Crowdfunding Platform will be admitted to trading on a regulated market. The Company will not constitute an obliged entity under the Cyprus Anti-Money Laundering Legislation.
Outbound	**Cyprus Crowdfunding Platform addressing foreign (EU) investors** • Crowdfunding Platform Although Cyprus investors may not be approached, the fact that the provision of investment services comes from within Cyprus could mean that the Cyprus Crowdfunding Platform offering investment services within MiFID's scope to investors abroad would be subject to the MiFID Law requirements. Insofar as the Cyprus Crowdfunding Platform offers investment services under the MiFID Law, it would also be subject to the Cyprus Anti-Money Laundering Legislation. Requirements arising from the Cyprus Companies Law will also be applicable, since the Crowdfunding Platform is a Cyprus company. • Company/project The Prospectus Law will be applicable in the event that securities are being offered to the public in Cyprus. **Cyprus Crowdfunding Platform addressing foreign companies/projects** • Crowdfunding Platform In the event that the Cyprus Crowdfunding Platform approaches Cyprus investors presenting foreign companies or projects, and provided that it provides the MiFID investment services or activities in relation to financial instruments, the MiFID Law will be applicable. Other financial regulation may be applicable depending on the activities conducted by the EU Crowdfunding Platform seeking to provide services in Cyprus, e.g., the Payment Services Law, the E-Money Law, the Business of Credit Institutions Law, etc. Depending on whether the above regulation is applicable, the platform will also be considered an obliged entity under the Cyprus Anti-Money Laundering Legislation. • Company/project In principle, a foreign company (which would be the company seeking funding through a Crowdfunding Platform) purporting to offer transferable securities (within the meaning of MiFID) to the public in Cyprus would have to adhere to relevant provisions of the

	Cyprus Prospectus Law. Assuming such company already has a prospectus approved by the competent authority of its home Member State, prospectus passport provisions would be applicable. • Foreign companies or projects that issue securities might be subject to additional compliance obligations (e.g., listing and transparency requirements), for instance, in the event that such securities are traded on a regulated market in Cyprus. • In the event that foreign companies or projects issue subordinated profit-participating loans, these will not in principle be regulated in Cyprus. • Foreign companies issuing securities or profit-participating loans will not constitute obliged persons within the meaning of the Anti-Money Laundering Law.
Impact of EU Regulation	
Prospectus regulation	• Prospectus Law transposes into national law the respective Prospectus Directive. • Companies Law also requires a Cyprus company intending to invite persons to subscribe for shares in or debentures of such company to issue a prospectus, and lists certain requirements in respect of its content. Nevertheless, the Companies Law explicitly provides that Companies Law provisions shall not apply in relation to shares or debentures, to which the Prospectus Law applies.
AIFM Directive	• Cyprus AIFM Law, which transposes into national law the provisions of the AIFMD, could be of relevance to a Crowdfunding Platform where the latter manages or markets a collective investment undertaking (other than in the form of Undertakings for Collective Investments in Transferable Securities - UCITS) which raises capital from a number of investors with the aim of investing it in accordance with a "defined investment policy". • The interpretation of collective investment undertakings (and therefore an AIF) remains with the respective local authorities, and therefore it cannot be excluded that there may be a cross-border barrier, in the sense that a local supervisory authority may consider an investment vehicle to be an AIF, whereas one other will not deem it as such. •
MiFID/MiFID II	Both MiFID I and MiFID II apply to transferable securities which are negotiable on the capital market. As it may be unlikely that Crowdfunding Platforms will address companies issuing such securities, the application of MiFID to the Cyprus Crowdfunding market may be very limited.
PSD/PSD II	• The PS Law implementing the Payment Services Directive may be crucial to the operation of a Crowdfunding Platform, whether under the Lending, Equity or Donations or Rewards models.

	• The PSD II is expected to be implemented by January 2018. • It is understood that, as far as PS Law is concerned, any transfer of funds through the operator of a Crowdfunding Platform would generally constitute money remittance services within the meaning of the PS Law.

C. Disclosures & safeguards

No professional industry association exists. To foster the professional and transparent development of the local market, it might be advisable for a national Crowdfunding association to establish a Code of Conduct with which platforms should be obliged to comply. Examples exist in a number of countries, such as the UK, France, Germany or the Netherlands. Alternatively, the open adoption of the European Crowdfunding Network Code of Conduct and its Charter of Crowdfunders' Rights by market players could help in markets without a critical mass of platforms.

Platforms themselves, to the extent that they can serve as marketplaces, have the potential to aid regulatory developments through early self-regulation and transparency. But this will require credible and enforceable quality and transparency standards as well as level playing fields. Any such initiative should aim to cover key performance indicators for the industry, conflict of interest rules and platforms remuneration. However, regulation will always play the main role in establishing and ensuring a functioning market with an adequate level of safeguards and disclosures.

D. Support policies

Overview

Matching funds, state aid and tax benefits for alternative finance are not currently available in Cyprus.

E. Additional insights

Best practice initiatives

"Crowdfunding Cyprus": 15 June 2016 conference on Crowdfunding, organised by KPMG and the Anirot Development Organisation to encourage the development of national regulation and of Equity-based and Lending-based Crowdfunding.

Czech Republic

Overview

Compared to other European countries, the Czech Crowdfunding market is rather small. Despite this, it is rapidly growing. Five platforms were online by the end of 2015, while policy makers began to include Crowdfunding and its related issues in legislation. Nonetheless, to date no legal regulation has been established.

A. Role of alternative finance

Market size

In 2015, EUR 9m was raised in the Czech Republic through Crowdfunding. The most common model in the country is Reward-based Crowdfunding. The platform Hithit raised 80% more funds in 2015 than in 2014. The second-most-used form of Crowdfunding in the Czech Republic is P2P consumer lending. This form is not publicly perceived as a form of Crowdfunding. It started to accelerate during 2015 when Zonky.cz was launched. This platform has built its public recognition on the premise that people who do not receive loans from banks should still have a chance to get a loan. SymCredit and Pujcmefirme represent Czech P2P business lending. Equity Crowdfunding has not been an active form of financing in the Czech Republic so far. Only one campaign has been successfully funded.[27]

Trend

The first Czech Crowdfunding Platform was launched in 2011, and Crowdfunding is becoming increasingly popular in the Czech Republic. While national Crowdfunding programmes are perceived as effective alternative finance mechanisms for small-scale projects, larger aspirations would typically turn to international Crowdfunding Platforms with the potential for funding large-scale ventures. Overall, the sums raised via Crowdfunding in the Czech Republic reached CZK 24m (approx. EUR 0.89m), whilst the support and interest of backers remains positive (October 2014).[28] Considering the number of effectively operating platforms and successfully funded projects, Crowdfunding shows its potential for bridging the funding gap between concept design and later stages of innovation development.[29]

[27] "Current State of Crowdfunding in Europe", CrowdfundingHub, 2016 (link)
[28] Staszkiewicz et al., 2014
[29] Casi Project Policy Brief for Czech Republic (link)

Figure: Crowdfunding activity in Czech Republic from 2014 to 2017
Source: TAB

Total Crowdfunding Platforms

Five platforms are active in the Czech Republic, according to a 2015 study by the European Commission.[30]

Zonky.cz is a P2P consumer lending platform launched in 2015.
Hithit.com is a reward-based Crowdfunding Platform that launched its operations in 2013.
Startovac.cz is the second biggest Reward-based Crowdfunding Platform. It was launched in 2013.
SymCredit.com is a P2P business lending platform that was launched in 2014.
Benefi, a P2P consumer lending platform, started operating in 2014.

Crowdfunding models

Equity-based Crowdfunding	In 2015, only EUR 28K was collected through Equity Crowdfunding Platforms. According to Act No. 240/2013 Coll., on management companies and investment funds ("AMCIF"), equity platforms would fit the definition of "investment fund" and therefore be subject to this regulation. Furthermore, they would have to be properly licensed by the Czech regulator

[30] European Commission (2015). "Crowdfunding: Mapping EU Markets and Events Study". 30 September (link)

	(Czech National Bank), according to Act No. 256/2004 Coll., on capital markets ("Capital Markets Act").[31]
Lending Crowdfunding	Peer-to-Peer Consumer Lending: EUR 1.5m in 2015.[32] There are no regulatory requirements for lending activities. Nonetheless, lending platforms would have to obtain a trade licence, in order to be entitled to organise collective lending and borrowing.[33]
Others	Invoice Trading: EUR 5.6m in 2015.[34]

B. Regulatory context [35]

Country / Summary	Czech Republic
Recent developments in Crowdfunding regulation	• Under the new Consumer Credit Act, consumer loan providers and intermediaries must obtain a licence from the Czech National Bank. • New Corporations Act enables more flexible structure of target companies using Equity Model. • No new regulation is expected in the near future.
Current/planned Crowdfunding regulation	
General regulation	• Project company or Crowdfunding Platform acting under Equity Model can be qualified as an Investment Fund under AMCIF → licence from Czech National Bank required. • Alternatively, Crowdfunding Platform may to a limited extent act as intermediary in direct purchase of shares by investors → licence from the Czech National Bank required. • Project company or Crowdfunding Platform acting under Lending Model is not a regulated entity → no licence required. • Project company or Crowdfunding Platform acting under

[31] Osborne Clarke Germany (2016): "Review of Crowdfunding Regulation & Market Developments". In: "CrowdFundRES - Unleashing the Potential of Crowdfunding for Financing Renewable Energy Projects". Deliverable 3.1 (PU) (link)
[32] Zhang, B., et al (2016): "Sustaining Momentum. The 2nd European Alternative Finance Industry Report". Cambridge University (link)
[33] Osborne Clarke Germany (2016): "Review of Crowdfunding Regulation & Market Developments". In: "CrowdFundRES - Unleashing the Potential of Crowdfunding for Financing Renewable Energy Projects". Deliverable 3.1 (PU) (link)
[34] Zhang, B., et al (2016): "Sustaining Momentum. The 2nd European Alternative Finance Industry Report". Cambridge University (link)
[35] M. Brezinova: Czech Republic. In: "Review of Crowdfunding Regulation" (2017). European Crowdfunding Network, Brussels. Page 143ff. (link)

	Donations or Rewards Model enjoys an exemption under AMCIF and cannot be qualified as an Investment Fund → no licence required.
Prospectus requirement	• General prospectus requirement for offering of investment securities. • Exemptions apply under threshold of EUR 1m per issuer for investment securities offered in any EU Member State within 12 months.
AIFMD regulation	• Operating company like start-up or developing company will not be qualified as AIF under AMCIF → no licence required. • A project company/Crowdfunding Platform acting under Equity Model could possibly be qualified as AIF under AMCIF → licence from Czech National Bank required. • Project company/Crowdfunding Platform acting under Lending or Rewards Model will not be qualified as AIF → no licence required.
Payment service regulation	• Provision of payment services as defined under Payment Services Act by a project company or a Crowdfunding Platform triggers licensing requirement (licence granted by Czech National Bank).
Consumer credit regulation	• The Consumer Credit Act only applies to individuals who are consumers; the Consumer Credit Act does not apply to business relationships.
Further possible requirements	• Trade Licencing Act • Capital Markets Act • AML Act
Regulatory barriers	
Inbound	• In case of distant provision of financial services, it is deemed that the service is provided in the Czech Republic if the Czech market is targeted, e.g., by addressing potential investors via direct e-mails, calls or advertisement in national newspapers. • The financial services provided via the Internet fall under Czech regulation if the website focuses on Czech investors, or if the website and the entire communication is in Czech or if the financial services are actually being offered to Czech clients. • As a general rule, a foreign platform that has a MiFID/MiFID II or Investment Fund licence can offer its products/services in the Czech Republic on the basis of such licence, provided that it has been passported into the Czech Republic. • In the event that a foreign platform does not hold a passportable licence, it needs to obtain the relevant regulatory licence under Czech regulation. • The project/company must adhere to the prospectus rules

	(exemptions) under the Prospectus Directive.
Outbound	• In the event that only investors outside the Czech Republic are targeted either by the Crowdfunding Platform or the project/company, Czech law does not apply.
Impact of EU regulation	
Prospectus regulations	• The Equity Model in the Czech Republic is subject to prospectus exemptions under the Prospectus Directive, primarily in respect of the total volume of shares offered.
AIFM Directive	• AIFM Directive and its implementation in the Czech Republic have no impact on Crowdfunding in the Czech Republic.
MiFID/MiFID II	• MiFID/MiFID II has a significant impact on the platforms offering the Equity Model; the platform must have an investment firm licence, or alternatively, depending on the exact scope of services, it must have a local law licence of investment intermediary. The local investment intermediary licence is not passportable.
PSD/PSD II	• Any transfer of funds through the operator of a Crowdfunding Platform constitutes money remittance service within the meaning of the Payment Services Act, the Czech implementation of PSD/PSD II in Czech law. PSD/PSD II has significant impact regarding the transaction of investments.

C. Disclosures & safeguards

No professional industry association exists. To foster the professional and transparent development of the local market, it might be advisable for a national Crowdfunding association to establish a Code of Conduct with which platforms should be obliged to comply. Examples exist in a number of countries, such as the UK, France, Germany or the Netherlands. Alternatively, the open adoption of the European Crowdfunding Network Code of Conduct and its Charter of Crowdfunders' Rights by market players could help in markets without a critical mass of platforms.

Platforms themselves, to the extent that they can serve as marketplaces, have the potential to aid regulatory developments through early self-regulation and transparency. But this will require credible and enforceable quality and transparency standards as well as level playing fields. Any such initiative should aim to cover key performance indicators for the industry, conflict of interest rules and platforms remuneration. However, regulation will always play the main role in establishing and ensuring a functioning market with an adequate level of safeguards and disclosures.

D. Support policies

Overview

Matching funds, state aid and tax benefits for alternative finance are not currently available in Czech Republic.

Market Supervision

Ministry of Finance, Czech National Bank[36]

E. Additional insights

Now that the platform Fundlift has entered the market, there is an expectation that Crowdfunding will expand further. Fundlift is a pure equity Crowdfunding Platform.

Banks have not yet made any significant steps towards becoming an active part of the Crowdfunding industry. One of the Czech branches of Raiffeisen Bank tried unsuccessfully to run its own Rewards-based Crowdfunding Platform called "Odstartováno".

The successful exception is the direct investment from credit company Home Credit in the P2P consumer lending platform Zonky. Home Credit wanted to diversify its credit activities into trendy P2P loan financing.

Investors have been mostly investing in Czech P2P consumer loans like Bankerat, Benefi or Zonky. The platform Zonky has gained the biggest attention, with several thousand investors wanting to invest in the loans on the platform. Czech investors are currently also investing in several international P2P platforms such as Bondora, Mintos and Twino.[37]

[36] Ministry of Finance, Czech National Bank (link)
[37] Expert opinion of Martin Střecha in "CrowdfundingHub, The Current State of Crowdfunding in Czech Republic" (link)

Denmark

Overview

There is no regulation on Crowdfunding in Denmark, as the Danish market for Crowdfunding is very limited. In November 2013, the Danish Financial Supervisory Authority published a guidance that includes Crowdfunding in its interpretation of the financial regulation.

A. Role of alternative finance

Market size

In 2015, EUR 24m was raised through Crowdfunding in Denmark.[38]

The total transaction value in the Crowdfunding segment amounted to USD 25m in 2017.[39]

Figure: Crowdfunding activity in Denmark from 2014 to 2017
Source: TAB

Total Crowdfunding Platforms

Seven Crowdfunding Platforms were active in the country, according to a 2015 study by the European Commission.[40]

[38] Zhang, B., et al (2016): "Sustaining Momentum. The 2nd European Alternative Finance Industry Report". Cambridge University (link)
[39] Statista (link)
[40] European Commission (2015). "Crowdfunding: Mapping EU Markets and Events Study". 30 September (link)

Crowdfunding models

Equity-based Crowdfunding	The first Equity-based Crowdfunding Platform was launched in 2016. The platform is Crowdinvest.[41]
Lending-based Crowdfunding	Peer-to-Peer Business Lending (EUR 7.8m in 2015).[42]
Others	The volume of Invoice Trading amounted to EUR 11.8m in 2015.[43] There is a platform for real estate Crowdfunding in the country. The platform is BrickShar.

B. Regulatory context [44]

Country / Summary	Denmark
Recent developments in Crowdfunding regulation	• Danish Growth Fund and the Danish Crowdfunding Association published a report regarding the Danish Crowdfunding market in 2016. According to the report, Crowdfunding has experienced a rapid growth over the last few years, with Reward-based and Lending-based Crowdfunding being the most popular in Denmark. Further, the very first Danish Equity-based Crowdfunding Platform has recently been launched.
Current/planned Crowdfunding regulation	
General regulation	• If a Crowdfunding Platform facilitates offering of securities or investment products, the operator of the platform renders financial services, which are subject to a licensing requirement. • The Donations or Rewards Model does not involve any form of financial investment or financial return and therefore does not fall within the scope of Danish financial regulation. • The Danish Ministry for Industry, Business and Financial

[41] Expert opinion, Flemming Binderup Gammelgaard
[42] Zhang, B., et al (2016): "Sustaining Momentum. The 2nd European Alternative Finance Industry Report". Cambridge University (link)
[43] Ibid.
[44] T. Linde: Denmark. In: "Review of Crowdfunding Regulation" (2017). European Crowdfunding Network, Brussels. Page 157ff. (link)

	Affairs recently announced that the Danish government intends to make it easier for fintech companies to be established in Denmark. The aim is to create a fintech lab within the Danish FSA, which will make it easier for digital start-ups to navigate within the financial regulation.
Prospectus requirement	• Prospectus requirement for offering of securities or investment products. • Threshold: EUR 1m per issuer within 12 months.
AIFMD regulation	• The Crowdfunding Platform may qualify as an AIF and be subject to the Danish AIFM Act. • The persons administering the AIF platform may qualify as Fund Managers of the AIF.
Payment service regulation	• Transfer of funds through an operator may constitute money remittance service. • Requires Danish FSA's authorisation. • A bill for a new act has been introduced to the Danish Parliament to implement PSD2-directive.
Consumer credit regulation	If consumer borrowers are permitted on a platform, and Crowd-funding offered is based on the Lending Model, there are requirements to the loan agreement pursuant to the Danish Act on Credit Agreements.
Further possible requirements	• The Danish Act on Measures to Prevent Money Laundering and Financing of Terrorism • Danish Marketing Practices Act • Danish Investment Associations, etc. Act • Danish Act on Credit Agreements • Danish Tax Rules • Danish Fundraising Act
Regulatory barriers	
Inbound	• Crowdfunding Platforms must determine whether Danish law is applicable. This is first and foremost triggered by the marketing of products or services to persons in Denmark, or when a Crowdfunding Platform carries out financial activities in Denmark. • A foreign Crowdfunding Platform planning to offer its activities into Denmark on a cross-border basis must overcome the same hurdles and barriers that apply to local Crowdfunding Platforms.
Outbound	Danish Crowdfunding Platforms planning to commence cross-border activities in another EU country must hold an equivalent license and receive notification from the Danish FSA before starting its activities.
Impact of EU regulation	
Prospectus	See section 3 "*Current regulation of Crowdfunding*"

regulations	
AIFM Directive	See section 3 "*Current regulation of Crowdfunding*"
MiFID/MiFID II	See section 3 "*Current regulation of Crowdfunding*"
PSD/PSD II	See section 3 "*Current regulation of Crowdfunding*"

C. Disclosures & safeguards

No professional industry association exists. To foster the professional and transparent development of the local market, it might be advisable for a national Crowdfunding association to establish of a Code of Conduct with which platforms should be obliged to comply. Examples exist in a number of countries, such as the UK, France, Germany or the Netherlands. Alternatively, the open adoption of the European Crowdfunding Network Code of Conduct and its Charter of Crowdfunders' Rights by market players could help in markets without a critical mass of platforms.

Platforms themselves, to the extent that they can serve as marketplaces, have the potential to aid regulatory developments through early self-regulation and transparency. But this will require credible and enforceable quality and transparency standards as well as level playing fields. Any such initiative should aim to cover key performance indicators for the industry, conflict of interest rules and platforms remuneration. However, regulation will always play the main role in establishing and ensuring a functioning market with an adequate level of safeguards and disclosures.

D. Support policies

Overview

The Danish Venture Capital and Private Equity Association ("Iværksætter Nation 4.0") introduced a new strategy that proposed to turn seed investment into a national cause through Crowdfunding.
In other words, the DVCA suggests the adoption of investment schemes like the British Seed Enterprise Investment Scheme (SEIS), and match funding by way of government loans or grants to crowdfunded start-ups.[45]

Market Supervision

Ministry of Business and Growth[46]

Crowdfunding models

Match funding initiatives	The Danish central government published a programme that explored how Crowdfunding can be used to support

[45] Expert opinion, Flemming Binderup Gammelgaard
[46] Ministry of Business and Growth (link)

	start-ups. As part of this scheme, companies which had raised approximately EUR 67,000 (500,000 Danish kroner) through a Rewards-based platform of their own choice were enabled to seek a match funding grant of between EUR 67,000 and EUR 207,497.
State aid	The same programme, amongst others, explores the use of Crowdfunding with match funding initiatives.[47]

E. Additional insights

Policy measures

The Danish Ministry of Business and Growth is offering guarantees through the Danish Growth Fund, in order to make progress in the application of Crowdfunding in Denmark. This is a way to strengthen the trust of investors and boost the growth of Crowdfunding activities.

The Market Development Fund supports development of the market for novel and innovative products. In 2016, the fund has allocated DKK 56.4m. Companies can apply for co-financing to test and adapt their products under real-life conditions.[48]

[47] Nesta (link)
[48] EY, Open Evidence, Politecnico di Milano, European Crowdfunding Network (2016): "Assessing the Potential for Crowdfunding and Other Forms of Alternative Finance to Support Research and Innovation". Final Report. (link)

Estonia

Overview

Estonia is a leader in the European Crowdfunding industry. It started in 2009 with the foundation of the local P2P consumer lending platform isePankur (now Bondora). Six years later, in 2015, Estonia ranked second in Europe in total volume per capita.
Despite the fact that Estonia has little more than 1 million inhabitants, the country still has a great potential to grow further "virtually", considering the e-residency programme that was recently launched by the Estonian government.

A. Role of alternative finance

Market size

Estonia is ranked in the top 10 European countries by alternative finance market volume, with an overall volume equal to EUR 31.5m.
The most common model is Lending-based Crowdfunding. Furthermore, Estonia has a high volume of alternative finance per capita compared to the relatively low GDP per capita. Excluding the UK, Estonia ranked first for alternative finance volume per capita with EUR 24.[49]

Figure: Crowdfunding activity in Estonia from 2014 to 2017
Source: TAB

[49] Zhang, B., et al (2016): "Sustaining Momentum. The 2nd European Alternative Finance Industry Report". Cambridge University (link)

Total Crowdfunding Platforms

Estonia has numerous platforms that have high visibility. Most of them operate cross-border.

- Bondora.com is aiming to become a pan-European lending platform. Bondora secured a peer-to-peer lending license in the UK and is now under the supervision of the UK Financial Conduct Authority.
- Hooandja.ee is the "Kickstarter" of Estonia. It was launched in 2012 and has over 43,000 regular contributors. Its user base spans 180 countries.
- Investly.co, the first business P2P lending and invoice factoring platform in Estonia (launched in 2014), opened its shop in London this year.
- The first Equity-based Platform, Fundwise.me, launched in 2015.

Crowdfunding models

Equity-based Crowdfunding	EUR 0.2m in 2015.
Lending-based Crowdfunding	Peer-to-Peer Consumer Lending: EUR 23.8m in 2015. Peer-to-Peer Business Lending: EUR 4.4m in 2015.
Other	Invoice Trading: EUR 0.1m in 2015. Real Estate Crowdfunding: EUR 2.4m in 2015.[50]

B. Regulatory context

Country / Summary	Estonia
Recent developments in Crowdfunding regulation	The Creditors and Credit Intermediaries Act (hereinafter "CCIA") came into force in March 2016, and it imposes a licence obligation on creditors and credit intermediaries. This act applies to those Crowdfunding Platforms which are providing or intermediating credit to consumers. Moreover, there is non-binding soft regulation regarding Crowdfunding Platforms which was drafted by an association consisting of Finance Estonia and important market players.
Current/planned Crowdfunding regulation	
General regulation	• If a Crowdfunding Platform organises an offering of securities or acts as a securities broker, it provides investment service. → FSA authorisation required

[50] EY, Open Evidence, Politecnico di Milano, European Crowdfunding Network (2016): "Assessing the Potential for Crowdfunding and Other Forms of Alternative Finance to Support Research and Innovation". Final Report. (link)

	• Crowdfunding Platforms granting or intermediating credit to consumers must be licensed by the FSA as a creditor or credit intermediary. • A Crowdfunding Platform operating the Donations/Rewards Model is not subject to financial services regulation. • Currently 4 platforms have obtained licences as credit intermediaries and 2 platforms have obtained licences as creditors.
Prospectus requirement	• Prospectus requirement for public offering of securities (securities do not include shares in Estonian private limited companies). • Exceptions apply, e.g., if the number of investors is less than 150 per EEA country or the total amount of investments is less than EUR 100,000.
AIFMD regulation	• AIFMD regulation was implemented in the Investment Funds Act in 2013 and 2014. • The Investment Funds Act does not introduce any provisions that would explicitly deal with Crowdfunding.
Payment service regulation	• Transfer of funds through operator may constitute payment service or money remittance service. → FSA activity licence or application to use exemption required. • "Commercial Agents" exemption may be applicable to operators of Crowdfunding Platforms. • Cooperation with payment institute/bank is necessary.
Further possible requirements	• The Law of Obligations Act (*võlaõigusseadus*) • Money Laundering and Terrorist Financing Prevention Act (*rahapesu ja terrorismi rahastamise tõkestamise seadus*) • Estonian Advertising Act (*reklaamiseadus*) • Personal Data Protection Act (*isikuandmete kaitse seadus*) • Consumer Protection Act (*tarbijakaitseseadus*)
Regulatory barriers	
Inbound	• Fragmented laws • Requirements of permitting the activities for Crowdfunding Platforms falling under the concept of creditor or credit intermediary inbound from other EEA Contracting States • Subject to prospectus regulation if the securities are offered to investors in Estonia • If the Crowdfunding Platform or the company/project falls under the definition of an obligated person pursuant to the Estonian Money Laundering and Terrorist Financing Prevention Act, and is offering its services in Estonia

	through a branch or cross-border, then the Crowdfunding Platform or the company/project is required to comply with the anti-money laundering regulation in Estonia
Outbound	• Fragmented laws • Requirements of permitting the activities for Crowdfunding Platforms falling under the concept of creditor or credit intermediary to outbound to other EEA Contracting States • Subject to prospectus regulation if the securities are offered to investors in Estonia • If the Crowdfunding Platform or the company/project falls under the definition of an obligated person pursuant to the Estonian Money Laundering and Terrorist Financing Prevention Act, and is offering its services in Estonia through a branch or cross-border, then the Crowdfunding Platform or the company/project is required to comply with the anti-money laundering regulation in Estonia
Impact of EU regulation	
Prospectus regulation	Relatively high impact, as the changes to the Prospectus regulation would influence the regulation regarding the public offering of securities in Estonia.
AIFM Directive	The AIFMD has been implemented in the Estonian law and is therefore applicable to the Crowdfunding Platforms that wish to operate in Estonia as AIFMs. As the AIFMD simplifies the process of operating Crowdfunding Platforms cross-border, the change in the AIFMD would have high impact on the Estonian Crowdfunding market.
MiFID/MiFID II	As there are currently no Crowdfunding Platforms in Estonia which operate based on a licence under MiFID, the impact to the Crowdfunding market in Estonia from the change in regulation would be limited.
PSD/PSD II	As there are currently no Crowdfunding Platforms that would operate in Estonia under the licence of payment or e-money institution, the changes to the regulation could be deemed to have limited impact on the Crowdfunding market in Estonia.

C. Disclosures & safeguards

No professional industry association exists. To foster the professional and transparent development of the local market, it might be advisable for a national Crowdfunding association to establish of a Code of Conduct with which platforms should be obliged to comply. Examples exist in a number of countries, such as the UK, France, Germany or the Netherlands. Alternatively, the open adoption of the European Crowdfunding Network Code of Conduct and its Charter of Crowdfunders' Rights by market players could help in markets without a critical mass of platforms.

Platforms themselves, to the extent that they can serve as marketplaces, have the potential to aid regulatory developments through early self-regulation and

transparency. But this will require credible and enforceable quality and transparency standards as well as level playing fields. Any such initiative should aim to cover key performance indicators for the industry, conflict of interest rules and platforms remuneration. However, regulation will always play the main role in establishing and ensuring a functioning market with an adequate level of safeguards and disclosures.

D. Support policies

Overview

Regulation is expected to be introduced soon. Crowdfunding experts hope that the amount allowed to be raised publicly will be raised to EUR 1m, from EUR 100,000.[51]

Market Supervision

Rahandusministeerium - Ministry of Finance[52].

E. Additional insights

Best practice initiatives

Best Practice 1 - The Estonian Development Fund co-organised, together with FinanceEstonia, an event on the status of in the world and in Estonia (August 2015).

Best Practice 2 - The Estonian government has launched an e-Residency programme to boost the country's digital economy and market with new customers. In this perspective, it is now partnering with Fundwise - the first equity Crowdfunding Platform in Estonia and the Baltic states.[53]

[51] "Current State of Crowdfunding in Europe", CrowdfundingHub, 2016, Expert opinion of Henri Laupmaa (link)
[52] Rahandusministeerium - Ministry of Finance (link)
[53] "Current State of Crowdfunding in Europe", CrowdfundingHub, 2016, Expert opinion of Henri Laupmaa (link)

Finland

Overview

Finland passed a regulation on Crowdfunding on 1 September 2016. The Crowdfunding Act is part of the key government projects and gives businesses more options to finance their growth, according to the Ministry of Finance. Through the regulation, the acquisition of debt- and securities-based Crowdfunding is made easier for businesses.

A. Role of alternative finance

Market size

In 2015, the size of the Crowdfunding market was approximately EUR 84.4m. This was 48% higher than the previous year, according to market estimates: investment-based Crowdfunding EUR 15.5m (equity capital collected from people for companies); loan-based Crowdfunding approximately EUR 68.9m (peer-to-peer loans mediated to consumers EUR 46.3m and loans mediated to companies EUR 22.6m).[54]

Trend

The growth rate compared to 2014 is approximately 48%.[55]

Figure: Crowdfunding activity in Finland from 2014 to 2017
Source: TAB

[54] O. Gajda, "Finnish Crowdfunding Act – Ministry of Finance provides answers" (link)
[55] Ibid.

Total Crowdfunding Platforms

In 2014, six Crowdfunding Platforms were reported, according to a 2015 study by the European Commission.[56]

Some examples of platforms active right now are:

- Invesdor.com (equity and debt) is a Helsinki-based fintech platform that operates across the European Economic Area.
- FellowFinance.fi is the biggest marketplace lending platform in Finland. Founded in 2013, it offers high-quality and secure online marketplace services in Europe.
- Vauraus.fi (equity and debt) was launched in 2011.
- Mesenaatti.me was launched in 2012 as a rewards- and Donation-based Crowdfunding Platform

Crowdfunding models

Equity-based Crowdfunding	According to the Finnish Ministry, Equity-based Crowdfunding in Finland reached approximately EUR 15.5m in 2015.[57] The 2nd European Alternative Finance Industry Report reports that EUR 6.2m was raised in 2015 by Equity-based Crowdfunding.[58] Until now, doing Equity-based Crowdfunding in Finland has required an investment firm license from the Finnish Financial Supervisory Authority (FIN-FSA). The license was a tall order for smaller aspiring Crowdfunding Platforms, and it has slowed the market entry of new players. In the framework set by the new Act, Crowdfunding can be organised by applying for registration at the FIN-FSA provided that the service provider meets a set of criteria. Registration is a considerably more affordable alternative to the investment firm license; therefore, the new procedure will pave the way for new entrants into the market.[59]
Lending-based Crowdfunding	Lending-based Crowdfunding in Finland reached approximately EUR 68.9m in 2015 (according to the Finnish Ministry). The 2nd European Alternative Finance Industry Report highlights the following numbers: Peer-to-Peer Consumer Lending (EUR 34.4m 2015) and

[56] European Commission (2015). "Crowdfunding: Mapping EU Markets and Events Study". 30 September (link)
[57] O. Gajda, "Finnish Crowdfunding Act – Ministry of Finance Provides Answers" (link)
[58] Zhang, B., et al (2016): "Sustaining Momentum. The 2nd European Alternative Finance Industry Report". Cambridge University (link)
[59] Crowdfundinsider (link)

	Peer-to-Peer Business Lending (EUR 20m 2015). Peer-to-peer Consumer Lending falls within the scope of the Consumer Protection Act. The Ministry of Justice is currently specifying the regulation of Peer-to-Peer Consumer Lending as part of the implementation of the Mortgage Credit Directive. A Government proposal on the matter will be submitted to Parliament in April 2016.[60]

B. Regulatory context

Country / Summary	Finland
Recent developments in Crowdfunding regulation	• The Finnish Crowdfunding Act ("CFA") took effect in 2016, laying down provisions on acquiring, offering and professionally mediating Crowdfunding using the Lending Model and Equity Model. • A Decree of the Ministry of Finance on the disclosure obligation of a Crowdfunding recipient took effect in 2016, laying down provisions on the content and structure of the basic information to be provided to potential investors in connection with the offering. • New national regulation was provided for peer-to-peer Crowdfunding using the Lending Model, and such activities now fall within the scope of consumer protection provisions and registration requirements under the Finnish Consumer Protection Act ("CPA").
Current/planned Crowdfunding regulation	
General regulation	• Pursuant to the CFA, mediating Investment-based or Lending-based Crowdfunding requires registration in the register of Crowdfunding intermediaries maintained by the FIN-FSA. • Investment-based Crowdfunding means an equity or debt investment for the purpose of acquiring, offering or mediating, in respect of the Crowdfunding recipient, a share of ownership or of debt, or other stake based on a financial return, specified in a subscription agreement or investment agreement concerning a financial instrument or concerning securities other than those referred to in the SMA, or in a comparable agreement. • Pursuant to the Finnish Act on Credit Institutions ("ACI"), an authorisation to act as a credit institution is required if repayable funds are received from the public. • Pursuant to the CPA, offering or mediating Lending Model

[60] O. Gajda, "Finnish Crowdfunding Act – Ministry of Finance Provides Answers" (link)

	Crowdfunding to consumers requires registration in the register of credit providers and peer loan intermediaries maintained by the Regional State Administrative Agency of South Finland. • Collecting funds without compensation by appealing to the public is subject to the provisions of the Finnish Money Collection Act ("MCA") and a money collection permit granted by authorities.
Prospectus requirement	• A Crowdfunding recipient offering the public securities as referred to in the SMA may fall within the scope of the obligation to publish a prospectus. • Pursuant to the CFA, Crowdfunding recipients do not need to publish a prospectus if the securities are offered in Finland and their combined consideration over 12 months is less than EUR 5m.
AIFMD regulation	The AIFM Directive and the act which implements it, the Finnish Act on Alternative Investment Fund Managers ("AIFMA"), mainly affect Equity-based Crowdfunding in the event that a project company would have several investors (at least two) and the company would have a collective investment policy.
Payment service regulation	Receiving funds from investors may be considered money remittance in accordance with the Finnish Payment Institutions Act ("PIA") implementing the Payment Services Directive in Finland.
Further possible requirements	• The Act on Registration of Certain Creditors • The Securities Market Act • The Investment Services Act • The Act on Detecting and Preventing Money Laundering and Terrorist Financing
Regulatory barriers	
Inbound	**Foreign Crowdfunding Platform addressing Finnish investors** *Crowdfunding Platform* • If an Equity Model platform qualifies as an investment services provider as defined in the ISA, the platform may enter the Finnish Crowdfunding market through passporting procedure. • If a platform receiving repayable funds from the public qualifies as a credit institution under the laws of the home Member State, it may access the Finnish Crowdfunding market by either passporting its licence and operating on a cross-border basis or establishing a branch in Finland by notifying the supervisory authority of its home Member State. • Where a foreign Crowdfunding Platform mediates Lending Model or Equity Model Crowdfunding in Finland through a passporting procedure, certain provisions of the CFA become applicable.

	• An Equity Model or Lending Model Crowdfunding Platform from another Member State may be registered in the register of Crowdfunding intermediaries maintained by the FIN-FSA. • Under the CFA, the obligation to register as a Crowdfunding intermediary does not apply to economic operators located in another state of the European Economic Area that temporarily mediate Crowdfunding in Finland. • If a foreign Crowdfunding Platform does not have a MiFID licence and its intended activities do not fall within the scope of the CFA, the foreign Crowdfunding Platform may be required to apply for an authorisation in order to offer financial services in Finland. • A foreign platform using the Donations Model must first establish a branch in Finland and apply for a money collection permit. *Company or project* • Companies/projects seeking Crowdfunding in Finland fall within the scope of Finnish prospectus requirements. • Crowdfunding recipients may, in cases where securities are offered in Finland through a registered Crowdfunding intermediary, benefit from an exemption from the obligation to publish a prospectus in connection with the public offering of securities. **Foreign Crowdfunding Platform addressing Finnish companies/projects** *Crowdfunding Platform* • In case the foreign Crowdfunding platform does not become active in Finland or approach Finnish investors, Finnish legislation is not likely to apply to its operations and the Crowdfunding Platform will not be required to apply for an authorisation or registration in Finland. *Company/project* • A Crowdfunding recipient offering securities, as referred to in the SMA, to the public in Finland may fall within the scope of the obligation to publish a prospectus. • Crowdfunding recipients may benefit from an exemption from the obligation to publish a prospectus in connection with the public offering of securities in cases where securities are offered in Finland. • Nevertheless, the Crowdfunding recipient is required to publish a document containing true and sufficient information about the factors that are likely to materially influence the Crowdfunding recipient's value or its solvency.
Outbound	**Finnish Crowdfunding Platform addressing foreign (EU) investors**

	Crowdfunding Platforms • A Finnish authorised credit institution, payment institution, fund company or investment service company that operates as a Crowdfunding Platform may become active based on its licence obtained from the FIN-FSA without having to apply for another licence in the host Member State by following a passporting procedure in accordance with MiFID. • Alternatively, the platform may establish a branch in another Member State. • However, Crowdfunding Platforms using the Rewards Model and Donations Model fall outside the scope of the MiFID passporting procedure and therefore such platforms may require relevant local licences before they can expand their business to another Member State. • A Finnish Crowdfunding Platform registered as a Crowdfunding intermediary under the CFA may mediate Crowdfunding using the Equity Model and Lending Model to another state of the European Economic Area provided that such activities are not prohibited or limited in the state concerned. *Company/project* • Finnish regulations concerning the obligation to publish a national prospectus do not apply in cases where a Finnish company/project offers securities by means of Crowdfunding to another Member State. **Finnish Crowdfunding Platform addressing companies/projects in another EU country** *Crowdfunding Platform* • In case a Finnish Crowdfunding Platform approaches Finnish investors and presents foreign companies or projects on its platform, the Crowdfunding Platform must either register as a Crowdfunding intermediary pursuant to the CFA or apply for an investment service company operating licence or another applicable authorisation or registration. • The Crowdfunding Platform will be subject to Finnish Crowdfunding regulations. *Company/project* • In case a foreign company/project offers securities as referred to in the SMA through a Finnish Crowdfunding platform in Finland, the foreign company/project may be subject to the obligation to publish a prospectus. • The SMA and the CFA contain exemptions from the obligation to publish a prospectus. • Notwithstanding, the foreign company/project may be subject to prospectus requirements pursuant to its home Member State.

Impact of EU regulation	
Prospectus regulations	The European Prospectus Directive has been implemented in Finland through the SMA.
AIFM Directive	The AIFM Directive and the implementing AIFMA mainly affect Equity-based Crowdfunding in the event that a project company would have several investors (at least two) and the company would have a collective investment policy.
MiFID/MiFID II	• The CFA implements Article 3 of MiFID I by facilitating the mediation of Crowdfunding with lighter administrative requirements in respect of Investment-based Crowdfunding instead of requiring an operating licence procedure. • MiFID I and MiFID II may be applied in relation to Crowdfunding where a Finnish Crowdfunding Platform intends to operate in another EU Member State by applying for a MiFID licence.
PSD/PSD II	• The Payment Services Directive was implemented through the PIA and Payment Services Act. • In general, any transfer of funds through the operator of a Crowdfunding Platform is regarded as money remittance services within the meaning of the PIA and subject to authorisation requirement in accordance with the PIA. • Small-scale activities may benefit from an exemption from the authorisation requirement.

C. Disclosures & safeguards [61]

The Finnish Consumer Protection Act regulates domestic and distance selling to consumers as well as the distance selling of financial services and instruments. No conduct that is inappropriate or otherwise unfair from the point of view of consumers shall be allowed in marketing. In addition, false or misleading information shall not be conveyed in marketing. It is also forbidden in marketing or consumer relations to refrain from providing relevant information which the consumer needs for a proper purchase decision.

The Consumer Protection Act also regulates the offering of consumer credit and sets out several obligations with respect to the offering of credit to consumers. These obligations include, for example, the duty of disclosure of a company offering consumer credit with regard to interest rate and other costs related to the credit, amount of credit and credit limit, duration of the credit agreement, cash price of the commodity, aggregate amount of the credit, credit costs and the number of instalments.

[61] ECN, Review of Crowdfunding Regulation, 2014

Additionally, obligations include, e.g., the duty to provide the consumers with sufficient information on the credit before entering into the credit agreement, the obligation of the company offering the credit to act in accordance with principle of responsibility, the duty to assess the creditworthiness of the consumer before entering into the credit agreement, the obligation to verify the identity of the consumer applying for the credit and the duty to inform the consumer if the creditor's rights under the credit agreement or the agreement itself will be assigned to a third party.

In addition, a Crowdfunding Platform provider offering consumer credit has an obligation to register in the register for creditors pursuant to Act on Registration of Certain Creditors (*Laki eräiden luotonantajien rekisteröinnistä*) provided that a payment institution license or a credit institution license is not required with respect to offering of the services.

Consumer complaints may be made to the Finnish Consumer Disputes Board. The Board issues non-binding recommendations. If a larger number of consumers have a dispute with the same business regarding the same matter, or if a business has concluded a contract containing an unfair term with many consumers, a group complaint can be filed by the Finnish Consumer Ombudsman to the Consumer Disputes Board after considering a case.

A case may be heard as a class action if several persons have claims against the same defendant based on the same or similar circumstances. A class action is brought by the Consumer Ombudsman, who also represents the class.

D. Support policies

Overview

The Crowdfunding Act came into force on 1 September 2016.

Market Supervision

Financial Supervisory Authority[62] with support by the Finnish Ministry of Finance.[63]

Crowdfunding models

Support measures for fundraisers: the Finnish Financial Authority has published Guidelines for Securities Crowdfunding.[64]

[62] Financial Supervisory Authority (link)
[63] Finnish Ministry of Finance (link)
[64] Tordera, I. (2014): "Finnish Financial Authority Publishes Guidelines for Securities Crowdfunding" (link)

France

Overview

France is the dominant force in European online alternative finance (excluding the UK), and is 28% larger than its closest competitor, Germany. Specifically, the total volume of online alternative finance raised in France grew from EUR 76m in 2013 to EUR 154m in 2014 and EUR 319m in 2015.[65]

A. Role of alternative finance

Market size

The total volume of online alternative finance raised in France grew from EUR 76m in 2013 to EUR 154m in 2014 and EUR 318m in 2015. France is the dominant force in European online alternative finance (excluding the UK), and is 28% larger than its closest competitor, Germany.[66]

Trend

The growth between 2013 and 2014 was 104%, and between 2014 and 2015 it was 107%, showing sustained growth over the three-year period.[67]

Figure: Crowdfunding activity in France from 2014 to 2017
Source: TAB

Total Crowdfunding Platforms

[65] "Sustaining Momentum". Cambridge Judge Business School, 2016.
[66] Zhang, B., et al (2016): "Sustaining Momentum. The 2nd European Alternative Finance Industry Report". Cambridge University (link)
[67] Ibid.

In 2015, 80 platforms were active, according to a 2015 study by the European Commission.[68]

Crowdfunding models[69]

Equity-based Crowdfunding	The second largest model in France is Equity-based Crowdfunding, with EUR 75m invested in 2015 nationally. Equity-based Crowdfunding experienced market growth of 298% from 2014-15 — the largest of any model on a national level.
Lending-based Crowdfunding	Lending-based Crowdfunding is the most widespread form.
Other	EUR 15m for Invoice Trading. EUR 12.7m for Real estate Crowdfunding, EUR 3m for Debt-based securities. EUR 0.4m for Balance Sheet Business Lending, and EUR 0.2m for profit sharing Crowdfunding.

B. Regulatory context

Country / Summary	France
Recent developments in Crowdfunding regulation	• New regulation applicable since 1 October 2014 and significantly amended on 28 October 2016. • Creation of 2 optional statuses (alternative to more costly and stringent statuses), subject to the control and disciplinary powers of the *Autorité des Marchés Financiers* ("AMF") and the *Autorité de contrôle Prudentiel et de Résolution* ("ACPR"): "CIP" – *conseil en investissement participatif* (Crowdfunding investment advisor), including offering of new instruments (convertible bonds, preferred shares with voting rights attached and Minibons); "IFP" – *intermédiaire en financement participatif* (Crowdfunding investment intermediary) for straight

[68] Osborne Clarke Germany (2016): "Review of Crowdfunding Regulation & Market Developments". In: "CrowdFundRES - Unleashing the Potential of Crowdfunding for Financing Renewable Energy Projects". Deliverable 3.1 (PU) (link)
[69] EY, Open Evidence, Politecnico di Milano, European Crowdfunding Network (2016): "Assessing the Potential for Crowdfunding and Other Forms of Alternative Finance to Support Research and Innovation". Final Report. (link)

	loans and donations. • Crowdfunding activities opened to "PSIs" – *prestataire de services d'investissement* (investment services advisors). • New exceptions to banking monopoly and prospectus requirements.
Current/planned Crowdfunding regulation	
General regulation	Monetary and Financial Code as modified by Ordinance no. 2014-559 dated 30 May 2014, Ordinance no. 20165-520 dated 28 April 2016, Decree no. 2014-1053 dated 16 September 2014 and Decree no. 2016-1453 dated 28 October 2016.
Prospectus requirement	• Specific Crowdfunding exceptions: Ordinary shares and/or preferred shares of *sociétés par actions simplifiées* with specific provisions in their by-laws can be offered on Crowdfunding Platforms to the public. • General cap applying to CIPs and PSIs for public offering on Crowdfunding websites of ordinary shares, preferred shares, and bonds (either convertible or non-convertible bonds) for a maximum raised amount of EUR 2.5m per year.
AIFMD regulation	• Generally not applicable. • Can apply where platforms may create holding companies to regroup shareholders of a single target company to simplify the relationships with the project holder and a potential purchaser in an exit scenario. A case-by-case analysis will determine if they fall within the category of AIF subject to the AIFM regulations.
Payment service regulation	• CIPs cannot collect payments for the project holders from the investors. • IFPs can apply to be licensed as payment services operator (unless they also are CIPs and are prohibited from doing so).
Further possible requirements	• Anti-terrorism control regulations • Anti-money laundering regulations • Consumer credit acts and regulations • Financial canvassing (*démarchage financier*) regulation (prohibited for IFPs and very strictly limited for CIPs) • Information privacy regulations
Regulatory barriers	
Inbound	**Foreign Crowdfunding Platform addressing French investors** • CIPs must be France-based legal entities • A foreign platform may potentially operate in France in two hypothetical situations, where in any event it will have to comply with French offering (prospectus) and banking monopoly regulations: the foreign platform benefits from a EU Passport, if certified as PSI by the French ACPR in its EU domestic

	state; or the foreign platforms register a French subsidiary as CIP or PSI. Foreign Crowdfunding Platform addressing French project holders • See above. • Where a foreign platform is targeting French project holders but is offering the securities/instruments to foreign investors and not French investors, the foreign platform will most likely be subject to the laws and regulations of the territories in which the securities/instruments are offered.
Outbound	French Crowdfunding Platform addressing foreign investors • CIPs/PSI must operate a website under strict regulation of the AMF, i.e., present the information to the investors by using a "clear and comprehensive" language. • The English language is unlikely to be considered "clear and comprehensive" for investors/lenders based in France. French Crowdfunding Platform addressing foreign project holder • A CIP/PSI may offer on its website securities issued by a foreign project holder as long as the platform is able to comply with its duty to act in the best interest of the investors, notably regarding (i) the selection of projects, (ii) the quality and the completeness of the information provided on the issuer, (iii) the ability of the CIP/PSI to confirm the adequacy/relevancy of the contemplated investment with the financial capacities of the investor. • If CIPs/PSI intend to operate on foreign markets, they will have to comply with local laws and regulations. • IFPs may offer their services outside French territory as long as they comply with local laws and regulations on Crowdfunding activities.
Impact of EU regulation	
Prospectus regulations	See above
AIFM Directive	See above
MiFID/MiFID II	See above
PSD/PSD II	See above

C. Disclosures & safeguards

The Platforms' Association (*Financement Participatif France* - FPF) has adopted a code of conduct, which can be voluntarily adopted by individual platforms themselves.

D. Support policies

Overview

In France, there are specific statuses for Crowdfunding operators that are less constraining and less costly than for other regulated activities. There is transparency and information regarding the binding obligations on the platforms for the investors/donors. This labelling of the platforms increases the public's confidence.
With regards to investors' protection: cap on maximum investments, funds raised; specific Crowdfunding-related exceptions to banking monopoly; specific Crowdfunding-related exceptions to prospectus requirements; tax incentives such as compensation of the financial losses.

Market Supervision

Autorité des Marchés Financiers – AMF[70] and *Autorité de contrôle Prudentiel et de Résolution* ACPR[71]

Crowdfunding models

Match funding initiatives	*La Banque Publique d'Investissement* (BPI France) offers matching funds.
Tax benefits	On 30 November 2015, the French Parliament adopted Amendment no. 718 on the tax treatment granted to individual lenders on Crowdfunding Platforms, amending Ordinance no. 2014-559 of 30 May 2014, related to the new Crowdfunding regulation. This amendment states that individuals who lend money to professionals on Crowdfunding Platforms (crowdlending) shall be able to recover financial losses resulting from a default payment, on the calculation of the income tax they shall bear. This tax incentive shall have a positive impact on French Crowdfunding in 2016. This, however, applies solely to loan-based Crowdfunding.[72]

[70] AMF France (link)
[71] *Autorité de contrôle Prudentiel et de Résolution* ACPR (link)
[72] AMF France (link)

Germany

Overview

The German market is the second largest in continental Europe. It follows France, the leader in Peer-to-Peer Consumer Lending, and ranks higher than the Netherlands for Peer-to-Peer Business Lending. Germany also features strongly as the European market leader within real estate Crowdfunding and Donation-based Crowdfunding[73].

A. Role of alternative finance

Market size

In 2015, German online alternative finance grew by 115%, from EUR 140m in 2014 to EUR 249m in 2015. If this acceleration continues, Germany could become the largest alternative finance market in Europe, excluding the UK, in the coming years.[74]

Trend

Germany experienced a growth rate of 78% compared to the previous year. Equity-based Crowdfunding experienced a counter-trend, decreasing by 21% from 2014 to the following year.

Figure: Crowdfunding activity in Germany from 2014 to 2017
Source: TAB

[73] "Sustaining Momentum". Cambridge Judge Business School, 2016.
[74] EY, Open Evidence, Politecnico di Milano, European Crowdfunding Network (2016): "Assessing the Potential for Crowdfunding and Other Forms of Alternative Finance to Support Research and Innovation". Final Report. (link)

Total Crowdfunding Platforms

More than 100 active platforms were reported in 2017 by a local industry news outlet.[75]

Crowdfunding models

Equity-based Crowdfunding	Though Equity-based Crowdfunding is performing well in terms of the overall 2015 European ecosystem (accounting for approximately 15% of all European Equity-based Crowdfunding), it experienced a significant decline in total volume from the previous years, reducing from EUR 30m in 2014 to EUR 24m in 2015. This 21% decline is likely the result of continued regulatory struggles, as indicated in several qualitative remarks from Equity-based platforms surveyed in the 2nd European Alternative Finance Industry Report.[76]
Lending-based Crowdfunding	Peer-to-peer Consumer Lending was the prevailing model, with the highest total volume accounting for EUR 253m from 2013-15, growing by approximately 121% from 2013-14, and by 70% from 2014-15. Over the course of three years, this model was also the fastest growing in Germany, with an average annual growth rate of 95% from 2013-15. In 2015, this model accounted for EUR 136m, or roughly 55% of Germany's total online alternative finance volume. Starting from a low base in 2014, the Peer-to-Peer Business Lending model is the second highest ranked model in Germany by transaction volume. Accounting for EUR 49m in 2015, this model experienced the most significant growth rate from the previous year, increasing by 698% from 2014's EUR 6m total Peer-to-Peer Business Lending volume.[77]
Other	Several new models also began trading in

[75] *Das Crowdfunding Informationsportal* (link)
[76] Zhang, B., et al. (2016): "Sustaining Momentum. The 2nd European Alternative Finance Industry Report". Cambridge University (link)
[77] Zhang, B., et al. (2016): "Sustaining Momentum. The 2nd European Alternative Finance Industry Report". Cambridge University (link)

	Germany in 2015, including: real estate Crowdfunding (EUR 8m), profit sharing Crowdfunding (EUR 320,000) and Debt-Based Securities (EUR 150,000). The average funding size and average number of participating funders in Germany vary considerably from model to model. As indicated in the figure above, Donation-based Crowdfunding saw an average of 18 individuals participating, with an average of EUR 1,651.[78]

B. Regulatory context

Country / Summary	Germany
Recent developments in Crowdfunding regulation	• First Crowdfunding regulation (Retail Investors' Protection Act - *Kleinanlegerschutzgesetz*) entered into force on 10 July 2015 • Revised Investment Products Act (*Vermögensanlagengesetz*) centrepiece of the new regulation and subject to the most changes • Evaluation of German Crowdfunding exception does (likely) not lead to facilitation of German Crowdfunding regulation (especially the Crowdfunding exception) • New amendments to the Crowdfunding regulation of the Investment Products Act (*Vermögensanlagengesetz*) entered into force in August 2017
Current/planned Crowdfunding regulation	
General regulation	• If Crowdfunding Platform facilitates offering of securities, investment products (*Vermögensanlagen*) or shares in collective investment undertakings (*Investmentvermögen*), the operator of the platform provides financial services - BaFin authorisation required • Qualification of subordinated loans (*Nachrangdarlehen*), profit-participating loans (partiarische Darlehen) and commercially comparable investments (*wirtschaftlich vergleichbare Anlagen*) as investment products (*Vermögensanlagen*) • Exemption for investment brokering (*Anlagevermittlung*) (and investment advice (*Anlageberatung*)) only regarding investment products (*Vermögensanlagen*) or shares in collective investment undertakings (*Investmentvermögen*) - straightforward licence sufficient for operator of Crowdfunding Platform

[78] Ibid.

Prospectus requirement	• Prospectus requirement for offering of securities or investment products (*Vermögensanlagen*) • General threshold: EUR 100,000 per issuer within 12 months (inter alia) • Qualification of subordinated loans (*Nachrangdarlehen*), profit-participating loans (*partiarische Darlehen*) and commercially comparable investments (*wirtschaftlich vergleichbare Anlagen*) as investment products (*Vermögensanlage*) • Increased regulatory requirements for prospectus for all investment products (*Vermögensanlagen*) • Exception from prospectus requirement for Crowdfunding and P2P lending — under specific conditions: - total offering maximum: EUR 2.5m; - offering only of profit-participating loans (*partiarische Darlehen*), subordinated loans (*Nachrangdarlehen*) or commercially comparable investments (*wirtschaftlich vergleichbare Anlagen*) (the latter relevant for P2P lending in Germany); - total investment amount for each investor per investment product (*Vermögensanlage*) of one issuer (Project Initiator) is restricted as follows: ⇨up to EUR 1,000: no restrictions ⇨more than EUR 1,000: cash deposits or financial instruments of the investor must exceed EUR 100,000 or maximum investment up to two monthly net incomes ⇨EUR 10,000: absolute maximum investment per investor ⇨Corporations: no restrictions - three-page fact sheet (VIB) with prior approval by BaFin
AIFMD regulation	• Typical start-up company in general does not constitute an AIF • "Project Company" might constitute AIF - extensive AIFMD regulation for AIF and its manager (AIFM) - AIFM requires BaFin authorisation • "Project Companies" that constitute operating companies are not AIFs • Funding by means of subordinated loans (*Nachrangdarlehen*), profit-participating loans (*partiarische Darlehen*) or commercially comparable investments (*wirtschaftlich vergleichbare Anlagen*) does not entail an AIF • Cooperatives (*Genossenschaften*) shall — according to BaFin — not constitute a collective investment undertaking and therefore fall outside the AIFMD regulation
Payment service regulation	• Transfer of funds through operator may constitute money remittance service (*Finanztransfergeschäft*)

	- BaFin authorisation required • Cooperation with a payment institute/bank is required
Further possible requirements	• German Trade, Commerce and Industry Regulation Act (*Gewerbeordnung*) • German Act on Money Laundering (*Geldwäschegesetz*) • German Securities Trading Act (*Wertpapierhandelsgesetz*)
Regulatory barriers	
Inbound	**Foreign Crowdfunding Platform addressing German investors** - German regulatory law is applicable since German investors are approached by presenting the investment opportunities in German language **Crowdfunding Platform** The platform has a foreign MiFID/MiFID II licence and intends to address German investors: - as a general rule, a platform with a foreign MiFID licence can conduct business in Germany without applying for a licence and without having a presence in Germany (so-called notification procedure/EU Passport) - however, MiFID (MiFID II) and the German implementation – German Banking Act (*Kreditwesengesetz*) – do not have the same scope. Therefore, e.g., shares of a German limited liability company or entrepreneurial company are covered by the scope of the German Banking Act (*Kreditwesengesetz*) but not by MiFID II's scope. The same applies to subordinated profit-participating loans (*partiarische Nachrangdarlehen*). - It remains an open question whether a Crowdfunding Platform with a foreign MiFID/MiFID II licence can offer financial instruments in Germany which are covered by the scope of the German Banking Act (Kreditwesengesetz) but not by MiFID - therefore, it cannot be excluded that a Crowdfunding Platform with a foreign MiFID licence might need — in addition — a (local) German licence in order to be allowed to offer all kinds of company shares as well as subordinated profit-participating loans in Germany. - Generally, the foreign Crowdfunding Platform might be subject to other German regulation in exceptional cases (e.g., German Securities Trading Act (*Wertpapierhandelsgesetz*). It is not subject to the German Act on Money Laundering (Geldwäschegesetz). **The platform has no MiFID/MiFID II licence and intends to address German investors**

	The Crowdfunding Platform must apply for a licence: - generally: according to section 32 of the German Banking Act (*Kreditwesengesetz*), if the platform targets the German market in order to offer financial services, or - in exceptional cases: under section 34f of the German Trade, Commerce and Industry Regulation Act (*Gewerbeordnung*), if the platform only conducts investment brokering and only offers profit-participating loans (*partiarische Darlehen*), subordinated loans (*Nachrangdarlehen*) or commercially comparable investments (*wirtschaftlich vergleichbare Anlagen*) publicly for the first time. **Foreign Company/project** • German prospectus regimes are applicable, since the foreign companies/projects offer investment opportunities in Germany • Applicable prospectus regime depends on whether the foreign company/project offers transferable securities (which is often the case in foreign (EU) countries, e.g., France) or other financial products, which most likely are investment products within the meaning of the German Investment Products Act (*Vermögensanlagengesetz*) • In the event a foreign company/project intends to benefit from the Crowdfunding exception, it is limited to offering subordinated profit-participating loans (*partiarischen Nachrangdarlehen*), since only these investment products (*Vermögensanlagen*) may benefit from Crowdfunding exemption. • In exceptional cases, other regulation (e.g., German Securities Trading Act (*Wertpapierhandelsgesetz*)) might be applicable, constituting information and compliance obligations (mainly if (equity/debt) securities are involved). The German Act on Money Laundering (*Geldwäschegesetz*) is — as a general rule — not applicable to the companies/projects. **Foreign Crowdfunding Platform addressing German companies/projects** - BaFin will (most likely) come to the conclusion that German regulatory law does not apply in the event that the investment opportunities are not presented in the German language. **Crowdfunding Platform** - As a general rule, since the foreign Crowdfunding Platform will not target the German market/German investors, German regulatory law is not applicable — no licence requirements pursuant to German regulatory law.

	- Generally, the foreign Crowdfunding Platform might be subject to other German regulation in exceptional cases (e.g., German Securities Trading Act (*Wertpapierhandelsgesetz*). It is not subject to the German Act on Money Laundering (*Geldwäschegesetz*). **German Company/project** - Also, the German company/project will — as a general rule — not be subject to obligations pursuant to the German Securities Trading Act (*Wertpapierhandelsgesetz*) but is required to provide a disclaimer stating that it does not address German investors. - In the event that German companies/projects issue Debt-Based Securities (e.g., bonds) they might – in exceptional cases – be subject to other German regulation (e.g. German Securities Trading Act (*Wertpapierhandelsgesetz*)). - Issuing entities – German companies/projects – generally are no obliged person within the meaning of the German Act on Money Laundering (*Geldwäschegesetz*).
Outbound	**German Crowdfunding Platform addressing foreign investors** - Here, only foreign investors (e.g. a German platform addresses French investors) are addressed. However, if several further indicators (e.g., German contact persons, details or investment opportunities clearly adjusted to German regulatory law, German language) lead to the assumption that the German market is being approached, BaFin might come to the conclusion that German market is being approached and German regulatory law is applicable. - However, within the overall view of all criteria, BaFin will (most likely) come to the conclusion that German regulatory law is not applicable in this case. This is because only foreign investors are addressed and only foreign (e.g., French) language is used. **Crowdfunding Platform** - As a general rule, since the Crowdfunding Platform will not target the German market/German investors, German regulatory law is not applicable — no prospectus requirements. - A Crowdfunding Platform might be subject to other German regulation in exceptional cases (e.g., German Securities Trading Act (*Wertpapierhandelsgesetz*). It is not subject to the German Act on Money Laundering (*Geldwäschegesetz*). **Company/project** - Both the German Securities Prospectus Act

(*Wertpapierprospektgesetz*) and the German Investment Products Act (*Vermögensanlagengesetz*) are not applicable since the financial products are not offered *in Germany*. In any case, it is required to place a disclaimer on the website (in German) stating that the offer is not intended to be offered to German investors.

- Companies/projects that issue securities might — in exceptional cases — be subject to additional information/compliance regulation (German Securities Trading Act (*Wertpapierhandelsgesetz*)), e.g., in case the company/project issues securities that are admitted to trading on an organised market.

- By contrast, companies/projects which issue subordinated profit-participating loans (*partiarische Nachrangdarlehen*) are — as a rule — not addressees of other additional (information or compliance) obligations (e.g., pursuant to the German Securities Trading Act (*Wertpapierhandelsgesetz*)).

- Since issuing entities — German companies/projects — generally do not constitute obliged persons within the meaning of the German Act on Money Laundering (*Geldwäschegesetz*), they are not required to comply with German anti-money laundering law.

German Crowdfunding Platform addressing foreign companies/projects

- Here, German investors are approached — German language will be used. BaFin will conclude that German regulatory law will be applicable.

Crowdfunding Platform

- Regular German regulation applies to the Crowdfunding Platform (licence obligation).

- Crowdfunding Platforms might be subject to other German regulation in exceptional cases (e.g., German Securities Trading Act (*Wertpapierhandelsgesetz*)).

- They are not subject to the German Act on Money Laundering (*Geldwäschegesetz*).

Company/project

- German prospectus regimes are applicable, since the foreign companies/projects offer investment opportunities in Germany.

- Applicable prospectus regime depends on whether the foreign company/project offers transferable securities (which is often the case in foreign (EU) countries, e.g., France) or other financial products, which most likely are investment products (*Vermögensanlagen*) within the meaning of the German Investment Products Act

	(*Vermögensanlagengesetz*). - In the event that a foreign company/project intends to benefit from the Crowdfunding Exemption, it is limited to offering subordinated profit-participating loans (*partiarische Nachrangdarlehen*), since only these investment products (*Vermögensanlagen*) may benefit from Crowdfunding Exemption. - In addition to the German regulation, the company/project might face (local) prospectus requirements pursuant to its home (EU) country, e.g., in the event that the home (EU) country/financial regulation authority follows an approach other than BaFin (marketing focussed approach). - In this case, the prospectus requirements of the host (EU) country as well as the German regulation might apply to the company/project, which might lead to double regulation. - Companies/projects that issue securities might — in exceptional cases — be subject to additional information/compliance regulation (German Securities Trading Act (*Wertpapierhandelsgesetz*)), e.g., in the event that the company/project issues securities that are admitted to trading on an organised market. - The German Act on Money Laundering (Geldwäschegesetz) is — as a general rule — not applicable to the companies/projects.
Impact of EU regulation	
Prospectus regulations	Due to the fact that most of the German start-ups are not stock corporations, but constitute limited liability companies (*GmbH*) whose shares are not securities (which are subject to the EU prospectus regulation), these EU regulations have no great impact on Crowdfunding in Germany.
AIFM Directive	• AIFM Directive and its implementation in German law have a very small impact on Crowdfunding, since the "typical" company (start-up) or project seeks funding for its general operative activity (commercial business) by means of a Crowdfunding Platform. • Only so-called Project Companies that do not operate the business themselves and do not constitute a cooperative (*Genossenschaft*) might be subject to the fund regulation. • Different interpretations of local authorities regarding the definition of collective investment undertaking (constituting an AIF) might lead to different application of AIFM-D and local implementations. - Severe consequences for company/project as well as (at least economically) for Crowdfunding Platforms. - Also, retail AIFs are regulated differently across the EU,

	which complicates cross-border situations.
MiFID/MiFID II	In Germany, most of the Crowdfunding Platforms facilitate the offering of subordinated profit-participating loans (*partiarische Nachrangdarlehen*), which do not fall under MiFID/MiFID II. In doing so, they are able to use an exception to the German Banking Act (*Kreditwesengesetz*) and need a small (local) licence. This local licence has less requirements, but is not passportable into other EU Member States.
PSD/PSD II	• Any transfer of funds through the operator of a Crowdfunding Platform generally constitutes money remittance services (*Finanztransfergeschäft*) within the meaning of the Payment Services Supervision Act (*Zahlungsdiensteaufsichtsgesetz*), the German implementation of PSD/PSD II in German law. • Great impact for Crowdfunding regarding the transaction of the investments.

C. Disclosures & safeguards

Fundraisers' protection

In the new regulation, there is no specific information described regarding the protection of the project owner. Project owners sign contracts with the investors which constitute Standard Business terms.[79]

The association Bundesverband Crowdfunding e.V. was founded in November 2015 and its main purpose is to serve as a networking forum for the platform owners and to develop best practices for the industry. The association developed a German Crowdfunding Code of Conduct. Its board of directors is composed of German platforms' representatives.

D. Support policies

Market Supervision

German Federal Financial Supervisory Authority *Bundesanstalt für Finanzdienstleistungsaufsicht* – BaFin.[80]

Crowdfunding models

Crowdfunding guidelines for entrepreneurs/investors	The Munich Chamber of Commerce offers a Crowdfunding Canvas and relevant information for preparing a Crowdfunding campaign. There is an independent platform offering information to Crowdfunding Platforms.

[79] Crowdfunding Crossing Borders, Crowdfunding Hub, 2016.
[80] Finanzdienstleistungsaufsicht - BaFin (link)

	Guide for Crowdfunding for the Tourism Industry.

E. Additional insights

Best practice initiatives

The Chamber of Commerce in Munich offers start-up consultation and courses for becoming a Crowdfunding manager.

Interest groups

Bundesverband Crowdfunding
Deutscher Crowdsourcing Verband

Greece

Overview

With a relatively low number of projects, the Greek Crowdfunding landscape consists mostly of donation- and Rewards-based platforms with short operation lifetimes. The alternative financing tool Crowdfunding is still weakly developed.

A. Role of alternative finance

Market size

The Greek Crowdfunding landscape consists of a small number of mostly donation-based Crowdfunding Platforms, with only two of them hosting Equity-based Crowdfunding projects. For the period 2012-2014, the total transaction volume was in the range of EUR 0.2m to EUR 1m.

The majority of projects hosted on Greek platforms are usually of a social or artistic character with small financing targets. Projects with technological or entrepreneurial subjects are generally scarce, and often do not reach their financing targets. As already mentioned, even the most popular and successful Crowdfunding Platform in Greece (groopio.com) did not exceed EUR 100K in accumulated project financing, according to the latest available data.[81]

Total Crowdfunding Platforms

There were around 8 active platforms in Greece in 2015, with reward-based and Donation-based platforms being more numerous, and Equity-based platforms gaining momentum.[82]

Crowdfunding models

Equity-based Crowdfunding	No data available
Lending-based Crowdfunding	No data available
Other	No data available

Crowdfunding models

Match funding initiatives	The National Bank of Greece, in strategic cooperation with organisations and foundations of international standing, such as the Alexandros S. Onassis Foundation, the John S. Latsis Foundation, the Bodossaki Foundation, the Hellenic National Commission for UNESCO and the

[81] Dimitris Ditsikas, Kaisa Matschoss, Petteri Repo, Anita Tregner-Mlinaric (2015): "Crowdfunding in Sustainable Innovation - Insights from and for Greece". (link)
[82] Ibid.

	Hellenic Network for Corporate Social Responsibility, is supporting the act4Greece programme, which is a pioneering initiative for the promotion of social and developmental banking. For the first time in Greece, an online platform has been created which enables the gathering of resources from the "crowd" — from anyone interested, wherever they may be in the world. The resources are then directed to specific projects undertaken by implementing bodies. The core philosophy of Crowdfunding is to enhance awareness amongst the public and to motivate people to contribute, as much as they can, to the implementation of projects that are needed by Greek society. The programme covers different action areas. These institutions contribute to the programme by offering their knowhow whilst also leveraging the potential of the Crowdfunding Platform so as to broaden and multiply the resources for projects or actions that they already support.[83]

B. Regulatory context

Country / Summary	Greece
Recent developments in Crowdfunding regulation	Law 4416/2016 came into force on 6 September 2016, enabling the public offering of securities through equity Crowdfunding Platforms without a prospectus, so long as the platforms are operated by licensed investment firms, local AIFMs following prior notification to the HCMC or the BoG.
Current/planned Crowdfunding regulation	
General regulation	Equity Model: Equity Crowdfunding Platforms through which securities are offered can be operated only by local licensed investment firms (namely AEPEY, AIFMs or credit institutions) which are licensed by the HCMC or the BoG, provided that: (a) they notify the HCMC or the BoG in advance of their intention to operate such platforms and provide adequate information

[83] Case Study: act4Greece, Crowdfunding4Culture (link)

	thereto on the way the activity is organised and will be performed; (b) specific information regarding the issuers and their companies hosted in the platform is provided to the investors, so that the latter are duly informed. Lending Model: The provision of loans or other credits can be performed only by licensed credit institutions and certain financial institutions, or alternatively by "passported" financial institutions established in other EU countries that offer their services either through a branch or on a cross-border basis without establishment in Greece. Rewards or Donation Model: Platforms may not be considered to be offering investment or banking services -> no regulatory requirements.
Prospectus requirement	• As a principle, the public offer of securities in Greece requires the prior publication of a prospectus, which must be approved by the HCMC. • Exceptionally, no prospectus is required for the public offer of securities through Crowdfunding Platforms operated by duly licensed firms when: - the public offer is performed exclusively through electronic platforms operated by AEPEYs or AEDOEEs or credit institutions (duly licensed to provide specific services); - the total value of securities offered is less than EUR 500,000.00 per issuer per year; and - participation of an individual (non-professional) is equal to or less than EUR 5,000.00 and in any case equal to or less than 10% of the average of their declared income of the past 3 years, per issuer, and equal to or less than EUR 30,000.00 per year, per AEPEY or credit institution. • The offer of investments which do not qualify as "securities" or other regulated products (such as UCITs or deposits, etc.) → not subject to regulatory requirements.
AIFMD regulation	• According to the definition of AIF in Law 4209/2013, Crowdfunding Platforms could be subject to the provisions of the AIFMD law, if they qualify as collective investment undertakings which raise capital from investors with a view to investing it in accordance with a defined investment policy for the benefit of those investors and are not UCITs. • Under Law 4209/2013, the management of an AIF in Greece is currently subject, apart from certain exemptions, to prior authorisation from the HCMC or other EU competent authority.
Payment service regulation	Transfer of funds made by operators of Crowdfunding Platforms to companies/projects could constitute money remittance services within the meaning of law 3862/2010 -> license is required, not clear whether commercial agent exemption applies

Further possible requirements	• Law 3691/2008 on money laundering prevention • Laws 2472/1997 and 3471/2006 on data protection • Law 2251/1994 on consumer protection and sales performed from a distance • Law 2121/1993 on intellectual property • Law 3862/2010 on payment services
Regulatory barriers	
Inbound	**Foreign Crowdfunding Platform addressing Greek investors** Greek regulatory law is applicable, since Greek investors are approached; the HCMC has not officially expressed its view as to when Greek investors are considered to be approached. The platform may benefit from the exemption of law 4416/2016 from the prospectus publishing requirements, provided that the conditions of law 4416/2016 are met. In practical terms, this means that the operation of the platform must be performed by a local investment firm or alternative investment fund manager or credit institution. Otherwise the platform may not benefit from the exemption of law 4416/2016. On the other hand, a Crowdfunding Platform which operates in another EU Member State or a third country, and which presents offers of investments other than securities, is not currently subject to regulatory restrictions. • **Foreign Crowdfunding Platform addressing companies/projects in Greece** The solicitation of companies/projects to participate in Crowdfunding Platforms from another EU country may or may not imply the provision of investment services (such as placement of securities without firm commitment) to such companies, depending on the services which are actually provided to such companies and on whether or not such services are offered in relation to financial instruments.
Outbound	• **Crowdfunding Platform from Greece addressing foreign investors** In the event that a Crowdfunding Platform from Greece which benefits from the exemption from the Greek public offer rules recently introduced by law 4416/2016 addresses investors in another EU country, it will be subject to the securities laws applicable in such country to public offers and to the provision of investment services. Although the operator of the Greek Crowdfunding Platform will be a duly licensed investment firm or alternative investment fund manager or credit institution, and will be able to passport its services (such as reception and transmission of investment orders) to such EU country, the offer of securities which will be made through such platform to such EU country will be still subject to the public offer restrictions of the relevant EU country. • **Crowdfunding Platform from Greece addressing**

	foreign companies/projects In the event that a Crowdfunding Platform from Greece which benefits from the exemption from the Greek public offer rules recently introduced by law 4416/2016 addresses companies/projects in another EU country, it will be subject to the rules of the relevant EU country on the provision of investment services. Although the operator of such platform will be a duly licensed investment firm or alternative investment fund manager or credit institution and will be able to passport its services to such EU country, the solicitation of companies/projects to participate in the platform may involve the provision of one or more investment services for which the operator does not have a license. It may also be the case that the other EU country has adopted a bespoke regime for the operation of Crowdfunding Platforms, in which case the Greek platform will have to comply with the requirements of such regime. On the other hand, companies/projects from another EU country which will participate in the Greek platform may well benefit from the exemption from the Greek public offer rules under the conditions of law 4416/2016.
Impact of EU regulation	
Prospectus regulations	• Prospectus regime regarding the offering of securities is harmonised on a pan-European level since the Prospectus Directive (and in the near future the Prospectus Regulation) and the implementing Greek legislation only cover transferable securities within the meaning of MiFID/MiFID II. • In Greece, most of the companies which have demonstrated interest in participating in Crowdfunding Platforms are organised in the form of a company limited by shares (*anonymi etairia*) and their shares are classified as transferable securities. • The Greek bespoke regime has introduced an exemption from the prospectus regime, under certain conditions, but the exemption applies only to offers addressed to investors in Greece. • Other types of companies organised in the form of partnerships are not covered by the European prospectus regulation, but there are currently no domestic regulatory restrictions on the public offer of investment in such companies.
AIFM Directive	• Local authorities (in Greece, the HCMC) are responsible for interpreting whether or not there exists a collective investment undertaking (and therefore an AIF), and thus an entity may be considered an AIF by one domestic authority and not an AIF by another. • Requirements regarding retail AIF are not harmonised on a European level, which might lead to frictions in the intensity of regulation: in some EU Member States, there exists lower/higher regulation for retail AIFs, whereas in some EU

	Member States, retail AIFs are completely prohibited. • AIFs may not be currently marketed to retail investors in Greece.
MiFID/MiFID II	• The main scope of application of MiFID and MiFID II for Crowdfunding in Greece is the general possibility to apply for a MiFID II license to generally operate in each EU Member State. • However, the service of reception and transmission of investment orders, on which current law focuses, does not cover the investment services that the operators may be providing to companies/projects. • Also, each EU Member State may have adopted a bespoke regime covering services and investments which are outside the scope of MiFID and MiFID II. • Thus, the MiFID passport of the operators of Greek platforms may prove to be insufficient in practice.
PSD/PSD II	• The PSD is already implemented by law in Greece. • PSD (II) must be implemented by Greece by January 2018. • Payment services in Europe are generally harmonised, but regarding the details there is still room for interpretation by the national legislators and (especially) financial regulation authorities — thus, there is no fully harmonised single market in Europe. • Regarding Crowdfunding, **money remittance services** are especially important: → Any transfer of funds through the operator of a Crowdfunding Platform generally constitutes money remittance services within the meaning of Greek law, which implemented the PSD; →

C. Disclosures & safeguards

No professional industry association exists. To foster the professional and transparent development of the local market, it might be advisable for a national Crowdfunding association to establish of a Code of Conduct with which platforms should be obliged to comply. Examples exist in a number of countries, such as the UK, France, Germany or the Netherlands. Alternatively, the open adoption of the European Crowdfunding Network Code of Conduct and its Charter of Crowdfunders' Rights by market players could help in markets without a critical mass of platforms.

Platforms themselves, to the extent that they can serve as marketplaces, have the potential to aid regulatory developments through early self-regulation and transparency. But this will require credible and enforceable quality and transparency standards as well as level playing fields. Any such initiative should aim to cover key performance indicators for the industry, conflict of interest rules and platforms

remuneration. However, regulation will always play the main role in establishing and ensuring a functioning market with an adequate level of safeguards and disclosures.

D. Support policies

The National Bank of Greece, in strategic cooperation with organisations and foundations of international standing, supports a Crowdfunding Platform with the objective of enhancing projects that are needed by Greek society. The act4Greece programme is a pioneering initiative for the promotion of social and developmental banking.

E. Additional insights

Policy measures

- Awareness-raising initiatives from Ministries and organisations from the wider public sector (dissemination material, online presence, etc.).
- Motivation for workshops, seminars and dissemination activities from collective bodies, industry organisations and higher education institutes.
- Establishment of a regulatory mechanism at national level, especially for equity Crowdfunding.
- Addition of alternative methods of financing in Higher Education curricula and philosophy.
- Conducting of thorough studies on Crowdfunding's impact on the economy, with a special focus on SMEs and on policies and strategies to increase the utilisation of alternative financing methods.[84]

[84] Dimitris Ditsikas, Kaisa Matschoss, Petteri Repo, Anita Tregner-Mlinaric (2015): "Crowdfunding in Sustainable Innovation - Insights From and For Greece". (link)

Hungary

Overview

The enhancement of Crowdfunding in Hungary seems to be hindered by several aspects, such as general mistrust, low population and limited savings.

A. Role of alternative finance

Market size

Hungarian society is still trying to familiarise itself with the new funding method. The per capita volume of alternative finance compared to the GDP per capita is lower than average. There are few active platforms, and they mainly use the donation or rewards model. None of them are focused on R&I projects, and they only collect and handle a limited amount of funds.

As in many other European countries, Crowdfunding has started to spread in Hungary. However, it is somewhat delayed in comparison to international and other European countries. General mistrust, relatively low population and limited savings seem to hinder the enhancement of Crowdfunding activity. Though there are no Crowdfunding Platforms dedicated to sustainability only, there are examples of successful sustainability projects.[85]

Trend

There were no open Hungarian platforms until 2012. However, in central and eastern Europe, there has been a growing trend over the last few years.

Total Crowdfunding Platforms

The first Hungarian Crowdfunding Platforms — e.g., Creative Selector, Induljbe.hu, kezdheted.hu — started in 2012 (HVG, 2014). The platforms were established by the *Nonprofit Információs és Oktató Központ Alapítvány* (Non-profit Information and Training Center (NIOK) Foundation). NIOK has been operating since 1994 and it targets the creation of a strong civil society in Hungary that is able to effectively represent social interest. In order to achieve this, it targets the strengthening of non-profit organisations through programmes and services that enhance the professionalism and effectiveness of those organisations, and strengthens their relationship with the public administration, the business community and society as a whole.[86]

The platform specifically targets the Crowdfunding activity of civil organisations and communities. It is adjusted to their needs and opportunities and also provides professional support to their fundraising and communication.[87]

[85] "Crowdfunding in Sustainable Innovation - Insights From and For Hungary". (link)
[86] Non-profit Information and Training Center (NIOK) Foundation (link)
[87] "Crowdfunding in Sustainable Innovation - Insights From and For Hungary". (link) and (link)

Crowdfunding models

Equity-based Crowdfunding	The model does not have any presence in the Hungarian market yet.
Lending-based Crowdfunding	The model does not have any presence in the Hungarian market yet.

B. Regulatory context

Country / Summary	Hungary
Recent developments in Crowdfunding regulation	There have been no recent developments in Hungarian Crowdfunding regulation, except the non-binding guidelines of the Hungarian National Bank in relation to Crowdfunding.
Current/planned Crowdfunding regulation	
General regulation	• If the Crowdfunding Platform facilitates the offering of securities, the operator of the platform may be subject to investment services requirements → licence from the Hungarian supervisory authority required • If the Crowdfunding Platform facilitates and/or intermediates the granting of loans to the crowdfunded business, such activity may trigger financial services requirements in relation to the platform operator, crowdfunded business and/or individuals granting loans → licence from the Hungarian supervisory authority required • Crowdfunding under both the Equity Model and the Lending Model could be structured so as to eliminate/limit the risk of triggering licensing requirements • The Donation or Rewards Model does not raise any specific Hungarian regulatory issues
Prospectus requirements	• Prospectus requirement for the offering of securities and certain other financial instruments (e.g., shares, bonds, certain derivatives) • Threshold: EUR 100,000 aggregated issue value for securities offered in all Member States of the European Union within a period of 12 months
AIFMD	If a Crowdfunding undertaking wants to structure its operation as an alternative investment fund (or manager thereof) it must

regulation	comply with the requirements under the Collective Investment Schemes Act
Payment service regulation	• Transfer of funds through the platform operator may constitute money remittance service → licence from the Hungarian supervisory authority required • Collection and holding of funds as escrow by the platform operator may constitute financial service → licence from the Hungarian supervisory authority required
Consumer credit regulation	Depending on the structure used by the platform, consumer credit regulations may be applicable
Further possible requirements	• Laws applicable to online marketing and contracts • Laws applicable to e-commerce and information society • Anti-money laundering laws • Data privacy and data protection laws • Consumer credit regulations • Consumer protection regulations
Regulatory barriers	
Inbound	EU entities having a licence to provide the relevant investment services and/or financial services in Hungary may passport their licence to Hungary.
Outbound	Hungarian entities having a licence to provide the relevant investment services and/or financial services in Hungary may passport their licence to the host EU country.
Impact of EU regulation	
Prospectus regulations	Applicable if licencing requirements are triggered. Passporting the existing relevant EEA license is possible
AIFM Directive	Applicable if licencing requirements are triggered. Passporting the existing relevant EEA license is possible
MiFID/MiFID II	Applicable if licencing requirements are triggered. Passporting the existing relevant EEA license is possible
PSD/PSD II	Applicable if licencing requirements are triggered. Passporting the existing relevant EEA license is possible.

C. Disclosures & safeguards

No professional industry association exists. To foster the professional and transparent development of the local market, it might be advisable for a national Crowdfunding association to establish a Code of Conduct with which platforms should be obliged to comply. Examples exist in a number of countries, such as the UK, France, Germany or the Netherlands. Alternatively, the open adoption of the European Crowdfunding Network Code of Conduct and its Charter of Crowdfunders' Rights by market players could help in markets without a critical mass of platforms.

Platforms themselves, to the extent that they can serve as marketplaces, have the potential to aid regulatory developments through early self-regulation and transparency. But this will require credible and enforceable quality and transparency standards as well as level playing fields. Any such initiative should aim to cover key performance indicators for the industry, conflict of interest rules and platforms remuneration. However, regulation will always play the main role in establishing and ensuring a functioning market with an adequate level of safeguards and disclosures.

D. Support policies

Overview

Most Hungarian Crowdfunding Platforms are devoted to social, public or charity projects, in order to benefit from tax deductions, the same scheme that applies to charitable organisations applied to the Crowdfunding Platforms. Donations to charitable organisations are not deductible from personal income taxes in Hungary. Each individual does have the right to offer 1% of their personal income tax to a charitable organisation when they do their taxes.

Market Supervision

Ministry for National Economy (through its operative branch for Crowdfunding, the National Innovation Office).[88]

Crowdfunding models

Tax benefits	Companies can deduct 20% of their donations from the tax base (another 20% in the case of a long-term contract) or they can deduct 50% if the donations go to the National Cultural Fund. One Percent Law, 1996 and following updates.

E. Additional insights

Policy measures

Some of the potential barriers (e.g., population size and level of private savings) are not easy to overcome. However, there are some measures that can enhance Hungarians' Crowdfunding activity. In addition to information and training, a clear regulatory environment can be beneficial, as demonstrated by the US government, for example. Though there are no governmental white papers or similar documents available, there is a paper written by two members of the Hungarian National Bank (although the paper does not necessarily reflect the official standpoint of the Hungarian National Bank) that deals with Crowdfunding issues. Bethlendi and Végh (2014) argue that development of the Hungarian Crowdfunding market could be best served by investor trust that can be

[88] Ministry for National Economy (link)

enhanced by a well-functioning business structure, transparency and regulations protecting investors.[89]

[89] EY, Open Evidence, Politecnico di Milano, European Crowdfunding Network (2016): "Assessing the Potential for Crowdfunding and Other Forms of Alternative Finance to Support Research and Innovation". Final Report. (link)

Ireland

Overview

Ireland has one of the smallest Crowdfunding industries in Europe. The country raised EUR 3m with alternative finance in 2015, according to the 2nd European Alternative Finance Industry Report.

A. Role of alternative finance

Market size

In 2015, Ireland raised about EUR 3m with alternative finance. The country has a limited record with respect to Crowdfunding. This is highlighted by the low amount of per capita volume dedicated to alternative finance, in comparison to GDP per capita.

Trend

Recent industry figures have shown growth in the sector since 2014.[90]

Figure: Crowdfunding activity in Ireland from 2014 to 2017
Source: TAB

Total Crowdfunding Platforms

Three Crowdfunding Platforms operate in Ireland.[91]

FundIt.ie (donation and rewards) is run by Business to Arts, a not-for-profit organisation working to support resilience and transformation in the cultural sector. FundIt is presently supported by The Bank of Ireland.

[90] Expert opinion of Eoin Cullina in CrowdfundingHub (undated, likely 2016) – "The Current State of Crowdfunding in Ireland" (link)
[91] Expert opinion of Eoin Cullina in CrowdfundingHub (undated, likely 2016) – "The Current State of Crowdfunding in Ireland" (link)

Linked Finance (peer-to-peer) is the leading P2P platform in the country at the moment. Through this platform thousands of local lenders provide business loans to Irish SMEs.

CoFunder (peer-to-peer) finds its origins in SeedUps and has operations in Ireland, the UK and USA. CoFunder provides peer-to-peer lending to growth-based companies looking to expand but who lack the capital to do so.

Crowdfunding models

Equity-based Crowdfunding	Due to the perceived risk and the lack of regulation, equity Crowdfunding has yet to find traction in the Irish market. Secondly, the question remains as to whether or not other non-equity types of Crowdfunding require specific legislative provision in Ireland.[92]
Lending-based Crowdfunding	Lending to corporates is not a regulated activity in Ireland. As for lending to consumers, a Crowdfunding Platform that provides such a service could be considered a "credit intermediary", falling under the provisions of the Consumer Credit Act of 1995, and would therefore have to obtain an authorisation as such. It should be noted that it is not a difficult process to obtain such an authorisation, since the process is more of a notification than a real application for authorisation.[93]

B. Regulatory context

Country / Summary	Ireland
Recent developments in Crowdfunding regulation	• Currently no bespoke regulation of Crowdfunding in Ireland • Public consultation launched on 21 April 2017 regarding the potential regulation of Crowdfunding in Ireland
Current/planned Crowdfunding regulation	
General	• Currently no bespoke regulation of Crowdfunding in Ireland

[92] Ibid.
[93] Osborne Clarke Germany (2016): "Review of Crowdfunding Regulation & Market Developments". In: CrowdFundRES – "Unleashing the Potential of Crowdfunding for Financing Renewable Energy Projects". Deliverable 3.1 (PU) (link)

regulation	• Public consultation launched on 21 April 2017 regarding the potential regulation of Crowdfunding in Ireland • Large body of related financial services legislation that is not expressly intended to apply to Crowdfunding but may nevertheless be applicable to Crowdfunding Platforms in certain circumstances
Prospectus requirement	• Prospectus (Directive 2003/71/EC) Regulations 2005 Implements the Prospectus Directive (2003/71/EC). • New Prospectus Regulation Designed to repeal and replace the existing body of European prospectus law. The two key changes from a Crowdfunding perspective are: 1. a higher threshold to determine when companies must issue a prospectus: EUR 1m (up from EUR 100,000); and 2. "EU growth prospectus" aimed at SMEs and other small companies.
AIFMD regulation	• European Union (Alternative Investment Fund Managers) Regulations 2013 Implements the Alternative Investment Fund Managers Directive ("AIFMD"). Only applies to funds that manage assets of EUR 100m or more. Alternative investment funds must be authorised by the CBI and are subject to strict marketing conditions. The most recent version of the AIF Rulebook was published by the Central Bank of Ireland in March 2017.
Payment service regulation	• European Communities (Payment Services) Regulations 2009 Implements the first Payment Services Directive. Aspects of Crowdfunding business models may involve the provision of certain regulated payment services. Exemption from authorisation as a payment institution may be possible if payment transactions are conducted through a commercial agent acting on behalf of both the payer and payee. Revised commercial agent exemption is much narrower in PSD 2 and may give rise to a requirement to obtain an authorisation as a payment institution from January 2018. • Part V of the Central Bank Act 1997 Regulates a "money transmission business". Crowdfunding Platforms should consider whether their business model may require them to obtain a regulatory authorisation as a

	money transmission business.
Further possible requirements	• Anti-Money Laundering Criminal Justice (Money Laundering and Terrorist Financing) Act 2010, as amended by Part 2 of the Criminal Justice Act 2013. A draft Criminal Justice (Money Laundering and Terrorist Financing) (Amendment) Bill is currently being prepared to amend this framework to give effect to the 4th EU Anti-Money Laundering Directive. • Data Protection The Data Protection Acts 1988 and 2003 are due to be replaced by the EU's General Data Protection Regulation, which will make businesses more accountable for data privacy compliance, and will offer citizens extra rights and more control over their personal data from 25 May 2018. • Consumer Credit Consumer Credit Act 1995. ⇨ Regulates "credit intermediaries" who in the course of business arrange or offer to arrange for a consumer the provision of credit in return for a commission, payment or consideration of any kind from the provider of the credit. ⇨ Lending-based Crowdfunding is most likely to fall within the Consumer Credit Act and the platform would therefore require a regulatory authorisation as a credit intermediary and compliance with the relevant obligations. ⇨ The Competition and Consumer Protection Commission ("CCPC") is the statutory body responsible for the regulation of credit intermediaries in Ireland. ⇨ The authorisation process is relatively simple and inexpensive compared to other regulatory authorisations. Part V of the Central Bank Act 1997 ⇨ Regulates all non-bank lenders of consumer credit operating in Ireland, known as "retail credit firms". ⇨ The lender must hold a retail credit firm authorisation issued by the CBI. ⇨ Significant authorisation and considerable human and financial resources are required. • Company Law

	Companies Act 2014 ⇨ A company may be considered to be a "credit institution". ⇨ If a company constitutes a credit institution, then it must be registered as a Designated Activity Company (DAC). 1. The DAC must have a minimum of two directors; 2. the DAC must have a memorandum and articles of association, including an objects clause in the memorandum of association; and 3. the DAC cannot dispense with holding physical AGMs in the same way as an LTD. • Investment Services European Communities (Markets in Financial Instruments) Regulations 2007 (as amended) ⇨ Implements the EU Markets in Financial Instruments Directive ("MiFID"). ⇨ Regulates provision of "investment services" in respect of "financial instruments". ⇨ Authorisation as an investment firm from the CBI. ⇨ Regulation 5(3) of the MiFID Regulations sets out exemption in specific circumstances. ⇨ Complex, expensive and lengthy process. ⇨ Substantial ongoing regulatory obligations. ⇨ MiFID II coming into effect in January 2018. Investment Intermediaries Act 1995 ⇨ Apply to the CBI for authorisation as an investment business firm. ⇨ More restrictive authorisation than a MiFID investment firm.
Regulatory barriers	
Inbound	• Crowdfunding is primarily currently carried out on a national basis and there is a low volume of cross-border activity. • If a foreign Crowdfunding Platform wishes to address Irish investors, then that Crowdfunding Platform may be subject to Irish laws if it is deemed to be operating in Ireland. • If a foreign Crowdfunding Platform wishes to address Irish companies and/or projects, then those companies and/or projects may be subject to Irish laws if the companies are incorporated under the laws of Ireland or the projects are

	deemed to be operating in Ireland. • A multitude of financial services legislation could apply to inbound Crowdfunding activities.
Outbound	• Crowdfunding is primarily currently carried out on a national basis and there is a low volume of cross-border activity. • If an Irish Crowdfunding Platform wishes to address foreign (EU) investors, then that Crowdfunding Platform will be subject to all applicable Irish, EU and local laws which regulate the operation of Crowdfunding Platforms. • If an Irish Crowdfunding Platform wishes to address foreign (EU) companies and/or projects, then that Crowdfunding Platform will be subject to all applicable Irish, EU and local laws which regulate such companies and/or projects. • A multitude of financial services legislation could apply to outbound Crowdfunding activities.
Impact of EU regulation	
Prospectus regulations	See above
AIFM Directive	See above
MiFID/MiFID II	See above
PSD/PSD II	See above

C. Disclosures & safeguards

Fundraisers' protection

Fundraisers are also protected by the Consumer Credit Sourcebook (CONC) and the Conduct of Business Sourcebook (COBS).

A platform should consider highlighting key risks to the borrower, including the consequences of missing payments or underpaying, which include, where applicable, the risk of repossession of the borrower's property[94].

Before a P2P agreement is made, the platform must grant that the agreement is adapted to the borrower's needs and financial situation[95].

D. Support policies

The harmonisation would introduce into the Crowdfunding space the protection applicable to investors in or consumers of other financial products.

[94] Further explanations: P2P agreements Article 4.3.3 (CONC).
[95] Further explanations: P2P agreements Article 4.3.4 (CONC).

"Fintech" is becoming an increasingly important area of focus for business and regulatory attention, which provides an opportunity to encourage a standardised approach across the common market. There is also consideration for adapted company law positions.[96]

E. Additional insights

In September 2015, the Bank of Ireland announced a three-year investment in and partnership with the Irish non-profit Crowdfunding Platform Fundit.ie, to further its support of Ireland's entrepreneurs and creative sectors (link).

Following recent financial crises, Irish businesses, charities and artists have looked to Crowdfunding to overcome challenges in the financing of projects and ideas (Kennedy, 2011). In recent years, there has been increased interest from organisations in the area of Crowdfunding both at a public and private level. Several noted Crowdfunding Platforms can be found both in The Republic of Ireland and Northern Ireland such as the platform "Seedups".[97] Furthermore, public sponsored research has looked at the prospect of using Crowdfunding in Ireland to assist national scientific research funding agencies.[98]

[96] Ibid.
[97] Coyne, 2016, Faulkner, 2016.
[98] Cullina et al., 2014.

Italy

Overview

The first Donation-based and Rewards-based Platform in Italy (*Produzioni dal Basso*) was launched in 2005. Despite its slow growth, the Crowdfunding market has had relevant impact. Crowd-investment (lending and equity) started in the last couple of years. Lending is heavily regulated and still intermediated by the platforms (lenders may not choose borrowers).

A. Role of alternative finance

Market size

An Italian Crowdfunding report indicates the overall volume of the Crowdfunding market in Italy to be around EUR 56m.[99]

According to the 2nd European Alternative Finance Industry Report, 30 Italian platforms were surveyed and thus Italy ranks seventh in terms of total volume in 2015 (EUR 31.61m).[100]

Trend

The whole market is growing. From 2014 to 2015, the volume increased sharply by 287%.

The aforementioned report from the Università Cattolica del Sacro Cuore, Milano, mentions:

- Number of platforms: + 68%
- Projects received: + 108%
- Campaigns: + 67%
- Total volume of funding: + 85%

The success rate decreased, from 37% to 30%, but this might be explained by several factors, including more competition amongst campaigns.

Lending-based Crowdfunding is expected to grow quickly, as two new platforms have just been licensed and more players seem willing to enter the market.

Equity-based Crowdfunding is expected to take off, as two main bugs have just been fixed by the legislator and the regulator: the number of kinds of companies that can use Crowdfunding to raise finance has been enlarged, and platforms can now directly

[99] Università Cattolica del Sacro Cuore; TIM. Il Crowdfunding in Italia, Report 2015 (link)
[100] Zhang, B., et al. (2016): "Sustaining Momentum. The 2nd European Alternative Finance Industry Report". Cambridge University (link)

assess whether the investment envisaged is appropriate for the client, without bringing the client off-line at a broker-dealer.[101]

Figure: Crowdfunding activity in Italy from 2014 to 2017
Source: TAB

Total Crowdfunding Platforms

By the end of 2015, there were 82 platforms in Italy, of which 62 were already active on the market and 13 were about to be launched. [102]

A list of some of the local platforms:

- ProduzionidalBasso.com (donation and rewards) was founded in 2005. It is one of the first platforms founded in Europe.
- DeRev.com (donation and rewards) is the main Italian Crowdfunding Platform. It was founded in 2013.
- Starteed.com (mixed model) was launched in 2012 as a platform combining donations, rewards and equity.
- Rete del Dono (2011) is a Donation-based platform for collecting online donations, to non-profit organisations in particular.
- Eppela is a Donation-based and Rewards-based Platform. It was founded in 2011.

Crowdfunding models

Equity-based Crowdfunding	The Italian Association of Equity Crowdfunding estimates a total of approximately EUR 5.5m raised.[103]

[101] Expert opinion of Alessandro Lerro CrowdfundingHub – "The Current State of Crowdfunding in Italy" (link)
[102] Universita' Cattolica del Sacro Cuore; TIM. Il Crowdfunding in Italia, Report 2015 (link)
[103] EY, Open Evidence, Politecnico di Milano, European Crowdfunding Network (2016): "Assessing the Potential for Crowdfunding and Other Forms of Alternative Finance to Support Research and Innovation". Final Report. (link)

Lending-based Crowdfunding	Lending-based Crowdfunding is little slightly above EUR 42m.
Other	Invoice Trading (EUR 3.9m in 2015).[104]

B. Regulatory context

Country / Summary	Italy
Recent developments in Crowdfunding regulation	• Law 33/2015: also allows innovative SMEs and investment funds to raise funds by means of online Crowdfunding Platforms. • CONSOB decision no. 19520 dated 25 February 2016: verification of the suitability of the investment (MiFID assessment), increase of the number of those authorised to subscribe as professional investors and loss of licence if the platform does not start to operate within 6 months from the granting of the licence. • Bank of Italy (resolution 584/2016): recognition of social lending activity (P2P and P2B).
Current/planned Crowdfunding regulation	
General regulation	• Equity Crowdfunding is limited only to: (a) innovative start-ups; (b) innovative SMEs; (c) collective investment undertakings and investment companies which invest primarily in innovative start-ups and in innovative SMEs (Law 221/2012 and Law 33/2015). • Crowdfunding activity has to be performed only by authorised entities (such as banks and investment companies) and by platform managers expressly authorised by CONSOB.
Prospectus requirement	Exemption from prospectus requirements for public offers of shares or of stocks of innovative start-ups and innovative SMEs must be made through an authorised Equity-based Crowdfunding Platform which does not exceed the overall amount of EUR 5m.
AIFMD regulation	Italian AIFMD regulation does not apply to Crowdfunding.
Further possible requirements	• Italian Money Laundering law • Italian Data Privacy law • Consumer Code
Regulatory barriers	

[104] Zhang, B., et al. (2016): "Sustaining Momentum. The 2nd European Alternative Finance Industry Report". Cambridge University (link)

Inbound	**Foreign Equity-based Crowdfunding Platform addressing investors in Italy** • In accordance with applicable Italian laws, foreign Equity-based Crowdfunding Platforms cannot directly operate in the Italian market without the prior obtainment of relevant authorisation by CONSOB, unless the platform is granted a MiFID EU licence which will allow the performance of the activity in Italy through the establishment of a local branch, or directly without any establishment of a local branch, or through an agent established in Italy. • (Such authorisation can be granted only if the relevant provisions of TUF and of the CONSOB regulation are respected.) • The abovementioned rules are also applicable with regard to foreign projects published on foreign Crowdfunding Platforms, due to the fact that such platforms are, as reported above, not allowed to direct their activity to Italian investors. • In any case, companies that are willing to offer (even through a Crowdfunding Platform) have to comply with the relevant prospectus requirements (and/or with the relevant exemptions). • The same considerations apply in relation to foreign Equity-based Crowdfunding Platform addressing Italian Companies/Project Initiators. **Foreign Lending-based Crowdfunding Platform addressing investors in Italy** • According to the TUB, a Payment Institution ("PSP") or an Electronic Money Issuer ("EMI") authorised in a EU Member State is allowed to provide payment services in Italy: a) through the establishment of a local branch, in accordance with the right of freedom of establishment; or b) directly without any establishment of a local branch, in accordance with the right of freedom to provide services; or c) through an agent established in Italy. • In compliance with TUB, PSPs and EMIs are also entitled to provide payment services without any need of any further authorisation. • Also foreign companies are allowed to publish a request for financing through a lending Crowdfunding Platform; in this respect they (as well as the Crowdfunding Platform operating in Italy) have to comply with the mandatory provisions of the Italian law regarding lending Crowdfunding and with regard to lending granted by

	consumers. • The same considerations can be made in relation to foreign lending Crowdfunding Platforms addressing Italian companies/project to intermediate.
Outbound	**Italian Equity-based Crowdfunding Platform addressing foreign investors** • In accordance with Italian law, Italian Equity-based Crowdfunding Platforms that have obtained the relevant authorisation from CONSOB cannot directly perform their activity in other countries. Such activities, in fact, are not subject to the principle of mutual recognition. • Italian companies are in theory allowed to publish a project on an EU Equity-based Crowdfunding Platform, in accordance with the relevant EU country's applicable laws and regulations. • The same considerations apply in relation to Italian Equity-based Crowdfunding Platforms addressing foreign Companies/Project Initiators. **Italian Lending-based Crowdfunding Platform addressing foreign investors** • Pursuant to the applicable laws, a PSP or an EMI which is duly authorised in Italy is also allowed to provide payment services in any other EU Member State through (i) establishment of a local branch, in accordance with the right of freedom of establishment, or (ii) directly, without any establishment of a local branch, in accordance with the right of freedom to provide services, or (iii) through an agent established in such other Member State. • Italian companies are in theory allowed to publish a project on an EU Lending-based Crowdfunding Platform, in accordance with the relevant EU country's applicable laws and regulations. • Although nothing is said in the relevant regulation concerning the fact that the social lending activity is allowed in Italy only in compliance with the limits set forth by the Bank of Italy, such limitation may apply to Italian companies even in the case of a lending requested through a foreign platform in another EU country. • The same considerations apply in relation to Italian Lending-based Crowdfunding Platforms addressing foreign Companies/Project Initiators.
Impact of EU regulation	
Prospectus regulations	According to the Italian Consolidated Law on Finance (TUF), public offers of shares or of stocks of innovative start-ups and innovative SMEs made through an authorised online equity platform which do not exceed the overall amount of EUR 5m are not subject to the duty to publish a prospectus.
Freedom to provide	• According to the Consolidated law on Banking (TUB), a Payment Institution ("PSP") or an Electronic Money Issuer

services	("EMI") authorised in a EU Member State is allowed to provide payment services in Italy: (a) through the establishment of a local branch, in accordance with the right of freedom of establishment; or (b) directly, without any establishment of a local branch, in accordance with the right of freedom to provide services; or (c) through an agent established in Italy. • In compliance with TUB, PSP and EMI are also entitled to provide payment services without any need of any further authorisation.
PSD/PSD II	• Any transfer of funds through the operator of a Crowdfunding Platform generally constitutes money remittance services within the meaning of Legislative Decree no. 11/2010, the Italian implementation of PSD/PSD II in Italian law. • Great impact for Crowdfunding regarding the transaction of the investments.

C. Disclosures & safeguards

Fundraisers' protection

No specific information is described in the new regulation regarding the protection of the project owner.

Code of Conduct

The CONSOB regulation provides specific rules of conduct, which consist of 7 articles.[105]

D. Support policies

Market Supervision

Ministero dello Sviluppo Economico (Ministry for Economic Development)[106]
CONSOB (Market Regulator)[107]

Crowdfunding models

Match funding initiatives	In November 2015, Milan's City Council launched a match funding initiative in collaboration with the Crowdfunding Platform Eppela. The project will last for 18 months and, for each project on the platform that reaches 50% of its target, the municipality will provide funds that will cover the other 50% (up to a maximum amount of EUR 50,000).
Tax benefits	Individuals (e.g., business angels) investing in innovative start-ups are awarded a personal income tax reduction (IRPEF) up to 19% of the invested amount, with a maximum investment up to EUR 500,000; legal entities (e.g., Venture Capital Funds) are awarded a corporate income tax (IRES) reduction of 20% of the invested amount, with a maximum investment up to EUR 1.8m.[108]
Other support measures for fundraisers	Simplification of the Equity-based Crowdfunding regulation in place at the moment: verifications about the appropriateness of the investment with regard to the knowledge and the experience of the investor will be

[105] Articles 13-21, CONSOB Resolution no. 18592, 26 June 2013.
[106] Ministero dello Sviluppo Economico (link)
[107] CONSOB (Market Regulator) (link)
[108] Portolano (link)

	performed by the platform's management staff (formerly only performed by banks). Further actions have been taken in order to simplify the procedures for raising capital, to reduce costs and to widen the range of individuals that can contribute to the financing of innovative projects.[109]

E. Additional insights

Best practice initiatives

Universitiamo by UNIPV is an in-house Crowdfunding Platform established by the University of Pavia. The platform enables everyone to support research (medical, technological, social, etc.). It allows people to choose projects with transparency and result tracking. This is outstanding, because the University of Pavia is the first university in Italy, and one of the first in the world to open its own Crowdfunding Platform.

[109] Expert opinion of Francesca Passeri, European Crowdfunding Network

Latvia

Overview

According to the 2nd European Alternative Finance Industry Report, Latvia raised EUR 15.2m through alternative financing in 2015.

A. Role of alternative finance

Market size

The amount raised through alternative financing (EUR 15.2m) in 2015, which amounts to EUR 7.68 per person, is a surprising number when considered in comparison to the GDP per capita (EUR 12.27).[110]

Figure: Crowdfunding activity in Latvia from 2015
Source: TAB

Trend

In central and eastern Europe, the growth rate from 2014 to 2015 was 167%.

Total Crowdfunding Platforms

Three platforms are currently active.

Crowdfunding models

Equity-based Crowdfunding	Pursuant to the Financial Instrument Market Law ("FIML"), anyone intending to provide investment services in Latvia, commercially or on a scale which requires

[110] Focus economics, Country indicator (link)

	a commercially organised business undertaking, requires a licence from the Financial and Capital Market Commission ("FCMC"). Where an online Crowdfunding Platform facilitates the offering of financial instruments, the operator of the platform will most likely be deemed to be providing investment services within the meaning of the FIML and therefore will require a licence from the FCMC.
Lending-based Crowdfunding	The market volume for Peer-to-Peer Consumer Lending was about EUR 15m in 2015. Two lending platforms are currently active in Latvia: Twino and Mintos.
Other	Invoice Trading (EUR 3.9m in 2015).[111]

B. Regulatory context

Country / Summary	Latvia
Recent developments in Crowdfunding regulation	Draft legislative amendments aimed at regulating Crowdfunding might be submitted to the Latvian Parliament in 2017.
Current/planned Crowdfunding regulation	
General regulation	• There is no regulatory regime specifically adapted to Crowdfunding. In principle, Latvian law allows for the implementation of Crowdfunding projects. In each situation, it is recommended to involve local counsel. • If a Crowdfunding Platform facilitates the offering of securities or other financial instruments or holds money belonging to third persons, the operator of the platform most likely provides investment or financial services. → FCMC authorisation required • Where securities do not qualify as financial instruments, this may fall outside the scope of investment services regulation, although guidance from FCMC would be advised. • Depending on the specific structure, there are sound

[111] Zhang, B., et al. (2016): "Sustaining Momentum. The 2nd European Alternative Finance Industry Report". Cambridge University (link)

	arguments that contributions under the Donations/Rewards Model do not constitute provision of investment or financial services. • According to the position of FCMC, assignment-based peer-to-peer lending Crowdfunding falls under the provisions of investment services. • It is most likely that an entity managing a Crowdfunding Platform which is not a credit institution cannot hold sums of money belonging to third parties. → Sums might be qualified as deposits → Credit Institutions Law only permits credit institutions to advertise receipt of deposits and other repayable funds, and to receive them.
Prospectus requirement	• Prospectus requirement for a public offer regarding transferable securities (i.e., offer is expressed to more than 150 individuals in one EU Member State). • Conditions for exemptions from Prospectus requirements: (a) offering of transferable securities does not exceed EUR 100,000 within a time period of 12 months, (b) only qualified investors are addressed, or less than 150 non-qualified investors per Member State are addressed, (c) the offering is made in respect of transferable securities with the nominal value being at least EUR 100,000, or (d) each investor acquires transferable securities with the nominal value at least EUR 100,000 and acquiring of one transferable security so that it belongs to several persons is prohibited. • Depending on the specific structure, there are no prospectus requirements for loans or contributions under the Donations/Rewards Model.
AIFMD regulation	• A typical start-up company generally does not constitute an AIF. • A project company might constitute an AIF. → There is extensive AIFMD regulation for an AIF and its manager. → The manager (AIFM) requires FCMC authorisation. • Depending on the specific structure, contributions under the Donations/Rewards Model should not entail an AIF. • Depending on the scope of the services it provides, a Crowdfunding Platform might qualify as an AIFM.
Payment service regulation	• Transfer of funds through operator may constitute money remittance service → FCMC licensing or registration with the FCMC required. • "Commercial Agents" exemption probably not applicable to operators of Crowdfunding Platforms • Another exemption might be that the operator of a Crowdfunding Platform uses an external provider or partner for processing payments rather than acting as an

	intermediary him/herself
Consumer credit regulation	If consumer borrowers are permitted on a platform (Lending-based Model), there are implications with regard to the licence for consumer crediting and the form and content of the lending agreements.
Further possible requirements	• Civil Law (in Latvian – *Civillikums*) • Commercial Law (in Latvian – *Komerclikums*) • Law on the Prevention of Laundering the Proceeds from Criminal Activity (Money Laundering) and of Terrorist Financing (in Latvian – *Noziedzīgi iegūtu līdzekļu legalizācijas un terorisma finansēšanas novēršanas likums*) • Natural Persons' Data Protection Law (in Latvian – *Fizisko personu datu aizsardzības likums*) • The Cabinet of Ministers regulations and FCMC regulations in relation to investment services and payment institutions • Consumer Rights Protection Law (in Latvian – *Patērētāju tiesību aizsardzības likums*) • Unfair Commercial Practices Prohibition Law (in Latvian – *Negodīgas komercprakses aizlieguma likums*) • Law on Advertising (in Latvian – *Reklāmas likums*) • Law on Corporate Income Tax (in Latvian – *Likums "Par uzņēmumu ienākuma nodokli"*)
Regulatory barriers	
Inbound	**Foreign Crowdfunding Platform addressing Latvian investors** • Crowdfunding Platforms may be required to obtain a licence under FIML/Payment Services and E-Money Law/AIFM Law/Consumer Rights Protection Law/Credit Institution Law; or may be required to notify the FCMC of an existing licence in another EU Member State (the obligations to obtain a specific licence or to notify of an existing licence are highly uncertain and fact-specific); or may be subject to other requirements, such as AML/CTF, consumer crediting rules and other regulations applicable to entities holding a particular licence. Latvian law does not recognise the concept of "security trustee", which allows an agent to hold and enforce security on behalf of multiple lenders. The assignment of claims through peer-to-peer lending platforms is not clear from the taxation perspective. • Foreign companies or projects: Prospectus requirement and AIFMD regulation might apply, depending on the

	circumstances. **Foreign Crowdfunding Platform addressing Latvian investors, companies or projects in Latvia** No specific regulatory barriers.
Outbound	**Latvian Crowdfunding Platform addressing foreign investors** • Crowdfunding Platforms may be required to obtain a licence under FIML/Payment Services and E-Money Law/AIFM Law/Consumer Rights Protection Law/ Credit Institution Law (the obligation to obtain a specific licence is highly uncertain and fact-specific); may be subject to other requirements, such as AML/CTF and other regulations applicable to entities holding a particular licence (the assignment of claims through peer-to-peer lending platforms is not clear from the taxation perspective). • Foreign and domestic companies and projects: prospectus requirement and AIFMD regulation might apply. **Latvian Crowdfunding Platform addressing foreign companies or projects** No specific regulatory barriers.
Impact of EU regulation	
Prospectus regulations	Latvian FIML generally mirrors the prospectus rules provided in the Prospectus Regulation ((EC) No. 809/2004). Thus, if a Crowdfunding Platform is considered an investment service provider, it is subject to prospectus rules provided in the Regulation.
AIFM Directive	So far, no known Crowdfunding Platforms have been subject to the Latvian rules implementing the AIFM Directive.
MiFID/MiFID II	Financial Instruments Market Law implements MiFID I. MiFID II is planned to be implemented in Latvia by the extended deadline. Thus, there has not yet been an impact on Crowdfunding Platforms by the directive.
PSD/PSD II	PSD II Directive is planned to be implemented in Latvia by the deadline, that is, January 2018. Thus, there has not yet been an impact on Crowdfunding Platforms by the directive.

C. Disclosures & safeguards

No professional industry association exists. To foster the professional and transparent development of the local market, it might be advisable for a national Crowdfunding association to establish a Code of Conduct with which platforms should be obliged to comply. Examples exist in a number of countries, such as the UK, France, Germany or the Netherlands. Alternatively, the open adoption of the European Crowdfunding Network Code of Conduct and its Charter of Crowdfunders' Rights by market players could help in markets without a critical mass of platforms.

Platforms themselves, to the extent that they can serve as marketplaces, have the potential to aid regulatory developments through early self-regulation and transparency. But this will require credible and enforceable quality and transparency standards as well as level playing fields. Any such initiative should aim to cover key performance indicators for the industry, conflict of interest rules and platforms remuneration. However, regulation will always play the main role in establishing and ensuring a functioning market with an adequate level of safeguards and disclosures.

D. Support policies

Overview

Currently, match funding, state aid and tax benefits for alternative finance are not available in Latvia.

Market Supervision

Latvijas Republikas Finanšu Ministrija - Ministry of Finance of the Republic of Latvia.[112]

[112] Latvijas Republikas Finanšu Ministrija (link)

Lithuania

Overview

In Lithuania, there are no active Donation-based or Rewards-based Platforms, even though they could operate without any major regulatory burden. Within the past year, as many as five P2P consumer lending platforms were launched in Lithuania. The country adopted the Law on Crowdfunding, which regulates Equity-based Crowdfunding, very recently.

A. Role of alternative finance

Market size

The transaction value in the P2P segment amounted to USD 10.5m in 2016.

Trend

There is no data available. However, transaction value is expected to show an annual growth rate of 27.7%.

Total Crowdfunding Platforms

Four active platforms (only P2P consumer lending): [113]
- Savy.lt, a P2P consumer lending platform launched in 2014.
- FinBee, a P2P consumer lending platform launched in 2015.
- Paskolų Klubas, a P2P consumer lending platform launched in 2015.
- Optimalus Kreditas (OK), a P2P consumer lending platform launched in 2015.

Crowdfunding models

Equity-based Crowdfunding	Lithuania has no Equity-based or P2P Lending-based Crowdfunding Platforms, except for P2P consumer lending platforms. The operator has the right to engage in Equity-based Crowdfunding activities after being included in the public list of Crowdfunding Platform operators.[114]
Lending-based Crowdfunding	EUR 10m has been raised on P2P consumer lending platforms by December 2016. An amended Law on Consumer Credit came into force on 1 February 2016. The Crowdfunding Law has also been adopted. The operator has the right to engage in

[113] Tomas Talutis (2016), Regulation on Crowdfunding in the Republic of Lithuania (link)
[114] Law firm TVINS - Regulation of Crowdfunding in Lithuania

	Lending-based Crowdfunding activities after being included in the public list of Crowdfunding Platform operators. Source: expert opinion Vytautas Šenavičius in www.crowdfundinsider.com

B. Regulatory context

Country / Summary	Lithuania
Recent developments in Crowdfunding regulation	• The Law on Crowdfunding of the Republic of Lithuania (*Lietuvos Respublikos sutelktinio finansavimo įstatymas*) came into force on 1 December 2016. It has eliminated regulatory obstacles in Lithuania to establishing and running Debt-based and Equity-based Crowdfunding Platforms. • P2P Consumer Lending in Lithuania falls under regulation of consumer credit. Regulation of P2P Consumer Lending platforms entered into force as of 1 February 2016.
Current/planned Crowdfunding regulation	
General regulation	• To engage in Lending-based and/or Equity-based Crowdfunding, the Crowdfunding Platform operator must be included in the Public List of Crowdfunding Operators, managed by the Bank of Lithuania. • To engage in P2P Consumer Lending, the P2P Consumer Lending Platform operator must be included in the Public List of P2P Lending Platforms, managed by the Bank of Lithuania. • Reward-based and Donation-based Crowdfunding is unregulated activity which falls within the scope of the Civil Code of the Republic of Lithuania (Lith. *Lietuvos Respublikos civilinis kodeksas*).
Prospectus requirements	There is a prospectus requirement for the public offering of securities. The obligation to publish a prospectus does not apply in the presence of at least one of the following conditions: • an offer of securities addressed solely to professional investors; • an offer of securities addressed to fewer than 150 natural or legal persons in each Member State of the EEA, other than professional investors; • an offer of securities addressed to investors who acquire securities for a total amount of at least EUR 100,000 for each separate offer;

	• an offer of securities with a nominal value amounting to at least EUR 100,000 per unit; • an offer of securities with a total amount of less than EUR 100,000 in all Member States calculated over a period of 12 months. Moreover, offerings of securities through a Crowdfunding Platform below EUR 5m in a 12-month period do not fall under prospectus requirement. In such case Lithuanian law applies the light prospectus regime whereby a project owner must prepare information documents, which must be approved by the Crowdfunding Platform operator.
AIFMD regulation	As collective investment undertakings are defined in a very comprehensive way, RES projects can easily serve the purpose of such definition and could therefore fall within the AIFMD regulation which is implemented in Lithuania through the Law on Managers of Collective Investment Undertakings for Professional Investors of the Republic of Lithuania (Lith. *Lietuvos Respublikos profesionaliesiems investuotojams skirtų kolektyvinio investavimo subjektų valdymo įmonių įstatymas*). However, there are no regulatory explanations as to how AIFMD could be applied with respect to RES projects.
Payment service regulation	Transfer of funds via the operator may be considered payment services, and thus may be subject to licensing requirements in Lithuania in accordance with the local legislation on payment services, which implements the Payment Service Directive.
Consumer credit regulation	Amended Law on Consumer Credit of the Republic of Lithuania (*Lietuvos Respublikos vartojimo kredito įstatymas*, the "Law on Consumer Credit") is applicable in the case of P2P Consumer Lending.
Further possible requirements	• Law on Prevention of Money Laundering and Terrorist Financing of the Republic of Lithuania (*Lietuvos Respublikos pinigų plovimo ir teroristų finansavimo prevencijos įstatymas*). • Law on Legal Protection of Personal Data of the Republic of Lithuania (*Lietuvos Respublikos asmens duomenų teisinės apsaugos įstatymas*). • Law on E-money and E-money Institutions of the Republic of Lithuania (*Lietuvos Respublikos elektroninių pinigų ir elektroninių pinigų įstaigų įstatymas*). • Law on Consumer Credit of the Republic of Lithuania (*Lietuvos Respublikos vartojimo kredito įstatymas*).
Regulatory barriers	
Inbound	• According to the Law on Crowdfunding, a person engaged or willing to engage in the activities of an operator of a Crowdfunding Platform in the Republic of Lithuania must have a residence in the Republic of Lithuania, except in the case where a person registered in another EU Member State has the right, in accordance with the laws of the Republic of Lithuania governing provision of investment services, to intermediate in conclusion of financial transactions without a registered office or through an

	established branch in the Republic of Lithuania. • In the event that the Lithuanian company issues securities through the foreign Crowdfunding Platform, the prospectus regime is applicable.
Outbound	• If a Lithuanian Crowdfunding Platform addresses investors in another EU country, the Crowdfunding Platform should comply with the law of the other EU country. Neither the Law on Crowdfunding nor the Law on Consumer Credit regulates such activity. However, if investors from another EU country initiate the contact, the reverse solicitation principle should be applied. • If a Lithuanian Crowdfunding Platform addresses companies/projects in another EU country, the Crowdfunding Platform should comply with the law of the other EU country. If a company/project from another EU country initiates the contact, the reverse solicitation principle should be applied.
Impact of EU regulation	
Prospectus regulations	Please see above
AIFM Directive	Please see above
MiFID/MiFID II	According to the Law on Crowdfunding, the operator of the platform is considered to be a financial advisory firm which falls under Article 3 of MiFID exemption and has the right to provide the following investment services without additional licence: execution of orders and provision of investment recommendations.
PSD/PSD II	For fund handling activities, the Crowdfunding platform must obtain payment institution licence or electronic money institution licence, or outsource this function to another financial institution able to provide respective financial services.

C. Disclosures & safeguards

The Lithuanian P2P and Crowdfunding Association (LTSA) covers six local lending platforms. To foster the professional and transparent development of the local market, it might be advisable to establish a public Code of Conduct with which platforms should be obliged to comply. Alternatively, the open adoption of the European Crowdfunding Network Code of Conduct and its Charter of Crowdfunders' Rights by market players could help in markets without a critical mass of platforms.

Platforms themselves, to the extent that they can serve as marketplaces, have the potential to aid regulatory developments through early self-regulation and transparency. But this will require credible and enforceable quality and transparency standards as well as level playing fields. Any such initiative should aim to cover key performance indicators for the industry, conflict of interest rules and platforms remuneration.

D. Support policies

Match funding, state aid and tax benefits for alternative finance are not currently available in Lithuania.

Market Supervision

Ministry of Finance.[115]

E. Additional insights

Restrictions on the maximum amount to be invested do not apply to investors. The Bank of Lithuania drafted implementing acts in November 2016. In October 2016, the Lithuanian Government amended laws establishing client identity verification methods. The amendments establish additional methods for remote identification.

[115] Ministry of Finance (link)

Luxembourg

Overview

The alternative finance market volume per capita is very low in Luxembourg. Neither the legislator nor the financial authority has given any indications as to how Crowdfunding will be organised on the field or what laws and regulations will be applicable.

A. Role of alternative finance

Market size

The market volume has been estimated at between EUR 1m and 5m in 2015.[116]

Trend

No Crowdfunding data for Luxemburg has been provided by TAB.

Total Crowdfunding Platforms

No data available

Crowdfunding models

Equity-based Crowdfunding	No data available
Lending-based Crowdfunding	No data available

B. Regulatory context

Country / Summary	Luxembourg
Recent developments in Crowdfunding regulation	• Two Crowdfunding platforms are currently active in Luxembourg; one is based on the Equity model (also offering real estate projects) and the other is based on the Donations or Rewards model. • There is no platform specialising solely in renewable energy or real estate. • Compared to those of other countries, Luxembourg's Crowdfunding market is in the testing phase.
Current/planned Crowdfunding regulation	
General	• Licence requirement under the law on the financial sector

[116] Zhang, B. et al (2016): Sustaining Momentum. The 2nd European Alternative Finance Industry Report. Cambridge University (link)

regulation	dated April 1993, as amended if, in particular, the platform is considered an investment adviser, a broker in financial instruments, a commission agent, an investment firm operating a Multilateral Trading Facility in Luxembourg or a financial intermediation firm in the case of investing (Equity Model), or considered a credit institution or possibly a professional carrying out lending activities (Lending Model). • Licence under the law on financial markets dated 12 July 2007, in particular if the platform is considered a Multilateral Trading Facility.
Prospectus requirements	Prospectus requirement for offers of securities to the public and admission of trading of securities on a regulated market. Exceptions: a) an offer of securities addressed solely to qualified investors; and/or b) an offer of securities addressed to fewer than 150 natural or legal persons per Member State, other than qualified investors; and/or c) an offer of securities addressed to investors who acquire securities for at least the total amount laid down in Article 3(2)(c) of Directive 2003/71/EC and in the delegated acts adopted in accordance with Article 24a of this Directive, per investor, for each separate offer; and/or d) an offer of securities whose denomination per unit amounts to at least the amount laid down in Article 3(2)(d) of Directive 2003/71/EC and in the delegated acts adopted in accordance with Article 24a of this Directive; and/or e) an offer of securities with a total consideration in all Member States of less than the amount laid down in Article 3(2)(e) of Directive 2003/71/EC and in the delegated acts adopted in accordance with Article 24a of this Directive. Such limit shall be calculated over a period of 12 months.
AIFMD regulation	If the Crowdfunding Platform were considered an AIF, the AIFMD could apply and the licencing requirements thereof would have to be complied with. Depending on the form of the Model and the investments, exceptions or derogations might apply.
Payment service regulation	• The Crowdfunding Platform may fall within the scope of the PSD. The envisaged services may constitute either (i) money remittance (in the event that no account is being created in the name of the payer or the payee) or (ii) payment transaction, which implies the existence of a payment account, at least, on the recipient's side. • In the event that the Crowdfunding does fall within the scope of the PSD, potential exemption methods would have to be addressed on a case-by-case basis.
Further possible requirements	• Amended law on undertakings for collective investment dated 17 December 2010 • Amended law relating to the risk capital investment

	company ("SICAR") dated 15 June 2004; • Anti-money laundering law dated 12 November 2004, as amended • Law regulating the access to the occupations of craftsman, tradesman, industrialist and certain liberal professions dated 2 September 2011
Regulatory barriers	
Inbound	The law on the financial sector does not distinguish between the different financial activities, i.e., addressing Luxembourg investors or promoting Luxembourg companies/projects on a platform (main criteria: activity and central administration in Luxembourg). **Foreign Crowdfunding Platforms addressing Luxembourg Investors** • *Licence requirements:* As a general rule, foreign platforms holding a licence for activity granted by the relevant authority in the origin Member State do not need authorisation in Luxembourg (if they can take advantage of the EU Passport). • *A non-EU Crowdfunding Platform* wishing to exercise its activity in Luxembourg, or a Crowdfunding Platform not able to take advantage of the EU Passport, must apply for a licence from the CSSF. • *Prospectus requirements:* A Luxembourg or foreign company offering its securities to Luxembourg investors must, as a general rule, provide a prospectus, unless the offer of securities falls under the exemptions mentioned. **Foreign Crowdfunding Platform addressing companies/projects in Luxembourg** • *Licence requirements:* If a Crowdfunding Platforms has a licence from another Member State to exercise its investment activity, no authorisation of the CSSF is needed (EU passporting). • *Prospectus requirements:* If the company/project offers its securities to Luxembourg investors, it will have to provide a prospectus. If it offers its securities only to investors in other EU or non-EU States, then there are no prospectus requirements in Luxembourg.
Outbound	**Luxembourg Crowdfunding Platforms addressing foreign investors** • *Licence requirements:* Luxembourg Crowdfunding Platforms that wish to carry on business within the territory of another Member State could benefit from the EU passporting. • *Prospectus requirements:* If Luxembourg Crowdfunding Platforms address only foreign investors, there are in principle no prospectus requirements to be fulfilled in Luxembourg. **Luxembourg Crowdfunding Platforms addressing foreign**

	companies/projects • *Licence requirements:* If Luxembourg Crowdfunding Platforms approach Luxembourg investors and present foreign companies on their platform, they may need a licence for their activity in the financial sector, but could benefit from EU Passporting. • *On receipt of a notice* from the competent authority of the host Member State, or failing such notice from the latter at the latest after two months from the date of transmission of the communication by the CSSF, the branch may be established and start business in the host Member State. • *Prospectus requirements:* If Luxembourg-based Crowdfunding Platforms approach Luxembourg-based investors and offer securities from companies/projects of other EU Member States on their platform (to the extent no exemption could apply), prospectus requirements apply. • If Luxembourg Crowdfunding Platforms only offer securities to foreign markets, there are no prospectus requirements to be fulfilled in Luxembourg.
Impact of EU regulation	
Prospectus regulations	Companies/projects that would offer equity or bonds to Luxembourg investors through a Crowdfunding Platform (based on the Equity-based or the Lending-based Model (if operating through bond issuance)) could be affected by this prospectus regime.
AIFM Directive	Crowdfunding Platforms that meet the criteria of an AIF would be impacted by this Directive (mainly Equity-based Platforms).
MiFID/MiFID II	MiFID and MiFID II (addressing the development of new trading platforms and activities) could mainly affect Crowdfunding Platforms based on the Equity or the Lending Model.
PSD/PSD II	Any transfer of funds (from investors to companies/projects) through an intermediary would in general be qualified as money remittance or a payment transaction within the meaning of the law dated 10 November 2009 and could therefore be impacted by such Directives.

C. Disclosures & safeguards

No professional industry association exists. To foster the professional and transparent development of the local market, it might be advisable for a national Crowdfunding association to establish a Code of Conduct with which platforms should be obliged to comply. Examples exist in a number of countries, such as the UK, France, Germany or the Netherlands. Alternatively, the open adoption of the European Crowdfunding Network Code of Conduct and its Charter of Crowdfunders' Rights by market players could help in markets without a critical mass of platforms.

Platforms themselves, to the extent that they can serve as marketplaces, have the potential to aid regulatory developments through early self-regulation and

transparency. But this will require credible and enforceable quality and transparency standards as well as level playing fields. Any such initiative should aim to cover key performance indicators for the industry, conflict of interest rules and platforms remuneration. However, regulation will always play the main role in establishing and ensuring a functioning market with an adequate level of safeguards and disclosures.

D. Support policies

Matching funds, state aid and tax benefits for alternative finance are not currently available in Luxembourg.

Market Supervision

Ministère des finances - Ministry of Finance.[117]

[117] Ministère des finances (link)

Malta

Overview

The Crowdfunding industry has yet to emerge in Malta. Nevertheless, the one platform that is active constitutes a good example of how cooperation between universities and entrepreneurship can be enhanced.

A. Role of alternative finance

Market size

There is not much information available about Crowdfunding in Malta. However, the volume of online alternative finance per capita compared to the GDP per capita indicates a very small market.

Trend

No data available

Total Crowdfunding Platforms

There is one operating platform, ZAAR. It was launched in December 2015. Since its launch, approximately EUR 55,000 has been collected, ranging from EUR 200 projects up to EUR 15,000 for the most successful project.

Crowdfunding models

Equity-based Crowdfunding	No data available
Lending-based Crowdfunding	No data available

B. Regulatory context

Country / Summary	Malta
Recent developments in Crowdfunding regulation	MFSA's consultation paper on investment-based Crowdfunding
Current/planned Crowdfunding regulation	
General regulation	If investment-based Crowdfunding contributors opt for the purchase of financial instruments, the intermediary role played by the Crowdfunding Platform may be considered an investment service. The investment service activity most likely to be provided is "the reception and transmission of orders without firm

	commitment", which would fall under Category 1A of the investment services licence.
Prospectus requirement	If a Crowdfunding Platform facilitates the offering of shares in collective investment schemes, it may be considered to be providing an investment service under the Investment Services Act. As a consequence, it may be required that an Offering Memorandum be provided to investors.
AIFMD regulation	If a Crowdfunding Platform facilitates the offering of securities, or shares in a collective investment scheme, it may be considered to be providing an investment service under the Investment Services Act. An MFSA authorisation may be required.
Payment service regulation	If a Crowdfunding Platform acts — even from a payment service point of view — as an intermediary between the parties involved in the transaction, it may be considered a payment service provider. An MFSA authorisation may be required.
Further possible requirements	• Prevention of Money Laundering Act ("PMLA") • Prevention of Money Laundering and Funding of Terrorism Regulations ("PMLFTR") • Distance Selling (Retail Financial Services) Regulations
Regulatory barriers	
Inbound	There appears to be a need for more clarity from the European institutions in respect of Crowdfunding Platforms. Should a platform hold a MiFID (or MiFID II) licence as envisaged by the MFSA for local Crowdfunding platforms, it could reach a larger market and pool of investors thanks to the ability to take advantage of the passport and market the platform in the various EU territories. Therefore, in theory, an EU-based Crowdfunding Platform which holds a MiFID licence can passport into Malta.
Outbound	Based on the assumption that the platform might undertake licensable activities, passporting rights shall be granted to the licensed platform. Therefore, we can differentiate between providing services on a remote basis setting up a branch. In the first case, the notification to the overseas Authority shall be accompanied by: • information relating to the services the platform intends to provide, together with a programme of operations also indicating whether it intends to operate through tied agents; • an indication of the Member States that will be targeted. Moreover, in the hypothetical event that the platform opts for the setting up of a branch, it would therefore need to provide a notice accompanied by: • an indication of the Member States within the territory for which the platform plans to establish a branch; • a programme of operations identifying the operations it seeks to carry out through the branch, also indicating

	whether there is an envisaged use of tied agents; • the address of the proposed branch; • the proposed organisational structure of the branch.
Impact of EU regulation	
Prospectus regulations	Due to the current lack of harmonisation, a negligible portion of the Crowdfunding market is likely to fall under the regulation of European law and subsequently be transposed into the Maltese Law. Hence, Crowdfunding would be more under the purview of the national regulators.
AIFM Directive	It is yet to be determined whether Crowdfunding would be affected by the AIFMD, at least from a Malta perspective, since the MFSA has yet to provide the industry with its position.
MiFID/MiFID II	Since the MFSA considers Crowdfunding a potentially licensable activity, it is likely that MiFID/MiFID II will have an impact in this respect. These directives might apply to the licencing requirements as well as to passporting.
PSD/PSD II	The requirements of the PSD have been transposed into the Maltese Financial Institutions Act ("FIA"). The FIA covers not only the payment service activities but also the activity of money remittance, which could be seen as an activity that might potentially be undertaken by the Crowdfunding Platform; therefore, the PSD directive shall be taken into consideration. However, as previously stated, it might be advisable for Crowdfunding Platforms to set up partnerships with already-existing credit/payment institutions, rather than acting as a mere intermediary between the project owner and the investors.

C. Disclosures & safeguards

No professional industry association exists. To foster the professional and transparent development of the local market, it might be advisable for a national Crowdfunding association to establish a Code of Conduct with which platforms should be obliged to comply. Examples exist in a number of countries, such as the UK, France, Germany or the Netherlands. Alternatively, the open adoption of the European Crowdfunding Network Code of Conduct and its Charter of Crowdfunders' Rights by market players could help in markets without a critical mass of platforms.

Platforms themselves, to the extent that they can serve as marketplaces, have the potential to aid regulatory developments through early self-regulation and transparency. But this will require credible and enforceable quality and transparency standards as well as level playing fields. Any such initiative should aim to cover key performance indicators for the industry, conflict of interest rules and platforms remuneration. However, regulation will always play the main role in establishing and ensuring a functioning market with an adequate level of safeguards and disclosures.

D. Support policies

The Malta Business Bureau and the University of Malta have set up the Foundation for the Promotion of Entrepreneurial Initiatives. ZAAR is the first offering: a Donation/Rewards-based Crowdfunding Platform for promoting entrepreneurship in Malta and supporting local start-ups. ZAAR offers an alternative way to raise finance for their projects and business ideas.

Market Supervision

Malta Financial Services Authority (MFSA)[118]

E. Additional insights

Best practice initiatives

The Malta Business Bureau and the University of Malta have set up the Foundation for the Promotion of Entrepreneurial Initiatives. ZAAR is the first offering: a Donation/Rewards-based Crowdfunding Platform for promoting entrepreneurship in Malta and supporting local start-ups. ZAAR offers an alternative way to raise finance for their projects and business ideas.

[118] Malta Financial Services Authority (MFSA) (link)

The Netherlands

Overview

The Netherlands is the third-highest-ranking country in continental Europe with regards to online alterative finance by market volume; its finance marketplace is well established and fast-growing. It has a large number of platforms, covering a wide variety of different models, from Peer-to-Peer Business Lending to Debt-Based Securities (debentures) and Equity-based Crowdfunding. The total amount raised in 2015 was EUR 111m, up from EUR 78m in 2014 and EUR 46m in 2013.[119]

A. Role of alternative finance

Market size

The Netherlands is the third-highest-ranking country regarding online alternative finance by market volume in Europe, excluding the United Kingdom. The Netherlands is the market leader in both Debt-Based Securities and Peer-to-Peer Business Lending, whilst also performing relatively strongly in Rewards-based Crowdfunding and Equity-based Crowdfunding, being the third-largest market for these models in Europe (excluding the UK). The total amount raised in 2015 was EUR 111m, up from EUR 78m in 2014 and EUR 46m in 2013.[120]

Trend

The Dutch market is well established and fast-growing. It has a large number of platforms, covering a wide variety of different models, from Peer-to-Peer Business Lending to Debt-Based Securities (debentures) and Equity-based Crowdfunding.

[119] "Sustaining Momentum". Cambridge Judge Business School, 2016.

Figure: Crowdfunding activity in the Netherlands from 2014 to 2017
Source: TAB

Total Crowdfunding Platforms

There were 34 active platforms in 2016.[121]
Some examples include:
- VoorDeKunst: a donation-based platform for the creative sector, founded in 2010.
- GeldVoorElkaar: the largest P2P business lending platform, started in 2010.
- Oneplanetcrowd: launched in 2012, it offers loans and convertible loans to sustainable projects through its platform.
- Collin Crowdfund and Kapitaal Op Maat: P2P business lending platforms that started their activities in 2013.
- Symbid: an Equity-based platform that launched in 2011.

Crowdfunding models

Equity-based Crowdfunding	Equity-based Crowdfunding is the second-largest model with a total volume of EUR 16.6m in 2015 - up 49% from EUR 11.2m in 2014.[122]
Lending-based Crowdfunding	Peer-to-Peer Business Lending had the highest total volume nationally, growing 34% from EUR 55.2m in 2014 to EUR 74m in 2015. This represents the highest Peer-to-Peer Business Lending figure in Europe (excluding the UK).[123]
Other	Other models that are quite popular in the Netherlands are Debt-based Securities, with a volume equal to EUR 8.3m, and Real Estate Crowdfunding, with a volume of EUR 0.5m.

B. Regulatory context

Country / Summary	Netherlands
Recent developments in Crowdfunding	• Enhanced Crowdfunding regime for non-transferable loan Crowdfunding Platforms. • Dispensation for ban on taking commissions by MiFID-licensed Crowdfunding Platforms.

[120] Zhang, B., et al. (2016): "Sustaining Momentum. The 2nd European Alternative Finance Industry Report". Cambridge University (link)
[121] University of Cambridge; Ernst & Young, 2015. "Moving Mainstream - The European Alternative Finance Benchmarking Report".
[122] Zhang, B., et al. (2016): "Sustaining Momentum. The 2nd European Alternative Finance Industry Report". Cambridge University (link)
[123] Ibid.

regulation	• In the legislative letter of 2016, the AFM requested the Minister of Finance to push the local Crowdfunding framework even further and migrate the framework completely into the Dutch financial supervisor regulation, the Wft.
Current/planned Crowdfunding regulation	
General regulation	• Non-transferable loan Crowdfunding Platforms have to comply with a local dispensation regime based on a dispensation for mediating in attracting repayable funds. • Equity-based and Loan-based (bonds and notes) Crowdfunding Platforms require a MiFID license from the AFM (for transmitting orders or as a placing agent) but do not always have to also comply with the above local Crowdfunding regime.
Prospectus requirement	• Relevant for Crowdfunding: Total offering maximum: EUR 2.5m per year per instrument type (shares or bonds); Information documents; and Warning banner.
AIFMD regulation	• AIFMD not applied in the Netherlands for Crowdfunding (but has been tried). • Typical start-up company in general does not constitute an AIF. • "Project Company" might constitute an AIF. - Extensive AIFMD regulation for AIF and its manager (AIFM). - AIFM requires AFM authorisation. • "Project Companies" that constitute operating companies (general business purpose) are not AIFs. • Funding by means of subordinated loans does not entail an AIF.
Payment service regulation	• Transfer of funds through operator may constitute money remittance service - AFM authorisation required • Cooperation with a payment institute/bank is required, but could also trigger a license for mediation in payment account or electronic money.
Further possible requirements	• The Dutch Civil Code (*Burgerlijk Wetboek*) • The Dutch Personal Data Protection Act (*Wet bescherming persoonsgegevens*) • The Dutch Telecommunication Act (*Telecommunicatiewet*) • The Dutch Consumer Credit Act (*Wet op het consumentenkrediet*) • The Dutch Money Laundering and Terrorist Financing (Prevention) Act (*Wet ter voorkoming van witwassen en financiering van terrorisme*).
Regulatory barriers	

Inbound	**Foreign Crowdfunding Platform addressing Dutch investors** Dutch regulatory laws are applicable, since Dutch investors are approached by presenting the investment opportunities in Dutch language. • Crowdfunding Platform **The platform has a foreign MiFID/MiFID II licence and intends to address Dutch investors** → As a general rule, a platform with a foreign MiFID licence can conduct business in the Netherlands without applying for a licence and without having a presence in the Netherlands (so-called notification procedure/EU Passport). → It cannot be excluded that a Crowdfunding Platform with a foreign MiFID licence might need — in addition — a (local) Dutch licence, in order to be allowed to offer all kinds of company shares as well as subordinated loans in the Netherlands. → Generally, the foreign Crowdfunding Platform might be subject to other Dutch regulations in exceptional cases (e.g., the Dutch Act on Money Laundering). **The platform has no MiFID/MiFID2 licence and intends to address Dutch investors** • The Crowdfunding Platform must — as a principle — obtain a dispensation under Article 4:5 of the Wft to mediate in non-transferable loans, or a MiFID license under Article 2:99 of the Wft if the platform targets the Dutch market in order to mediate in financial instruments targeted by MiFID. **Foreign Company/project** Dutch prospectus regime is applicable, since the foreign companies/projects offer investment opportunities in the Netherlands (provided the offer entails financial instruments). **Foreign Crowdfunding Platform addressing Dutch companies/projects** The AFM will (most likely) come to the conclusion that Dutch regulatory laws do not apply in the event that the investment opportunities are not presented in the Dutch language. • Crowdfunding Platform As a general rule, since the foreign Crowdfunding Platform will not target the Dutch market/Dutch investors, Dutch regulatory laws are not applicable — no licence requirements pursuant to Dutch regulatory laws. Generally, the foreign Crowdfunding Platform might be subject to other Dutch regulations (e.g., the Dutch Act on Money Laundering). • Dutch Company/project

	In the event that Dutch companies/projects issue Debt-Based Securities (e.g., bonds), they might — in exceptional cases — be subject to other Dutch regulation.
Outbound	**Dutch Crowdfunding Platform addressing foreign investors** Here, only foreign investors are addressed (e.g., a Dutch platform addressing German investors). However, if several further indicators (e.g., Dutch contact persons, details or investment opportunities clearly adjusted to Dutch regulatory law, Dutch language) lead to the assumption that the Dutch market is being

	approached, the AFM might come to the conclusion that the Dutch market is being approached and Dutch regulatory laws are applicable. However, within the overall view of all criteria, the AFM will (most likely) conclude that Dutch regulatory laws are not applicable in this case. • Crowdfunding Platform As a general rule, since the Crowdfunding Platform will not target the Dutch market/Dutch investors, German regulatory laws are not applicable — no prospectus requirements. Crowdfunding Platforms might be subject to other Dutch regulation in exceptional cases (e.g., the Dutch Act on Money Laundering). • Company/project None in particular **Dutch Crowdfunding Platform addressing foreign companies/projects** Here, Dutch investors are approached; Dutch language will be used. The AFM will conclude that Dutch regulatory laws will be applicable. • Crowdfunding Platform Regular Dutch regulation applies to the Crowdfunding Platform (licence obligation). The Crowdfunding Platform might be subject to other Dutch regulation in exceptional cases (e.g., the Dutch Act on Money Laundering. • Company/project Dutch prospectus regimes are applicable, since whether the foreign companies/projects offer investment opportunities in the Netherlands' applicable prospectus regime depends on whether the foreign company/project offers transferable securities (which is often the case in foreign (EU) countries, e.g. France) or other financial instruments. In addition to the Dutch regulatory laws, the company/project might face (local) prospectus requirements pursuant to its home (EU) country, e.g., in the event that the home (EU) country/financial regulation authority follows an approach other than the AFM (marketing-focused approach). In this case, the prospectus requirements of the host (EU) country, as well as the Dutch regulatory laws, might apply to the company/project, which might lead to double regulation.
Impact of EU regulation	
Prospectus regulations	These EU regulations have no great impact on Crowdfunding in the Netherlands.
AIFM Directive	• AIFM Directive and its implementation in Dutch law have very little to no impact on Crowdfunding, since the "typical" company (start-up) or project seeks funding for its general operative activity (commercial business) by

	means of a Crowdfunding Platform. • Only so-called Project Companies that do not operate the business themselves might be subject to the fund regulation. • Local authorities' different interpretations regarding the definition of collective investment undertaking (constituting an AIF) might lead to different applications of AIFMD and local implementations. Severe consequences for company/project as well as (at least economically) for Crowdfunding Platforms. Also, retail AIFs are regulated differently across the EU, which complicates cross-border situations.
MiFID/MiFID2	In the Netherlands, most Crowdfunding Platforms facilitate the offering of non-transferable loans which do not fall under MiFID/MiFID2. In doing so, they are subject to the local Dutch Crowdfunding framework attached to a dispensation granted by the AFM. This local dispensation has less requirements, but is not passportable into other EU Member States.
PSD/PSD2	• Any transfer of funds through the operator of a Crowdfunding Platform may constitute money remittance services within the meaning of the Wft, the implementation of PSD/PSD2 in Dutch law. • Great impact on Crowdfunding regarding the fund processing of the investments.

C. Disclosures & safeguards

The Netherlands Crowdfunding association (*brancheverenigingen Nederland Crowdfunding*) has developed a Code of Conduct. It contains a number of minimum requirements regarding the quality and operation of a Crowdfunding Platform. The association's members are obliged to comply with the Code.

D. Support policies

Overview

The Dutch regulatory framework applicable to both Debt-based Crowdfunding and Equity-based Crowdfunding was updated on 1 April 2016. Crowdfunding Platforms in the Netherlands are expected to follow a set of best practices that encourage investors to invest appropriately by following best practices such as diversification. In addition to this, the platforms must adhere to a list of requirements broadly covering the areas of risk, ethics, transparency and consistent operational practices. It will be of utmost importance for the regulatory bodies and businesses to monitor the growth of the market given these new rules.[124]

[124] EY, Open Evidence, Politecnico di Milano, European Crowdfunding Network (2016): "Assessing the Potential for Crowdfunding and Other Forms of Alternative Finance to Support Research and Innovation". Final Report. (link)

Market Supervision

Dutch Financial Supervision Act (*Wet op het financieel toezicht*, the "DFSA") and the Netherlands Authority for the Financial Markets (the "AFM").

Crowdfunding models

Match funding initiatives	In Rotterdam, the studio ZUS set up a successful Crowdfunding campaign for the Luchtstingel wooden footbridge in Rotterdam. The bridge was created due to local frustration with an unsafe/lacking highway crossing, which led to citizens coming together to crowdfund ZUS's idea. Each backer got their name on a plank on the bridge. After 8,000 local people funded the project, Rotterdam City decided to top up the crowdfunded funding with a grant so that the studio could complete the project. The campaign has since led to the development of a series of new initiatives related to the Luchtstingel, including the development of an events space and a roof garden.[125] Other initiatives in this area include the match fund for the arts by Dutch platform Voordekunst.

[125] Nesta (link)

Poland

Overview

The development of Crowdfunding in Poland is limited, due to capital market regulations and administrative barriers primarily having to do with public money gathering.

A. Role of alternative finance

Market size

According to the 2nd European Alternative Finance Industry Report, Poland raised EUR 10m in 2015. Poland is ranked amongst the top 15 countries in Europe for volume of alternative finance. However, capital market regulations and administrative barriers, primarily with respect to public money gathering, are limiting the development of Crowdfunding in Poland, a nation with almost 40m inhabitants. [126]

Trend

The overall volume in 2014 was EUR 4m, which increased to EUR 10m in 2015.

Figure: Crowdfunding activity in Poland from 2014 to 2017
Source: TAB

Total Crowdfunding Platforms

There were 6 active platforms in the country in 2016.[127]

[126] "The Polish Crowdfunding Society Aims At Changing Crowdfunding Landscape In Poland" (link)
[127] According to desk research of the European Crowdfunding Network, referencing the state of the market in 2016 (link)

Crowdfunding models

Equity-based Crowdfunding	Equity-based Crowdfunding volume amounted to EUR 0.2m in 2015.
Lending-based Crowdfunding	Peer-to-Peer Consumer Lending volume was EUR 1.9m in 2015.
Other	EUR 4.1m has been raised with Invoice Trading, and EUR 0.4m has been raised with Real Estate Crowdfunding.

B. Regulatory context

Country / Summary	Poland
Recent developments in Crowdfunding regulation	• Poland has not yet adopted any regulations that would specifically concern Crowdfunding in any of its models. • In 2014, the Polish government published its position on Crowdfunding and its potential regulation in the future: → there is currently no need to introduce binding legal regulations, because the Crowdfunding market in Poland is still in its early stage of development • Since mid-2016, the Polish Ministry of Economic Development has been working on a new kind of company: simple joint-share company. → the aim is to make this new type of a company a convenient start-up vehicle that could be also used for raising capital through Equity-based Crowdfunding • In 2017, the Polish Financial Supervision Authority initiated a joint market and government working group with a task to identify legal barriers regarding financial innovations. Among several task forces, there is one working on Crowdfunding regulations and legal barriers concerning social lending. This task force has already prepared an initial document describing and analysing legal barriers hindering the development of Crowdfunding in Poland.
Current/planned Crowdfunding regulation	
General regulation	There is no clear and explicit regulation of Crowdfunding in Poland. • The framework for Crowdfunding transactions in Poland is still the Polish Civil Code and several other acts. • Certain types of Crowdfunding-related activities may trigger the application of financial regulations.
Investment	• Under the Polish Trading in Financial Instruments Act

services/ prospectus requirement	(*ustawa o obrocie instrumentami finansowymi*) of 29 July 2005 ("TFIA"), investment services are regulated and require a licence. → TFIA is essentially an implementation of the MiFID directives • Crowdfunding Project Initiators can be obliged to prepare and publish a prospectus under the Polish Public Offering, Conditions for the Introduction of Financial Instruments to Organised Trading, and Public Companies Act: The notion of "securities" does not include shares in a limited liability company, but it applies to shares of a joint-stock company Under the Act, a public offering is defined as "making available to at least 150 persons in one EU Member State or to an unspecified addressee, in any form and by any means, information about securities and conditions for the acquisition of securities that constitutes a sufficient basis for making a decision to acquire these securities." There are a number of exemptions from the prospectus requirement. The initiator does not need to prepare a prospectus if, e.g., the acquired financing is of relatively low value: up to EUR 100,000 over a 12-month period.
AIFMD regulation	It cannot be excluded that some Project Initiators will fall within the scope of the Polish implementation of the AIFMD and will have to comply with the regulatory requirements.
Payment service regulation	• Polish Payment Services Act dated 19 August 2011 implements PSD It implies that Crowdfunding Platforms are providing a regulated payment service within the meaning of the Payment Services Act. Despite the intermediation in payments performed by Crowdfunding Platform operators, in most cases they will not have to obtain permission for providing payment services. • Poland will have to transpose PSD2 into its national system (the deadline is in January 2018). Revision of Payment Services Act may concern the issue of Crowdfunding Platforms.
Further possible requirements	Counteracting Money Laundering Act All activity based on intermediation in transferring monetary resources should be analysed from the point of view of the requirements imposed by the Counteracting Money Laundering and Financing of Terrorism Act dated 16 November 2000. The key thing is to determine whether the Crowdfunding Platform operator will be one of the obligated institutions within the meaning of the Counteracting Money Laundering Act. • Act on Rendering Electronic Services dated 18 July 2002 The services provided by platform operators should, in principle, be

	qualified as being services provided by electronic means within the meaning of the provisions of the Act on Rendering Electronic Services. Crowdfunding Platform operators should hold regulations for the provision of services and adhere to the regulations concerning processing the personal data of persons using a platform • Consumer Credit Act dated 12 May 2011 It should be determined whether agreements entered into within the framework of a Crowdfunding Platform should be treated as being consumer credit agreements within the meaning of the Consumer Credit Act. The Consumer Credit Act refers only to loan agreements in which the creditor is an entrepreneur within the meaning of the Polish Civil Code. It should be assumed that in the case of most models where loans are entered into directly between the financer and beneficiary, we will not be dealing with an entrepreneur on the financer's side. Practice shows that in most cases these are consumers. In such cases, a loan agreement entered into between a financer and a beneficiary will not be qualified as being a consumer credit agreement within the meaning of the Consumer Credit Act. • Foreign Exchange Law dated 27 July 2002 Crowdfunding Platform operators may also carry out currency exchanges in the course of their activity. When a financing payment is provided in a currency other than a currency accepted by the beneficiary, the platform operator converts the currency at an exchange rate determined in advance.
Regulatory barriers	
Inbound	• Application of the Polish financial regulatory framework to a foreign Crowdfunding Platform which addresses Polish investors would mainly depend on the Crowdfunding model and structure adopted by such platform. • Unless any specific financial regulations apply, Crowdfunding Platforms would have to comply with general regulations on conducting economic activity in Poland • If platforms are registered in one of the EU Member States, they can take advantage of the fundamental rules of freedom of establishment and freedom to provide services specified in the Treaty on the Functioning of the European Union (TFEU). • They have a right to offer services and target the Polish market. • However, should the foreign Crowdfunding Platform operate in a model that falls into the Polish financial regulatory framework (such as offering financial instruments to the public), the relevant regulations will apply. → if such Crowdfunding Platform has a relevant MiFID licence in

	another EU Member State, it can passport the licence to Poland.
Outbound	• In principle, the Polish regulatory law will not be applicable in this case. → This is because the Polish Crowdfunding Platform exclusively addresses foreign investors. Therefore, the Polish Crowdfunding Platform will have to abide by the licence requirements in the jurisdictions being addressed. • The Polish Public Offerings, Terms and Conditions for Introducing Financial Instruments into Organised Trade, and the Public Companies Act dated 29 July 2005 establish a prospectus requirement only in cases where the financial products are offered in Poland.
Impact of EU regulation	
Prospectus regulations	The Public Offerings, Terms and Conditions for Introducing Financial Instruments into Organised Trade, and the Public Companies Act dated 29 July 2005, which transposed EU law into Polish legal system.
AIFM Directive	• The AIFM Directive and the implementing Investment Funds Act of 2004 (as amended in 2016) with four executive regulations implementing the AIFM Directive • The laws implementing the AIFM Directive also take into account Polish Financial Authority Supervision's control over the investors and funds. → on the basis of the AIFM Directive Crowdfunding Platforms (especially those offering equity model) could be registered as a fund.
MiFID/MiFID II	• Some equity-based Crowdfunding Platforms follow the regulations set down under the Polish implementation of MiFID. Many Crowdfunding campaigns fall within the regulatory exceptions. • In the alternative model, where limited liability companies are used, MiFID does not apply (shares in LLCs are not deemed financial instruments). • MiFID II is in the process of implementation to the Polish legal system.
PSD/PSD II	• The Payment Services Directive was implemented by the Payment Services Act in 2009 ("PSA"). → many Crowdfunding Platforms in Poland rely on either regulated Payment Services Providers or structure their business in a way to be covered by one of exemptions in the PSA, in particular the so called commercial agent exemption. • Due to the fact that PSD2 significantly narrows the above-mentioned exception, it might be expected that some of the Crowdfunding Platforms in Poland may be brought under the payment services regulatory regime.

C. Disclosures & safeguards

No professional industry association exists. To foster the professional and transparent development of the local market, it might be advisable for a national Crowdfunding association to establish a Code of Conduct, with which platforms should be obliged to comply.

Examples exist in a number of countries, such as the UK, France, Germany or the Netherlands. Alternatively, the open adoption of the European Crowdfunding Network Code of Conduct and its Charter of Crowdfunders' Rights by market players could help in markets without a critical mass of platforms.

Platforms themselves, to the extent that they can serve as marketplaces, have the potential to aid regulatory developments through early self-regulation and transparency. But this will require credible and enforceable quality and transparency standards as well as level playing fields.

Any such initiative should aim to cover key performance indicators for the industry, conflict of interest rules and platforms remuneration. However, regulation will always play the main role in establishing and ensuring a functioning market with an adequate level of safeguards and disclosures.

D. Support policies

Currently, matching funds, state aid or tax benefits for alternative finance are not available in Poland.

Portugal

Overview

In Portugal, Crowdfunding for Rewards-based projects started in 2011. It is one of the few countries which regulated Crowdfunding as early as 2015. The industry is expected to grow further once the concept of Crowdfunding is more accepted by the general public.

A. Role of alternative finance

Market size

There is limited data available on the Crowdfunding volumes. Comparing the alternative finance volume per capita with the GDP per capita, Portugal is below the best-fit line. This indicates the underdeveloped status of Crowdfunding compared to many other European countries.[128]

Total Crowdfunding Platforms

There were 3 operating platforms in the country in 2016: [129]
- Ppl.com (reward-based), launched in 2011, the only platform providing reward-based Crowdfunding.
- Raize.pt started its activities as a P2P business lending platform in 2014.
- NovoBancoCrowdfunding.pt (donation) was launched in 2012 by Novo Banco Bank.

B. Regulatory context

Country / Summary	Portugal
Recent developments in Crowdfunding regulation	• Approval of specific legal regime applicable to Crowdfunding Platforms • Approval of specific regulation from CMVM that is not yet in force due to the lack of a sanctions regime
Current Crowdfunding regulation	
General regulation	• Crowdfunding Platforms operating under the Donation and Rewards Model (including pre-sales model) are subject to giving notice to the DGC prior to launching. • Crowdfunding Platforms in Portugal that offer services under Lending and Equity Models must be registered with the Securities Exchange Commission (CMVM) and be subject to supervision by this entity.

[128] Crowdfunding Poland (link)
[129] According to desk research of European Crowdfunding Network, referencing the state of the market in 2016, (link)

	• **License requirements** (two of the following financial requirements): Minimum share capital of EUR 50,000.00 totally paid up at the incorporation date; Civil liability insurance or any equivalent guarantee to cover liability arising from professional negligence, that covers a minimum amount of EUR 1,000,000.00/per casualty and, globally, EUR 1,500,000.00 for all the casualties occurred during one year; • **Investment Limits:** EUR 3,000.00 per offer; and EUR 10,000.00 of total Crowdfunding investment/per year These limits are not applicable to: (i) companies, (ii) to individuals with an income of EUR 70,000.00 or more or to qualified investors (according to article 30th of the Portuguese Securities Code). • Information requirements towards CMVM and towards the investors to enable an informed decision-making. • The Regulation also establishes a maximum limit for fund raising through Crowdfunding per each 12 months (by a single offer or by the total of offers within the European Union: EUR 1,000,000.00 (one million euros).
Prospectus requirement	• Description of the activity or product to be funded and the purpose of the funds to be raised; • Price of each unit to be subscribed or method to calculate such price; • Other information requirements to be established by Regulation of CMVM.
AIFMD regulation	• A start-up company such as those that typically benefit from Crowdfunding does not constitute an Alternative Investment Fund.
Payment service regulation	• For the purpose of making the investment, the regulation also requires the intervention of an entity duly authorised to provide payment services.
Further possible requirements	• Portuguese Money Laundering Regime
Regulatory barriers	
Inbound	• Foreign Crowdfunding Platforms must comply with regulatory license, information and compliance requirements. • The Project company that intends to collect funds through a Crowdfunding Platform in Portugal must also comply with the legal regime, mainly the compliance and information requirement for investors' protection.
Outbound	• Crowdfunding Platforms incorporated and governed by Portuguese law must comply with licence, compliance and

	information requirements of Portuguese Law and also with regulatory requirements of the investor's jurisdiction.
Impact of EU regulation	
Prospectus regulations	• Most Portuguese start-ups are "sociedades por quotas" whose shares are not securities, therefore the Portuguese Securities Code and its prospectus regulation shall not be applicable.
AIFM Directive	• AIFM Directive has a small impact in Crowdfunding as the start-up companies that typically benefit from Crowdfunding do not constitute Alternative Investment Funds (it is a company or a project that seeks investment for its general activity through the Crowdfunding Platform).
MiFID/MiFID II	• The new Portuguese legal regime for Crowdfunding establishes an exception of Crowdfunding from most regulatory requirements as well as simplest requirements for a local Crowdfunding license.
PSD/PSD II	• The new legal framework for Crowdfunding does not prejudice the application and the supervision of Banco the Portugal whenever required. • In fact, the Crowdfunding legal regime and its regulation establish the need for the intervention of an entity duly authorised to provide payment services for the purpose of making the investment.

C. Disclosures & safeguards

No professional industry association exists. To foster the professional and transparent development of the local market, it might be advisable for a national Crowdfunding association to establish a Code of Conduct with which platforms should be obliged to comply. Examples exist in a number of countries, such as the UK, France, Germany or the Netherlands. Alternatively, the open adoption of the European Crowdfunding Network Code of Conduct and its Charter of Crowdfunders' Rights by market players could help in markets without a critical mass of platforms.

Platforms themselves, to the extent that they can serve as marketplaces, have the potential to aid regulatory developments through early self-regulation and transparency. But this will require credible and enforceable quality and transparency standards as well as level playing fields. Any such initiative should aim to cover key performance indicators for the industry, conflict of interest rules and platforms remuneration. However, regulation will always play the main role in establishing and ensuring a functioning market with an adequate level of safeguards and disclosures.

D. Support policies

Overview

The Portuguese government classifies Crowdfunding as collaborative funding. Collaborative funding is a type of financing for entities, or their activities and projects, through an online platform where they carry out a fundraising campaign directed to individual investors.
The Portuguese government distinguishes the following forms of collaborative funding: collaborative financing through a donation, collaborative financing with an associated reward, collaborative equity financing and collaborative loan financing.[130]

Market Supervision

Crowdfunding in Portugal is monitored by the CMVM (Securities Market Commission).[131] Every platform needs to be registered at the DGC (General Consumer Office).[132]

E. Additional insights

Cooperation with banks - NOVO BANCO launched a Donation-based Crowdfunding Platform in late 2012, which is still active today. Banks have demonstrated a modest interest in the alternative finance industry and have done little so far to either fight it or collaborate with it.[133]

Romania

Overview

In Romania, Crowdfunding is rarely developed. Its first Crowdfunding Platform was launched in 2014, and only a dozen small projects have eventually been financed and finalised.

[130] Crowdfunding in sustainable innovation - Insights from and for Portugal. (link)
[131] CMVM (Securities Market Commission) (link)
[132] DGC (General Consumer Office) (link)
[133] Expert opinion of Yoann Nesme in CrowdfundingHub - The Current State of Crowdfunding in Portugal (link)

A. Role of alternative finance

Market size

There are no reliable numbers available with regard to Crowdfunding volume in Romania.

The review of Crowdfunding regulations performed by The European Crowdfunding Network (ECN) at the end of 2014, indicated that in 2014, Multifinantare Project financed one project in the artistic sector for EUR 1,500. Other projects are still pending, such as a project regarding a blood substitute amounting to EUR 2,000. Since the end of 2013, Crestem Idei managed to finance another 11 projects and obtained more than EUR 20,000.[134]

Trend

There is an overall positive trend in the area of Central and Eastern Europe. No specific data about Romania is available.

Figure: Crowdfunding activity in Romania from 2016
Source: TAB

Total Crowdfunding Platforms

Currently, there are approximately 8 active Crowdfunding Platforms in the country: Crestemidei.ro, Multifinantare.ro, PotSiEu.ro, We-are-here.ro, Kazuu.ro, Bursabinelui.ro, Crowdfunding oferit de Universitatea Babeş-Bolyai – Cluj-Napoca, and Sprijina.ro.[135]

[134] ECN Review of Crowdfunding Regulation. Interpretations of existing regulation concerning Crowdfunding in Europe, N. America and Israel (link)
[135] According to desk research of European Crowdfunding Network, referencing the state of the market in 2016, (link)

Crowdfunding models

Equity-based Crowdfunding	There is only one Crowdfunding Platform (Multifi nantare) and it mixes both equity and rewards Crowdfunding.
Lending Crowdfunding	P2P business lending: EUR 1m.

B. Regulatory context

Country / Summary	Romania
Recent developments in Crowdfunding regulation	• a draft law regarding participatory financing development is in legislative procedure before the Romanian Chamber of Deputies; • currently there is no specific regulation in force with regards to Crowdfunding;
Current/planned Crowdfunding regulation	
General regulation	Directive 2011/61/EU regarding alternative investment fund managers has been transposed into Romanian legislation by adopting Law no. 74/2015 on managers of alternative investment funds;
Prospectus requirement	• Public offering of securities is subject to the approval of a prospectus by the ASF with several exceptions. • Trading shares of a company on regulated markets is subject to the approval of a prospectus by the ASF. This rule shall apply to the Equity Model.
AIFMD regulation	• The typical operator of a Crowdfunding Platform does not qualify as an AIF; • The AIFM law could apply in cases where the structure operated by the platform or the project company falls within the legal concept of an AIF;
Payment service regulation	Providers of payment services need an authorisation by the NBR. Authorisation by the NBR is not applicable to entities licenced as deposit-taking banks, e-money issuers or IFNs.
Consumer credit regulation	• In Romania, no Crowdfunding Platform currently offers financing pursuant to the lending regulation; in principle, any financial institution which finances its clients for development of an activity/business by public issuance of stocks/bonds falls under the requirement of the Banking Law or the NFI Law; • In order to avoid breaching the requirements on lending

	activity, some Crowdfunding organisations act as intermediaries between the initiator of the project and the banks and/or NFI.
Further possible requirements	• Regulations regarding marketing and distance selling; • Anti-money laundering regulations; • Data protection regulations.
Regulatory barriers	
Inbound	**Foreign Crowdfunding Platform addressing Romanian investors** • Crowdfunding Platform: no licence applicable under Romanian law; if the platform benefits from a MiFID licence in its home Member State there is no need to apply for a similar licence in Romania (however a notification procedure is required); • Company/project: Romanian prospectus regulation applies, if required by law; however, an exception is provided in cases where the foreign platform complies with prospectus regulations in its home Member State (the notification procedure will be necessary); **Foreign Crowdfunding Platform addressing Romanian companies/projects** • Crowdfunding Platform: there is no specific Crowdfunding licence required; • Company/project: Capital Markets Law is applicable for any operations carried out on Romanian territory;
Outbound	**Romanian Crowdfunding Platform addressing foreign investors** • Crowdfunding Platform: no licence applicable under Romanian law in respect of Crowdfunding; however Romanian regulatory law will apply as the platform is a Romanian resident; • Company/project: Romanian prospectus regulation applies, if required by law for operations carried out on Romanian territory. **Romanian Crowdfunding Platform addressing foreign companies/projects** • Crowdfunding Platform: there is no specific Crowdfunding licence required; Romanian legislation applies to the platform; • Company/project: Capital Markets Law is applicable for any operations carried out on Romanian territory.
Impact of EU legislation	
Prospectus regulations	MiFID has been transposed into Romanian law with the adoption of the Capital Markets Law; however, the impact of the European

	legislation is not significant for most start-ups.
AIFM Directive	The AIFM Directive, transposed into Romanian law, could impact on the operator of a Crowdfunding Platform only in cases where it is structured as an AIF or as an AIF manager.
MiFID/MiFID II	MiFID II has not yet been implemented in Romanian legislation; MiFID, implemented with the adoption of the Capital Markets law, can have an impact where platforms organised as stock companies comply with the specific conditions in this respect.
PSD /PSD II	PSD II has not yet been implemented in Romanian legislation. PSD could have in impact in cases where the investors pay their investments amounts directly to the operator of the Crowdfunding Platform.

C. Disclosures & safeguards

No professional industry association exists. To foster the professional and transparent development of the local market, it might be advisable for a national Crowdfunding association to establish a Code of Conduct with which platforms should be obliged to comply. Examples exist in a number of countries, such as the UK, France, Germany or the Netherlands. Alternatively, the open adoption of the European Crowdfunding Network Code of Conduct and its Charter of Crowdfunders' Rights by market players could help in markets without acritical mass of platforms.

Platforms themselves, to the extent that they can serve as marketplaces, have the potential to aid regulatory developments through early self-regulation and transparency. But this will require credible and enforceable quality and transparency standards as well as level playing fields. Any such initiative should aim to cover key performance indicators for the industry, conflict of interest rules and platforms remuneration. However, regulation will always play the main role in establishing and ensuring a functioning market with an adequate level of safeguards and disclosures.

D. Support policies

Overview

A draft proposal of the Law for Participatory Financing Development ("Crowdfunding Project") was launched for public discussion, by the Department for SME Business Environment and Tourism in September 2014. Since then, there has been no further development.[136]

Market Supervision

Ministerul Finanțelor Publice - Ministry of Public Finance.[137]

Crowdfunding models

[136] Osborne Clarke Germany (2016): Review of Crowdfunding Regulation & Market Developments. In: CrowdFundRES - Unleashing the potential of Crowdfunding for Financing Renewable Energy Projects. Deliverable 3.1 (PU) (link)
[137] Ministerul Finanțelor Publice (link)

Crowdfunding guidelines for entrepreneurs/investors	The Financial Education centre for capital market investors (ASF-SIIF) has published, on its website, a short guide to what Crowdfunding is and the potential risks.

E. Additional insights

Lack of business experience and knowledge, shortage of capital and low incomes are some of the barriers for enabling Crowdfunding projects in Romania. The lack of confidence increases reluctance to participate on such platforms. In the 1990's several institutional attempts to build on some type of financial mechanisms ended in complete failure, which led to many people to lose lots of money. This brought on a significant backtrack and mistrust from the general public to any sort of financial breakthroughs.[138]

Slovakia

Overview

The Slovakian Crowdfunding industry is a newcomer in Europe. To date, most of the projects from Slovakia have been hosted on international Crowdfunding Platforms. Some local Crowdfunding Platforms started their business in 2015. It has been challenging for them to operate due to the difficult policy and legislative environment.

[138] Cristian Moisoiu, Kaisa Matschoss, Petteri Repo, Anita Tregner-Mlinaric (2015): Crowdfunding in sustainable innovation - Insights from and for Romania (link)

A. Role of alternative finance

Market size

There are currently no numbers available for Crowdfunding volumes in Slovakia.
Crowdfunding initiatives in Slovakia can be grouped under two main, partially overlapping, types: platforms that seek support for philanthropic, non-commercial activities, and those focused more on commercial projects, including technology innovations.[139]

Trend

There is an overall positive trend in the area of central and eastern Europe. No specific data about Slovakia is available.

Total Crowdfunding Platforms

The number of Crowdfunding Platforms in Slovakia is limited, there are approximately 2-4 local platforms and others which are all international.
- 3 platforms dominate philanthropic fundraising, or support for volunteer activities.
- 4 platforms service mostly for-profit projects (one of them is currently not operational).[140]

Local examples of platforms include Crowdberry and Dobrakrajina.

Crowdfunding models

Equity-based Crowdfunding	There are at least 2 platforms offering equity Crowdfunding projects.
Lending Crowdfunding	No data available

[139] Cristian Moisoiu, Kaisa Matschoss, Petteri Repo, Anita Tregner-Mlinaric (2015): Crowdfunding in sustainable innovation - Insights from and for Slovakia (link)
[140] Ibid.

B. Regulatory context

Country / Summary	Slovakia
Recent developments in Crowdfunding regulation	• New corporate legal form – simple joint stock company; • Number of new Crowdfunding Platforms in Slovakia.
Current/planned Crowdfunding regulation	
General regulation	• The Securities and Investment Services Act – licence and prospectus requirements. • The Collective Investment Act – licence and sale prospectus requirements – possible exception of financing regular business activity with half of the funds being collected from own resources;
Prospectus requirement	• Prospectus requirement for offering of securities or investment products; • General threshold: EUR 100,000 per issuer within 12 months; • No explicit exemption from the requirement for a prospectus for Crowdfunding.
AIFMD regulation	• Depending on the particulars, both project companies and operating companies may constitute an AIF; • General exemption from AIFM for financing of general business activities provided half of the funds collected are from own resources; • General exemption for intra-group financing and financing of general business activities of municipalities.
Payment service regulation	• Licence required for money remittance and payment transactions, however, a number of exemptions might be applicable; • Cooperation with a payment institution or bank removes the risk of applicability of the Payment Services Act.
Further possible requirements	• Act No. 162/2014 Coll. on public collections, as amended • Act No. 455/1991 Coll. on trade licencing, as amended; • Act No. 297/2008 Coll. on protection against legalisation of crime proceeds and against financing of terrorism, as amended (AML regulation); • Act No. 129/2010 Coll. on provision of consumer credit, as amended;

	• Act No. 483/2001 Coll. on banks, as amended; • Act No. 122/2013 Coll. on protection of personal data, as amended.
Regulatory barriers	
Inbound	**Foreign Crowdfunding Platform addressing Slovak investors** • Slovak regulatory law is applicable since Slovak investors are approached in Slovakia. • Three licence options are available for foreign Crowdfunding Platforms: Full Licence, Branch Licence or EU Passport. • The company/project has prospectus obligations which can be met through the approval of the prospectus by the NBS, by approval of the prospectus in its home Member State or by approval of the prospectus outside the EU with subsequent approval by the NBS subject to certain equivalency provisions. **Foreign Crowdfunding Platform addressing Slovak companies/projects** • Slovak regulatory law may be applicable depending on whether the Slovak market is approached (Slovak language, physical presence, marketing focus on Slovakia). • Three licence options are available for foreign Crowdfunding Platforms: Full Licence, Branch Licence or EU Passport. • The company/project has prospectus obligations which can be met through the approval of the prospectus by the NBS, by approval of the prospectus in its home Member State or by approval of the prospectus outside the EU with subsequent approval by the NBS subject to certain equivalency provisions.
Outbound	**Slovak Crowdfunding Platform addressing investors in other EU country** • Primarily governed by the laws of that EU country. • Slovak regulatory law may be triggered if there is a sufficient link to the Slovak market in addition to links with other EU markets. If that is the case, a Full Licence needs to be obtained in Slovakia. • If the Slovak Crowdfunding Platform is already licenced in Slovakia, then – according to the Slovak law – it can either rely on an EU Passport or establish a branch in that EU country subject to the applicable laws of that country. • The company/project has prospectus obligations which can be met through the approval of the prospectus by the NBS, by approval of the prospectus in its home Member State or by approval of the prospectus outside the EU with subsequent approval by the NBS subject to certain

	equivalency provisions. **Slovak Crowdfunding Platform addressing company/projects in other EU countries** • Not explicitly recognised under the Slovak law. • General test of whether Slovak law applies (link to Slovak market). • The company/project has prospectus obligations which can be met through the approval of the prospectus by the NBS, by approval of the prospectus in its home Member State or by approval of the prospectus outside the EU with subsequent approval by the NBS subject to certain equivalency provisions.
Impact of EU regulation	
Prospectus regulation	• Since there are only two Equity-based Crowdfunding Platforms in Slovakia (to the best of our knowledge), EU regulations have no great impact on Crowdfunding in Slovakia. • However, for these two Equity-based Crowdfunding Platforms, EU regulations (as implemented into Slovak law) pose a major regulatory barrier to their operation and/or establishment.
AIFM Directive	The impact of the AIFM Directive as implemented into Slovak law is not yet fully clear since the main regulator – the NBS – has not determined its standpoint on enforcement with regard to Crowdfunding Platforms.
MiFID/MiFID II	EU Passport possibility is the main impact.
PSD/PSD II	• Depending on its cash flow model, licence requirements for money remittance services may be triggered. • Certain licence exemptions are available.

C. Disclosures & safeguards

No professional industry association exists. To foster the professional and transparent development of the local market, it might be advisable for a national Crowdfunding association to establish a Code of Conduct with which platforms should be obliged to comply. Examples exist in a number of countries, such as the UK, France, Germany or the Netherlands. Alternatively, the open adoption of the European Crowdfunding Network Code of Conduct and its Charter of Crowdfunders' Rights by market players could help in markets without critical mass of platforms.

Platforms themselves, to the extent that they can serve as marketplaces, have the potential to aid regulatory developments through early self-regulation and transparency. But this will require credible and enforceable quality and transparency standards as well as level playing fields. Any such initiative should aim to cover key performance indicators for the industry, conflict of interest rules and platforms

remuneration. However, regulation will always play the main role in establishing and ensuring a functioning market with an adequate level of safeguards and disclosures.

D. Support policies

Overview

For donation and Rewards-based Crowdfunding, the new Public Collections Act – an easy regulatory framework for Crowdfunding with publicly beneficial purposes, is a good initiative. However, with regard to investment, no specific public activities supporting the development of Crowdfunding as an alternative tool for finance have been implemented.

E. Additional insights

Policy measures

While innovative projects in Slovakia could - and often do - benefit from well-established Crowdfunding Platforms in other countries, public policies for innovation and/or support of start-ups could also target this issue and create better conditions for existing, or potentially new Crowdfunding initiatives. For example, the Slovak innovation ecosystem could benefit from specific legal instruments and policies inspired by Austria (alternative financing), or Portugal (collaborative funding), described in respective Policy Briefs.[141]

[141] Ibid.

Slovenia

Overview

In 2015, the first Crowdfunding Platform was launched in Slovenia. Crowdfunding is thus a completely new industry for this small country. The year 2016 will be a trend indicator.

A. Role of alternative finance

Market size

The Crowdfunding volume in 2015 for Slovenia was EUR 0.8m.[142] The majority of Crowdfunding projects is hosted by platforms from other countries. The first Crowdfunding Platforms started operating in Slovenia at the end of 2015.

Trend

There is an overall positive trend in the area of central and eastern Europe. But there is no specific data available about Slovenia.

Total Crowdfunding Platforms

The first Crowdfunding Platforms started in Slovenia at the end of 2015.
Arifund and Conda.si are two existing platforms.

Crowdfunding models

Equity-based Crowdfunding	In 2016, a platform has started crowd investing in Slovenia.
Lending Crowdfunding	No data available

B. Regulatory context

Country / Summary	Slovenia
Recent developments in Crowdfunding regulation	• AIFMD was implemented through the Act on Alternative Investment Fund Managers (*Zakon o upraviteljih alternativnih investicijskih skladov*), which entered into force on 23 May 2015, and an amendment to the Investment Trusts and Management Companies Act (*Zakon o investicijskih skladih in družbah za upravljanje*), which entered into force on 19 May 2015.
Current/planned Crowdfunding regulation	

[142] Zhang, B. et al (2016): Sustaining Momentum. The 2nd European Alternative Finance Industry Report. Cambridge University (link)

General regulation	• Financial services and transactions related to offerings of securities provided by a Crowdfunding Platform trigger a requirement for a licence by the Securities Market Agency • Intermediary services with respect to consumer credit and other loan agreements require a licence by the Bank of Slovenia or the Securities Market Agency • Donations-based and Rewards-based Crowdfunding Models are, among others, likely to have implications under tax, game of chance and consumer protection laws
Prospectus requirement	• Prospectus requirement for offer of **securities** • Threshold: **EUR 100,000** in the European Union within 12 months • Other most relevant exceptions: (i) offering of securities to sophisticated investors only, or (ii) offering of securities to up to 150 natural or legal persons, who are not sophisticated investors • Simplified prospectus possible for offerings of securities below or equal to EUR 5m in the European Union within 12 months
AIFMD regulation	• AIFMD has not yet been implemented in Slovenia • AIFs are presently regulated by the Investment Trusts and Management Companies Act and the Venture Capital Companies Act • A Crowdfunding Platform might fall under the AIF regulation and a future regulation implementing the AIFMD in Slovenia Intermediary services with respect to consumer credit and other loan agreements would require a licence by the Bank of Slovenia or the Securities Market Agency
Payment service regulation	• Remittance of cash payments or transfer of funds by an intermediary between a consumer and a provider of goods and services constitutes provision of payment services, which requires a licence from the Bank of Slovenia. • A Crowdfunding Platform might rely on the "technical service provider" exemption.
Consumer credit regulation	• The Consumer Credit Act (*Zakon o potrošniških kreditih*) regulating the content and offering of consumer credit applies only to credit and loan agreements entered into with natural persons who are acting as consumers, which means acting outside of their employment or gainful activity.
Further possible requirements	• Consumer Protection Act (*Zakon o varstvu potrošnikov*) • Consumer Protection against Unfair Commercial Practices Act (*Zakon o varstvu potrošnikov pred nepoštenimi poslovnimi praksami*) • Prevention of Money Laundering and Terrorist Financing Act (*Zakon o preprečevanju pranja denarja in financiranja*

	terorizma) • Book Entry Securities Act (*Zakon o nematerializiranih vrednostnih papirjih)* • Personal Data Protection Act (*Zakon o varstvu osebnih podatkov*) • Investment Trusts and Management Companies Act (*Zakon o investicijskih skladih in družbah za upravljanje*) • Venture Capital Companies Act (*Zakon o družbah tveganega kapitala*) • Supportive Environment for Entrepreneurship Act (*Zakon o podpornem okolju za podjetništvo*) • Humanitarian Agencies Act (*Zakon o humanitarnih organizacijah*) • Code of Obligations (*Obligacijski Zakonik*) • Prevention of Restriction of Competition Act (*Zakon o preprečevanju omejevanja konkurence*)
Regulatory barriers for Crowdfunding crossing borders	
General	• The registered offices of the Crowdfunding Platform would generally determine the governing law for the contracts for the provision of its services to projects and investors, if the parties did not expressly agree on the governing law. • The same requirements and conclusions of Slovenian law discussed above would also apply to Crowdfunding crossing borders regardless of whether the Slovenian Crowdfunding Platform was addressing investors in Slovenia or in another EU country.
Inbound	• The Financial Instruments Market Act (*Zakon o trgu finančnih instrumentov*) and the Banking Act (*Zakon o bančništvu*) apply. • A Crowdfunding Platform based in an EU Member State may provide investment services and activities in Slovenia either through a branch or directly. • Notification and "passporting" procedures apply. • The Crowdfunding Platform would be liable with all its assets for the liabilities arising from the business conduct of its local branches in Slovenia. • The prospectus requirements would apply in cases where securities (debt or equity) were offered in Slovenia, unless an exception detailed above applies. • A prospectus may be approved by the Securities Market Agency or it may be "passported" into Slovenia
Outbound	• The Financial Instruments Market Act (*Zakon o trgu finančnih instrumentov*) and the Banking Act (*Zakon o bančništvu*) apply. • Notification and "passporting" procedures apply.

	• The Securities Market Agency may refuse to submit the respective notification to the supervisory authority of another EU Member State if reasonable doubt exists as to whether the organisation and management of the branch or the platform's financial standing are adequate. • If a Crowdfunding Platform from Slovenia addressed only investors and/or only companies and projects in another EU country and the offering would not take place in Slovenia, the Slovenian prospectus regulation would not apply.
Impact of EU regulation	
Prospectus regulations	• The EU Prospectus Directive is implemented into the Slovenian rules governed under the Financial Instruments Market Act (*Zakon o trgu finančnih instrumentov*).
AIFM Directive	• The AIFMD has recently been implemented into Slovenian law, namely through the Act on alternative investment fund managers (*Zakon o upraviteljih alternativnih investicijskih skladov*) and an amendment to the Investment Trusts and Management Companies Act (*Zakon o investicijskih skladih in družbah za upravljanje*).
MiFID/MiFID II	• The MiFID II is implemented into the Slovenian rules governed under the Financial Instruments Market Act (*Zakon o trgu finančnih instrumentov*).
PSD/PSD II	• The Payment Services Directive is implemented into Slovenian legislation through the Payment Services and Systems Act (*Zakon o plačilnih storitvah in sistemih*).

C. Disclosures & safeguards

No professional industry association exists. To foster the professional and transparent development of the local market, it might be advisable for a national Crowdfunding association to establish a Code of Conduct with which platforms should be obliged to comply. Examples exist in a number of countries, such as the UK, France, Germany or the Netherlands. Alternatively, the open adoption of the European Crowdfunding Network Code of Conduct and its Charter of Crowdfunders' Rights by market players could help in markets without a critical mass of platforms.

Platforms themselves, to the extent that they can serve as marketplaces, have the potential to aid regulatory developments through early self-regulation and transparency. But this will require credible and enforceable quality and transparency standards as well as level playing fields. Any such initiative should aim to cover key performance indicators for the industry, conflict of interest rules and platforms remuneration. However, regulation will always play the main role in establishing and ensuring a functioning market with an adequate level of safeguards and disclosures.

D. Support policies

Overview

According to the CASI project policy brief for Slovenia, "changes to the current law and regulations are the first and probably the most important prerequisite for Crowdfunding in Slovenia.[143]

Market Supervision

Securities Market Agency and/or the Bank of Slovenia.[144]

E. Additional insights

Policy measures

Potential Policy Measures are indicated in the CASI policy brief for Slovenia as follows:
- Simplify the administrative procedures at all levels and in different areas (taxation, equity investments, reporting).
- Don't change the legislation and rules so often, so companies can plan their activities and internalise the processes to address them.
- Decrease taxation and make it more attractive/simple for start-up companies.

Try to reach bilateral agreements with some bigger markets (e.g. USA) to unify and simplify administrative issues to support the execution of Crowdfunding projects and initiatives.[145]

Spain

Overview

Among European countries, Spain ranks fifth in terms of total volume of the alternative financing market. The market is still young but continuously growing.

[143] Crowdfunding in sustainable innovation - Insights from and for Slovenia (link)
[144] Securities Market Agency (link) and Bank of Slovenia (link)
[145] Ibid.

A. Role of alternative finance

Market size

The Spanish online alternative finance volume amounts to EUR 50m in 2015. This is the fifth largest amongst European countries in terms of volume. Whilst this is a sizeable volume, it should be noted that when adjusted for alternative finance per capita, Spain drops from 5th to 14th place at EUR 1.08 per person.[146]

According to "Crowdfunding in Spain. Annual Report 2016", in the last two years the total amount of money raised through Crowdfunding increased from EUR 52,268,920 in 2015 to EUR 113,592,388 in 2016, which represents a growth of 116.09%, a significant increase that places Spain among the top six countries in Europe for volume of revenues raised in Crowdfunding projects.

Over a broader timeframe, this growth is even more significant, as only four years earlier, in 2013, total revenue amounted to EUR 17,100,000, representing 564.3% growth between 2013 and 2016.[147]

Trend

Spanish alternative finance platforms have grown at an average of 75% during the period 2013-15. In 2015, the Spanish online alternative finance volume grew by around 39% from EUR 36m in 2014 to EUR 50m in 2015.[148]

Trends according to "Crowdfunding in Spain. Annual report 2016":[149]

- 2017 is expected to be a great year for Crowdfunding, in that the sum raised is predicted to exceed EUR 200m, according to the growth patterns observed over the last five years.
- The Code of Good Practice is being increasingly extended and consolidated among entrepreneurs, investors, and savers in Crowdfunding in Spain. This does not mean that the Crowdfunding sector is free of problems related to delinquency, scams, and non-compliance. Investment and lending platforms certified by the Comisión Nacional Mercado de Valores (National Stock Market Commission) offer the greatest guarantees against problems of delinquency and non-compliance.
- Despite the good data, Spain has very serious challenges to face in terms of growth and consolidation of Crowdfunding practices.
- In the last year, vertical platforms have appeared as a new form of participatory financing with great potential. Vertical platforms are those platforms that focus their activity on a sector or are very localised. They can be limited to projects in the music sector, comics, books, or even for SMEs or freelancers, such as the platform coavanza.com.

[146] Zhang, B. et al (2016): Sustaining Momentum. The 2nd European Alternative Finance Industry Report. Cambridge University (link)
[147] Ángel González, Javier Ramos: Crowdfunding in Spain. Annual report 2016 (link)
[148] According to desk research of European Crowdfunding Network, referencing the state of the market in 2016, (link)
[149] Crowdfunding in Spain: Annual Report, 2016 (link)

The closer the platform is to the community; the more options promoters will have to fund projects. The trend towards the generation of vertical, thematic, sectorial, and large-scale platforms is significant. Tools like Crowdants.com, a Spanish start-up that allows you to create your own platform in a few minutes, represent a new space for diversification and innovation in Crowdfunding

Figure: Crowdfunding activity in Spain from 2014 to 2017
Source: TAB

Total Crowdfunding Platforms

77 platforms were active during the first quarter of 2016.[150]

The number of active platforms is in line with the process of diversification and professionalisation in Spanish Crowdfunding. In 2016, there were 48 active platforms, more than 2015 (43) and many more than 2013 (19).[151]

Crowdfunding models

Equity-based Crowdfunding	Equity-based Crowdfunding registered a significant decline in total volume from the previous year, decreasing by 49% from EUR 10.5m in 2014 to EUR 5.3m in 2015. Despite the year-on-year decrease, over a three-year period, Equity-based Crowdfunding created EUR 22m in total alternative finance volume for Spanish businesses and is the model ranked third

[150] According to desk research of European Crowdfunding Network, referencing the state of the market in 2016, (link)
[151] Ángel González, Javier Ramos: Crowdfunding in Spain. Annual report 2016 (link)

	over the three-year period. One possible reason for the decrease of this model in 2015 may be regulation that has forced existing firms to modify their operations or seek the additional permissions prescribed under new Crowdfunding laws.[152] Based on "Crowdfunding in Spain. Annual Report 2016", equity-based Crowdfunding represents 14% of the volume of capital managed (money raised) in 2016.[153]
Lending-based Crowdfunding[154]	Peer-to-Peer Business Lending (EUR 21.8m) and Peer-to-Peer Consumer Lending (EUR 0.5m) in 2015. Peer-to-Peer Business Lending was the prevailing model in Spain, accounting for EUR 38m in total volume between 2013-15, growing at an average of 222% per year between 2013-15. Starting from a relatively low base in 2013 (EUR 3m) the model grew by 384% between 2013-14, to EUR 14m in 2014. The model grew by an additional 59% between 2014-15, to EUR 22m. In 2015, this model accounted for roughly 44% of Spain's total alternative finance volume. Based on "Crowdfunding in Spain. Annual Report 2016", lending-based platforms (crowdlending) have the highest volume of capital managed (money raised), at 54%.
Other	Invoice Trading (EUR 7.0m) and Real Estate Crowdfunding (EUR 2.9m). Invoice Trading accounted for EUR 7m in alternative finance volume. This model saw the greatest year-on-year increase, growing at over 1000% from a very small EUR 630,000 in 2014. A continued growth of this model is anticipated through 2016.[155] Based on "Crowdfunding in Spain. Annual

[152] Zhang, B. et al (2016): Sustaining Momentum. The 2nd European Alternative Finance Industry Report. Cambridge University (link)
[153] Ángel González, Javier Ramos: Crowdfunding in Spain. Annual report 2016 (link)
[154] Zhang, B. et al (2016): Sustaining Momentum. The 2nd European Alternative Finance Industry Report. Cambridge University (link)

[155] Ibid.

	Report 2016", real estate Crowdfunding represents 17% of the total capital raised on Crowdfunding Platforms in 2016.

B. Regulatory context

Country / Summary	Spain
Recent developments in Crowdfunding regulation	• There are different investing models in Spain: Equity-based, Lending-based and Donations or Rewards-based models. • Crowdfunding Platforms operating the Equity-based model and the Lending-based model are regulated for the first time under the Promotion of Corporate Finance Act 5/2015 of 27 April 2015.
Current Crowdfunding regulation	
General regulation	• CNMV authorisation required for Equity-based and Lending-based Models. • Donations-based and Rewards-based Models are not subject to the LFFE and therefore, no licence is required. • The LFFE points out the financial and general requirements for an entity to obtain authorisation as a Crowdfunding Platform. • No exemptions from the authorisation requirement are provided by the LFFE.
Prospectus requirement	• The publication of a prospectus is not mandatory. • Crowdfunding Platforms shall include background information for the client on their homepage.
AIFMD-regulation	• Crowdfunding Platforms are not considered to be managers of AIFs.
Payment service regulation	• If platforms wish to receive funds in order to pay on behalf of investors or promoters, authorisation from the Ministry for the Economy and Competitiveness is required.
Further possible requirements	• Consumer Contracting Loans or Mortgage and Brokerage Services for the Conclusion of Contracts of Loan or Credit Act. • Consumer Credit Contracts Act. • General Contracting Terms Act. • Protection of Consumers and Users Act. • Money Laundering and Terrorist Financing Prevention Act.

	• Personal Data Protection Act.
Regulatory barriers	
Inbound	• Spanish regulatory law is applicable to foreign Crowdfunding Platforms that announce, promote or attract clients or potential investors and promoters in Spain, and/or address its services specifically to investors and promoters residing in Spanish territory.
Outbound	• Spanish regulatory law is not clear in respect of which is the regime applicable to a Spanish Crowdfunding Platform that enters EU markets and therefore addresses foreign investors. • However, since not only foreign investors are addressed but also Spanish promoters, a restrictive interpretation of Spanish regulatory law should be applied. Therefore, in this case, a Spanish Crowdfunding Platform could provide services in the Spanish territory as it approaches Spanish promoters; therefore, Spanish regulatory law is (likely) applicable.
Impact of EU regulation	
Prospectus regulations	• Due to the fact that equity-based Crowdfunding regulated under the LFFE is based on the issue or subscription of bonds, ordinary and preferential shares or other securities representing the capital, when it does not require a prospectus in accordance with the LMV, these EU regulations have no impact on Crowdfunding in Spain.
AIFM Directive	• Since Crowdfunding Platforms are not considered as managers of AIFs, the AIFM Directive and its implementation in Spanish law have no impact on Crowdfunding in Spain.
MiFID/MiFID II	• Since the LFFE expressly prohibits Crowdfunding Platforms from exercising activities reserved to investment firms and credit institutions under the Securities Market Act (LMV), the provisions of MiFID and MiFID II have no impact on Crowdfunding in Spain.
PSD/PSD II	• If platforms wish to receive funds in order to pay on behalf of investors or promoters, authorisation from the Ministry for the Economy and Competitiveness is required.

C. Disclosures & safeguards

Fundraisers' protection

Both funders and fundraisers are considered as customers.[156] Platforms must provide information to fundraisers about their rights and obligations in a clear and easily accessible way. Platforms must provide clear information to promoters on how they

[156] Article 60 (Act 5/2015).

receive and process the information provided by the promoters and the criteria for publication, which should be uniform and non-discriminatory.

D. Support policies

Overview

The Spanish regulator was one of the first to impose some level of legislation for alternative finance activities. In 2015, Spain saw a number of changes (both already implemented and proposed) with the goal of clarifying rules applicable to the various models, especially around investor protections and capital requirements at the alternative finance firm level. Despite continued cooperation and dialogue between Spanish firms and the regulator, only 17% viewed existing national regulation as 'adequate or appropriate', whilst 13% viewed it as 'inadequate and too relaxed'. A resounding 43% of firms perceived existing national regulation as 'too strict and excessive' which is relatively high as compared to other countries in Europe.[157]

Market Supervision

Ministerio de Economia y Competitividad; Comision Nacional del Mercado de Valores (CNMV) as surveillance authority.[158]

E. Additional insights

Best practice - Reinventando la pròtesis

Platform used: Verkami

Description: The project was aimed at designing and producing a prosthetic hand through the use of a 3D printer. It was started by university students. They decided to finance their final BA project through Crowdfunding, linking it to the personal history of an armless man, interviewed in a promotional video for the initiative. The idea to transform this project in a sort of collective effort to help this man had a decisive influence on its positive outcome.

[157] Ibid.
[158] Ministerio de Economia y Competitividad (link)

Sweden

Overview

Sweden's alternative finance market is dominated by seven local platforms. They offer a wide range of business models and nearly all types of Crowdfunding models.

A. Role of alternative finance

Market size

According to the 2nd European Alternative Finance Industry Report, Sweden raised EUR 13m through alternative financing in 2015. Between 2014 and 2015, a major platform based in Sweden went bankrupt. This led for the total alternative finance volume for 2014-15 in Nordic countries to fall by almost a fifth in that year, but it still remained well above the 2013 figure of EUR 94m.[159]

Trend

The overall market volume of the Nordic countries is expected to grow for 2016, with a number of new platforms and increased competition, after a drop of 19% in 2015 compared to the previous year.[160]

Figure: Crowdfunding activity in Sweden from 2014 to 2017
Source: TAB

Total Crowdfunding Platforms

[159] According to desk research of European Crowdfunding Network, referencing the state of the market in 2016, (link)
[160] Osborne Clarke Germany (2016): Review of Crowdfunding Regulation & Market Developments. In: CrowdFundRES - Unleashing the potential of Crowdfunding for Financing Renewable Energy Projects. Deliverable 3.1 (PU) (link)

There are currently between 10-15 active Crowdfunding Platforms in Sweden.

Some Platforms include:
- FundedByMe.com (equity-based + P2P consumer lending) was launched in 2011.
- Toborrow.se (P2P lending) started in 2013 and is available for C2B as well as B2B.
- Crowdculture.se, Takespace.se and Agreatday.tv is a donation based platform. Agreatday has recently removed the rewards-based part and operates only using donations.
- Tessin.se (2014) is a real estate Crowdfunding Platform.
- Trustbuddy.se (P2P lending) filed for bankruptcy in 2015.

Crowdfunding models

Equity-based Crowdfunding	EUR 6.5m in 2015.
Lending-based Crowdfunding	Peer-to-Peer Consumer Lending raised EUR 2.0m in 2015.
Other	EUR 0.2m of Community Shares in 2015.

B. Regulatory context

Country / Summary	Sweden
Current/planned Crowdfunding regulation	
General regulation	The government will investigate regulatory issues related with Crowdfunding (Dir. 2016:70): • outline the market for platforms used in Crowdfunding, • clarify the role, function, status, and incentive structure of the platforms from a commercial law perspective, especially with regard to lending-based Crowdfunding, • analyse which rules apply to equity-based and loan-based Crowdfunding and if these are appropriate, • analyse how Crowdfunding of private limited companies relates to the spreading and advertisement prohibition in the Companies Act and clarify if there is any obstacle that prevents private limited companies that wish to use Crowdfunding from becoming public, • propose legislative amendments necessary to promote Crowdfunding and strengthen legal protection for investors and other involved parties, • analyse whether the scope of current commercial legislation can be amended or, if a new regulation for Crowdfunding should be adopted, and, if necessary, elaborate the necessary legislative proposals, and • analyse the need for sanctions and, if necessary,

	submit legislative proposals that also include sanctions

MiFID and Prospectus requirement	**MiFID-licence**
	• Transferable securities are defined in the Securities Market Act as securities, with the exception of instruments of payment, which are traded on the capital market, such as:
	  • shares in companies and comparable ownership rights in other types of undertakings, and depositary receipts in respect of shares;
	  • bonds and other forms of debt instruments, including depositary receipts in respect of such securities; and
	  • other securities granting the right to transfer or acquire such transferable securities as referred to in a and b, or giving rise to a cash settlement calculated based on prices of transferable securities, currencies, interest rates or yields, commodities or other indices or measures.
	• Securities held in both public and private limited liability companies that are not traded on the capital market fall outside the scope of the directive.
	• The capital market is defined as a securities market, meaning trading on the stock exchange or other organised marketplace.
	→ No MiFID licence required for equity-based Crowdfunding platforms
	Prospectus requirement
	• The Financial Instruments Trading Act contains provisions regarding the prospectus requirements for trade with transferrable securities.
	• The prospectus shall be prepared when transferable securities are offered to the general public or admitted for trading on a regulated marketplace.
	• Transferrable securities in the Financial Instruments Trading Act have the same definition as in the Securities Market Act.
	→ No prospectus required for equity-based Crowdfunding platforms

AIFMD regulation	• The Alternative Investment Fund Managers Act regulates licence and registration requirements for AIF and AIFMs as well as the supervision of funds and managers. • The business models of the current platforms do not fall within the stipulated definition of AIFs/AIFMs. • It is possible that future Crowdfunding Platforms will fall within the scope of the AIFMD. → The AIFMD is not applicable to the current Crowdfunding

	Platforms.
Payment service regulation	The Lending-based Model is regulated under the following acts: If the platforms offer payment services or credit intermediation, the platform needs a licence or a registration under The Banking and Financing Business Act (2004:297), The Act regarding Certain Activities with Consumer Credit (2014:275) ("LVK"), and The Payment Services Act (2010:751). • If the platform's activities are not covered by any of the above acts, it may instead require registration under the Certain Financial Operations (Reporting Duty) Act (1996:1006).
Further possible Requirements	• The Companies Act (2005:551) • The Marketing Practices Act (2008:486) • Off-Premises Contract Act (2005:59) • Money Laundering and Terrorist Financing (Prevention) Act (2009:62), • Contracts Act (1915:218), • Tort Liability Act (1972:207), • Act concerning qualified electronic signatures (2000:832), • Consumer Contracts Act (1994:1512), • Consumer Sales Act (1990:932)
Regulatory barriers	
Inbound	**Foreign Crowdfunding Platform addressing Swedish investors and companies** The S-FSA applies a market-focused approach - Swedish regulatory law applies when the market is approached. *PLATFORMS* • **Licence obligations** Equity-based: MiFID-licence not required since MiFID is not applicable to equity-based Crowdfunding platforms according to Swedish law. There is no requirement for a foreign Crowdfunding Platform to have an EU passport in order to approach and offer its equity-based Crowdfunding services on the Swedish market. Lending-based: A PSD-licence is required. Foreign platforms must have a EU-passport and report cross-board activity to the competent authority of the home state in which the company is authorised. Foreign Crowdfunding Platforms can be operated either through a branch, agent or entities to which the platform's activities have been outsourced.

	• **Other financial/compliance regulations** Money Laundering and Terrorist Financing (Prevention) Act The provisions regarding basic due diligence measures and ongoing follow-up of business relationships do not apply to foreign platforms if they are domiciled within the EEA because the state has equivalent provisions regarding measures against money laundering. *COMPANY/PROJECT* • **Licence obligations** No prospectus requirement for companies that offer non-transferrable securities. • **Other regulations** The Companies Act is only applicable to Swedish limited liability companies. Foreign companies/projects will therefore not be affected by the spreading prohibition. Must comply with the information requirements under the Marketing Practices Act. Swedish anti-money laundering regulation is not applicable to EEA fund-seeking companies/projects – if not based in Sweden, they are covered by the anti-money laundering provisions in their home state.
Outbound	**Swedish Crowdfunding Platform addressing foreign investors** *PLATFORMS* • **Licence obligations** Activities in an EEA country may, after notification to the S-FSA, be operated either by employing a representative or setting up a branch in that country or conducting other cross-border activities in the country. A company that is going to change any of the conditions specified in the company's notification to the S-FSA after the cross-border activity has been initiated must notify the S-FSA in writing before the change is made. • **Other regulations** Anti-money laundering: platforms must comply with the Swedish anti-money laundry provisions in order to be compliant in other EEA countries.
Impact of EU-regulation	
MiFID and Prospectus regulations	• The different interpretations and implementations of certain elements in MiFID I and II have created quite a non-harmonised regulatory framework regarding licence requirements for Crowdfunding Platforms. • There are MiFID-licence and prospectus requirements in some countries but not in others.
PSD I/II	• High risk that Crowdfunding services will be considered

	Payment Service Providers (money remittance) if they receive and transferring funds between the parties. • Must use third party licenced Payment Service Providers. • PSD II will most likely lead to increased harmonisation.

C. Disclosures & safeguards

No professional industry association exists. To foster the professional and transparent development of the local market, it might be advisable for a national Crowdfunding association to establish a Code of Conduct with which platforms should be obliged to comply. Examples exist in a number of countries, such as the UK, France, Germany or the Netherlands. Alternatively, the open adoption of the European Crowdfunding Network Code of Conduct and its Charter of Crowdfunders' Rights by market players could help in markets without a critical mass of platforms.

Platforms themselves, to the extent that they can serve as marketplaces, have the potential to aid regulatory developments through early self-regulation and transparency. But this will require credible and enforceable quality and transparency standards as well as level playing fields. Any such initiative should aim to cover key performance indicators for the industry, conflict of interest rules and platforms remuneration. However, regulation will always play the main role in establishing and ensuring a functioning market with an adequate level of safeguards and disclosures.

D. Support policies

Overview

Crowdfunding still has no legal definition in the Swedish regulations. Its regulation is covered by different pieces of legislation, which was created a long time before the FinTech age. In the recent publication on Crowdfunding by the Swedish Financial Authorities (Finansinspektionen) it was pointed out that, under certain circumstances, it is not even clear which public authorities should supervise Crowdfunding activities.

Due to a lack of regulation of equity-based Crowdfunding for private limited liability companies on platforms without MiFID, obtaining a license is very complex. The type of Swedish Private Limited Liability Company called a Privat Aktiebolag is one of the most popular types of SME company for legal entities in Sweden. Privat AB companies cannot advertise their desire to sell shares to the public and cannot take in more than 200 new shareholders in one share issue.

For potential investors to view financial information, business plans or financial forecast of a Privat AB during an Equity-based Crowdfunding campaign on a Swedish platform without a MiFID license, the platform requires the user to become an "exclusive member" even when signing up through social media accounts. After logging in, the "exclusive member" has full access to the information provided by the company. The platform does not advertise any offerings from Privat AB companies, it provides information about the issue that the project seeks to fund. (Being informed about a share issue process is not considered advertisement.)

One platform, for example, blocks the share issue process once the 200-investor limit is reached. If the fundraising company (Privat AB) would like to continue to raise funding, its board has to decide to initiate a new share issue.[161]

Market Supervision

Swedish Financial Authorities (Finansinspektionen).[162]

E. Additional insights

Policy measures

Policy measures that should be initiated:
- Legislate any MiFID or prospectus requirements.
- Raise the limit for a prospectus to be required from EUR 2.5m to EUR 5m.
- Harmonise the Swedish Payment Services Act.

Others

Close cooperation is expected between Swedish Crowdfunding Platforms and banks in the next 18 months. Up to now, Swedish banks have expressed something of a "love-hate" relationship with platform operators. The banks in Sweden are aware of the changes caused by FinTech and Crowdfunding in particular, but have still decided not to follow other traditional financial institutions in the UK or the USA, which already cooperate with platforms and have done for many years. [163]

"In 2016, the Crowdfunding industry in Sweden should continue to grow in excess of the European average. Despite very impressive growth rates on paper, all the Swedish Crowdfunding Platforms combined will not generate more loans or provide more equity to Swedish companies in a year than a big Swedish bank pays out on loans during a business week" was the statement from one Swedish bank executive during a personal interview. The question that arises from this is how big does Crowdfunding have to be to partner-up with a Swedish bank?
Employees of Crowdfunding Platforms said that banks in Sweden use the "low-volume-argument" for delaying cooperation with Crowdfunding Platforms. The more pressing issue is the lack of transparent and proportionate legislation adapted to a digital industry. Even the Swedish Financial Authority states that who is responsible for supervision is unclear in Sweden, so it is hard to ensure that banks will take compliance risks."[164]

[161] Expert opinion of Michal Gromek CrowdfundingHub - The Current State of Crowdfunding in Sweden (link)
[162] Swedish Financial Authorities (link)
[163] Osborne Clarke Germany (2016): Review of Crowdfunding Regulation & Market Developments. In: CrowdFundRES - Unleashing the potential of Crowdfunding for Financing Renewable Energy Projects. Deliverable 3.1 (PU) (link)
[164] Expert opinion of Michal Gromek CrowdfundingHub - The Current State of Crowdfunding in Sweden (link)

United Kingdom

Overview

The United Kingdom dominates the Crowdfunding landscape in Europe in terms of market volume per capita. The country's overall market share in Europe reached 81% with EUR 4.412m in 2015.

A. Role of alternative finance

Market size

1.09m people invested, donated or lent via online alternative finance platforms in the UK.
254,721 individuals, projects, not-for-profits and businesses raised finance via online alternative finance models.[165]

Trend

Donation-based Crowdfunding grew by 507% from GBP 2m in 2014 to GBP 12m in 2015. Equity-based Crowdfunding is the second fastest growing sector - up by 295% from GBP 84m raised in 2014 to GBP 332m (including real estate Crowdfunding) in 2015.[166]

Figure: Crowdfunding activity in UK from 2014 to 2017
Source: TAB

[165] Zhang, B. et al (2016): Sustaining Momentum. The 2nd European Alternative Finance Industry Report. Cambridge University (link)
[166] Ibid.

Total Crowdfunding Platforms

In terms of the trends for platforms in the UK, the regulatory environment appears to have begun to act as a barrier to entry for new platforms as the cost of compliance rises and the number of new platforms declined for first time in 2015.

Crowdfunding models

Equity-based Crowdfunding	Equity-based Crowdfunding is one of the fastest growing models, up by 295%, to GBP 332m raised in 2015, compared to GBP 84m in 2014. A sizeable part, GBP 87m of the total Equity-based Crowdfunding volume, is from real estate Crowdfunding, wherein a syndicate of individuals receive a legal share of a property, typically through equity into a registered security in a special purpose vehicle (SPV) that is operated by the online platform.[167]
Lending-based Crowdfunding	Peer-to-Peer Business Lending remains the largest model by volume in the UK online alternative finance market. In total, nearly GBP 1.49bn was lent to SMEs in the UK. This represents a 99% year-on-year growth rate and 194% average growth rate between 2013-2015. Peer-to-Peer Consumer Lending reached GBP 909m in 2015, compared with GBP 547m in 2014. With a 66% year-on-year growth rate and a 78% average growth rate for the period 2013-2015, the Peer-to-Peer Consumer Lending sector is growing fast and continues to provide efficient consumer credit to UK borrowers.
Other	In 2015, community shares reached GBP 61m with a 79% year-on-year growth rate, whilst pension-led funding was almost flat with GBP 23m for the year. Debt-based Securities, which allow investors to invest in both short-term and long-term renewable energy initiatives, achieved a very respectable GBP 6.2m with a 52% three-year average growth rate.[168]

[167] Ibid.
[168] According to desk research of European Crowdfunding Network, referencing the state of the market in 2016, (link)

B. Regulatory context

Country / Summary	United Kingdom
Recent developments in Crowdfunding regulation	• The FCA is currently in the process of concluding a post-implementation review of its Crowdfunding rules which commenced in July 2016. The interim report published at the end of 2016 focused principally on loan-based Crowdfunding and how investor protections could be strengthened but also considered the content and timing of disclosures in investor communications for both loan and investment-based Crowdfunding. Further changes are likely when the review concludes mid-2017. • From 21 March 2016, advising on P2P agreements became a regulated activity and from 6 April 2016, the FCA's client money rules were simplified for firms that that operate electronic systems in relation to lending and hold money in relation to both regulated and unregulated P2P. • In January 2016, HM Treasury amended secondary legislation so that firms performing the activity of operating an electronic system in relation to lending (i.e. operators of loan-based Crowdfunding Platforms) are not regarded as operating collective investment schemes (though they may still be AIFs under the AIFMD). • On 29 March 2017, the UK government triggered the process for exiting the EU. The ramifications for the cross-border development of Crowdfunding into and out of the UK will largely depend on the basis of any transitional arrangements following Brexit as well as the outcome of the negotiations on the UK/EU relationship which will determine what arrangements apply in relation to EU legislation in future once the UK has left.
Current/planned Crowdfunding regulation	
General regulation	The Securities Model generally entails conducting a regulated securities business • FCA authorisation required For the Lending Model, the regulated activity of "operating an electronic platform in relation to lending" was introduced in April 2014 • FCA authorisation required. Donations/Rewards-based Model is not subject to financial services regulation. For the Securities Model, FCA rules restrict the promotion of "non-

	readily realisable securities" to certain categories of retail investor.
Prospectus requirement	Prospectus requirement for offering of transferable securities (such as shares): • Threshold: EUR 5m per issuer within 12 months. Proposed EU Commission changes will permit Member States to impose an exemption from the requirement to produce a prospectus for domestic offers of up to EUR 10m, and for non-domestic offers, a maximum raise of EUR 500,000 – although this may be subject to change given the European Parliament's current agreed position. For the Securities Model, where profit share is not channelled through a standard corporate issuer/shareholder relationship, investment may be characterised as collective investment scheme.
AIFMD regulation	For the Securities Model, to the extent that an investment amounts to a collective investment scheme: • categories of investors to which unregulated collective investment schemes are narrower than for other non-readily realisable securities. A Crowdfunding structure could constitute an AIF if it includes profit share arrangements. Light-touch regime for managers with management assets under EUR 100m: • FCA authorisation/registration and reporting requirements, but Directive marketing restrictions not applied.
Payment service regulation	• The transmission of funds between the investor and the crowdfunded business may involve the platform operator providing "credit transfer" or "money remittance" services under the Payment Services Regulations 2009 (as amended) (PSRs) implementing the Payment Services Directive in the UK. A platform operator will require separate FCA authorisation if it is conducting payment services. • Operators have historically relied on the exemption for 'commercial agents' but this is unlikely to be possible post 13 January 2018 when PSD2 takes effect. The FCA has published draft guidance on this point which, although not yet final, may mean that loan and investment-based Crowdfunding Platforms would not be considered to be providing payment services as a regular occupation or business activity, such that separate authorisation would not be required.
Further possible requirements	Money Laundering Regulations 2007: • platform operator has to verify the identity of clients. Note that the Money Laundering Regulations 2007 will be repealed from 26 June 2017 and new regulations will apply in order to implement 4MLD. From 25 May 2018, the General Data Protection Regulation will

	replace the UK's existing Data Protection Act 1998 and will impose wide-ranging requirements on platform operators in relation to their processing of personal data. The consequences of breaching the GDPR can be significant.
Regulatory barriers	
Inbound	**Foreign Crowdfunding Platform addressing UK investors:** • Financial Services and Markets Act 2000: Platforms carrying on a "regulated activity" in the UK will be required to obtain FCA authorisation as an "authorised person". The scope of the FCA authorisation required will depend on the regulated activities being carried on by the platform. Platforms based in Member States other than the UK and authorised under MiFID may be able to exercise passport rights under MiFID without having to obtain authorisation on a country by country basis. Financial promotions directed at UK recipients will also likely be subject to additional conduct of business obligations under the UK financial promotion regime. **Crowdfunding Platform from another EU country addressing companies/projects in the UK:** • Companies seeking to raise finance through issuing debt or equity securities must satisfy themselves that they are meeting any requirement to publish a prospectus (or fall within an available exemption). Contravening the prohibition in the FSMA of dealing (and other activities) in transferable securities without an approved prospectus is a criminal offence. The Companies Act 2006 also prohibits the offer of shares in a private limited company to the public.
Outbound	**UK Crowdfunding Platform addressing foreign investors:** • UK platforms targeting non-UK investors only would not be subject to UK licensing requirements or conduct of business rules provided that the fundraising activity is also taking place outside the UK (i.e. the companies or projects seeking to fundraise through the platform are non-UK based). The FCA would consider a number of different factors in determining that this would be the case. UK platforms are likely to be subject to local licensing and conduct of business requirements (depending on the scope of their activities) and so should carry out due diligence on the regulatory regime of any EU country in which they are targeting investors or investment companies/fundraising opportunities prior to launch. • As mentioned above, UK platforms seeking to passport into other EU jurisdictions under their MiFID platform would not need to obtain additional licences, but may be subject to additional conduct of business rules under the host state's regulatory regime. UK platforms should be aware of EU-based regulation including in relation to data protection, AML and consumer protection, which set out

	common standards which UK platforms will be expected to comply with under local implementing legislation. Similarly, companies seeking to raise finance should be aware of any local requirements to issue a prospectus (or conditions which must be met in order to issue shares to the public).
Impact of EU regulation	
Prospectus regulations	As a result of implementing the Prospectus Directive in the UK, the FSMA requires a prospectus to be published where transferable securities are offered to the public. Contravening the prohibition in the FSMA of dealing (and other activities) in transferable securities without approved prospectus) is a criminal offence. In addition, under the UK corporate regime, the Companies Act 2006 prohibits the offer of shares in a private limited company to the public. It is possible to structure the involvement of the platform so as to reduce the risk of breach.
AIFM Directive	A Crowdfunding structure could constitute an AIF if it includes profit share arrangements. Light-touch regime for managers with management assets under EUR 100m which is applicable to most UK-based platforms: • FCA authorisation/registration and reporting requirements, but Directive marketing restrictions not applied.
MiFID/MiFID II	The key impact of MiFID (and MiFID II from July 2018) is whether securities in question are those that fall within the MiFID definition of 'financial instrument' and, if so, the ability of the platform in question to passport their activities across Europe. There is substantial overlap between the UK regulatory regime and MiFID as you would expect but each platform needs to identify and confirm that their UK regulated activities fall within the scope of MiFID and can therefore be passported.
PSD/PSD II	The reduction in scope of the 'commercial agent' exemption under PSD2 is likely to mean that many platform operators will need to be authorised to provide payments services on the basis that the transmission of funds between the investor and the crowdfunded business can involve the platform operator providing "credit transfer" or "money remittance" services.

C. Disclosures & safeguards

Fundraisers are protected by the Consumer Credit sourcebook (CONC) and the Conduct of Business Sourcebook (COBS). A platform should consider highlighting key

risks to the borrower including the consequences of missing payments or underpaying, including, where applicable, the risk of repossession of the borrower's property.[169]
Before a P2P agreement is made, the platform must grant that the agreement is adapted to the borrower's needs and financial situation.[170]

Both, the UK Crowdfunding Association and the Peer-to-Peer Finance Association have published a code of practice. Members of the associations agree with the principles laid out in the Code and the adherence of those principles is required for membership.

D. Support policies

Overview

The UK Crowdfunding sector is subject to specific regulation in the equity-based and P2P lending field. The regulatory body is the Financial Conduct Authority (FCA), which introduced a wholly new set of regulations for the P2P sector in April 2014 and, at the same time, some additional requirements for equity-based Crowdfunding Platforms. Prior to this, the P2P sector was not formally regulated, as it was not considered to fall under any existing regulatory regime. The regulations require that platforms operating in the sector must be authorised (Licensed) and conform to standards set out by the FCA.
The equity-based sector has always been regulated, however additional regulations dealing specifically with Crowdfunding activities were also introduced in April 2014. These will be reviewed and amended if deemed necessary. Primarily, the regulations require platforms to be authorised (Licensed) or to have regulated activities managed by authorised parties, and a screening process must be in place to sort sophisticated and non-sophisticated investors. If an investor is deemed a "non-sophisticated" investor, constraints are placed on how much they are permitted to invest, in that they must not invest more than 10% of their net investable assets in investments sold via what are called investment-based Crowdfunding Platforms.[171]

Additional regulations concern the communication of the offers, the fairness, language and clarity of description used to describe these offers and the awareness of the risk associated with them.
Whilst most offerings are small enough to take advantage of the exemptions offered by the EU Prospectus Directive, there are examples where Crowdfunding activities have been conducted with properly prepared prospectuses thereby permitting higher raises to be transacted, notably the Brewdog Equity For Punks IV offer.
Whilst often viewed as a good regulatory regime, there are those that contend that they are founded in an "old world understanding of finance and motivation" and so are not sensitive to the distinctiveness of Crowdfunding models and the philosophy behind them. Survey data suggests that most platforms are reasonably comfortable with these arrangements, however, as the intention is to protect the consumer from inappropriate behaviour by platforms and those they permit onto them, this metric of

[169] Further explanations: P2P agreements Article 4.3.3 (CONC).
[170] Further explanations: P2P agreements Article 4.3.4 (CONC).
[171] Zhang, B. et al (2016): Sustaining Momentum. The 2nd European Alternative Finance Industry Report. Cambridge University (link)

acceptability to platforms may not be a good indicator of the appropriateness of the existing regulatory framework.[172]

Market Supervision

FCA - Financial Conduct Authority.[173]

State initiatives

Matching funds initiatives	SME P2P lending match funds by the British Business Bank (link). Local Business Lending Partnership Newcastle City Council and Funding Circle (link). Crowdfund Plymouth by Plymouth City Council (link). The Mayor of London Crowdfunding programme. This initiative by the Mayor is aimed at helping Londoners to crowdfund innovative project ideas that boost quality of life and the economy (link).
State-aid	Department for International Development funded Crowdpower programme. GVEP international launched a three-year initiative that looks to stimulate, develop and learn from Crowdfunding into renewable energy enterprises in sub-Saharan Africa and Asia (link).
Tax benefits	There are two widely mentioned tax incentives which have been associated with Crowdfunding in the UK. The first is the Enterprise Investment Scheme (EIS), which was started in 1993 to help small, high risk companies raise capital. This plan actually replaced a previous plan, the Business Expansion Scheme (BES), which had been somewhat poorly written as many investors used it purely for tax relief and not necessarily to fund solid business

[172] Expert opinion of Tim Wright in CrowdfundingHub - The Current State of Crowdfunding in UK (link)
[173] FCA - Financial Conduct Authority (link)

	operations. The EIS program allowed for investors to reclaim 30% of income tax by an approved offering. So, within the limit of GBP 1m, the 30% could add up to returning potentially GBP 300,000 of income tax to a UK investor. The Seed Enterprise Investment Scheme (SEIS) was introduced as a new programme. The SEIS was created to provide tax relief to private investors who invested in early-stage companies. Viewed as complementary to the EIS programme, SEIS is for very early-stage companies. SEIS has an annual limit of GBP 150.000 raised but this may be used in conjunction with EIS. The company may not have more than GBP 200.000 in assets when shares are issued, must have fewer than 25 employees, must not be listed, cannot have existed for more than 2 years and must not have received investment from a Venture Capital Trust (link).
Crowdfunding guidelines for entrepreneurs/investors	E.g. the FCA provides some guidelines for consumers (link).

E. Additional insights

Best practices

Best Practice 1 - The UK government is the most progressive with the introduction of requirements for banks to be obliged to offer alternative finance options to clients to whom they refuse loans.

Best Practice 2 - The Government created a GBP 2 Million Peer-to-Peer Impact Fund which will help people make social investments through peer to peer and Crowdfunding Platforms

Best Practice 3 - Plymouth University, The University of Surrey and Nottingham Trent University have all partnered with Crowdfunder to facilitate and fund Crowdfunding projects in the cities surrounding their campuses – enabling economic regeneration, community partnerships and business development (link).

Policy measures

The UK's government is known for its support of the online alternative finance market. The government has supported the growth of this market through direct investments (such as the more than GBP 60m lent to SMEs by the British Business Bank via peer-to-peer lending platforms) to the application of tax incentives, such as the EIS and SEIS60 which have been used by a large proportion of investors using alternative finance platforms particularly within Equity-based Crowdfunding.

In 2016, the government introduced the Innovative Finance Individual Savings Account (IFISA). This allows for peer-to-peer loan agreements to be included within the tax-free ISA tax wrapper.[174]

More information on the Innovative Finance Individual Savings Account (IFISA).
Jones, R. (2015), 'Savers could unlock GBP 300m in extra interest with IFISA Financial Reporter.

Other

Set against a period of continued subdued demand from businesses for bank finance, it is apparent that Crowdfunding is beginning to be an important source of finance to businesses. The UK government is introducing requirements for banks to be obliged to offer alternative finance options to clients to whom they refuse loans. This is likely to increase pressure on banks to engage more fully with the sector. It is worth noting that in a survey of 200 international delegates attending the University of Edinburgh Business School's Credit Risk and Credit Control conference, three-quarters felt alternative lenders now pose a threat to banks and traditional lenders. There is some way to go before this happens, but even Ian McCafferty, External Member of the Monetary Policy Committee of the Bank of England acknowledges, "we may well be seeing the early stages of some important changes to the architecture of business finance."
The generally positive stance towards Crowdfunding from the UK Government is also helpful to the sector. This encouragement can be seen through the Government's use of the British Business Bank to place funds on to a number of alternative finance platforms, the maintenance of the SEIS and EIS tax incentive scheme for investors in start-ups, and with introduction of the new P2P ISA provisions.[175]

[174] Zhang, B. et al (2016): Sustaining Momentum. The 2nd European Alternative Finance Industry Report. Cambridge University (link)
[175] Expert opinion of Tim Wright in CrowdfundingHub - The Current State of Crowdfunding in UK (link)

European Commission

Identifying market and regulatory obstacles to cross-border development of crowdfunding in the EU

Annex A3

Case Studies

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I. Abundance

A. Introduction

Abundance is a UK-based crowdfunding platform focusing on renewable energy projects. Between 2014 and 2017, the platform was part of Citizenergy[1], an EC-funded project aimed at enabling cross-border crowdfunding for renewable energy. The platform's existing MiFID licence and operational structure was proposed as the backbone of the project expansion. Together with two other crowdfunding platforms, Abundance participated in a focus group about cross-border crowdfunding on 25 April 2017 in Amsterdam. Further data was collected through desk research from publicly available sources, including the company website. Abundance has also been a participant in another EU funded project regarding crowdfunding for renewable energy, CrowdFundRES[2], in which the platform provided valuable and useful insights.

B. Context

The debt security-based crowdfunding platform Abundance was launched in 2011. Its first project was launched in summer 2012. It operates with a sectorial focus on environmental and social projects, and mainly hosts projects related to renewable energy. With its MiFID licence it can, in theory, operate cross-border, which proves difficult to execute in practice (see in-depth exploration). The table below summarises the key facts and figures in relation to the UK-based platform.

Name of platform	Abundance
Country	UK
Year of establishment	2011
Number of employees	n/a
Turnover	ca. £55 million
Type of crowdfunding model	debt security-based
Main products	debentures, ISA, pensions
% estimate domestic versus cross-border fund inflow	2% of total investment coming from EU countries
% estimate fund inflow from retail/institutional	n/a
% estimate fund inflow from actively pursued/passive	n/a

[1] https://citizenergy.eu/
[2] http://www.crowdfundres.eu/

% estimate domestic versus cross-border deal origination	n/a
Regulatory framework	FCA regulated, MiFID

Abundance joined a consortium in applying for an EC grant linked to establishing a pan-European crowdfunding platform for renewable energy in 2014. The project was awarded and run from 2014 to 2017 under the name Citizenergy. To overcome legislative shortcomings for cross-border transactions, the project aimed to use Abundance's platform operations and structure, including its MiFID licence, in order to roll out cross-border transactions on which individual projects could be launched cross-border.

C. In-depth exploration

Cross-border experience and impact on business

The crowdfunding industry in the UK is regulated by the Financial Conduct Authority (FCA). The FCA is responsible for the regulation of both investment-based and lending-based crowdfunding platforms, with Abundance sitting in the investment-based category, as it arranges investments in debt securities.

The table below shows details about the platform's cross-border experience.

Years of experience of cross-border activity	n/a
Geographical markets	UK
Investors	EEA, Switzerland
Countries of fund inflow	EEA, Switzerland
Countries of deal origination	UK
Countries where deals are actively pursued	UK
Countries where deals are passive	UK

The platform's experience with cross-border crowdfunding has proved to be difficult. The platform has a MiFID licence and a European passport and it can, in theory, operate cross-border. However, this is not easy in practice, due to fragmentation of national interpretations of the MiFID framework. As it was phrased, "the ability to seamlessly operate across Europe does not exist".

The platform's main experience of cross-border crowdfunding has been with the community energy portal Citizenergy, an EC-funded initiative that ran from 2014 to 2017. The platform considered selected countries, as represented within the project

consortium, to see whether it could offer its services in them with the use of its MiFID licence. After extended research, it found that this was extremely difficult in most of the cases, at both the legal level and the operational level. Germany and France were cited as examples of countries with very different legal interpretations of crowdfunding compared to the UK. The basis of the plan was to keep the operational base in the UK and to not open subsidiaries in other Member States, especially as there was intended cooperation with local partners within the EC project. The attempt was stopped due to lack of funding and economic considerations, based on the incompatible national regulations regarding crowdfunding. Operationally, the currency risk was thought to be the prime hurdle, even prior to Brexit events. Also, as for the platform's ambitions outside the EC project, the operational cost played a major role in the platform's consequent decision not to pursue cross-border expansion after all.

Business Model

The platform is focused on infrastructure investments. It provides long-term finance from private investors to projects — predominantly renewable energy projects — lending at terms up to 25 years. Investors deposit their funds by bank transfer or debit card. They can see in their Abundance account when they will receive their next cash return, how much their investments have returned to them, and how individual investments are performing.

There are no fees for investing, but there is a fee for the fundraising company. All returns are quoted after deduction fees.

Marketing

The platform markets its activities actively only in its home market. It does accept investments from throughout Europe, but it does not actively market its products in Europe to investors or fundraising companies. Even if Abundance can get access to investors EU-wide through its MIFID licence, the costs outstrip the perceived benefits for the time being.

Other challenges

There are also cultural and language barriers, especially for renewable energy projects and project finance. It is important for the platform to know the local market and offer the products in the local language. This is key to fostering customers' trust in the products as well as customer protection, but it is also important for SMEs raising finance. Although the rules for SMEs lending are more straightforward, the platforms will be more confident if the SME screening and the assessment of the project are carried out locally.

Additionally, different company laws and finance structures present hurdles to cross-border operations. National interpretations of the legal requirements, as to which legal entities can raise finance through crowdfunding (e.g., public or private companies) and how a security is defined, vary significantly across MSs.

Regulatory burdens and proposals

Regulatory compliance has created a significant burden on the platform's operations and there has been an increase in overall accounting and regulatory costs. A cost benefit balance has been achieved in the platform's home market and has not yet been forecasted for other markets. Taxation is another significant burden on the platform's cross-border operations, as it inflates transaction costs for the platform.

In order to overcome these hurdles, relevant effort with the aim of creating a harmonised implementation and interpretation of the MiFID framework regarding crowdfunding — as well as other EU and tax regulations — is needed in each MS.

Disclosure and safeguards

The platform has a general risk warning on its website. The Offer Document covers the risks specific to an individual investment.

The platform has a specific disclosure regime related to currency risk for non-UK investors. This is the only risk warning tailored to the investor's provenience. All the others remain the same for all investors.

D. Case outcomes and lessons learned

Innovative Crowdfunding Business Model

The platform has established a marketplace for its products; it is basically a secondary market for the trading of crowdfunding investments. The marketplace allows investors to find a buyer for investments in funded projects they wish to sell. There are no fees for buyers and sellers.

For a seller, the process includes creating an offer and setting the price. The potential buyers can register their interest with the sellers by making a bid on the offer. They can choose the amount they want to buy and offer a price for that amount (they are not required to buy the full amount available). Then the bid is sent to the sellers with the buyers' email addresses, so that they can get in contact if they would like to negotiate and conclude a sale with the buyers.

A bid and an offer are not binding agreements. Once a bid has been received and the seller has been in contact, the buyer and seller can confirm the trade by email or continue to negotiate a final amount and price to trade at. Once a sale is agreed, the seller should notify Abundance so that it can transfer the investments to the buyer.

For the platform, the main lessons learned were twofold.
Firstly, despite being regulated in its home market and being MiFID-compliant, it was not able to expand the UK-based services into other EU Member States, as interpretations of the legal framework of crowdfunding within Member States subsequently could not be reconciled. In this regard, comparable legal frameworks at the Member State level, or the acceptance of one Member State's legal framework Member State by another, could have helped.

Secondly, the platform found that operating outside the Euro Zone provided an additional layer of risk that could not be adequately addressed and rewarded within its business model. Abundance has refocused on the UK market, a decision that has been further underlined by recent political developments around Brexit.

E. Analysis

Abundance attempted to expand its operations cross-border based on its MiFID licence while keeping all its operations in the UK. The licence, however, does not cover all aspects of its business, and the platform was thus confronted with local interpretations of crowdfunding that go beyond MiFID. In contrast to all other platforms, Abundance did not seek to establish subsidiaries or other dependencies under local law in the Member States into which it tried to expand.

F. Conclusion

Abundance's attempt to offer cross-border services was inherently linked to the framework of the supporting EC project. As a result, Abundance's objective was not to expand at all cost, but rather to expand at a minimal economic cost while retaining a strong focus on its home market. The result was that Abundance considered its expansion only under MiFID and not, as other platforms have done, via subsidiaries or joint ventures. Despite being a platform located in an active market with sufficient room for expansion still available, regarding both deal origination and investments, it did not hold expansion across the EU at the core of its business strategy.

II. Companisto

A. Introduction

Companisto is the largest equity crowdfunding platform offering subordinated loans in Germany both by volume and by value. It has a five-year track record. A telephone interview with Companisto was conducted on 2 June 2017. The interview lasted about 1 hour and 30 minutes. Further data was collected through desk research from publicly available sources, including the company website.

B. Context

Companisto is a German-based crowd investing platform that was founded in 2012. The platform launched an English-language website early in its history, in order to attract business across borders, but has remained centred on its home market, with only minor cross-border activities to date.

Name of platform	Companisto
Country	Germany
Year of establishment	2012
Number of employees	35
Turnover	n/a
Type of crowdfunding model	equity-based
Main products	profit-participating loans (*partiarisches Darlehen*), subordinated loans (*Nachrangdarlehen*)
% estimate domestic versus cross-border fund inflow	less than 5% cross-border
% estimate fund inflow from retail/institutional	n/a
% estimate fund inflow from actively pursued/passive	n/a
% estimate domestic versus cross-border deal origination	99%, 1%
Regulatory framework	Investment Products Act (*Vermögensanlagengesetz*)

C. In-depth exploration

Cross-border experience and impact on business

The platform operates mainly in Germany with a small cross-border activity in Europe. The majority of fund inflows and deal origination comes from Germany. There are small percentages of fund inflows (3%) and deal origination (less than 5%) coming from the EU and a small percentage of fund inflows coming from outside the EU (5-7%).

Due to the particularities of the German crowdfunding regime regarding the investment products that can be offered by crowdfunding platforms (mainly profit-participating loans and subordinated loans), the cross-border activity for the platform is more challenging than for other platforms in other MSs. Member States that allow equity to be offered by crowdfunding platforms do not recognise the German profit-participating loan (main investment vehicle for crowdfunding platforms) as a tradeable security. Consequently, it becomes hard for German platforms to attract deals and investors from other countries. Moreover, the scope of EU legislation applicable to offerings of financial instruments that can also be applied in the context of crowdfunding will not cover the German equity-like profit-participating loan — as it does not qualify as security — unless there is an explicit provision regarding the German crowdfunding regime in the EU piece of legislation. A summary of the platform's cross-border experience is illustrated in the table below.

Years of experience of cross-border activity	4
Geographical markets	Germany
Investors	70,000
Countries of fund inflow	Germany, Austria, Switzerland, EU
Countries of deal origination	Germany, Austria, Switzerland
Countries where deals are actively pursued	Germany
Countries where deals are passive	Austria, Switzerland

Business Model

The platform offers two types of investments: start-up investments and investments in growth companies. The start-up investments take the form of profit-participating loans with similar rights to equity, in that the lender receives a participation in the profits or turnover of the company or in a possible purchase price of the company (exit) in return for the provision of capital. The investments in growth companies take the form of subordinated loans which pay out a fixed rate. The platform retains a 10% success fee from successful capital raises from the SMEs; it also retains 10% of all paid-out profits for investors.

The limits of the German crowdfunding regime make the platform's business model not easily transportable to other MSs. To establish its business in another MS, the platform has first to examine whether the structure of its investment products renders them acceptable as crowdfunding products under the host MS regime. If so, its existing investors can benefit from the new market. It would not make economic sense for the platform to create a business model from scratch, without an investor base, and lock its existing investors out of the new market. Therefore, replication of the business model cross-border requires that the crowdfunding regime of the MS complies with the German regime and recognises the German profit-participating loan as an eligible crowdfunding product in the host MS.

The platform has received expert advice with regards to launching its business in certain countries. Of the countries identified as potential targets, only 50% could provide the environment for the German crowdfunding regime to be applicable within the host MS crowdfunding regime. The successful countries are usually selected based on language and cultural proximity (there is currently deal origination on the platform from Austria and Switzerland).

Marketing

Cross-border activity reflects as little as 3% of the total fund inflows and less than 5% of the total deal originations. None of the investment opportunities are actively marketed; they are offered on a reverse solicitation basis. In the case of fund inflows coming from outside Germany, the platform does not follow any special know-your-customer (KYC) measures tailored to non-German investors other than providing English as a second language on its website. In the case of deal origination, a legal expert opinion is required before the project is accepted on the platform.

Other challenges

The main challenges for the platform are the national crowdfunding regulation and the unreasonable distinction between the different types of investment products that crowdfunding platforms can use. These create issues both nationally, when the platform interacts with players from outside the crowdfunding industry (business angels and VCs) that fail to understand the crowdfunding regime, and internationally, when it tries to involve investors or deal originations, or to establish its business model in another MS.

Regulatory aspects

Since the implementation of the Retail Investor Protection Act *(Kleinanlegerschutzgesetz – KASG)*, profit-participating loans and subordinated loans are classified as investment products according to the German Investment Products Act (*Vermögensanlagengesetz – VermAnlG*). Therefore, extensive prospectus requirements are triggered. However, the KASG provides for an exception from the prospectus requirements for the offering of profit-participating loans on crowdfunding platforms (*Crowdfunding Exemption*), whereby the issuer of the investment products is exempted from the obligation to prepare a prospectus and from some other related consequential obligations.

The Crowdfunding Exemption applies only to profit-participating loans and subordinated loans (and commercially comparable investments), not to any other investment products. However, the equity-like investment, as seen in the structures of the profit-participating loans offered in Germany, works well for the platform economically. Therefore, the distinction among different types of investment products does not make economic sense and it limits crowdfunding platforms' freedom to offer all kinds of investment products.

The offering of equity investments on a crowdfunding platform is limited by German corporate law, which allows investments in tradeable securities to be offered only by companies that are established as a public company (*Aktiengesellschaft*).

Overall, the level of the current regulation is appropriate and necessary for providing the appropriate circumstances for the industry to grow. The German crowdfunding regime's main weakness, which creates a barrier to cross-border investments, is the limitation of the Crowdfunding Exemption regarding the forms of investment products offered by the crowdfunding platforms. Unless the German regulator is willing to define the term "crowdfunding" to also include securities, the scope of the current crowdfunding regime is not likely to change.

For now, the costs of compliance are considered low since it is handled internally, but as it takes crucial time away from the management of the company, outsourcing compliance for an affordable price would be preferable.

Disclosure and safeguards

The safeguards for the lenders follow a four-tier approach. First, the platform makes sure that it communicates all the relevant risk warnings regarding investments in start-ups and investments in general. Second, it provides transparency about the project and the borrower by including in the borrower's profile — which is published on the website — all the information made available by the borrower himself or herself. Third, it makes an investor space available online where projects are analysed and assessed by the investors, and valuable information is generated and communicated among them. Last but not least, the platform adheres to and incorporates all standards established by the German trade association. The association has put in place codes of conduct and investor reporting standards that surpass the international standards of crowdfunding associations in terms of clarity and commitment. Communication of these standards on the platform occurs by way of news posts or newsletter updates on the website.

The platform has about 70,000 investors registered on the platform. Of these, 95% have investment experience, 30% consider themselves investment professionals and approximately 5% lack investment experience. Also, 60% earn €50K or more yearly net income, while 40% earn €70K or more yearly net income. The platform estimates that the majority of investors registered on the platform have some form of investment experience and are financially affluent.

There are no extra safeguards in place. The platform considers investors equally able to make rational investment decisions. Risk warnings are visible on the website and investors knowingly accept the terms and conditions.

A screening of projects is carried out to make sure that the company's profile on the platform is an accurate representation of its standing, but the accuracy is not guaranteed by the platform. No information from a potential due diligence is shared with investors.

In the event of the borrower's default, there are no specific redress mechanisms in place to mitigate loss of capital by the investors. In the event of the borrower's bankruptcy, the platform functions as a facilitator of the process, by way of bringing the insolvency administrator into contact with the investors and providing the necessary paperwork to the investors in order to establish their claims against the borrower in court. A voucher is given to the investors encountering default, entitling them to a discount on future investments.

Additional safeguards, such as a separate recovery fund mechanism, are at this point deemed not economical, and covering for such operations would decrease the return to investors. However, the platform is considering this possibility for the future.

In the event of the platform's default, all tools available in corporate law will be used to avoid termination of the business and of the relationship with the investors. The platform is part of a group of a holding structure, and the other companies from the group can assume its operations. In the event of default of all the companies in the group, the borrower can step in and communicate directly with the investors (for example, the fundraising company can pay dividends directly to the investor).

D. Case outcomes and lessons learned

Cross-border expansion was an early goal for the platform, and investor onboarding was enabled by offering an English language website. Investments from outside of Germany remain low. The specific German crowdfunding regime that has been implemented over the past years has made further activities complex. To date, the platform has funded one non-German project, based in Austria, and will not proactively seek to expand on this experience due to cost and compliance issues.

Regarding EU efforts — for example, the prospectus directive — that aim at harmonising the European market, the platform remains sceptical. The German crowdfunding regulation is likely to circumnavigate any such efforts, and the platform considers cross-border expansion a model that will not be economically viable unless the German rules change or the EU addresses the German law directly (in the form of an exception for the German regulation).

E. Analysis

Companisto was not able to overcome the hurdles to cross-border operations created by the German crowdfunding regulation. This is also reflected by the approach of other German platforms, such as Innovestment, which was also interviewed. To date, no German equity crowdfunding platform has established significant cross-border activity. At the same time, non-German platforms' ambitions to enter the German market have so far also shown limited results. FundedByMe and OnePlanetCrowd both failed to offer investment products in Germany. Only the Austrian platform Conda has so far been able to enter the German market via acquisition. The first acquisition was of Mashup Finance in Munich in 2015, which enabled Conda to establish presence but did not result in relevant activity. Only the acquisition of Bankless24 in 2016 added relevant activity.

F. Conclusion

Companisto, operating under the German crowdfunding regulation, saw its ambitions of cross-border transactions severely cut back. A replication of the model applied in the German market into other large EU markets would not be easy; this significantly increases the operational hurdles for cross-border expansion. While the platform tested cross-border activities with an Austrian project, the size of the Austrian market does not incentivise significant investment. The platform therefore does not seek to expand outside of Germany.

III. Conda

A. Introduction

On 2 June 2017, an interview was conducted by telephone with one representative of Conda. The interview lasted 45 minutes. Additional data was collected by desk research, which included the examination of the platform's website, as well as press releases and press articles about Conda.

B. Context

Conda has four years of experience in the alternative finance market. It was established in 2013 and, being located in Austria, is bound to the regulatory framework of Austria. The platform uses the lending-based crowdfunding model and mainly offers subordinated loans.

Name of platform	Conda
Country	Austria
Year of establishment	2013
Number of employees	35
Turnover	€20 million
Type of crowdfunding model	lending-based
Main products	subordinated loans (*Nachrangdarlehen*)
% estimate domestic versus cross-border fund inflow	n/a
% estimate fund inflow from retail/institutional	n/a
% estimate fund inflow from actively pursued/passive	n/a
% estimate domestic versus cross-border deal origination	n/a
Regulatory framework	Austria

C. In-depth exploration

Cross-border experience and impact on business

The platform was originally established in Austria. It started in 2013 with the aim of operating beyond Austria's borders. It is currently operating in seven countries: Germany, Austria, Switzerland, Poland, Slovakia, Slovenia, and Liechtenstein. The crowdfunding business is provided a local subsidiary in each country, via each one's own website in local language. In 2014, the platform assumed the assets of Mashup Finance[3], Germany, a small platform that at the time had executed three local transactions in Munich, and in 2016 it assumed those of Bankless24, a small platform focused on SME finance that had executed eight transactions at the time[4]. It provides marketing, regulatory information and investor information relevant to that country.

The criteria for choosing the geographical markets have been cultural similarity (especially in terms of language), the platform's own network and the competition. Cross-border expansion has been very important for the platform's growth due to the limited scalability of the Austrian market. This table shows a summary of the platform's cross-border experience.

Years of experience of cross-border activity	2
Geographical markets	Germany, Austria, Switzerland, Poland, Slovakia, Slovenia, Liechtenstein
Investors	n/a
Countries of fund inflow	EU
Countries of deal origination	EU
Countries where deals are actively pursued	Germany, Austria, Switzerland, Poland, Slovakia, Slovenia, Liechtenstein
Countries where deals are passive	EU

Business Model

The platform's business model is commission-based and is replicable in other countries. The key success factor is knowledge of the local markets and of the cultural differences, the aim being to reflect those in the business model. The platform has a local team in each country which will provide marketing information and customer service in the local language, ensuring compliance and managing investor relations.

Legal advice and close collaboration with the national authorities have been key when launching new subsidiaries in the different jurisdictions. However, identification and

[3] http://crowdstreet.de/2015/01/12/conda-mashup-finance/
[4] https://www.mittelstand-nachrichten.de/unternehmen/conda-auf-expansionskurs-in-deutschland/

preparation for launch in a new geographical market involve high cost. This is considered when identifying market opportunities.

Marketing

The platform is marketing directly in the seven countries through its local subsidiaries in local language. Investment opportunities are offered to investors locally but are also shared in the other six countries. The same applies to deal origination and funding opportunities for companies.

The platform does not actively offer investment and funding opportunities in countries other than the seven countries of operation, but it will passively accept fund inflows and deal origination from other countries. Less than 5% of fund inflows and deal origination is not actively marketed.

Other challenges

The significant operational and regulatory costs of expanding cross-border are met by two potential answers: scaling up operations and overall funding volume, and increasing individual funding rounds on the platform. Generally, smaller countries entail higher regulatory costs compared with the benefits they confer on the business. On the other hand, the cost is less significant when compared with the social and economic impact the funding of local SMEs has on the market. The decision to enter a new market requires evaluation of the regulatory environment and of the market.
Additionally, different company laws and finance structures present hurdles to cross-border operations. National interpretations of the legal requirements, as to which legal entities can raise finance through crowdfunding (e.g., public or private companies) and how a security is defined, vary significantly across MSs.

Regulatory aspects

The commercial collection of loans, which finances the ongoing business of the platform, can constitute a deposit business in the sense of the Austrian Banking Act; it can be carried out only by credit institutions and requires a licence from the Financial Markets Authority. The Alternative Financing Act from 2015 established the legal basis for the financing of SMEs through crowdfunding and citizen participation models. In addition, it created a legal framework for the operators of crowdfunding platforms: they must either hold trade licences entitling them to act as financial advisers for investment transactions or investment service providers, or they must be in possession of a licence issued by the Financial Markets Authority.

For Conda, operating in seven different countries requires compliance with seven different crowdfunding regulations or, in the absence of those, with other local rules. Crowdfunding is most regulated in Germany and Austria, with stricter provisions about the types of crowdfunding activities that are permitted and not permitted. Moreover, consumer organisations established in Germany and Austria have increased authority in consumer protection matters related to crowdfunding and any kind of investment.

The decision to enter a new market requires evaluation of the regulatory environment and of the market. This evaluation may account for a cost of €10K to €100K per

country. The replication of this evaluation adds a great deal of regulatory cost to the platform.

Disclosure and safeguards

The platform has implemented several disclosure procedures. It communicates relevant risk warnings regarding investments in start-ups and investments in general. It publishes the criteria according to which it carries out risk assessments and calculates performance ratios. It makes an online investor room available, where projects are analysed and assessed by the investors and valuable information is generated and communicated by and among them. And the platform incorporates the code-of-conduct rules, the "Code of conduct, crowdinvesting: ACC Austrian Crowdinvesting Committee" linked to the Austrian Chamber of Commerce. However, the code of conduct is not publicly available, and a provided URL redirects to a generic website of the Chamber. Internationally, the platform says it is in contact with the German and Polish trade association in order to harmonise the reporting standards followed by platforms in these countries.

Due diligence is carried out on the funding companies but not shared with the investors, and no guarantee is provided about its accuracy, as the platform could incur potential liability. The platform follows a KYC process that is compliant with the rules of the country where it operates. Individual investments are generally limited by Austrian law to a maximum of €5K per project. This hurdle also applies in most other markets in which the platform operates.

D. Case outcomes and lessons learned

The platform is currently experiencing significant cost burdens due to the replication of operational structures within each of the countries it operates in, as investor relation and deal origination within each new market require local engagement according to the platform. It is yet unclear whether the markets chosen by the platform will be able to scale their operations to cover cost.

For now, the platform is able to execute deal origination at the local level in the countries where the platform operates subsidiaries and to share investment opportunities with investors in other markets.

E. Analysis

Conda has chosen its local markets based on geographic context on the one hand and regulatory arbitrage on the other. While geographic and cultural aspects are important for identifying a general opportunity, the platform stresses the high importance — next to that of potential market size — of contact with regulators, and of appreciation of the home market and model by regulators in new markets. Other equity platforms — namely Crowdcube, Invesdor and Seedrs — also look at regulatory affinities, but have put more weight on market volumes and access to local networks. Regulatory arbitrage has been a repeated aspect for lending platforms, which also are partly able to outsource deal origination to a local partner.

F. Conclusion

Conda has successfully entered several new markets by acquiring and setting up local subsidiaries. It is too early to say whether the platform will be able to scale its operations sustainably and the local operations will generate sufficient revenue, but the operational cost has clearly been a reason for concern. Interestingly, to reduce complexity and keep operational efforts low, the platform has kept the lowest common denominator (Austrian regulation), even in markets where local regulation would have allowed, for example, higher per-person investment.

IV. Crowdcube

A. Introduction

The platform was interviewed on 6 June 2017. The interview lasted about 45 minutes and was conducted by phone. Further data was collected through intensive research of the platform's website, as well as their press releases and press articles about the organisation.

B. Context

Crowdcube is a UK-based crowdfunding platform that was established as early as 2011. The platform follows the equity-based model, while offering equity and mini-bonds as their main products. The table below illustrates the key business parameters of the platform.

Name of platform	Crowdcube
Country	UK and Spain
Year of establishment	2011
Number of employees	50-100
Turnover	n/a
Type of crowdfunding model	equity-based
Main products	equity, mini-bonds
% estimate domestic versus cross-border fund inflow	95%, 5%
% estimate fund inflow from retail/institutional	n/a
% estimate fund inflow from actively pursued/passive	n/a
% estimate domestic versus cross-border deal origination	n/a
Regulatory framework	FCA-regulated activity, MiFID, Spain Authorisation

C. In-depth exploration

Cross-border experience and impact on business

The platform is one of the largest equity crowdfunding platforms in the UK. It currently operates in the UK and Spain, and soon will do so in the Netherlands and France. Its investor base is mainly UK-based, approximately 5% being EU-based on a reverse solicitation basis. Deal origination comes mostly from UK and Spain, and the rest is generated passively by other countries in the EU and outside the EU.

The crowdfunding experience in Spain has been positive and the business has been fruitful. However, the experience has not always been the same in other territories where the platform has operated. With the aim of testing new markets, the platform has tried in the past to pursue cross-border business in Spain, Italy, Poland, New Zealand and Sweden under the structure of a joint venture and/or remotely.

The platform considers cross-border crowdfunding important for its business growth. It aims to grow its international business in the next two years so that 10%-20% or more of the business comes from Europe, provided that the regulation paves the way for such launch. Candidate geographical markets are the Netherlands, France and Ireland. The plan is to open European business to UK investors and test the demand for investment in these businesses. This time it will use Crowdcube.com, and not the joint venture structure, for offering cross-border services. However, there is a concern about the appropriateness of the regulation and the market for cross-border business.

The platform's cross-border experience is illustrated in the table below.

Years of experience of cross-border activity	n/a
Geographical markets	UK, Spain, France (upcoming), the Netherlands (upcoming), Ireland
Investors	450K
Countries of fund inflow	UK, worldwide
Countries of deal origination	UK, Spain
Countries where deals are actively pursued	UK
Countries where deals are passive	UK, Worldwide

Business Model

The platform's model is commission-based. The current commission rate is 7% of the amount of funds raised by the investee companies.

The platform is happy with this model as a revenue-generating mechanism. The commission-based model is appropriate since no guarantee is offered by the platform regarding the ROI.

Marketing

Cross-border activity reflects a small percentage of the overall business. For the UK platform, approximately 5% of the overall fund inflows come from Europe and the deal origination comes mostly from UK and Spain. None of the investment opportunities are actively marketed; they are offered on a reverse solicitation basis. Its promotional activity is not translated into other European languages, partly because of regulation and partly because of financial capacity.

Other challenges

Judging from the platform's experience with Spain, Italy, Poland and Sweden, the cross-border challenges have been of regulatory and commercial nature. In Italy, the regulation was particularly restrictive with regards to the type of companies eligible for crowdfunding. In each of the other countries, the reason was either regulatory challenges or the focus that Crowdcube had on the UK market at the time. The joint-venture approach demonstrated that adequate investment is required in order to enter each new market, particularly where the regulations vary.

Regulatory aspects

The UK crowdfunding regime achieves a balance between removing barriers to businesses and securing an appropriate standard of protection for investors, e.g., mandatory arrangements for the event of platform failure, capital adequacy requirements, client money segregation and requiring communications with customers to be clear, fair and not misleading.

In a cross-border setting, fragmentation of regulatory frameworks across MSs creates challenges, even with Crowdcube's MiFID passport. Examples include rules on investor limits (e.g., investment limit vs. self-declared limit for retail investors), marketing rules, rules on tax incentives, and rules on the types of crowdfunding permitted by law (e.g., in Germany equity-based crowdfunding in the form of issuing shares is very restrictive). Moreover, differences in national company laws create legal uncertainty in a cross-border setting (e.g., the use of a notary in the issuance of shares is required by some MSs; the nominee structure for holding shares on behalf of the investors is not allowed in all MSs). Last but not least, the fragmented interpretation of cross-border investments and the lack of guidance by the European and national regulators create a great deal of legal uncertainty, which prevents platforms from actively marketing their products across borders.

The regulatory costs and the legal uncertainty caused by the fragmented national regulations constitute a significant barrier to entering new markets and to business growth. The regulatory cost of operating a UK business cross-border — with full compliance, marketing in the local language, and a local team in place — has been estimated to be about €100K per country for the platform. The platform will initially

use a light-touch approach to offer European projects on the website by seeking external legal advice ad hoc to control cost and operational complexity.

To help overcome this, the EU regulators may consider providing guidance to national regulators as to how to implement EU legislation related to crowdfunding (e.g., guidance on how to implement prospectus exemptions in cross-border offerings, guidance on what is considered an offer of financial services — for example, when services are offered in one language but advertised in more than one country). A unified implementation of crowdfunding rules and exemptions across MSs (e.g., prospectus exemptions could apply to all MSs where the platform operates) or a "country of origin" principle applying to investment marketing and prospectus exemptions (similar to the E-Commerce Directive) would reduce barriers and mean the MiFID passport is effective.

Disclosure and safeguards

The platform implements the safeguard requirements mandated by the FCA to make sure that it treats investors fairly and to ensure that the promotions are clear and not misleading. The FCA rules are principle-based, meaning it is left to the platforms to choose the right mechanism/safeguards to reflect these principles in their business.

Therefore, the platform has introduced its own charter of principles for the safeguard of investors. The code-of-conduct rules provided by the trade associations of which the platform is a member are not included on the website, since they are considered lighter than the regulatory requirements mandated by the FCA. However, it is believed that, for the new entrants in the market, such rules are useful for building investors' trust.

For the protection of investors, the platform undertakes due diligence on the fundraising companies, which involves credit checks, bankruptcy checks, and money laundering checks on the directors as well as checks on the good standing of the company. The information provided by the national authorities and credit agencies of MSs for the European fundraising companies is not consistent, which has an impact on due diligence mechanisms.

For the protection of the fundraising companies, the platform undertakes investor appropriateness checks, whereby investors are categorised as retail, sophisticated and high-net-worth. The same UK-compliant checks are carried out for all European investors. Moreover, the same appropriateness checks aim to protect the funders by having everyday retail investors declare that they will not invest more than 10% of their investable assets. This approach is preferred over having the platform impose investment limits on investors, since there is little evidence that investors are not aware of the investment risks.

D. Case outcomes and lessons learned

In 2013, Crowdcube announced its strategy to expand into a number of countries through joint ventures with local partners[5]. The dependence on local partners, their ability to create both deal origination and investor networks and differing local regulations led to a different impact on each market. By 2017 only the Spanish market, by then under control of Crowdcube, was still active. For the renewed expansion plans, the company keeps control over the entity in order to be able to act quickly and in its own interest. Crowdcube UK is FCA-regulated, and has passported to all MSs under MiFID. In the meantime, their Spanish operations have obtained a licence under the local Spanish crowdfunding regulations, which was required due to the local nature of those rules and the fact that they do not fall under MiFID. For cross-border transactions beyond Europe, though, Crowdcube has partnered with US-based SeedInvest[6].

E. Conclusion

Expanding cross-border with or without the European licence, and through creating joint ventures (or subsidiaries), carries extensive operational, regulatory and financial hurdles. Given that crowdfunding platforms are either start-ups or small businesses themselves, at least for now, platforms need to be careful in ensuring relevant and early revenue generation in the new market, control of the operations and a good local team. Regulation is certainly a challenge, and a more effective European cross-border framework can help support companies like Crowdcube that have demonstrated that they can provide significant investment, job creation and innovation given the correct legal and regulatory environment.

[5] In Europe, especially Spain, Italy, Poland and Sweden: https://www.crowdfundinsider.com/2013/11/27054-crowfunding-platform-crowdcube-launch-italy/ and http://startups.co.uk/crowdcube-set-to-launch-in-italy/

[6] https://www.crowdfundinsider.com/2017/09/122069-seedinvest-crowdcube-partnership-announces-cross-border-investment-crowdfunding/

V. Invesdor

A. Introduction

Invesdor is a leading Nordic equity crowdfunding platform. A representative of Invesdor was interviewed in person on 20 March 2017. The interview lasted for about 1 hour. In addition to the data gathered during the interview, further desk research was conducted, which included not only the examination of Invesdor's website but also its press releases and press articles about the platform.

B. Context

Invesdor is a platform based in Finland. It was established in 2012. The platform offers the equity and the lending crowdfunding model to its customers (see table below) and has expanded into four more markets on the basis of its MiFID licence.

Name of platform	Invesdor
Country	Finland
Year of establishment	2012
Number of employees	15
Turnover	€27.6 million
Type of crowdfunding model	equity-based, lending-based
Main products	mini-bonds
% estimate domestic versus cross-border fund inflow	n/a
% estimate fund inflow from retail/institutional	n/a
% estimate fund inflow from actively pursued/passive	50%, 50%
% estimate domestic versus cross-border deal origination	n/a
Regulatory framework	Crowdfunding Act, MiFID

C. In-depth exploration

Cross-border experience and impact on business

Cross-border activity is important for Invesdor's business to scale, considering that, being based in Finland with a small domestic investor base, it does not have much

opportunity for growth. The ability to tap European investors gives the platform the opportunity to scale. A MiFID licence is key to cross-border expansion; however, the platform believes it can only have a meaningful impact if one single licence is required for all cross-border transactions instead of multiple licences for multiple transactions.

For Invesdor, another added value of its expansion is that investors over time and with experience become less risk-averse. Onboarding new investors will no longer be as time-consuming. A smooth and positive cross-border investment experience builds investor trust in the process and the platform, leading to an increase in quantity and frequency of cross-border investments.

A number of hurdles make cross-border expansion difficult. The divergent due diligence requirements across MSs make the whole operation very costly and time-consuming. The number of registered users on the platform is considered to be crucial for the international reputation of the platform. There needs to be a representative number of registered users in order for the platform to have a respectable EU presence. Invesdor estimates that, for a successful cross-border operation, the number of investors should be in the millions, in order to answer relevant deal origination across most MSs.

The table below illustrates Invesdor's cross-border experience.

Years of experience of cross-border activity	2 years
Geographical markets	Finland, Norway, UK, Denmark, Sweden
Investors	25K
Countries of fund inflow	worldwide
Countries of deal origination	Finland, Norway, UK, Denmark, Sweden
Countries where deals are actively pursued	UK, Denmark, Sweden
Countries where deals are passive	Finland, Norway

Business Model

Transparency and ongoing investor relations are key to successful equity investing for the platform. Invesdor aspires to achieve that in the context of its post-round services by offering a registry for shares, payments of dividends and coupons for bonds: essentially an "investor relations" tool and service. A second step will be to provide an information service for companies and shareholders that aims to keep the shareholders up-to-date about all the information they need to know about the company they have invested in. The platform collects a transaction fee from investors, as well as a fixed up-front listing fee, a percentage-based success fee and a fixed closing fee, if the funding round is successful, from the fundraiser.

Marketing

The platform markets itself directly in three countries via activities targeting fundraisers, especially through networking (e.g., events) and information related to the platform's services, operations, business model, financial information and information on expected return.

Investor marketing is mainly about advertising on social media on the opening rounds, with the aim of attracting as many investors as possible. The platform simply acts as a matching service between the fundraising companies and the investors.

Other challenges

In the larger markets, increasing competition is creating pressure on platforms to deliver high-value services at a viable price. The platform already has a good market presence in Finland, but focuses marketing in order to improve its position in other markets in Europe. This is costly and time-consuming, and requires direct access to local networks and market knowledge.

The fragmentation of the various regulatory frameworks in MSs remains another major hurdle, as do the different business and taxation rules in each MS and the lack of information on shareholders' rights across the EU.

Regulatory aspects

The platform can adapt its operations to the current regulatory framework of crowdfunding. For a platform which holds or controls client money, adequate regulatory burdens are prudent. Invesdor is not an investor. It provides secure online digital infrastructure that helps investors inject capital into companies. In crowdfunding, both investors and platforms are key to successful early-stage investing.

The costs associated with regulatory compliance have created a significant burden on the platform's operations. Specifically, there has been an increase of about 50% in legal and accounting costs because of MiFID compliance.

The MiFID framework is important for the platform's cross-border operation, and especially important for reputational benefits. However, the MiFID authorisation process makes the transactions slower, since every service provided on the platform needs to go through a specific process of regulatory screening and approval. To ease fragmentation, national regulators could come together to create a harmonised interpretation and implementation of MiFID terms and other EU regulations and of tax laws.

Taxation is another significant burden to the platform's cross-border operation. Having different tax structures in every MS makes cross-border business difficult. For example, a harmonised approach as to what is tax-deductible and what is a tax benefit, leaving room for national variations limited to a percentage range, would make a noticeable difference in cross-border crowdfunding. The lack of harmonisation of tax incentives for risk capital investors limits cross-border investments further.

Technological developments are seen as a huge milestone in building an effective regulatory framework. Examples include KYC models that make the screening of investors more efficient, the improvement of payment processes on the platform and a digital authentication such as the Estonian e-residency or possibly an equivalent EU citizenship that would ensure the path towards completely unfettered digital cross-border business.

Disclosure and safeguards

The platform's approach to safeguards for the funders is to make sure that it discloses all the necessary information about the project (e.g., the share price of the company) to them. It does undertake legal due diligence, but not business due diligence. The platform is impartial and does not promote individual projects differently.

Disclosure requirements imposed on the fundraising companies serve, foremost, regulatory and authorisation purposes rather than investor protection. The companies are required to disclose a significant amount of information to the regulator, but less than public listed companies.

The platform has taken steps towards preventing money laundering and terrorism financing by using digital interfaces of EU and US authorities. So far, the platform has not experienced any incidents of money laundering or terrorism financing.

Invesdor follows the disclosure requirements imposed by MiFID. No particular post-investment disclosure measures apart from general risk warnings are taken to protect investors from the risks of misrepresentation or fraud, since the contractual relationship between the company and the platform has ended. EU-wide harmonised KPI systems would be very helpful, since they would serve as common comparison measurement for the users.

D. Case outcomes and lessons learned

Invesdor was forced to comply with MiFID due to a shift in the interpretations of existing laws by the Finnish regulator. Once compliant, after about one year of preparations, the platform went on to passport the licence successfully into the remaining 27 Member States. However, when considering executing its business model beyond its home market, the platform realised that this was not possible despite the passporting, due to other legal frameworks that related to crowdfunding. The platform therefore chooses to focus on the markets for which it has an affinity, in which, with no significant regulatory hurdles standing in its way, it believes it can achieve relevant scale, i.e., Scandinavia and the UK.

Success stories: Heeros

Heeros raised €660K through crowdfunding in Finland in 2015. Founded in 2000, the fintech and consultancy firm has been on the Deloitte Finland Technology Fast 50 list for seven years in a row, reaching about €4 million in revenue with staff of just over 50 people in 2015. The funding raised through crowdfunding helped to further grow

the business and prepare its IPO (initial public offering) on NASDAQ OMX in October 2016.

E. Analysis

Invesdor was the first MiFID-licensed platform to expand cross-border, yet its operations are still relatively new and small. Indeed, other than in Sweden and the UK, there was no staff on the ground at the time of the interview. While the platform has been critical of the MiFID licence impact on the operation of crowdfunding across borders, it currently sees no alternative to this and believes that the MiFID licence augments its prudential conduct and professional image. This is also reflected in the latest expansion by Crowdcube, in the fact that its Spanish subsidiary now is also MiFID-compliant and in the expansion into the Netherlands, but stands in stark contrast to Conda, whose operations are similar to those of another platform, FundedByMe, in 2013: operating without a MiFID licence within numerous Member States. Yet Invesdor realises that, despite the MiFID licence, local operations with regard to marketing, investor relations and deal origination are still necessary.

F. Conclusion

Invesdor adapted MiFID early on, being forced to do so by the local legal situation, and is now focusing on reaping benefits from the investment. The platform believes that it is on the right track and that MiFID compliance will be the way forward, but it has not yet produced relevant business from its expansion to prove this. Nevertheless, MiFID has also given the platform the opportunity to seek access to new markets through local partners, an option it is likely going to exploit. It remains unclear whether the MiFID can be a relevant tool for reducing some of the operational cost of expanding into new Member States, and whether its associated professional standards might help the platform to achieve better traction with the market to compensate the cost of expansion.

VI. Lendahand

A. Introduction

In order to gather first qualitative data, an interview was conducted on 3 May 2017. The interview lasted for about 1 hour. In addition to the interview, desk research was conducted. While the platform's website was one source of information, press releases and press articles about the organization delivered additional data.

B. Context

Lendahand is a still-young lending-based platform that was established in 2014. It is based in the Netherlands and offers loans as well as debt instruments to their customers (see table below).

Name of platform	Lendahand
Country	Netherlands
Year of establishment	2014
Number of employees	10
Turnover	n/a
Type of crowdfunding model	lending-based
Main products	loans, debt instruments
% estimate domestic versus cross-border fund inflow	95%, 5%
% estimate fund inflow from retail/institutional	n/a
% estimate fund inflow from actively pursued/passive	n/a
% estimate domestic versus cross-border deal origination	5%, 95%
Regulatory framework	AFM-regulated activity (domestic), MiFID

C. In-depth exploration

Cross-border activity and impact on business

The platform's business is mainly cross-border. Essentially, it receives fund inflows in Europe with the aim of investing them in emerging markets outside Europe. The total volume of crowdfunding managed via Lendahand to date has been an aggregated €20 million.

Currently, the platform actively markets its products to investors in the Netherlands and the UK. It does not market its products to other EU countries, due to different prospectus and other national rules. It aims to expand to other larger crowdfunding markets that provide better opportunities to scale. However, it has been challenging. Communication with national authorities has been difficult because of the different crowdfunding rules and regulations.

The current regulatory regime is deemed not suitable for the crowdfunding business. In particular, the authorization process creates delays and excessive financial burdens for SMEs and investors.

Years of experience of cross-border activity	n/a
Geographical markets	Netherlands, UK
Investors	worldwide (passive investors) (except USA; see certain other exceptions on the website https://www.lendahand.com/en-nl/faqs/)
Countries of fund inflow	Netherlands (80%), UK (10%), others (10%)
Countries of deal origination	Africa, Asia, Latin America
Countries where deals are actively pursued	Africa, Asia, Latin America
Countries where deals are passive	Africa, Asia, Latin America

Business Model

The platform provides meso-credit (as opposed to microcredit suitable for micro-enterprises) to SMEs through local partners that are non-bank financial institutions. These local partners issue the loans to the investors and constitute the legal counterparties to the investors. They pay the platform an interest rate of 3% to 6% for the service. Investors pay a fee of 3% to 4%.

The platform only facilitates the process. It presents to all the SMEs projects that require funding on its website, it collects the returns from the local partners and it makes the loan repayments to the investors via a third payment services provider. It

pays 3% or 4% interest to the investors. The other 3% or 4% constitutes its gross margin.

Looking to the future, the platform plans to use the same model in Europe; that is, to finance SMEs directly through SPVs in Europe that can issue the loans that will be invested in the developing countries. The result would be higher interest rates paid to the investors and higher margin left to the platform.

Marketing

The platform operates with a MiFID licence in three countries: Netherlands, Belgium and Finland. Its marketing to lenders targets only these three countries. It does accept investors from elsewhere, but it does not actively pursue them.

With regards to deal flows, 95% of them come from outside the Netherlands, since the platform is focusing on emerging markets only. There are cases of deal flows coming from Europe or the Netherlands, when the fundraising company is a holding company or SPV of the parent company located in the emerging market which will use the funds.

Challenges

Competition is not a real hurdle, since the platforms that currently offer finance to microfinance organisations operate under different business models. Usually, such platforms operate under the NGO model, whereas the platform is structured as a limited liability company with a commercial and business mentality.

However, regulation is considered a significant challenge. In particular, the fragmentation of national crowdfunding regulations makes the use of MiFID licence in other MSs onerous. Notably, the platform is exempted from the prospectus requirements in the Netherlands and UK but there is uncertainty as to whether the same exemption applies to other MSs.

Moreover, the additional local regulations that apply to offerings of SMEs' securities add an extra obstacle to entering new markets, since the overall customer journey becomes burdensome for the fundraising SMEs, both operationally and financially.

Regulatory aspects

Overall, the current regulation of the microfinance sector is considered disproportionately burdensome.

Currently, the platform uses a MiFID licence for brokerage activities of debt instruments and loans in Belgium and Finland. The choice of applying for a MiFID licence serves the need of entering new markets and attracting more investors in Europe. However, the fragmented application and interpretation of laws has made the MiFID experience challenging. It has resulted in a burdensome and less flexible investment process.

The main challenge of complying with the individual national crowdfunding regulations is the high costs associated with doing so. These include the cost of IP protection, legal and compliance, staff costs (usually €300 per hour per country), the cost of acquiring a new licence (€10K per year) and the cost of using a third party payment service provider. The above costs are incurred per country, and if multiplied by 28 (the number of MSs) then the overall cost is extremely onerous for a meso-finance platform.

Moreover, investing human capital and time in compliance on a regular basis means less time for managing the company's day-to-day business. One out of eight employees work in compliance.

The platform's approach to safeguards for the funders is to make sure that it discloses all the necessary information about the project to them. The due diligence on the projects and the investee companies is not carried out by the platform but by authorised local partners. However, the platform ensures transparency by sharing information regarding the project that allows the investor to make an informed decision.

To identify the right local partners, the platform takes a number of actions, including market research, market analysis, networking and attending events where crowdfunding stakeholders meet up. The platform also uses various criteria to assess the suitability of the candidate financial enterprises willing to become local partners in relevant countries.

These criteria are: a) the local partners must have a social mission and work with the platform to supply loans as cheaply as possible. This ensures that local entrepreneurs have access to affordable financing which allows them to grow their business. b) Local partners must also have "track records"; they must have proved themselves as meso-credit providers for SMEs. This includes, for instance, a solid credit portfolio and enough buffers and equity to compensate for unexpected downturns. c) The organizational structure of the partner is assessed; in particular, the robustness of their (internal) procedures. d) The loans that a local partner receives via the platform must be in proportion to the total balance of that partner. A healthy balance between effectuating influence and being independent is crucial. e) In the event of excessive currency risk, local partners are urged and sometimes obliged to cover such risks.

As for voluntary safeguards, the platform places a general warning on its website regarding the risks associated with meso-finance as opposed to microfinance. It also provides warnings on investment limits (in the Netherlands the limit is €80k) and monitors investors who surpass it. Moreover, it carries out appropriate investor tests to assess the level of financial literacy of its investors, with the goal of ensuring that they make rational decisions. This is a core value of the platform's business and reflects its social purpose. Lastly, its KYC procedures are outsourced to its payment service provider.

Concerning redress mechanisms, the platform acts only with regards to prevention. It monitors the SMEs on a quarterly basis to make sure that they are always in a

financially sound position. It also monitors the due diligence processes that the local partners themselves have in place and stays in close contact with them to solve any issues that might affect the loan repayments.

In the event of default or of platform default, the funds of the depositors are separated by the funds of the defaulting entity by being placed in a separate protected bank account. In such a case, the funds are transferred directly to the investors' bank accounts. When it comes to information flow and reporting, there is no specific mechanism in place, but it is the platform's plan to include such in the future. It is currently building an investor tool that will enhance information flow and reporting: a foundation that will operate on behalf of the crowd and can contact the defaulting entities and ask for reporting. Details about the operational procedure of such foundation are not published yet.

D. Case outcomes and lessons learned

The use of a MiFID licence does not make the cross-border experience easier for the platform. The different national regulatory regimes do not allow for the full passporting of the licence in the MSs — especially in Germany and the UK — and they imply high compliance costs as well. As a result, the platform currently only allows investments from three EU Member States. The Dutch investment structure used, however, does allow investment across the world. Compliance cost remains a key hurdle for the platform to address regarding cross-border expansion.

The platform believes that technological advancements, like potential regulatory improvements, could help disrupt the market. Advanced KYC procedures and electronic means of identification in particular are believed to be examples that could help to significantly reduce transaction and operational cost.

What the regulators could do better is put effort into simplifying the authorisation and compliance process. A pan-European crowdfunding regulatory framework that all crowdfunding stakeholders will have to comply with is vital, but the sharing of experience amongst the industry could also be increased, in order to identify problems and solutions that could be adopted by policy makers.

E. Analysis

Lendahand stands out by collecting funds from EU investors but investing these across the world. While no other platform reviewed in this study operates outside, let alone predominantly outside, the EU, the company makes use of national regulation with regard to the investment structure used and the possibility of collecting these investments in a special purpose vehicle for investing outside the home Member State.

However, while this model exploits the Dutch legislation, it is unable to apply the same principles to all EU Member States. To fully use its MiFID licence, it would also need to use a financial structure that is accepted for investment across the EU and not only by a small number of Member States.

F. Conclusion

The platform exploits national legislation regarding a MiFID licence that enables it to offer its services in a very few select Member States for now. This model comes with a high compliance cost and a lack of scalability. It does not work in other EU Member States; for example, the French platform Babyloan, which also funds projects in the developing world, is restricted by French regulation from collecting funds from non-French citizens. Lendahand is seeking a better model in order to offer its investments to the developing world, ideally from investors across the EU.

VII. Lendix

A. Introduction

A telephone interview with one representative of the platform Lendix served as a first source of gathering data. It was conducted on 20 May 2017 and lasted for about 1 hour and 20 minutes. Additional sources, including the platform's website, press releases and press articles about the organization, were used to obtain further information.

B. Context

Lendix was established in 2014 and is located in France, with 65 employees. It is a lending-based platform that uses debt as its main product. The table below summarises the platform's key business parameters.

Name of platform	Lendix
Country	France
Year of establishment	2014
Number of employees	65
Turnover	€105 million
Type of crowdfunding model	lending-based
Main products	debt
% estimate domestic versus cross-border fund inflow	n/a
% estimate fund inflow from retail/institutional	n/a
% estimate fund inflow from actively pursued/passive	n/a
% estimate domestic versus cross-border deal origination	n/a
Regulatory framework	crowdfunding intermediary (*Intermédiaire en financement participatif - IFP*), Payment Services Directive (PSD)

C. In-depth exploration

Cross-border activity and impact on business

The platform is currently operational in France, Spain and Italy, with the goal of continuing to build its lending marketplace in Continental Europe. Spain and Italy were chosen because of their potential in terms of available credit and number of SMEs.

Years of experience of cross-border activity	6 months
Geographical markets	Spain, France, Italy
Investors	EU & worldwide (except USA)
Countries of fund inflow	EU & worldwide (except USA)
Countries of deal origination	France, Spain, Italy
Countries where deals are actively pursued	France, Spain, Italy
Countries where deals are passive	None

Business Model

The platform's business model shows some positive attributes; it has a competitive advantage compared with other platforms and actively promotes cross-border activity. The platform allows both retail and institutional investors and takes a fee from the borrower. Deal origination is sourced locally, but the investments are available in each of the markets in which the platform is active, thus allowing some degree of cross-border fund flows within the active markets.

More specifically, the platform follows a no-discrimination approach to its lenders. Interest rates are the same for all lenders for a given project. Further, it provides 100% guaranteed funding to the SMEs via an investment fund which is comprised of institutional investors who fund alongside retail investors and, if necessary, complete every project at the end of the subscription period. Also, in line with the goal not to compromise the projects' quality in favour of quantity, the screening process is stringent, with low default rates.[7]

[7] Also, it has a record of low risk rate projects. A recent project (€3 million) was an A+ project with 4.59% risk rate over 60 months. This rate is believed to be lower than the market average, although still higher than a bank risk rate.

Marketing

The platform actively markets its investment opportunities exclusively to France, Italy and Spain. It does not actively market to other countries in Europe, but it does passively accept fund inflows from the rest of Europe (as well as from outside Europe). The percentage of lenders/borrowers coming from countries other than the three where the platform is present is estimated to be low.

Challenges

The main reasons that the platform does not actively market its funding and investment opportunities to other countries in the EU are the complexity and constraints caused by the divergent national regulations and laws. In particular, offering lending-based crowdfunding cross-border requires that all the relevant contracts entered into by the parties (lenders, borrowers, and platform) are in their language. Dealing with cross-border tax-related issues is also very complex, and local regulators' view on the status requirements regarding PSD also vary from one country to another.

Regulatory aspects

The platform's main activities are subject to two layers of regulation: crowdlending and PSD. At the PSD level, the platform is using an external Service Payment Provider and, unless not accepted by the national authority, will continue to be registered as an agent of a Payment Establishment to accept funds on behalf of third parties in the context of crowdfunding operations under the Payment Services Directive. Moreover, it must comply with the obligations in relation to money laundering and terrorist financing under Directive (EU) 2015/849.

Also, the platform is the first to have launched a European Long-Term Investment Fund (ELTIF) dedicated to lending to SMEs. Thanks to this fund, institutional investors can lend directly to the platform's projects in France, Spain and Italy. This new fund format is passportable everywhere within the European Union, which helps the platform to open its business across Europe.

At each national level, the platform has to obtain the necessary registration/authorisation to operate as a Marketplace Lender that, through its website, puts companies carrying projects in contact with people financing such projects by way of loans. This status cannot be transported from one EU country to another, due to different regimes. Spain uses a different model for the regulation of lending-based crowdfunding and Italy has no specific regulation in place for this activity.

Generally, the level of difficulty of launching a cross-border business depends on whether there is an existing regulation or not. Usually, this venture requires recruitment of a local law firm which makes sure that the platform gets the necessary licence/authorisation/exemption and complies with the local regulation (including other local rules such as employment law, taxation, and contracts). In the absence of specific regulation, the law firm usually advises on legal matters related to the set-up of the business.

Disclosure and safeguards

The platform's approach to safeguards for the funders is to make sure that it discloses to them all the necessary information about the project, the applicable law and the language in case of cross-border investments. It provides the same disclosure and safeguards to all funders, regardless of the country, unless specific rules apply.

In the event of borrower default, the platform accompanies the lender to non-judicial recovery and then represents it via a specialist company in judicial recovery. There has been one incident of fraud attempt in France, where the platform drove judicial recovery on behalf of the lenders and managed to recover the sum lent. Other than this, the overall experience with the recovery has been positive, due to transparency and equal treatment of the lenders.

France and Spain impose investment limits on the platform (in Italy there are no regulatory limits). However, the Spanish limits and their interpretation differ considerably from those in France,which makes it difficult to monitor and not as effective for the lenders' protection. Plus, monitoring can only be platform-specific; thus, investments that occur on other platforms could exceed the investment limits.

Risk warnings exist with regards to general risks related to any investment in SMEs, particularly cross-border investments. Moreover, diversification of investments is strongly promoted so that lenders can minimise the risks incurred as much as possible. Furthermore, rating of projects functions as a risk warning for the lenders. The rating is carried out by an internal credit committee which rates the companies with A, B or C, following rating criteria which are publicly available on the platform's website.

The platform applies a strict process of due diligence which has resulted in less than 1% of the projects being published on the website. Ensuring a low default rate of the projects is key for its reputation, and for ensuring it is trusted by private investors and by institutional investors that support the investment fund.

The platform offers three types of guarantees for borrowers: query responses in 48h, a known interest rate before the acceptance of the loan and, finally, a funding guarantee once the project is uploaded on the platform; i.e., the investment fund invests in all projects and if necessary tops up the portion not taken up by the community of private investors at the end of the funding period.

Financial maturity questionnaires are also used to assess the lenders' level of financial literacy. Although not as thorough as a MiFID form, these questionnaires ensure that the lenders have the knowledge and maturity to understand their investment decisions.

On top of the mandatory disclosure requirements, the platform aims to offer maximum transparency with regards to its loans portfolio. It does so by publishing more statistics on its website than usually required by French, Italian and Spanish regulators.

D. Case outcomes and lessons learned

The main challenge in complying with the individual national crowdfunding regulations is the tedious process of national authorisation for operating a crowdfunding business. For example, in Spain it took the platform one year to get authorised and registered, and it was not able to create the local entity and recruit before this.

The operational day-to-day compliance aspects of the business are dealt with internally and rely on local law firms only with regards to specific matters and questions. Regulatory matters in that regard represent an important aspect of operations in three different EU countries.

There is a positive and constructive attitude towards regulation, as it is believed to help the business grow and create trust among stakeholders. This does not necessarily translate into a call for a pan-European regulation. Rather, it is translated into a call for a cooperative approach as to the understanding of the lending-based crowdfunding and education/support of local regulators.

Essentially, there is desire for a dialogue-based approach between the industry and the regulator, and among the national regulators themselves, with the aim of optimally promoting the industry and allowing it to reach its full potential in terms of covering the funding needs of SMEs alongside traditional finance providers. In this context, platforms with positive experience of national regulatory regimes can promote a constructive dialogue by sharing their ideas and proposals.

For example, the platform had a productive dialogue with the national Italian regulator and the national bank, in which they shared information and practices, trying to find the best solution for the platform to operate in the country. The lack of a common understanding of the industry and of a common regulatory approach across MSs creates uncertainty and prejudice against the cross-border business.

It could be helpful if the EU regulator were to communicate to the national regulators a signal of trust about the platform wanting to establish itself cross-border. A competent EU authority established ad hoc could confer a "seal of approval" on the platform, provided it has showed a record of compliance with individual national regulations in the context of its cross-border operations.

As for the stimulation of investment, the issue of high taxes applied on the revenue and returns remains a burden. Tax netting of gains and losses as a minimum, and potentially other incentives, should be considered more seriously as solutions. After all, investment in SMEs should be a way of fuelling the economy and creating employment and growth.

E. Analysis

Like other lending platforms operating cross-border via subsidiaries, Lendix has encountered lengthy regulatory processes and related costs when setting up local operations in Member States. The choosing of markets defined by demand and

regulatory ease — though it takes up to a year to set up operation — is common to all expansion activities of lending platforms. The Spanish market especially has been identified as an opportunity by a number of platforms.

Competitor Funding Circle expanded via acquisition of Zencap into Germany, the Netherlands and Spain in 2015, adding 75 staff members to the company for operations on the ground[8]. Yet the platform was unable to benefit from the head start and had to close down its subsidiaries in Germany and Spain. In summer 2017, it relaunched in Germany[9].

Other European lending platforms, such as Mintos and Bondora, also expanded organically, though in some cases the deal origination was done via partners so the platform had less operational hurdles, while in other cases the deal origination was an integral part of the platform, as it is also with Lendix. The expansion for consumer loan and SME lending platforms has similar traits, the reasons clearly being proximity, market size and regulatory arbitrage (lower regulatory burdens).

F. Conclusion

Lendix's approach to cross-border expansion has encountered mostly-regulatory hurdles with regard to local frameworks. The markets chosen are marked by geographic proximity and regulatory possibilities. Operational considerations are less of a hurdle or are easier to anticipate. Other lending platforms in the market have made similar considerations, though to some degree regulatory hurdles have been more important than geographic proximity in decisions of expansion.

While there have been cases of failure to grow cross-border business in lending platforms, namely Funding Circle, there were also early success stories with Trustbuddy, a NASDAQ-listed lending platform that acquired the then-largest Dutch lending platform Geldvoorkaar and Italian lender Prestiamoci in 2014[10], and though it filed for bankruptcy in 2015, this was not in relation to its cross-border activities.
However, the bulk of lending platforms operating cross-border, like Lendix, seem to be expanding organically by opening local operations under national regulations. The regulatory framework is the deciding factor, as in some legislations the entry burdens are extremely high; for example, in Germany, where a lending platform would be required in order to hold a banking licence or partner with a bank that holds such licence. As a result, lending platforms have sought markets that provide relevant size and limited compliance efforts.

[8] http://www.cityam.com/226942/funding-circle-buys-german-startup-zencap-from-rocket-internet-for-european-expansion-plans
[9] https://www.crowdfundinsider.com/2017/07/119293-funding-circle-germany-takes-fresh-start/
[10] https://globenewswire.com/news-release/2014/11/13/682798/0/en/TrustBuddy-Acquisition-of-Italian-and-Dutch-Peer-to-Peer-Companies.html

VIII. Lumo

A. Introduction

One representative of Lumo participated in the focus group discussion about cross-border crowdfunding that was conducted on 25 April 2017 in Amsterdam. In addition to this data gathering, desk research took place, while the platform's website served as a source of information, as did press releases and recent news articles about the platform. Lumo has also been a participant in two EU-funded projects surrounding crowdfunding for renewable energy, Citizenergy[11] and CrowdFundRES[12], in which the platform provided valuable and useful insights.

B. Context

Lumo is a lending-based platform that was established in 2012 in France. Its sectorial focus is renewable energies and it offers debt and subordinated loans as its main products.

Name of platform	Lumo
Country	France
Year of establishment	2012
Number of employees	5
Turnover	€3 million
Type of crowdfunding model	lending-based
Main products	debt/loan, subordinated convertible loan
% estimate domestic versus cross-border fund inflow	100% domestic
% estimate fund inflow from retail/institutional	100%, 0%
% estimate fund inflow from actively pursued/passive	80%, 20%
% estimate domestic versus cross-border deal origination	100% domestic
Regulatory framework	*Conseillers en investissements participatifs* (CIP)

[11] https://citizenergy.eu/
[12] http://www.crowdfundres.eu/

C. In-depth exploration

Cross-border experience and impact on business

Lumo was created in 2012 to finance renewable energy projects: mainly solar, hydro and wind. The platform's main experience of cross-border crowdfunding has been with the community energy portal Citizenergy and another EC-funded programme, CrowdFundRES. Based on the experience, and the limitations of French regulation, the platform decided to seek a partnership with Dutch platform OnePlanetCrowd. OnePlanetCrowd has funded 170 entrepreneurs in projects or social sustainable enterprises and projects, such as start-ups, growth SMEs, renewable energy and real estate. It offers lending and convertible bond structures.

In April 2017, the two crowdfunding platforms launched a campaign to fund the solar park Torreilles, located near the city of Perpignan in southwestern France. The two platforms have developed a solution to remove the barriers to cross-border crowdfunding in Europe. This makes it possible for both French and Dutch citizens to participate in a European project that contributes to the energy transition.

The project is located in France, the developer is based in Ireland, the deal-originating platform is from France and the second platform from the Netherlands. A German bank has made the €20 million loan to fund the project.

The funding of the project was successful. But the business model is only partly replicable under the same conditions in other countries. Generally, bigger projects and higher volume of projects are needed. Other barriers include the different regulatory regimes, the language and cultural barriers (lack of knowledge of the local market).

Years of experience of cross-border activity	1
Geographical markets	France
Investors	5K
Countries of fund inflow	France
Countries of deal origination	France
Countries where deals are actively pursued	France
Countries where deals are passive	None

Business Model

Lumo set out in 2012 to build a pan-European crowdfunding platform for renewable energy and energy efficiency projects. Lack of EU regulation complicated matters at first, and the French national crowdfunding regulation later excluded the opportunity

to execute cross-border transactions. The platform, initially focused solely on community investments, actively seeking solutions with other platforms and contributing to EC-funded projects Citizenergy and CrowdFundRES, now has restructured. Since 2017, the focus has been solely on the French market and on seeking out larger transactions in cooperation with institutional or corporate co-sponsors. The crowd in this business model is engaged to co-invest next to a lead institution. Fees are collected from the project owner depending on the need for services from the platform (4% to 10%), and an advisory fee of up to 3% is collected from the investor, though the actual majority of fees will be about 1% to 2%. Nevertheless, cross-border transactions remain a long-term goal of the platform, and in the context of the described example, Lumo sought a partnership with Dutch OnePlanetCrowd to exploit opportunities under Dutch law to test potential cross border solutions.

The two platforms operated with the use of their national licences, but they made it possible for a French entrepreneur and the Dutch investors to benefit from cross-border investments. Essentially, they operated cross-border via a partnership business model. The platforms deemed the partnership-based cross-border business model more viable and commercially reasonable than operating under a MiFID licence or via local subsidiaries, both of which entail higher costs and complexity due to the cultural and language barriers.

However, even the partnership-based model has its drawbacks. The replication of this model across MSs is costly without an adequate volume of transactions. Plus, the overall profits will be shared between the platforms, which makes the available margin even smaller.

Marketing

The French platform was the originator of the bonds. Also, Lumo was responsible for the due diligence of the project and marketing in France. For the transfer of the funds by the Dutch investors to the French company, a French SPV was created which would invest in the French project. Basically, the Dutch investors would lend the funds to the SPV and the SPV would buy the French bonds with those funds. This solution was chosen because of the different investment products offered by the two platforms which, without the use of an SPV, would make the investment more complicated for both the borrower and the lender.

Challenges

For Lumo to operate cross-border under its current regulatory licence, it would need to rely on a partner, such as OnePlanetCrowd, to deliver the relevant cross-border fund inflow. There are restrictions to this in many other MSs, so partnerships might not be possible without further legal developments across the EU. To build a partnership, both platforms also need to develop trust in their capabilities and operating models. Most platforms do not have adequate resources to establish such cross-border partnerships.

Regulatory aspects

The platform is regulated according to the Participating Investment Advisor (*Conseiller en Investissements Participatifs* (CIP)) status. The CIP statute permits a prospectus exemption for fundraising up to €2.5 million, but this threshold is raised to €5 million if the platform is approved as an investment firm. This prevents the platform from accepting non-French residents as investors, or projects from outside of France. Under this regime, cross-border crowdfunding becomes virtually impossible, which is what the regulator wants. The platform, at launch in 2012, aimed at cross-border operations for its business model, but was restricted in this, first by the lack of a regulatory framework and then by the specific French rules. Today it is focusing on scaling its local market first, but remains interested in exploiting cross-border potential, if this becomes economically viable.

To be able to offer cross-border transactions, Lumo would have to operate under a different licence. Under French law this would require MiFID compliance, but Lumo decided to circumnavigate MiFID requirements and related cost. For the cross-border transaction with Dutch investors, both platforms, Lumo and OnePlanetCrowd, work under their own existing local licences. Lumo offers bonds to its investors, while OnePlanetCrowd offers loans. In order to ease the set-up and align the investors, Lumo and OnePlanetCrowd set up a special purpose vehicle (SPV) for Dutch investors operating under their normal structure. Once the SPV was funded, it acquired the bonds offered by Lumo at the same conditions as the French investors.

The French regulatory framework is set up more for the advice and information of French investors, and less for the issuers' protection or for the process of the platform carrying out its activities. It limits investments to French citizens. It fails to consider the specificities of internet platforms, for example, the client relationship exclusively carried through digital channels or the double-sourcing issues (investors and issuers). For cross-border transactions to be viable for Lumo, the economic viability of crowdfunding business models needs to be given in any regulatory model, including access to funds and deal origination. Innovation of business models and professional conduct needs to be given room within the regulatory conditions when applied to competitive markets (MSs), but there is also need for adequate and comparable rules for the protection of investors and issuers and rules regarding money laundering and financing of terrorism across MSs.

Disclosure and safeguards

There are relevant disclosure requirements within the local legislation, which Lumo applies. Regulation limits the marketing scope to French citizens, and the platform has relevant disclaimers according to local law, but it does not carry special disclaimers for non-French investors, as these are not accepted. Uncertainty exists about French citizens living abroad. To avoid problems, a French bank account is required to invest on the platform.

In the event that non-eligible investors approach Lumo, the platform will decline their funds. In some cases, it might provide a referral. For example, Lumo maintains a very

light non-competitive partnership with one US-based platform; Lumo refers non-eligible investors from the US to invest on the partner platform instead and vice versa.

Especially for local renewable energy projects and project finance, it is important for the platform to know the local market and make offerings in local language. This is important for customers' trust in the products as well as customer protection. The platform therefore operates with local partners, especially energy companies, local councils and project developers, in mobilising investors.

Under French regulation, the platform advises on proposed transactions and therefore also has an obligation to ensure all its terms and paperwork can be understood by the investors. To translate all relevant documents for a small fraction of its capital inflow would not be economic, even if the platform were allowed to do this. Therefore, the platforms are not translating or offering any information in any language other than French.

D. Case outcomes and lessons learned

After extensive efforts seeking a regulatory approach according to which the platform could operate cross-border, the platform refocused on its national market. At this point, Lumo does not believe existing local regulation or MiFID will enable it to operate cross-border on its own merits. The creation of a European status for crowdfunding, with defined rules and exemption thresholds, would be necessary. To this end, gold-plating by national regulators or lawmakers would have to be avoided, a European passport would need to be transferable across different regulations and national interpretations, and the national regulators would have to be kept aligned across MSs through direct application.

The operation of co-investment partnerships, such as the one with OnePlanetCrowd, can work with partners in specific legislations where crowd-based investment can be pooled for cross-border transactions, like in the Netherlands. Yet the complexity of the partnership requires sizeable transactions, a professional partnership with trust and the willingness to engage and adapt. The platform does not believe this model could be replicated, given the operational effort and cost it means for both parties, unless a relevant volume of high-value investments could be offered. The platform expects the cross-border transaction with OnePlanetCrowd to remain an exception, though it might seek to replicate it if another relevant transaction arises.

E. Analysis

The example of Lumo and OnePlantCrowd is one of a unique approach that succeeded in circumnavigating national and European regulatory uncertainties with regard to cross-border transactions. However, it did create significant operational cost. Both platforms state that, from a business point of view, the transaction has not been cost-effective. More and larger transactions would be needed to cover the cost of building such a partnership.

While a replication with other platforms in other Member States would in theory be possible, the platform operators state that significant trust was needed to advance the set-up of the deal. Both platforms have been a member of the EC-funded project CrowdFundRES and both have been Board Members of the European Crowdfunding Network for multiple years, which has helped to create an initial basis for the cooperation. This does not exist with platforms in other Member States at the same level.

F. Conclusion

The example of cross-border transactions between Lumo and OnePlanetCrowd remains an exception. Because of the required trust in the partners' professional abilities, it seems unlikely that this model can be spread widely. The operational costs are high and require goodwill and upfront investment into the partnership, while financial rewards for the platforms are expected to materialise only after multiple and larger transactions. Neither participant believes this a viable model, but they sought to explore the opportunity because of their existing relationship in the market.

IX. Seedrs

A. Introduction

Qualitative research was undertaken on 4 May 2017, when one representative of the platform Seedrs was interviewed. The interview was conducted by phone and lasted for about 35 minutes. Additional information was gathered through the examination of the platform's website, as well as press releases and press articles about the platform.

B. Context

Seedrs is based in the UK and was launched in 2012. It is an equity-based crowdfunding platform that offers equity, equity funds and convertible equity.

Name of platform	Seedrs
Country	UK
Year of establishment	2012
Number of employees	c. 65
Turnover	£2 million
Type of crowdfunding model	equity-based
Main products	equity, fund equity, convertible equity
% estimate domestic versus cross-border fund inflow	80%, 20%
% estimate fund inflow from retail/institutional	n/a
% estimate fund inflow from actively pursued/passive	0%, 100%
% estimate domestic versus cross-border deal origination	80%, 20%
Regulatory framework	FCA-regulated, MiFID

C. In-depth exploration

Cross-border activity and impact on business

The platform acquired its first MiFID licence in 2016. Prior to that, it had been operating only out of the UK, though it was allowed cross-border fund raising. Since the launch of its MiFID-based cross-border business, it has established several representative offices in Lisbon, Berlin and Amsterdam. The cross-border investments, however, are limited only to deal flows of projects and investments from investors investing on their own initiative. It has not actively marketed its products outside the UK because of the legal uncertainty and the high costs caused by the fragmentation of national crowdfunding regulations.

The table below summarises the cross-border experience of Seedrs.

Years of experience of cross-border activity	4 years
Geographical markets	UK, Iberia, Benelux, DACH, USA
Investors	UK, EU
Countries of fund inflow	UK, EU
Countries of deal origination	UK, Iberia, Benelux, DACH
Countries where deals are actively pursued	UK, Iberia, Benelux, DACH
Countries where deals are passive	UK, Iberia, Benelux, DACH

Business Model

The platform provides three types of equity products/campaigns, pooling investors via a nominee structure using either direct equity, convertible equity (in which case they receive a discount in valuation for an investment made in the future) or an investment in a cohort fund. The platform uses a nominee structure whereby it holds and administers the shares of the business on behalf of the underlying investors after an investment is completed.

The nominee structure is essential to Seedrs' crowdfunding model, as the platform believes it enables business to easily raise follow-on funding but also ensures that investors' interests are protected and that the business can operate without the administrative burden of dealing with a large number of individual shareholders. In this way, the platform still has a post-investment role: taking the necessary actions to ensure that both investors and entrepreneurs benefit from the investment structure.

The platform does not advise on investments but effectively acts as a broker. Seedrs also offers a number of services to the fundraising company, such as free company incorporation and structuring, SEIS and EIS paperwork, etc., and charges fundraising entities a fee of 6% on all funds raised, plus 0.5% payment processing fee and £2,000

completion fee excluding VAT. The platform also operates a secondary market platform that allows investors to sell and buy shares to and from each other.

Marketing

The platform actively markets its products to entrepreneurs in the UK and Europe. In Europe, it has established representative offices in Portugal, the Netherlands and Germany which use the Seedrs brand for marketing to project owners.

However, it does not actively market its products to investors cross-border, despite having a MiFID licence, because of the legal uncertainty caused by the various national regulations. It does, however, accept fund inflows from investors outside the UK who approach the platform on their own initiative.

Challenges

The most significant obstacles to cross-border business are the bespoke crowdfunding regimes of the individual Member States and the securities legislations. Specifically, diverse implementation of European directives — especially the Prospectus Directive — by individual Member States brings high administrative cost to the platform, while deal origination in countries where the platform is not represented physically remains limited.

The fragmentation of crowdfunding regimes across the 28 EU Member States and the different applications of the Prospectus Directive, and the resulting administrative cost, are essentially the factors that limit the platform from fulfilling its growth ambitions outside the UK today.

Regulatory aspects

The platform finds the national regulatory framework for crowdfunding sensible and proportionate. Regulatory due diligence is not considered a barrier to crowdfunding business. Overall, standards and principles regarding disclosure and safeguards are deemed crucial, but it is best to consider commercial aspects of a deal in addition to regulatory initiative. A one-size-fits-all approach (e.g., in the form of a prescriptive list of standards) will not be appropriate, since platforms have different business models and offer different products.

The costs associated with regulatory compliance, national and European, have created a significant burden on the platform operations. Furthermore, the fragmentation of the national regulatory regimes increases the overall costs. Notably, the platform's business would not be viable if an investment and compliance team for each Member State had to be recruited.

Overall, the experience with the national and European regulators has been positive. Plus, the current EU regulation is deemed appropriate for the crowdfunding model; it is just applied differently by different Member States. However, it is suggested that the European regulator could better communicate to Member States the pieces of regulations applied to crowdfunding, like MiFID or the E-Commerce Directive. Lack of such communication to the individual Member States requires platforms to take

commercial and regulatory risks in each of those Member States while pursuing their ambitions to grow their businesses.

The industry, for its part, could create principles and standards to make sure that the platforms operate in a way that is commercially viable for them and that they disclose the processes of their operations.

Disclosure and safeguards

The platform complies with the MiFID disclosure requirements, but it also undertakes voluntary commercial due diligence. Plus, its nominee structure enables an extra layer of contractual protection for the investors.

More specifically, for investor protection, the platform complies with the regulatory due diligence and disclosure requirements for the analysis and verification of financial promotions. On top of that, its nominee structure serves as an extra protection layer for investors. This is achieved through contractual provisions included in the investment agreements between the platform (as nominee on behalf of investors) and the investee companies, which confer shareholder rights to investors. These include pre-emption rights, tag-along rights and consent rights.

With regards to the investee companies, the platform undertakes commercial due diligence, including, but not limited to, disclosure requirements imposed on investee companies, interviews with directors, checking sanctions registers and negotiating the shareholder and subscription agreements that the platform enters into with the companies. Essentially, the investee companies have a contractual obligation to provide the platform with the required information, a breach of which can lead to legal action. The platform finds this a sound commercial decision, essential for the protection of investors and for the success of the business.

There are no insurance schemes provided, as they are deemed insufficient for meeting the needs of equity crowdfunding investments. The Seedrs nominee-based business model is believed to be more effective in terms of investor protection, since it involves personal liability of the directors of the investee company in the event of breach of contract, whereas an insurance scheme mainly protects against fraud.

D. Case outcomes and lessons learned

For Seedrs, the different limits under the Prospectus Directive within Member States have proved to be a hurdle. In addition, the bespoke national crowdfunding regulations are adding to the fragmentation. Addressing each of these differences creates compliance cost that is likely not covered by the volume and value of quality deal origination.

Apart from this, technological developments will be vital in terms of operational efficiency. The platform is aiming to partner with the new fintech stakeholders to gain access to faster payment systems and integrations following the liberalisation of the

Payment Services Directive. For now, it is working with traditional banks, but their services are not sufficiently flexible for the platform's needs.

Seedrs has encountered additional challenges in identity verification. It needs to be clarified which electronic verification methods can be used by the financial services industry (e.g., paper evidence vs. electronic evidence, biometrics). It remains costly to adjust the platform's operations to different national aspects.

Similarly, the platform has encountered difficulties accessing comparable database information with regard to "Know Your Customer" data across Member States. Domestic database providers offer easy access to information locally, but in a cross-border setting, access to information becomes more difficult considering the lack of consistency of database models and the lack of uniformity of KYCs.

E. Analysis

In operating local teams in the countries where Seedrs is active, the platform is comparable to other platforms examined, such as Crowdcube, Invesdor and Conda, though it compares best to the former two platforms, which hold MiFID licences. The platform was open for cross-border transactions prior to opening offices abroad[13], but the need for on-the-ground presence with regard to deal origination has proven critical.

While deal origination remains costly until the achievement of relevant volume and value of local origination in each Member State where the platform is active, the platform relies mostly on its native investor base in the UK and those investors that join it of their own initiative.

As for the choice of markets the platform has entered, Portugal is home to Seedrs' development team and one of its co-founders, and so has long been a central market for the platform. The Netherlands and Germany, on the other hand, offer geographic and likely some cultural proximity, while the platform's main competitor from its native market, Crowdcube, is now also active in the Netherlands.

F. Conclusion

Seedrs is in clear competition with Crowdcube in both the UK and the Netherlands. Operating a different model, via a nominee structure, Seedrs claims to have a deeper vested interest in the companies it helps fund. The structure also allows for simpler cross-border transactions, with the investors represented by a nominee under UK law which can make investments outside the UK.

Nevertheless, the cost of accommodating national rules has kept the cost of cross-border transactions high, and the platform has not been able to scale as quickly as it would like to.

[13] https://www.crowdfundinsider.com/2013/11/27078-seedrs-equity-crowdfunding-expands-across-europe/

For Seedrs, as for its competitors, success in building cross-border business under the current regulation would depend on being able to build high-volume and high-value deal origination operations in each new market, despite local competition.

X. WiSEED

A. Introduction

One representative of the platform WiSEED was interviewed by telephone on 30 May 2017. The interview lasted for about 1 hour. In addition, desk research was conducted which included the examination of the platform's website and press releases as well as press articles about the platform.

B. Context

WiSEED is a crowdfunding platform that uses the equity- and lending-based model. It is based in France and was established in 2008. The main products the platform offers are equity and bonds.

Name of platform	WiSEED
Country	France
Year of establishment	2008
Number of employees	35
Turnover	n/a
Type of crowdfunding model	equity-based, lending-based
Main products	equity, bonds
% estimate domestic versus cross-border fund inflow	approx. 1% cross-border
% estimate fund inflow from retail/institutional	n/a
% estimate fund inflow from actively pursued/passive	80%, 20%
% estimate domestic versus cross-border deal origination	n/a
Regulatory framework	AMF General Regulations for operating as PSI - Investment services advisor (*Prestataire de services d'investissement*), Crowdfunding Act, CIP - Crowdfunding investment advisor (*Conseiller en investissements participatif*)

C. In-depth exploration

Cross-border activity and impact on business

The platform operates in France with 1% cross-border fund inflows from Belgium, Switzerland, Luxemburg, and Asia. Its deal origination is France-based.

WiSEED operates under the PSI structure as an Investment services advisor (*Prestataire de services d'investissement*) and under the CIP structure as a Crowdfunding investment advisor (*Conseiller en investissements participatif*). The PSI authorisation allows it to carry out cross-border crowdfunding.

Cross-border expansion is extremely important for business growth, for two reasons. First, there is a larger pool of projects that can be pursued EU-wide, particularly for real estate, increasing the market share of the platform in Europe. Second, there is a great opportunity for portfolio and risk diversification for the investors, which results in higher profitability for the platform. Germany and South Europe are the most attractive real estate markets at the moment. In these markets, there is great potential for crowdfunding due to limited or lack of bank finance. The way to tap into these markets would be either by scaling the existing platform, which would require the right resources to go cross-border, or by employing a local partner.

A summary of the platform's cross-border activities is illustrated in the table below.

Years of experience of cross-border activity	n/a
Geographical markets	n/a
Investors	85K (8K active, 1K premium - VIPs)
Countries of fund inflow	France, Belgium, Switzerland, Luxemburg, Asia
Countries of deal origination	France
Countries where deals are actively pursued	France
Countries where deals are passive	n/a

Business Model

The platform's business model is based on commission, which ranges from 8% to 10% of the amount invested on the project. For a few products, the commission fee is charged to the investors. The main source of profit is the commission fee charged on the funds raised by the projects. WiSEED started out providing direct equity investments into small and medium-sized enterprises, but has in the meantime branched out to also provide lending-based structures (bonds) for real estate and renewable energy projects. Total accumulated funding raised on the platform is €87 million at the time of writing.

WiSEED accepts fund inflows from a number of platforms, and due to its regulatory set-up could also originate deal flow from countries outside France, but has not acted upon this so far due to anticipated costly and complex sourcing and due diligence issues.

Marketing

The platform operates in France with 1% cross-border passive fund inflows from Belgium, Switzerland, Luxemburg, Asia. It does not actively market its products outside France. It would consider such a possibility only if it could set up a local subsidiary that would carry out the necessary due diligence and the marketing activities to attract investors and entrepreneurs seeking funding. From a regulatory perspective, the hurdles are surpassed since the platform can passport the PSI authorisation to the EU, but the operative cost and burdens are not covered by the expected market share the platform envisions as realistic.

Challenges

The platform has not yet invested in projects outside France because it is difficult to identify local partners to carry out the due diligence on the local projects. For example, it has turned down a deal offer from Singapore due to the high costs and complexity related to the due diligence required for the project. Moreover, the different tax systems create another hurdle for the cross-border expansion. Yet the platform has taken the first steps of enquiring about investing into real estate projects cross-border, particularly in Belgium, Switzerland and Luxembourg, since the regulation and business practices in these countries are similar to those followed in France. Realistically, real estate projects are the only ones that can at the moment be pursued cross-border with regard to operational cost.

The KYC process in particular has a negative effect on user experience and ultimately on the conversion of website visitors to potential investors. Investors, especially small investors, are not usually keen to fill in extensive KYC forms, and they tend to quit the investment process at this stage.

Regulatory aspects

The platform operates under the PSI structure as Investment services advisor (*Prestataire de services d'investissement*) and under the CIP structure as Crowdfunding investment advisor (*Conseiller en investissements participatif*). The PSI authorisation allows it to operate cross-border.

Although no licence is required to operate as CIP, WiSEED is placed under the supervision of the AMF and is subject to registration obligations. It must also comply with the good conduct rules set by the AMF General Regulations and ensure that its clients' interests are protected. French crowdfunding regulation provides exceptions to the rules on public offering of securities and banking monopoly. As a CIP, the platform is not subject to any statutory provision as to a minimum share capital and it does not benefit from a European passport in relation to its activities. However, as a PSI, it is subject to minimum capital requirements and does benefit from a European passport.

The French crowdfunding regulation on investor protection is deemed stricter than the respective regulation of other financial industries (banks, investment funds, online trading, gambling). The extensive information required in the KYC forms is considered a deterrent to becoming an investor.

Disclosure and safeguards

WiSEED complies with the French regulatory safeguards for the protection of funders. It applies the same rules for domestic and European investors but it imposes stricter requirements and additional controls for overseas investors. The language of the platform, rather than the strict KYC process, is thought to be a barrier to the number of overseas investors registered on the platform.

As a PSI, the platform is not subject to an investment limit per investor, but it is subject to the €5 million investment limit per project.

As for the financial literacy of its investors, the platform takes measures to ensure risk awareness and promote financial education. It achieves that by delivering educational material through blog posts and training, and by making available an investor room where investors can seek advice from an analyst and the project leader.

D. Case outcomes and lessons learned

Generally, the regulatory focus is investor-centric, with a focus on information and risk warnings. According to WiSEED, the stability and sustainability of the platform should be at the centre of regulation, with a stronger focus on the quality of services provided. Also, the regulation should focus more on investor training (e.g., through articles and educational videos) rather than self-declaration forms that usually are not read and not understood by investors.

WiSEED's business incurs high costs in order to comply with crowdfunding regulations. For the platform, the cost of hiring staff (in communication, IT and compliance) and the actual time spent to make sure that the platform complies with regulation is significant. On top of such costs, there are also the payment service provider fees. Overall, the costs amount to approximately €200K annually, and 30% of the working hours are spent on regulatory matters.

Also, the taxation on investment returns for investors is as high as almost 50%, which leaves them with a net return of as little as 5%. As a result, the cost structure of the platform needs to remain lean, as there is little possibility to increase the platforms margin from the investment return without further limiting the results for its investors.

Reduced legal costs in cross-border crowdfunding would help to make the market attractive to the platform. Regulators should share practices and experiences in order to better address the market. An EU-wide regulation that could facilitate cross-border investments, mainly through establishing local partnerships, would be helpful, in the opinion of WiSEED.

A positive feature of the French crowdfunding regulation is the increase of the investment limits from €1 million to €2.5 million, which helps platforms to grow by registering more secured and safer projects. The new prospectus laws will likely affect the French market only in case the local ceiling of €2.5 million is increased further.

E. Analysis

WiSEED is regulated under the French crowdfunding regimes and is, based on those, able to offer cross-border transactions to its local investors. For now, the platform has not offered any cross-border transactions because of the associated operational cost with regards to deal origination and due diligence. Being regulated under French law, the platform has liability as an advisor in the transactions it promotes. The platform therefore takes additional care in its deal origination process and the quality of projects it markets to its investors.

While competitors on the equity crowdfunding side from the UK or Finland expand cross-border, they are not regulated as advisors and have a lower liability in the transactions compared to WiSEED. WiSEED does not operate subsidiaries under local regulation in other markets. Cross-border activities under the current set-up of WiSEED would fall under the French regulatory model, focused on French investors, and carry greater liability than the models operated by its competitors.

F. Conclusion

WiSEED remains positive about cross-border business, but for now does not see business sense in entering costly deal origination abroad. The fact that its regulatory status allows deal sourcing outside of France has made no difference in the platform's assessment of associated cost and risks. The platform has instead sought to maximise growth in its home market by expanding from equity investments in SMEs to include lending structures, such as bonds, for real estate and renewable energy.

It is likely that the platform would have tried to expand its operations outside of France if the local regulation had been less focused on investor information and rights. With competition on the equity side expanding out of the UK, Austria or Finland, the platform has not seen sufficient success to force a change of strategy. On the lending side, competition from other MSs and from within France has expanded, but only with great effort. However, the platform has considered deals from outside of France in the past and it is likely that, with the right opportunity and risk profile, the platform might begin to operate outside of France.

XI. Case Study protocol

(14 March 2017, final)

A. Overview

The aim of this protocol is to assist the case researcher in the planning, implementation, analysis and write-up of each case. Forming part of the overall project seeking to identify market and regulatory obstacles to the cross-border development of crowdfunding in the EU, a collection of case studies will complement and elaborate on the findings from desk research, survey results, in-depth interviews and focus groups.

Of particular interest are case studies on crowdfunding platforms that have experience in cross-border activities, and platforms or business models that have the potential to scale up through cross-border expansion.

In order to achieve best focus and methodological consistency, the protocol has been developed in an iterative fashion, starting out with an initial template protocol, and has passed through prototyping and testing of intermediate versions during early case work.

B. Data collection

Data collection strategy will typically build on prior identification of a potential case, coming out of the set of in-depth interviews with key platform and other stakeholders. In order to extend data collection, relevant information for case studies will be rolled into the interview protocol for the main study objectives as well as the focus groups. This will ensure more depth of data collected across a large number of platforms and also help to identify cases that might not have been on the short list initially. The additional information collected, if not used otherwise in the main study, will remain available for use for further analysis.

Case researcher has discretion to follow up by contacting the relevant organisation for further information and data relating to the case, leading to follow-up interviews with relevant contacts where called for and appropriate. Together with background desk research, this information will be collated into a case sketch.

C. Compliance

Case research will operate on the basis of organisational authorisation and the informed consent of each respondent, with the option to request anonymity of response within the constraints of what is possible in this regard for the present study or masking of the organisation under study.

D. Agenda

The case researcher is charged with pursuing the following areas of inquiry in an open-ended fashion, drawing where possible from multiple sources of information (desk research, data supplied by the organisation, interview responses, qualitative analysis of transcripts):

I. Organisational context
II. Background and detail of case
III. Regulatory framework as it relates to case
IV. Safeguards as present/relevant to case
V. Outcomes, lessons learned

Based on the data thus obtained, the case researcher will distil the case sketch to feed into final case study write-up.

E. Reporting framework

Reporting on each case researched should adhere to a common format to ensure all relevant findings are presented in a transparent way that facilitates comparative analysis, keeping to the following headings:

I. Introduction

- Key issue researched and approach

II. Context

- Background data on relevant platform/organisation: key business parameters and operating history
- Background of the cross-border activity (which may refer to a completed, ongoing, or planned activity)

III. In-depth exploration

- Relevant case detail
- Regulatory aspects
- Safeguarding aspects

IV. Case outcomes and lessons learned

- From the platform perspective
- What would have helped/could have made a difference?

V. Analysis

- Incl. where relevant cross-reference to other results obtained

VI. Conclusion

European Commission

Identifying market and regulatory obstacles to cross-border development of crowdfunding in the EU

Annex A4

Report on Disclosures & Safeguards

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Introduction

The structure of each country sub-section may differ slightly, according to the different structure of the regulatory framework that each country follows and the existence or otherwise of a code of conduct.

I. United Kingdom

Introduction

The UK remains the largest player in Europe in terms of market volume, providing €4.412 billion in 2015. The European market share for the UK has increased year on year, reaching 81% of the total European marketplace by 2015. In 2014, the UK's market share for Europe was around 75%[1].

A. Existing Regulation

The crowdfunding industry in the UK is regulated by the Financial Conduct Authority (FCA). The FCA is responsible for the regulation of both investment-based and lending-based crowdfunding platforms.

Investment-based crowdfunding

Investment-based crowdfunding falls within the scope of pre-existing regulation concerning investments through platforms and consumer protection, albeit a few amendments have been made especially for the protection of consumers[2].
Marketing restrictions have been introduced allowing firms make direct offer promotions only to retail consumers who meet certain criteria:

- Professional clients (those who take regulated advice)[3];
- High-net-worth or sophisticated investors;
- Retail investors who confirm they will invest less than 10% of their net assets in this type of security.

In addition, firms are required to conduct appropriateness tests upon clients that do not take regulated advice, to ensure they understand the risks associated with crowdfunding investment activity.

Lending-based crowdfunding

A new set of regulations for the P2P sector were introduced in April 2014; the P2P sector had not been formally regulated before. The new regulation includes the following:

- Platforms are authorised by the FCA.
- Platforms must take reasonable steps to ensure that arrangements are in place for P2P agreements facilitated by them to continue to be managed and administered, in accordance with the contract terms, if at any time they cease to operate.
- A platform must at all times be able to meet its liabilities as they fall due.

[1] "Sustaining Momentum". Cambridge Judge Business School, 2016.
[2] A review of the regulatory regime for crowdfunding – FCA, February 2015.
[3] A detailed description of "Professional clients" is provided in the Conduct of Business Sourcebook (COBS), para. 3.5 "Professional clients".

- A platform must ensure that at all times its financial resources are not less than its regulatory financial resources requirement. The minimum capital requirement is £50,000 or a percentage of the volume of loaned funds – whichever is higher[4]:
  - 0.2% of the first £50 million of that total value;
  - 0.15% of the next £200 million of that total value;
  - 0.1% of the next £250 million of that total value;
  - 0.05% of any remaining total value.
- In the event that a platform receives money from clients after that money has been pledged and before passing that money on to a borrower, the platform will need permission to hold client money (in this case, they are subject to rules in the FCA Client Assets Sourcebook – CASS).
- Cancellation rights do not apply in certain situations and it is for firms to consider whether they need to grant cancellation rights to investors.
- There are no limitations on the size of a loan or the investable amounts.
- The following information on the platform and its services must be provided:
  - contact details;
  - the firm's authorisation statement;
  - details of expected performance a funder can expect;
  - conflicts of interest policy.
- The nature and the risks of the projects must be presented thoroughly and in sufficient detail so that the client can take investment decisions on an informed basis.
- Platforms are obliged to send at least one statement per year to their clients informing them about their investments and money held.
- Platforms do not have to follow a specific due diligence procedure but they must disclose information to potential funders on which due diligence procedure is undertaken.
- Platforms must identify and record possible conflicts of interest that may entail a material risk of damage to the interests of their clients and take any action that is needed to avoid potential losses for their clients. In cases where the risk cannot be managed, this should be disclosed to clients.

Funder protection

Funders have the same rights as other consumers. Specifically, funders are protected by:

- the Financial Services and Markets Act 2000:
  - the Regulated Activities Order
  - the Financial Promotion Order
- the FCA's Handbook of Rules and Guidance:
  - the Conduct of Business Sourcebook (COBS)[5]
  - the Consumer Credit sourcebook (CONC)[6]

Platforms are directly supervised by the FCA.

[4] As of 1 April 2017.
[5] https://www.handbook.fca.org.uk/handbook/COBS.pdf.
[6] Detailed rules for the FCA regime for consumer credit Including feedback on FCA QCP 13/18 and 'made rules', February 2014.

As mentioned above, funders who do not take regulated advice should take an appropriateness test and they must also commit to invest not more than 10% of their net investable assets.

Fundraiser protection

Fundraisers are also protected by the Consumer Credit sourcebook (CONC) and the Conduct of Business Sourcebook (COBS).
A platform should consider highlighting key risks to the borrower including the consequences of missing payments or underpaying, including, where applicable, the risk of repossession of the borrower's property[7].
Before a P2P agreement is made, the platform must confirm that the agreement is adapted to the borrower's needs and financial situation[8].

Cross-border activity

As regards cross-border activity, the FCA protects investors from offshore firms making financial promotions in the UK. Every overseas platform that invites UK investors to invest in securities or P2P loans is subject to regulation in the UK. MiFiD-licensed European platforms can conduct securities business in the UK on a cross-border basis.

Support Schemes

The UK Government has created several support schemes to boost crowdfunding investment activity. In the paragraphs that follow, a brief description is provided, in the context of "disclosures" to users.

1. Enterprise Investment Scheme (EIS)

The Enterprise Investment Scheme (EIS) is designed to help smaller higher-risk trading companies to raise finance by offering a range of tax reliefs to investors who purchase new shares in those companies[9].
These tax reliefs are:

- An amount equivalent to 30% of the cost of the shares;
- Up to a maximum of £1,000,000 invested in such shares;
- Maximum tax reduction in any one year of £300,000 (providing an investor has sufficient income tax liability to cover it).

The shares must be held for a 3-year period since the shares were issued.
There is no tax relief if the investors are connected with the company, namely:

- Connection by financial interest in the company:
  - Controlling the company, or holding more than 30% of the share capital or voting rights.
- Connection by employment:
  - Being a partner, director[10] or employee of the company.

[7] Further explanations: P2P agreements Article 4.3.3 (CONC).
[8] Further explanations: P2P agreements Article 4.3.4 (CONC).
[9] https://www.gov.uk/government/publications/the-enterprise-investment-scheme-introduction/enterprise-investment-scheme

Tax relief will be withdrawn if, during the 3-year period:

- the investor or an associate becomes connected with the company;
- the company loses its qualifying status.

Moreover, tax relief will be reduced or withdrawn if, during that period:

- any of the shares are disposed of (unless the disposal is to a spouse or civil partner – in those circumstances the shares are treated as if the spouse or civil partner had subscribed for them);
- the investor or an associate 'receives value' from the company (or a person connected with that company).

2. Seed Enterprise Investment Scheme (SEIS)

The Seed Enterprise Investment Scheme (SEIS) is designed to help small, early-stage companies raise equity finance by offering tax reliefs to individual investors who purchase new shares in those companies. The SEIS complements the existing Enterprise Investment Scheme (EIS). Higher tax reliefs are offered, recognising the risks taken for investments in early stage companies:

- Tax relief of 50% of the cost of the shares on a maximum annual investment of £100,000.
- A claim to relief can be made up to 5 years after the 31 January following the tax year in which the investment was made.

3. IFISA (Innovative Finance ISA)

The Innovative Finance ISA, or IFISA, allows UK investors to lend money using FCA-regulated peer-to-peer lending platforms and receive interest and capital gains tax-free[11].

The Innovative Finance ISA is the third type of Individual Savings Account (ISA) and it was launched on 6 April 2016. Under this new scheme, investors' earnings from crowdfunding investments will be exempt from tax for investments up to the value of £15,240 for the current financial year[12].

B. Code of Conduct (UK Crowdfunding Association)

The UK Crowdfunding Association was formed in 2012 by fourteen crowdfunding businesses. One of the three major pillars of the association is its Code of Conduct, which is hoped to be adopted by UK crowdfunding businesses.

All members of the association agree with the principles laid out in the Code and adherence to those principles is required for membership.

The principles of the Code are as follows:

[10] There is an exception for directors who are 'Business Angels' who receive no remuneration (and are not entitled to such remuneration), and had not previously been involved in carrying on the trade the company is carrying on at the time the relevant shares are issued. Such investment may qualify for income tax relief.

[11] https://www.gov.uk/government/publications/income-tax-innovative-finance-individual-savings-account-and-peer-to-peer-loans/income-tax-innovative-finance-individual-savings-account-and-peer-to-peer-loans.

[12] The current financial year is defined as 6 April of each year to 5 April of the following year.

- Segregated client accounts must exist for the separation of investment and business monies.
- There must be transparency regarding information about investors' money.
- There must be a safe and secure record of users' information and this must be easily accessible even if a platform ceases to operate.
- If a platform ceases to operate, money must not be accessible to its creditors and must be returned to investors.
- If a platform is not authorised to offer investment advice, it shall not do so.
- There must be a cooling-off period – a period where investors can cancel or redeem their investments – in accordance with applicable regulatory requirements.
- There must be clear and well-explained terms and conditions concerning:
    - Investment procedure;
    - Duties and responsibilities;
    - Due diligence;
    - Fees and charges.
- Platforms must recruit competent, professional, honest people and implement appropriate systems and processes to run businesses safely.
- IT systems and business processes must be secure and reliable.
- Platforms must comply with the laws and regulations applicable to sales and marketing activity (including social media), ensure that risks and potential returns are presented clearly in a balanced way, and treat users fairly.
- Platforms must be capable of handling complaints from unhappy users.
- Platforms must promote healthy competition.
- Platforms must not use or compete for other members' names, trademarks or other intellectual property or data without express permission to do so.
- Platforms must undergo periodic audits and reviews by the UKCFA to ensure compliance with the Policy and Code of Conduct.
- The Directors of the UKCFA are responsible for the maintenance and effectiveness of this Code.

Platforms that do not meet the above criteria cannot become members of the Association and members that fail to meet these requirements on an ongoing basis will be withdrawn.
The logo of the Association can be displayed on its members' websites, which demonstrates that the platform follows the above code of conduct.

C. Individual Platforms

Abundance

Abundance is an investment-based platform. The platform is a member of the UK Crowdfunding Association.

About the platform:

- There is a minimum investment amount of £5.
- The platform offers a 14-day cooling-off period during which investors can cancel their order for whatever reason and a refund will be issued.

- There are no fees for investors.
- The platform provides tradable assets. Investors could sell their investments from previously funded projects to potential buyers. The platform provides a free marketplace (no costs for sellers/buyers) where potential buyers and sellers are connected. The seller has the option to choose to connect with any of the bidders and agree a final sale. After the sale, the seller must inform the platform about the transaction.
- EEA or Switzerland residents can also invest through the platform.
- The platform has a general risk warning section on its website.
- There are additional risk warnings for non-UK investors (currency risk).

Crowd for Angels

Crowd for Angels is an investment-based platform. The platform is a member of the UK Crowdfunding Association.

Fundraisers pass a three-stage process before the project is made available online:

- Initial assessment;
- Signing an engagement letter;
- CODE Investing Bootcamp diligence process. During the Bootcamp process, the platform confirms that the business is robust and that its claims are valid.

The platform ensures that the structure of each investment and its potential return is clear, transparent and simple. There are no fees for investors.

The platform selects and screens a diverse range of businesses offering both debt and equity investment opportunities for private investors. Only projects that have passed the due diligence process are shown to private investors.

A Risk Disclosure Notice is provided which informs potential investors that:

- Investing in equity and debt is risky.
- Unlisted companies are not subject to certain shareholder protection regimes.
- There is no existing market for the shares offered in projects listed on CODE Investing and the platform cannot be certain that an active trading market will develop.
- The percentage ownership in a company may be diluted in the future.
- There is no guarantee that a company will pay dividends.
- Minority shareholders may not be able to influence the strategic direction of a company.
- Provisions in the UK Takeover Code may prevent or delay an acquisition of a company.
- No advice is given by the platform.
- There may be tax consequences to investing in shares on the platform.

The platform offers Enterprise Investment Scheme (EIS) and Seed Enterprise Investment Scheme (SEIS) tax reliefs.

No information is provided regarding international transactions online. Potential international investors are prompted to communicate with the platform.

CrowdCube

CrowdCube is an investment-based platform. The platform is a member of the UK Crowdfunding Association.

For investors:

- There is a short quiz to make sure the potential investor understands the risks of investing.
- An investor could invest from £10 to the full amount that the business is seeking to raise.
- The platform verifies key statements made on every pitch to ensure that it is 'fair, clear and not misleading' before putting it live.
- There is a risk warnings process.
- There is a due diligence process.
- SEIS and EIS tax reliefs are in practice.

Furthermore, the platform thoroughly describes the three pillars of its due diligence process (legal, financial, compliance) in a detailed three-page text[13].

For fundraisers:

- The minimum target amount is £20,000.
- The optimum range is £100,000 – £150,000.

Downing Crowd

Downing Crowd is an investment-based platform. The platform is a member of the UK Crowdfunding Association.

About the platform:

- The platform has a minimum investment amount of £100.
- The assets are considered transferable but a secondary market for the trading of these assets is not applicable.
- There is a 14-day cooling-off period for cancellation without provision of specific reasons and without cost (the association suggests a 7-day period).

Emerging Crowd

Emerging Crowd is an investment-based platform. The platform is not a member of the UK Crowdfunding Association.

[13] https://www.crowdcube.com/pg/due-diligence-charter-1745.

About the platform:

- There is a minimum investment amount of £500.
- The platform requires and publishes the following disclosure documents for each project:
  - Financial disclosure;
  - Business model and growth strategy;
  - Ownership and management;
  - Potential exit strategies and risk factors.
- The platform follows the following rules on investor protection:
  - Quarterly management reports with key financial indicators;
  - Year-end financial statements;
  - Timely updates of key developments;
  - Voting shares in all equity campaigns.
- The platform offers a 14-day cooling-off period.
- The platform provides an Invitation Document for each campaign which sets out key risks in relation to the particular investment (besides the Risk Warnings process).
- The platform has set a minimum target amount of £500,000.

Growthdeck

Growthdeck is an investment-based platform. The platform is a member of the UK Crowdfunding Association.

About the platform:

- There is a minimum investment amount of £1000.
- The platform publishes the amount of investment in a business made by all connected parties, who are investing their own money on the same terms as other investors, sending a powerful signal about their confidence in the fundraiser and the investment itself.
- There is an optional two-stage authentication for users (username and password, 6-digit PIN).
- Investors are kept updated with semi-annual reports on their investments. These reports include a summary of the company's performance and highlight noticeable achievements and areas that require ongoing improvement.
- There is a 7.5% arrangement fee to each investee company.
- The platform charges an optional annual management fee of 2.5% to monitor investments on behalf of investors.

Seedrs

Seedrs is an investment-based platform. The platform is a member of the UK Crowdfunding Association and it shows relatively active cross-border activity.

About the platform:

- There is a minimum investment amount of £10.
- There is an overfunding period (when a business hits its target, it has the option to offer additional equity with the same terms).
- Investors can cancel an investment at any time before a campaign closes from within their Investment Account. By cancelling, funds already paid will be returned into their Seedrs account.
- SEIS and EIS tax reliefs are in effect.
- There is a straightforward fee of 7.5% on any profit that an investor makes on an investment held by Seedrs as nominee. Seedrs is the legal shareholder in the relevant company's shareholder register, but they hold those shares on behalf of the various individuals who have invested in the company through the platform. The effect of this structure is that while Seedrs holds the shares, the full economic interest in them – including the benefits of individual tax reliefs such as SEIS and EIS – are passed through to the underlying investors.
- If new investors (in the EU, EEA or CH) are referred by existing ones ("referrers"), the platform will cover 50% of the fees they charge to the business on any investments the referrer makes over the next two years.
- There is a guide for fundraisers.
- There is a subscription agreement with businesses before completing every investment similar to those of business angels and venture capital:
    - a requirement that the company provides information to investors on a regular basis (known as information covenants);
    - a requirement that if the company is sold the investors are able to sell their interests alongside the founder (known as tag-along rights);
    - anti-dilution rights which mean that investors are offered the chance to maintain their percentage shareholding in future rounds, and a number of other provisions.
- All shares issued through Seedrs are voting shares.

SyndicateRoom

SyndicateRoom is an investment-based platform. The platform is not a member of the UK Crowdfunding Association.

About the platform:

- There is a minimum investment amount of £1000.
- There is a minimum equity funding round of £150,000.
- 25% of the equity sought has to be already committed.

- The lead investor(s) must be named.
- The lead investor may be an individual investing alone or representative of a syndicate or institution.
- The lead investor is generally willing to contribute their time and experience to the investee company, not just their capital, although they are not necessarily the largest or best-known investor on a funding round.
- The lead investor could be either investing in the company for the first time as part of this funding round (a 'new' investor) or an existing shareholder investing again ('following on'). The lead investor's statement will indicate which.
- Investors will receive the same class of share, and the same price per share, as the lead investor.
- There might be some differences in the terms between SyndicateRoom members and lead investors. These differences might be the right to appoint an Investor Director or a Board seat – terms that are generally not feasible for every investor to have.
- On some funding rounds, there will be two share classes on offer, for example preference shares negotiated by a VC that are not SEIS-qualifying or EIS-qualifying shares.
- On some funding rounds, a lead investor might charge fees for investing in the company, often to contribute towards additional advice or support. These fees will not extend to SyndicateRoom investors, but SyndicateRoom will make the details of these fees visible on the company's fundraising page.
- Secured investment from 'arm's length' investor(s).
    - An 'arm's length' investor could be a venture capitalist, a business angel or any other investor but not a relative or a close friend.
- The company must offer SyndicateRoom investors the same share class and price as lead investor(s).
- Only companies incorporated in the UK can run a campaign.
- There are no fees for investors, only for successfully funded companies.
- There is a Q&A area for each deal which, according to the platform, is part of the due diligence process.
- Investor protection:
    - pre-emption rights on the issue of new shares;
    - drag-along and tag-along rights and pro-rata voting rights, regardless of the size of the investment.
- There is a 7-day period to cancel (withdraw) an investment.

Venture Founders

Venture Founders is an investment-based platform designed to make angel and venture capital-style investing easier for potential investors. The platform is a member of the UK Crowdfunding Association.

About the platform:

- There is a minimum investment amount of £1000.
- The majority of the investment opportunities are offered in collaboration with leading venture capital firms or angel networks with established track records and sector expertise.
- The platform is comprised of professionals with backgrounds in venture capital, corporate finance and private equity.
- The platform arranges meetings where potential investors meet with the fundraiser's management team.

Crowd2Fund

Crowd2Fund is a mixed platform (donations, loans, revenue, bonds and equity). The platform is a member of the UK Crowdfunding Association.

About the platform:

- A detailed guide for all the types of funding for both funders and fundraisers is provided.
- The platform provides two risk indicators for the investor's information.
    - Their own risk level;
    - The risk level assigned by Equifax.
- The platform offers individual loan agreements for each loan where the platform manages the whole process on behalf of both funders and fundraisers.
- The platform will represent the investor's interests in and out of court, in the event that a business stops repaying a loan.
- The amount of repayments (monthly repayments, unless otherwise stated) is clearly shown on the campaign page as total months of the loan.
- The platform provides a bad debt summary and the actions taken by the platform according to the type of bad debt.
- SEIS and EIS tax reliefs are in effect.
- The platform reserves the right to cancel/reject a pledge from an investor for any reason and at any time.
- The platform reserves the right to extend, cancel, interrupt, suspend and remove a campaign for any reason and at any time.

Investors have the option to give Crowd2Fund the discretion to make choices on their behalf with the use of a service called Smart-Invest. Smart-Invest comprises an automatic selection and management service which enables users to invest in a

number of different businesses via the platform. The platform will only invest the funds according to specific criteria chosen by the users. Users may choose to use Smart-Invest in respect of all or part of the investor's funds.

An equity fundraiser must supply:

- information on the purpose of the campaign;
- the target amount;
- the amount of equity (as a percentage) that will be given in aggregate to the investors;
- the minimum contribution that an investor can invest;
- whether the company qualifies for SEIS and/or EIS relief;
- the proposed commencement date and closing date of the campaign.

An equity fundraiser has the option to accept overfunding on its project.

Regarding the Smart-Invest feature:

- The initial investment is £250.
- Any portfolio additions should be a multiple of £100.
- The platform acts as an agent depending on the funder's instructions and:
    - enters into agreements with the fundraisers;
    - makes investments as an agent;
    - manages investments on a discretionary basis including re-allocating repayments and therefore diversifying the portfolio;
    - reports to funders.

Funding Circle

Funding Circle is a lending-based platform. The platform is not a member of the UK Crowdfunding Association.

About the platform:

- The platform is also available in Dutch and German.
- The platform offers the Autobid tool. Autobid:
    - Lends automatically on behalf of the investors;
    - Offers average rate investing. The platform calculates the minimum, weighted average and maximum simple gross interest rates on the platform's marketplace and offers an average rate investing through the Autobid tool. Nevertheless, investors have the option to choose the gross interest rate they want to lend at;
    - Diversifies the investor's portfolio by investing in several different projects;

  - Offers investors the option to choose which risk bands they would like to lend to;
  - Automatically relends repayments.
- The fundraisers follow a 3-stage credit assessment process:
  - Initial criteria check:
    - A minimum of 2 years' trading;
    - A minimum of 1 year of filed or formally prepared accounts;
    - No outstanding County Court Judgments larger than £250;
    - Majority UK ownership and resident directors.
  - Credit model check:
    - The platform has created a credit rating model based on a number of variables including company performance, credit history and existing loans and debts.
  - Manual assessment:
    - A member of the platform's credit assessment team reviews every application that reaches this stage, and decides whether to list the loan on the marketplace.
- The minimum investment is £20 per business.
- The platform rates projects according to their risk (A+ to E).
- Investors have the option to sell loan parts before the end of the loan term in 2 different ways:
  - Autosale: the investor can sell a portion of their account by setting the amount (£) they wish to sell;
  - Sell individually: the investor (original investor) chooses the individual loan parts they want to sell. They can also add a premium to the cost, which simply means that the new buyer will earn a lower rate of interest than the original rate set when the original investor placed a bid. The original investor keeps the difference.
- Specific procedures for missing repayments:
  - Day 1: the platform contacts the borrower to explain that they will reattempt to collect the outstanding payment on the next working day.
  - After 5 working days: the borrower's account will be treated as "overdue", but the platform will continue to attempt to collect the funds.
  - After 3 or more months:
    - Loan default;
    - Borrowers may be charged an additional collection charge of up to 15% of the outstanding loan amount;

- Defaulted loans are assigned to a subsidiary which becomes a significant creditor and can commence court proceedings against the borrower on behalf of the investors.

Funding Knight

Funding Knight is a lending-based platform. The platform is a member of the UK Crowdfunding Association.

About the platform:

- The platform only lends to UK Ltd. or LLP companies that are profitable and have a net worth of £50,000 or more.
- These companies must have been trading for two years and have at least one set of filed accounts with Companies House.
- The platform does not provide services for start-ups or seed capital.

Pre-application stage:

- Registration for an online account;
- Reading and acceptance of the borrower agreement and terms and conditions;
- Simple questionnaire about the borrower, its business and the proposed loan;
- The platform replies to the borrower within 24 hours as to whether the application can progress.

Application stage

- Last set of full filed accounts: the platform assesses the profitability, cash generation and balance sheet of the business.
- Up-to-date management accounts: a more recent snapshot of the financial position and provision of support in analysing the balance sheet.
- 12-month cash flow forecast: the forecast tells the platform how the borrower sees the loan impacting its business and how it is going to make the repayments.
- Last 3 months' bank statements: the movement of cash within the business is checked and other debt repayments cross-referenced with the balance sheet.
- Statement of Assets and Liabilities of the proposed guarantor(s): this document shows the platform what assets and wealth are behind the proposed guarantor(s).
- Directors' & beneficial owners' names, addresses and other information: this information is needed to complete the anti-money laundering and credit checks. Details are required for directors and shareholders with 20% or more equity.

Credit team

- The credit team conducts a detailed analysis based on information both in the public domain and provided by the borrower as part of the application process.

- The credit team also conducts an interview with each borrower.

Autobid tool

- The Autobid tool places a bid on the investor's behalf based on the investor's preferences.

Marketplace

- The Marketplace is a trading platform where investors can sell all or part of the loans to other registered investors in the platform.

Landbay

Landbay is a lending-based platform. The platform is not a member of the UK Crowdfunding Association.

Landbay is an online peer-to-peer (P2P) lending platform that offers investors the opportunity to invest money directly into loans to buy-to-let landlords. The platform matches investors with borrowers so both parties benefit from the British property market, either through investment or direct ownership.

The platform provides specific borrowing criteria:

Borrower

- Must have a UK credit footprint and be 21 years or older;
- Must be applying for a buy-to-let mortgage and already own a property in the UK;
- Must earn a minimum income of £25,000 per annum;
- Must have no history of adverse credit.

Property

- Must be in England or Wales;
- Must be valued at more than £80,000;
- Must be suitable for letting at completion.

Financials

- Buy-to-let mortgage must be between £50,000 and £500,000.
- Minimum deposit must be 20%.
- Must satisfy the platform's income and affordability thresholds (custom assessment to be conducted by the platform's credit team).

If a borrower defaults on their mortgage and there is a shortfall after selling the property, less all related enforcement costs, a claim will be made on the platform's Reserve Fund for any remaining principal and interest due.

The platform will also use the Reserve Fund to cover missed mortgage interest payments as and when it deems appropriate.

The platform provides a secondary market where investors can buy and sell loans.

A Landbay investment is secured by British property, more specifically by buy to-let property.

II. France

Introduction

France is the dominant force in European online alternative finance (excluding the UK), and is 28% larger than its closest competitor, Germany. Specifically, the total volume of online alternative finance raised in France grew from €76 million in 2013 to €154 million in 2014 and €319 million in 2015. The growth from 2013 to 2014 was 103%, and 107% from 2014 to 2015, representative of sustained growth across the three-year period[14].

A. Existing Regulation

The full crowdfunding-specific regulation was enforced on 1 October 2014. Under the new regulation, crowdfunding platforms can either register as a crowdfunding investment advisor (CIP – *conseil en investissement participative*, for equity crowdfunding) or as a crowdfunding investment intermediary (IFP – *intermédiaire en financement participative*, for P2P lending). These two statutes clarified the prior regulatory uncertainties on platform activities.

Investment-based crowdfunding

Before October 2014, under the pre-existing regulation, equity crowdfunding platforms had to hold a licence as a financial services provider (PSI – *Prestataire de services en investissement*). They had to be legal entities, authorised to provide investment services in the normal course of their business. Under this licence, the platform can provide investment advice among other services and they have to register with both the French Capital Market Authority (AMF – *Autorité des Marchés Financiers*) and the ACPR (*Autorité de contrôle prudentiel et de resolution*), an independent administrative authority charged with preserving the stability of the financial system and protecting the users of financial services, insurance policyholders, members and beneficiaries of the persons that it supervises. If the platform collects funds on behalf of third parties as part of crowdfunding campaigns, the platform must, at a minimum, be licensed as a payment institution by the ACPR or registered as an agent of a payment services provider.
Under the new regulation, equity crowdfunding platforms can either register as a CIP or hold the existing licence (PSI), as described above.

CIPs

CIPs[15, 16] provide investment services in equity securities ("plain vanilla" capital) and fixed rate bonds (debt securities) via an internet website.
CIPs:

[14] "Sustaining Momentum". Cambridge Judge Business School, 2016.
[15] Crowdfunding: Regulatory framework, AMF, 23/2/2015.
[16] Crowdfunding crossing borders, Crowdfunding Hub, 2016.

- are registered with the French association in charge of a single register of insurance, banking and finance intermediaries – ORIAS (*Organisme pour le registre unique des intermédiaires en assurance, banque et finance*);
- present certain moral guarantees;
- are members of an AMF accredited association (industry group regulated by the AMF) which controls their activities (if the association is not accredited, specific control procedures are implemented) in compliance with the AMF General Regulation;
- hold a professional liability insurance policy (minimum guaranteed amount to be set out by a decree, this being mandatory as of 1 July 2016);
- comply with the good conduct rules set forth in the Ordinance and the AMF General Regulations;
- ensure that their clients' interests are protected and that they receive the adequate level of information to appreciate the risks connected to their investment.

CIPs are monitored by the regulated industry group to which they belong and by the AMF, or directly by the AMF.

CIPs are prohibited from receiving funds from their investors except for their remuneration but they are allowed to provide a limited number of ancillary services (e.g. handling subscription applications). They are also subject to anti-money laundering and antiterrorist regulations.

CIPs operate under specific regulatory duties for the protection of both funders and fundraisers. The current regulation obliges the CIPs to:

- follow regulatory conditions of good repute and professional competence (for platform managers);
- establish a statutory duty of care to advise and propose projects in the best interests of crowd investors. These projects are selected based on criteria defined in advance on condition that such criteria are being published on the platform;
- maintain, for their operations, sufficient dedicated resources and appropriate procedures and implement them with care and efficiency; they establish policies to prevent conflicts of interest and communicate about the services provided (and related costs) to project owners and provide information as to privileged relationships they may have with issuers at a case-specific level;
- provide accurate, fair and not misleading information;
- ensure that the offering is suited to the investor's profile by conducting tests. Crowd investors are allowed access to the securities offer on condition that they successfully answer the potential crowd investor questionnaire;
- observe the application of business rules relating to the management of conflicts of interest;
- present, in a transparent manner, the services provided to the issuers and the fees charged for providing advice to clients.

Investor protection

Crowd investors are usually non-professional individuals who invest their money in projects of their choice. The new regulation applying to crowdfunding activities, in conjunction with the French Civil code, provides specific safeguards for their protection.

As mentioned above, the new regulation introduced a new status for equity crowdfunding platforms, the CIP. According to the new regulation, it is mandatory for every CIP to have an insurance policy (since 1/7/2016). The existence of an insurance policy reduces risk for crowd investors in the event that a project does not develop in the expected manner because of multiple factors.
Every CIP complies with conduct rules, namely rules related to the management of conflicts of interest, and is directly supervised by the AMF which ensures that financial intermediaries meet their professional obligations.
CIPs are obliged to subject potential investors to suitability tests measuring experience, resources and other indicators. They allow access to their services only if a potential investor passes these tests.
CIPs are obliged to facilitate a better understanding of the organisation and management of the beneficiary of the investment.
Due diligence must be performed by platforms based on predefined criteria. Platforms are responsible for the accuracy and completeness of the information provided by the investees (issuers).

Investee protection

Platforms sign a contract with the project owners. Both sides are expected to perform their agreement in good faith. Any violation may lead to the nullification of the agreement.
Platforms are not allowed to unilaterally modify the terms and conditions of the agreements entered into with project owners. In addition, contractual agreements must be fully performed by the platforms. In case of violation, platforms can be held liable for monetary damages.

Lending-based crowdfunding

Under the new regulation, lending crowdfunding platforms have the option to register as IFPs.

IFPs

IFPs are legal entities which bring together, through their online platforms, project owners (borrowers) and individuals or companies (lenders) who intend to invest in such projects by lending or donating money, following conditions and limits set forth by the regulation concerning loans.
IFPs may also be banking or credit institutions, payment institutions, electronic currency establishments, PSIs and CIPs.
Platforms that are registered as IFPs:

- are registered with the ORIAS;
- present certain moral guarantees;
- hold specific insurance policies (mandatory as of 1/7/2016);
- abide by a good conduct code implemented in accordance with the terms of the Ordinance.

The regulation specifies:

- the conditions of applicability of the good conduct code;
- the registration modalities for the internet sites of the intermediaries;
- the conditions of use of the intermediaries' services.

IFPs can receive a maximum payment amount set to €3 million per month.
A private lender can provide:

- up to €1000 for a loan with interest per year, per project and per lender.
- up to €4000 for an interest-free loan per year, per project and per lender.

The borrower can get a loan for the maximum amount of €1 million (per project) and a maximum maturity of 7 years (per project).
IFPs are obliged to:

- describe the eligibility criteria for the selection of projects and project owners;
- provide risk warnings (lender exposure, borrower default risk, and excessive indebtedness);
- make available to potential lenders tools allowing them to assess a viable loan considering their revenues and costs (current income, costs and savings);
- provide information on the economic soundness of the borrower and the project;
- provide a brief description of the project (business plan);
- make available on the platform a standard loan form, compliant with the regulation;
- ensure that the interest rate proposed by crowd lenders complies with regulatory requirements (the interest rate must be lower than the rate set in the consumer code)[17];
- define specific processes and organise the follow-up of the financing and management of a project (loan repayment).

Lender protection

Platforms must have an insurance policy (mandatory as of 1 July 2016) which reduces the potential risk taken by lenders.
The regulation refers to maximum amounts specified for the protection of a lender's exposure.
Risk warnings must be provided.
Helpful tools must be available for the evaluation of a loan.
The platform must provide follow-up services to investors where the platform checks whether the loan agreement has been respected.
An amendment enforced in December 2015 provides the possibility for lenders to reduce the potential loss from non-reimbursement of a crowdfunding loan, to the interest received from other loans in the calculation of their income taxation[18].

Borrower protection

The new regulation does not include any specific measures for the protection of the project owners.

Cross-border activity

As regards cross-border activity, the newly introduced statuses (CIP and IFP) cover national activities only. Platforms that intend to expand internationally should, in addition, opt for investment services provider (ISP) status, which is governed by the Markets in Financial Instruments Directive (MiFID).

[17] Article L313-3.
[18] Current state of Crowdfunding in Europe, Crowdfunding Hub, 2016.

B. Code of Conduct

The Platform Association (*Financement Participatif France* – FPF) has adopted the following code of conduct, which can be voluntarily adopted by individual platforms themselves. The main points of the code of conduct are the following:

- Members of the Association feel morally responsible for the honesty of the means employed, the truthfulness of messages, and rigor in the management and the proper use of the funds collected.
- Potential investors must be able to understand from the home page of the site what type of funding is offered (loan, equity, donation, reward).
- Platforms must perform due diligence in order to verify the truth of the information published on its website by the project owners.
- Platforms must clearly explain what kinds of projects they accept, and the existence (selection criteria) or absence of a selection process.
- The contributors must be able to understand clearly, in plain language, the destination of their money.
- Potential risks borne by the funder should be clearly explained in plain and intelligible language.
- Funders and fundraisers must have access to clear and complete information concerning the accounting and tax rules applicable to contributions and collection in crowdfunding.
- Platforms are obliged to publicly provide indicators of activity on the platform.
- The mechanics of financing and transactional flows must be explained in plain language as far as the operation of transactions on the platform is concerned.
- Each platform decides on the method of remuneration for the service it proposes, which is accepted by both funders and fundraisers. Remuneration must be clearly explained in plain language.
- Each platform provides secure transactions and information (including personal and private data) provided by funders and fundraisers.
- The platforms clearly state in their regulations the types of conflicts of interest to which they are exposed.
- Each party (funder, project leader or platform), at its own discretion, may use arbitration organised by the FPF association, provided plaintiff and defendant agree to respect the arbitration.

C. Individual Platforms

1001PACT

1001PACT is an investment-based platform. They provide a guide for beginners which contains a detailed presentation of how to become an investor.

Additionally:

- The platform provides tailored advice to investors.
- The platform has set a minimum investment amount of €100. This limitation excludes non-professional investors who lack experience and knowledge and who are not willing to invest an amount of at least €100.

- The platform provides financial and non-financial information concerning their investment (project), at the follow-up stage of the investment.

EOS Venture

EOS Venture is an investment-based platform, licensed as an ISP which is the main passport for cross-border activity. As an ISP platform, they can communicate details of campaigns on all media, while CIPs can only present a brief description on their website.

Additionally:

- Projects' equity in issue is already endorsed by the AMF.
- The platform also offers securities of a higher level of complexity.
- The platform has set a withdrawal period after payment (the period is defined by the French consumer code).
- The platform has the option to act as banking or financing agent (if the prospectus in question is endorsed by the AMF).

The platform has been pre-approved by the AMF and is certified by the ACPR, while CIPs are only certified by the AMF.

An additional advantage for investees is the option to raise more than €1 million because of the platform's ISP status.

SparkUp

SparkUp is an investment-based platform. On its main web page, the platform gives funders the option of building a free website and launching it in an hour. According to the terms and conditions of the platform, the funders and fundraisers (Parties) must agree to limit their liability for direct damage that one Party might cause another to a pre-specified amount of €10,000.

Easiup

Easiup is a mixed platform (donation, reward and P2P lending). On the main web page of the platform there is a link called "Ethical Charter" which presents the platform's code of ethics.

Additionally:

- The P2P lending refers to tuition funding for students only.
- The maximum amount for tuition funding is set to €10,000.
- A detailed guide is provided for both funders and fundraisers.
- There is a modification and a cancellation option in the event that the targeted fundraising is not reached.
- The platform specifies exactly which personal details are sent to the project owners (address, email, telephone).

Wellfundr

Wellfundr is a mixed platform (equity, rewards) and has adopted the following policies:

- If the project is validated by the platform owners, it will go through a voting phase (a 30-day period) on the platform where a minimum of 100 votes and 25% of funding intentions is needed to progress to the financing phase.
- For all contributions above €250, the platform asks for ID as required by the ACPR. This aims to combat money laundering and the financing of international terrorism.

Babyloan.org - ABC Microfinance

Babyloan.org - ABC Microfinance is a lending-based platform which deals with philanthropic loans.

The platform provides:

- A minimum investment amount of €10;
- A guaranteed repayment from their local partner (the microfinance institution).

Lendix

Lendix is a lending-based platform for both individuals and institutions.

According to their policies:

- In case of company default, the platform accompanies the lender to judicial recovery.
- The platform offers three types of guarantees for borrowers: Query responses within 48 hours; a funding guarantee once the project is uploaded on the platform; and finally, a known interest rate before the acceptance of the loan.
- Registration is free, but opening an account costs €100.
- There is a minimum investment amount of €20.
- There is a minimum amount a company can borrow of €30,000.
- A credit committee rates the companies (A, B or C).
- The rating criteria are publicly available.
- The platform invests in all projects as a sign of high-level due diligence.

MicroWorld

MicroWorld is a lending-based platform. The platform supports local economic development in developing countries through its projects. It currently supports 9 countries through its campaigns.

- The platform cooperates with microfinance institutions and banking partners as a safeguard against project failure. In case of default, banking partners reimburse investors, consequently reducing business and country risk.

III. Germany

Introduction

The German market is the second largest in continental Europe (after France), the leader in peer-to-peer consumer lending, and second behind the Netherlands for peer-to-peer business lending. Germany also features strongly as the European market leader in real estate crowdfunding and donation-based crowdfunding[19].

A. Existing Regulation

A new regulatory framework came into force on 10 July 2015 (the German Retail Investor Protection Act – *Kleinanlegerschutzgesetz*, KASG) which affected crowdfunding and all types of investment products. The Retail Investor Protection Act extended the scope of the Investment Products Act (*Vermögensanlagengesetz* – VermAnlG) which constitutes the legal framework for investment products (*Vermögensanlage*) and especially for publishing a prospectus when offering investment products to the public[20]. Specifically, subordinated profit-participating loans (*partiarische Nachrangdarlehen*) have since then been considered investment products and as such a prospectus is required under the Investment Products Act. Particular exceptions were regulated with a direct focus on crowdfunding, whereas crowdfunding is excluded from most requirements of the VermAnlG, especially those concerning prospectus publishing. Specifically:

- Exceptions are only applicable when offering profit participating loans (*partiarische Darlehen*), subordinated loans (*Nachrangdarlehen*) or commercially comparable investments (*wirtschaftlich vergleichbare Anlagen*).
- A prospectus is not required for projects up to a threshold of €2.5 million.
- Each private investor can invest €1000 without providing any statement on assets and income.
- Each private investor can invest a maximum of €10,000. When investing more than €1000, the investor must give assurances that they hold disposable assets of at least €100,000 or that they are investing less than twice their monthly net-income.
- Every crowdfunding platform must hold a licence under the German Trade, Commerce and Industry Regulation Act (*Gewerbeordnung*), the German Banking Act (*Kreditwesengesetz*) or the German Securities Trading Act (*Wertpapierhandelsgesetz*).
- Platforms must subject potential investors to an appropriateness test. If the investor gives information that leads to the assumption by the platform that the investment is not appropriate, the platform must advise the investor of this. The ability of the investor to invest is independent of the appropriateness test.
- The regulation gives investors the mandatory right to withdraw (*Widerrufsrecht*) their investment within 14 days.

[19] "Sustaining Momentum". Cambridge Judge Business School, 2016.
[20] Crowdfunding Crossing Borders, Crowdfunding Hub 2016.

- Combination of the Crowdfunding Exemption with other exemptions (i.e. exemptions provided for Private Placement) is prohibited under the VermAnlG (ban of combination – *Kombinationsverbot*).
- A highlighted warning notice must be contained in the three-page fact sheet (*Vermögensanlagen-Informationsblatt*, VIB). Under the new regulation, it is possible to electronically confirm the warning notice which was tailored for crowdfunding platforms.
- Strict rules regarding marketing of investment products have been introduced. A risk warning must be shown on project advertisements.

Funder protection

The main rules regarding funder protection are the following:

- Investment limits are set by the regulation (as described above).
- A withdrawal period of 14 days is offered.
- The issuer must prepare an investment information sheet (VIB) and submit it to BaFin in the event that the issuer is not obliged to prepare a prospectus. Specifically, the VIB must:
    - present essential information about the investment;
    - contain a notice that there is no prospectus approved by BaFin;
    - contain a notice that further information may be requested from the issuer;
    - warn of the potential risks.
- Investors must confirm that they have been informed of the above (signature or equivalent).
- The issuer must comply with rules on marketing of investments (mainly regarding warning of risks).
- Platforms that provide investment advice must also prepare the VIB. In that case, the VIB has to be presented to potential investors in good time prior to purchase of the investment.
- Platforms are required to disclose any fees, payments or other monetary benefits that they receive from third parties other than the investors in connection with the services provided, for the avoidance of conflict of interests.
- Platform employees must pass specific exams conducted by the Chamber of Industry and Commerce to prove their expertise and reliability.

Fundraiser protection

No specific information is described in the new regulation regarding the protection of the project owner. In any case, project owners sign contracts with the investors which constitute Standard Business terms[21].

B. Code of Conduct (Bundesverband Crowdfunding e.V.)

The German Crowdfunding code of conduct was drawn up by the Bundesverband Crowdfunding e.V. The association was founded in November 2015 and its main purpose is to serve as a networking forum for platform owners and to develop best practices for the industry. The association works in close cooperation with national and

[21] Crowdfunding Crossing Borders, Crowdfunding Hub, 2016.

European networks. The association's board of directors is comprised of platform representatives.

In order to provide highly professional, transparent and ethical services to its members for the development of confidence in crowdfunding, the association developed the following code of conduct:

- Investments generated through platforms must be kept separate from the cash flows of the operating activities, i.e. in client accounts or similar separate structures for capital management.
- Transparency must be ensured so that investors or donors can receive information about their invested or donated money.
- Processes must be created to ensure the secure storage of all participants' data (investors, donors and capital-seeking companies, persons or projects).
- Platforms must comply with all data protection regulations in force in Germany. This also means that access to this data is still possible when the business (platform) is discontinued.
- Processes must be created to ensure that investors have access to their holdings in the event that the business (platform) is terminated.
- General terms, conditions and contracts must be formulated for companies and individuals, investors or donors in an understandable manner. An exact explanation of the investment process and transfer process must be provided to potential investors. The platform must be aware of its rights and obligations, must inform potential investors on which due diligence process is applied, the total fees and the specific time these fees are to be paid.
- Platforms must ensure that they have hired competent and professional staff and that they have the necessary systems and processes to conduct business in a secure manner. Every member's management is presented on the website of the Bundesverband Crowdfunding e.V. (German Crowdfunding Association).
- Platforms must ensure that their IT systems and business processes are secure and reliable and that they comply with the nature, scale and complexity of the business, and with the applicable laws and regulations and this code of conduct.
- Platforms must comply with the laws and regulations applicable to sales and marketing activities and ensure that their communications are fair, comprehensible, transparent and in no way misleading. Risks and potential returns must presented in a balanced manner, and investors and donors must be treated fairly.

C. Individual Platforms

Companisto

Companisto is a mixed crowdfunding platform (equity, lending). The platform offers equity for start-up companies and loans for growth companies.

About the platform:

- The platform offers granted loans for a period of 3-4 years and a fixed annual interest rate of 8% (lending-based) with semi-annual interest payments. The platform defines these loans as "venture loans".
- Fees are charged only when profits are made on investments (for investors).

- Start-ups may raise a maximum amount of €2.5 million through the platform.
- The platform charges a success-based commission of 10% of the raised funds (for investees).
- The minimum holding period for investors is 8 years.
- Profits are paid out once a year.
- The platform applies a very strict due diligence process and only 1% of all start-ups that apply for funding rounds on the platform are accepted, as follows:
    - Companies apply for an equity crowdfunding campaign (100%).
    - The platform pre-screens companies and requests additional documents (25%).
    - The platform meets with the team of founders to get to know the people behind the company (10%).
    - The platform negotiates with companies for attractive investment terms (5%).
    - The company is accepted by the platform (1%).
- There is no minimum investment amount.
- There is a so-called crowd-voting mechanism, designed to protect investors, which works as follows:
    - For investments in this category, one third of each investor's investment is deposited in an escrow account protected against insolvency.
    - Crowd voting provides investors with additional rights and more influence on a start-up's decisions, and it reduces their risk.
    - All start-ups offering the crowd voting safety mechanism are labelled "crowd voting".
    - After the end of the financing campaign (usually 6 months later), investors decide through a majority vote (weighted by shares) whether they want to pay out the remaining third of their investment to the company or they want this third to be repaid to them free of charge. The investors can make this decision based on the current business development of the company, which provides them with additional financial safety.
- Investors receive an overview of all profits, exit proceeds, and other income from their share. In addition to this, they may also view the published annual financial statements of the start-up. In particular, start-ups are obliged to mention the following aspects in their investor updates:
    - Revenue of the previous quarter;
    - Gross profit;
    - Earnings before Interest and Taxes (EBIT);
    - Information on Liquidity;
    - Strategy & Product;
    - Marketing & Sales;
    - Personnel and Press.

- Investors may sell their shares to third parties independently but there is no secondary market to accommodate these transactions.

Innovestment

Innovestment is an investment-based crowdfunding platform[22]. The platform focuses on growth-oriented companies with innovative and competitive products and offers partial subordinated loans[23].

About the platform:

- Companies are selected according to their depth of innovation and potential for growth.
- Investors get a detailed insight into the company's history and the academic and professional background of the founders, as well as a detailed report on the company's assessment.
- Interest payments are connected with the company's profits.
- The platform promotes communication between investors and founders after the financing. Specifically, the loan agreement grants investors the right to participate in an annual web-based investor meeting, as well as certain information rights (e.g. on the provision of quarterly reports and annual accounts, information in the context of web-based investor meetings).
- The platform has a minimum investment amount of €250.
- Project owners are obliged to provide regular and transparent information about the development of the business through a standardised quarterly report.
- Investors receive the annual financial statements and can participate in the Company's web-based annual general meetings.

Seedmatch

Seedmatch is an investment-based crowdfunding platform and offers partial subordinated loans.

About the platform:

- The platform has set a minimum investment amount of €250.
- The platform targets mainly seed companies (seed investments) and start-up companies (venture-debt investments).

For seed investments:

- There is a minimum contract of 5 to 8 years[24].
- A basic fixed interest rate of 1% per annum is offered and on top of that, companies offer a bonus interest which is performance-related.
- Interest payments are made every six months.
- The performance-related bonuses are paid at the end of the contract.

[22] Innovestment has closed down its operation in late 2017 as reported in the media http://www.faz.net/aktuell/finanzen/finanzmarkt/innovestment-erste-crowdfunding-plattform-geht-in-die-insolvenz-15301408.html
[23] Investors exercise shareholder rights when investing in partial subordinated loans.
[24] A contract extension is possible.

For venture-debt investments:

- There is a fixed contract of 4 to 5 years.
- A basic fixed interest rate of 8% per annum is offered.
- Interest payments are made every six months.
- At the end of the contract, if the calculated annual turnover of the company is above a contractual fixed sum, the investor will receive an amount of 10% to 30% of their loan amount as a bonus which is called a "Venture Kicker".
- The platform offers a specially granted interest rate[25] for investors who invest within the "Early Investing Period"[26] which is called an "Early Investor Bonus".
- Venture-debt does not include an exit share. Instead, investors have the chance to earn a final bonus interest, which is based on the sales development of the start-up, as described above.
- If a venture-debt start-up leads to an exit and the loan agreement is terminated prematurely by dissolving the start-up, investors are paid a prepayment penalty. This is composed of the fixed interest rates of the entire contract and the maximum bonus interest.

Auxmoney

Auxmoney is a lending-based platform. Every project on the platform must be registered at Schufa (a credit reporting agency).

About the platform:

- The platform classifies projects into different score levels according to their credit rating: AA, A, B, C, D, E or X. The higher the score level of a project (e.g. AA) the greater the security for investors, leading to lower interest rates.
- The loans range from €1000 to €50,000.
- Projects remain on the platform for a maximum of 20 days.
- Loan periods are between 12 and 84 months.
- The platform requests documents from the project owners only after the end of the financing.
- Interest payments are made on a monthly basis.
- The platform has a minimum investment amount of €25
- The platform offers a "Re-Invest" tool where investors have the option to invest their returns automatically into new projects.
- A loan project must be financed 100% by investors in 20 days otherwise investors get their money back.
- The platform offers credit insurance to borrowers for specific reasons, such as for unintentional reasons which might lead to incapacity to work or bankruptcy.
- Project owners must be at least 18 years old but not older than 69 years old.
- Project owners must have a residence in Germany, a German bank account and a regular income to ensure the repayment of the loan.

[25] For example, 9% fixed interest rate per annum.
[26] The Period is not specified.

Lendico

Lendico is a lending-based platform. The platform offers a variety of loans[27].

About the platform:

- Projects are divided into four levels (A to D) according to risk.
  - A level: 2.00% – 4.00%
  - B level: 2.81% – 5.40%
  - C level: 3.88% – 6.40%
  - D level: 6.39% – 7.40%
- The platform offers two types of accounts, one for beginners (Starter's account) and the other for experienced investors (Premium account).
  - Starter's account holders can invest up to €5000.
  - With a Premium account:
    - Investors must have a bank account at the platform's partner bank;
    - There is an unlimited investment amount.
- The platform has set a minimum investment amount of €25 for consumer loans and €100 for corporate loans.
- The platform offers loans from €10,000 to €250,000, with terms of between 6 months and 5 years.
- Interest payments are made on a monthly basis.
- Project owners must provide documents showing their identity, their financial position and their credit profile.
- Companies must meet the following criteria in order to apply to the platform for a loan:
  - The company has to have operated on the market for more than two years.
  - The company must have a minimum turnover of €50,000 per year.
  - The platform requires a fundamentally healthy financial situation and the willingness of the company's management to provide private assets for the repayment of loans as a guarantee.

IV. The Netherlands

Introduction

The Netherlands is the third largest player in continental Europe, with a well-established and fast-growing alternative finance marketplace. It has a large number of platforms, covering a wide variety of different models, from peer-to-peer business lending to debt-based securities (debentures) and equity-based crowdfunding. The total amount raised in 2015 was €111 million, up from €78 million in 2014 and €46

[27] Education loans, new car financing, wedding loans, existing loan restructure.

million in 2013. Despite positive growth in 2015, the annual growth rate declined from 70% in 2014 to 42% in 2015[28].

A. Existing Regulation

Crowdfunding in the Netherlands is regulated by the Financial Market Authority (*Stichting Autoriteit Financiële Markten,* AFM) and the Dutch National Bank (*De Nederlandse Bank N.V.*, DNB). Both investment-based and lending-based platforms require a licence from the AFM. The first crowdfunding regulation came into force in 2013 and was amended on 1 April 2016.

Investment-based Crowdfunding

Investment-based crowdfunding is regulated by the AFM. The main points of the regulation are the following:

- The investment limit for equity-based crowdfunding per retail investor is set to €40,000.
- Platforms are required to conduct a test to examine whether potential investors have sufficient knowledge and experience to understand the risks involved:
  - in crowdfunding in general;
  - in the specific project in which the potential investor wishes to invest;
  - in the specific platform.
- Platforms must inform potential investors in a clear and comprehensible way that they may invest only a part of their available assets, specifically not more than 10% of their available assets.
- Platforms are obliged to inform potential investors about the results of their test. In the event that investors fail the test, the platform must warn them accordingly and in an explicit way, but the test result is not binding regarding the investor's choice to invest or not.
- Platforms must conduct the test before the first investment on their specific platform and whenever the investment amount is more than €500. If the investor has placed their first investment before 1 April 2016, the test should be conducted for investments after 1 April 2016 and whenever the investment amount is more than €500.
- Platforms must reassess any investment that cumulatively exceeds €5000 as well as any multiple of €5000 thereafter. Specifically, platforms must check whether the investor has sufficient freely available assets and give them the option to reconsider their investment.
- Platforms must offer a 24-hour withdrawal period with no extra costs.

The AFM has created a form to monitor platforms, which are obliged to file the form twice a year. Platforms must file information about:

- the size of the platform;
- the financial situation of the platform;
- the number of active investors;
- the number of projects requesting financing;
- the number of accepted projects;
- the number of successfully financed projects;

[28] "Sustaining Momentum". Cambridge Judge Business School, 2016.

- the number of defaulted projects.

Lending-based Crowdfunding

Lending-based crowdfunding is regulated by the AFM and the DNB. The main points of the regulation are the following:

- The investment limit for lending-based crowdfunding per retail investor is set to €80,000.
- Platforms are required to conduct a test to examine whether potential investors have sufficient knowledge and experience to understand the risks mentioned above.
- Platforms must conduct the test before the first investment on their specific platform and whenever the investment amount is more than €500. If the investor has placed their first investment before 1 April 2016, the test should be conducted for investments after 1 April 2016 and whenever the investment amount is more than €500.
- Platforms must reassess any investment that cumulatively exceeds €5000 as well as any multiple of €5000 thereafter. Specifically, platforms must check whether the investor has sufficient freely available assets and give them the option to reconsider their investment.
- Platforms must offer a 24-hour withdrawal period with no extra costs.
- Platforms must also file the monitoring form mentioned above on a semi-annual basis.
- Platform directors must have sufficient knowledge and skills and a professional background in a relevant position for at least two uninterrupted years in the same position.
- A platform's counterparties must be informed of their rights and obligations under the agreement in a clear and complete manner before any contract is signed.
- Platforms must have a specific due diligence process for assessing loan applications.
- Platforms must hold all information provided by fundraisers, as well as the loan agreement, for at least five years after the beginning of the campaign.
- Platforms must follow specific procedures to classify projects according to risk.
- Platforms are obliged to hold the amounts of money received by investors in a separate account or make use of a payment services provider or an electronic money institution.

B. Code of Conduct

The Netherlands crowdfunding association (*brancheverenigingNederland Crowdfunding*) has drawn up a code of conduct which contains a number of minimum requirements regarding the quality and operation of a crowdfunding platform. The association's members are obliged to comply with the code.

1. Platforms that are members of the association must be transparent about their legal structure, directors and shareholders. Any relevant information must be presented on the platform's website. Information about the directors' CVs and their expertise, and about the main beneficial owners, must also be presented.

2. Platforms that are members of the association must guarantee the quality of the IT systems and processes they use, in order to ensure safe and reliable operation appropriate to the nature, scale and complexity of crowdfunding. This means that they must have taken measures ensuring:
    a) user authentication;
    b) safeguards complying with applicable privacy laws and data protection laws;
    c) the integrity of the back office and data;
    d) the continuity of the platform.
3. Platforms that are members of the association are required to explain clearly the forms of finance that they use. They must also publish the AFM's opinion regarding the platform's operation.
4. Platforms that are members of the association are required to communicate the risks of crowdfunding to both funders and fundraisers. They must provide advice on maximum exposure, risk spread and the risk of investing with borrowed money. They are also obligated to inform entrepreneurs about their rights and their responsibilities.
5. Platforms that are members of the association must be transparent to both funders and fundraisers about the costs of their services and present these on their website.
6. Platforms that are members of the association must ensure that the investments made by third parties are not at risk during the period where the platforms hold the money.
7. Platforms that are members of the association are required to be transparent about the screening and selection process of the applicants requesting funding. They are responsible for the monitoring of the funded companies and present this public process on their website.
8. Platforms that are members of the association are required to provide information about the procedure for handling complaints and follow this procedure.
9. Platforms that are members of the association are required to report transparently on the status of the portfolio of their platform, including any late payments and bankruptcies.

C. Individual Platforms

Symbid

Symbid is a mixed crowdfunding platform (equity, P2P lending). The platform offers investors a choice between equity and convertible loans.

About the platform:

- There is a minimum investment amount of €20.
- The maximum standard duration of a loan is 5 years.

- The platform accepts investors from all countries, except for the US and Canada[29].
- Funders are charged a 1% transaction fee on the invested amount. Fees are paid only for successful campaigns.
- Fundraisers are charged a 5% success fee of the total amount raised.
- The platform offers support (i.e. marketing and legal) to fundraisers at all stages of the campaign.
- All money invested is kept in a separate third-party (trust) account, which is supervised by the AFM and the DNB.
- Convertible loan discounts:
    - 15% when conversion takes place within 1 year after closing the convertible loan;
    - 20% when conversion takes place later than 1 year, but within 18 months after closing the convertible loan;
    - 30% when conversion takes place later than 18 months after closing the convertible loan.
- Before conversion, interest is added to the amount invested. In the event of conversion, investors receive shares for the amount invested plus the interest capitalised. If the investor decides not to convert to shares, the investment will still be a loan and the investor receives interest until the fundraiser repays the loan.
- The shares carry the following rights:
    - Issue right: If more shares are issued in the future, investors can buy additional shares to prevent dilution.
    - Anti-dilution: If, within 12 months after conversion, new shares are issued at a lower price than the conversion price, investors will receive additional shares (at no extra cost) to prevent dilution.
    - Drag-along: If at least 70% of the regular shareholders[30] (i.e., excluding the crowdfunding shareholders) sell their shares, the crowdfunding shareholders must sell their shares as well. In this case, the crowdfunding shareholders cannot prevent the sale of shares.
    - Tag-along: If at least 15% of the regular shareholders (i.e., excluding the crowdfunding shareholders) sell their shares, the crowdfunding shareholders can sell their shares as well pro rata. This means that regular shareholders cannot sell shares in the company without also allowing the crowdfunding shareholders to sell their shares.

Oneplanetcrowd

Oneplanetcrowd is a mixed crowdfunding platform (convertible loans, P2P lending, donation, reward). The platform offers subordinated convertible loans.

About the platform:

[29] US law does not yet allow non-professional American investors to invest in equity crowdfunding.
[30] Regular shareholders are the shareholders who did not obtain their share via crowdfunding.

- Loan duration varies from 1-5 years.
- Interest rates vary from 4%-10%.
- Fundraisers can raise between €1000 and €1,000,000.
- Loan repayments are made in 3 different ways:
  - Linear: interest plus repayment is relatively high at the start of the loan duration and decreases over time.
  - Bullet: the whole repayment is made at the end of the loan duration.
  - Annuity: the instalments (interest plus repayment) are divided equally per year.
- The platform assesses the fundraisers and their projects before publishing.
- If a project application is found suitable to be published on the platform, an assessment interview is conducted with the entrepreneur (only for loans).
- Fundraisers must provide the following documents and information:
  - Proof of identity;
  - Chamber of Commerce (*Kamer van Koophandel*, KvK) registration number;
  - Office for Credit Registration (*Bureau Krediet Registratie*, BKR) listing.
- Additionally, for (convertible) loans:
  - Certificate of good conduct[31];
  - Financial prospectus: historical data (including annual report and recent balance sheet) and future expected returns;
  - Business plan.
- The platform checks the fundraiser's project and videos for clarity, transparency and completeness.
- The buyer and/or loan agreements entered into by the fundraiser upon investment in the project are drawn up by the platform and then submitted to the fundraiser for approval prior to online publishing.
- Evaluation of the financial prospectus is carried out by experienced business analysts. The prospectus must show that the enterprise will be able to meet its future obligations to the funders.

TailwindCrowd

TailwindCrowd is a mixed crowdfunding platform (P2P lending, reward). The platform focuses on start-ups (pre-sales, rewards), SMEs in business for at least 2-3 years and dental practice entrepreneurs looking to finance the acquisition, expansion or creation of new clinics (loans).

About the platform:

- There is a minimum investment amount of €150.

[31] A certificate of good conduct (*Verklaring Omtrent het Gedrag*, VOG) is a document by which the Dutch State Secretary for Security and Justice declares that the applicant has not committed any criminal offences that are relevant to the performance of his or her duties - https://www.justis.nl/producten/vog/certificate-of-conduct/.

- Interest rates vary between 5% and 12% for growing SMEs.
- Interest rates vary between 4% and 10% for dental practice projects.
- Loans range from €5000 to €250,000.
- Loan duration is between 6 months and 4 years.
- Companies that apply for a loan must have the following characteristics (at a minimum):
    - 3 years in business;
    - Evidence that the loan will be used only for (a) working capital, (b) production or (c) fixed assets;
    - The company must be profitable[32].
- Investors in lending projects must be Dutch residents with a Dutch bank account. International investors are allowed only in the case of professional investment institutions.
- A third-party company[33] ranks the projects as follows:
    - AAA (0.00%-0.15%): Very low probability of default
    - AA (0.16%-0.30%): Low probability of default
    - A (0.31%-0.62%): Average probability of default
    - BBB (0.63%-1.24%): Average probability of default
    - BB (1.25%-2.49%): Average probability of default
    - B (2.50%-4.99%): High probability of default
    - CCC (5.00%-9.99%): Very high probability of default
    - CC (10.00%-19.99%): Very high probability of default
    - C (20.00%): Very high probability of default
    - D: Company is insolvent
- The platform provides information regarding the financial performance of the fundraisers in the following areas:
    - Sales
    - Liquidity
    - Solvency
    - Profitability
    - Capital structure
- These financial indicators are also ranked in a very simple way:
    - Very Good: the score is a lot higher than the industry median in the same area.

[32] Companies that do not have one or more of these characteristics can also be considered for funding, but are placed under higher scrutiny and must provide substantiated reasoning (and proof) that they will be able to repay the loan to the investors.
[33] The third-party company is Graydon, a leading provider of business credit information and data intelligence.

- Good: the score is similar to the industry median.
- Poor: the score is significantly lower than the industry median.

Leap Funder

Leap Funder is a lending-based crowdfunding platform. The platform offers convertible notes.

About the platform:

- There is a minimum investment amount of €1000.
- Fundraisers are required to complete an Information Memorandum, clearly documenting the following:
  - A description of their product or service, the market, and the competition;
  - A description of their team;
  - A solid financial plan;
  - A description of the risks;
  - A description of the current financial situation and financing;
  - The terms of the investment round:
    - the required Minimum Investment
    - First Closing Date[34]
    - Final Closing Date[35]
    - Interest rate
    - Conversion Discount
    - Cap[36]
- If the company wishes to use the funds raised via the platform for a different purpose than the one stated in the Information Memorandum, it must get permission from the investors through a vote.
- A business has to be a legal entity before it can open a funding round.
- The convertible notes will be converted to shares that are held by a Special Purpose Vehicle (SPV).
- The fundraiser is required to send an update with information concerning the company's development each month.
- If the fundraiser refuses to send the monthly information update 3 times in any 12-month period then the whole investment can be cancelled.

[34] The First Closing Date is the date at which an investment round needs to have reached the Minimum Investment in order for the investment to go ahead.
[35] If the round does reach the Minimum Investment level, the funds – held temporarily under supervision by an accountant or attorney – can be accepted by the company and will be transferred to the bank account of the company. Investments that are made after this time can be transferred directly to the company until the Final Closing Day.
[36] This is the maximum pre-money valuation that can be used during conversion into shares.

- Investors have the right to receive a copy of the company's annual report.

Lend a hand

Lend a hand is a lending-based crowdfunding platform. The platform focuses on projects concerning SMEs with 2-100 employees in the farming, retail, wholesale, production or services industries.

About the platform:

- There is a minimum investment amount of €50.
- The annualised interest rate varies from 3-6%. If the maturity of the loan is longer than 24 months, the interest rate is increased by 0.25%.
- Loan duration varies from 6 to 48 months.
- The platform uses an extended network of local partners (financial institutions).
- Companies apply to the platform's local partner for loans.
- The local partner assesses the request (purpose, availability of collateral, past information, etc.).
- If the local partner accepts the loan, they forward the details to the platform which reassesses the loan application.
- If the loan application is approved, the local partner provides the loan to the company and crowdfunding funders actually provide a loan the financial institution.
- The fundraiser reimburses the loan in equal instalments plus interest every six months.
- If the company cannot repay the loan in full, then the platform's local partner can claim the collateral.
- The local partner must hold cash reserves to pay back the project funders, should the fundraiser default.
- The local partner transfers the redemptions and interests to the platform.
- The platform also offers direct loans to companies (without a local partner as intermediary) and offers higher interest rates (on average 5-8% on an annual basis) but also informs potential investors about the risks involved when lending directly to a company rather than lending through a financial institution (local partner).
- The platform accepts investments from several foreign countries.

Regarding the fundraiser's application, the following criteria must be fulfilled during the initial phase:

- Good moral character as evidenced by good standing in the community, association or organisation of which she/he is a member;
- At least 3 years in profitable operation with clear proof or indication of sustainability;
- Minimum compliance with legal requirements, such as payment of required taxes, etc.;
- Absence of any pending case involving non-payment of a loan, non-compliance with a legal contract or involvement in illegal activities;

- Verifiable experience in debt servicing (no past-due loans with any private or government lending institutions or banks);
- Clear and solid benefits to stakeholders, such as: job creation, care for the labourers and workers, payment of fair wages and taxes, adherence to the principles of fair trade, care for the environment and concern for the community at large.

V. Italy

Introduction

The Italian online alternative finance market is relatively small when compared to other EU Member States, but it has been registering the largest year-on-year growth rates: 287% for 2014-15, and 580% for 2013-14. This surge in growth may be attributed to the increasing number of platforms joining the market in recent years. It is worth noting that there is no industry code of conduct in Italy, perhaps because of the existence of a code of conduct introduced by CONSOB, the public authority responsible for regulating the Italian financial markets.

A. Existing Regulation

The first crowdfunding regulation came into force on 26 June 2013[37], was amended on 24 February 2016[38] and is limited to innovative start-up companies[39], innovative SMEs[40], collective investment schemes ("UCITS") which invest mainly in innovative start-ups and in innovative SMEs[41] and companies which invest mainly in innovative start-ups and SMEs[42].

Specifically, innovative start-up companies:

- are not listed on a regulated market;
- have been incorporated and have been active for a period of no longer than 60 months;
- have their registered office in Italy or a branch or a production facility in Italy;
- have a total maximum turnover of €5,000,000, starting from the second year of activity;
- have as their exclusive company object the development and marketing of innovative products or services with high technological value.

Innovative SMEs:

- are not listed on a regulated market, but can have their shares traded on MTF;
- have their registered office in Italy or a branch or a production facility in Italy;

[37] CONSOB Resolution no. 18592, 26 June 2013.
[38] CONSOB Resolution no. 19520, 24 February 2016.
[39] Article 25, paragraphs 2 and 4, of the decree and tourism start-ups pursuant to Article 11-bis of Decree Law no. 83 of 31 May 2014, converted with amendments by Law no. 106 of 29 July 2014.
[40] Article 4, paragraph 1, of Decree Law no. 3 of 24 January 2015, converted with amendments by Law no. 33 of 24 March 2015.
[41] Article 1, paragraph 2, letter e), of the Ministry of Economy and Finance Decree of 30 January 2014.
[42] Article 1, paragraph 2, letter f), of the Ministry of Economy and Finance Decree of 30 January 2014.

- have had an independent audit of the last available balance sheet.

Moreover, for a company to be considered an innovative SME it must comply with at least two of the following three requirements:

- expenses relating to R&D must be equal to or greater than 3% of either turnover or cost of production, whichever is higher;
- some of the employees must be graduates with three years of research experience or with university research experience;
- the company must own IP rights to industrial patents, biotech, new plant-related kind or original software code;.

For retail investors, an appropriateness test must be conducted by platforms. An exemption from the appropriateness test is offered for investments under the following thresholds:

- For natural persons: €500 per individual order and €1000 in annual total orders;
- For legal persons: €5000 per individual order and €10,000 in annual total orders.

The maximum investment amount that can be offered is €5 million.

Platforms must ensure that the published information must be presented in a concise, correct and clear way, using the standard CONSOB form. It is the project owner's responsibility to provide all applicable information to potential investors and there is no requirement for prior approval by CONSOB. Project owners are allowed to use other communication tools such as films, interviews, slides and pitches.

Platforms must provide detailed information about the due diligence process they follow for the selection of the projects which are presented on the platform.

The regulation specifies the minimum professional requirements for both the controlling shareholders[43] and the persons who perform managerial and supervisory functions[44].

The maximum amount raised for projects cannot exceed €5 million per year.

The platform manager must verify that a stake of at least 5% of the financial instruments offered has been subscribed by professional investors or by bank foundations or by innovative start-up incubators[45] or by investors in support of innovation, and that the value of the financial instruments portfolio, including cash deposits, exceeds €500,000, holding the requisites of integrity required by the law[46] and at least one of the following requirements:

- made, in the last two years, at least three investments in the share capital either as shareholders' loans in innovative start-ups or innovative SME, each of which for at least €15,000;
- covered, for at least twelve months, the office of executive director of an innovative start-up or an innovative SME, other than the offering company.

[43] Article 8, CONSOB Resolution no. 18592, 26 June 2013.
[44] Article 9, CONSOB Resolution no. 18592, 26 June 2013.
[45] Contemplated by Article 25, paragraph 5 of the decree.
[46] Article 8, paragraph 1 of the decree.

Professional investors[47] are investors who possess the experience, knowledge and expertise to make informed decisions on investments and to properly assess the risks involved. Professional investors are categorised as:

- Professional clients:
  - Entities which are required to be authorised or regulated to operate in financial markets, whether Italian or foreign, such as:
    - a) Banks;
    - b) Investment firms;
    - c) Other authorised or regulated financial institutions;
    - d) Insurance companies;
    - e) Collective investment schemes and management companies of such schemes;
    - f) Pension funds and management companies of such funds;
    - g) Dealers in freight and commodity derivatives;
    - h) Persons who exclusively perform proprietary trading on financial instruments markets and indirectly participate in settlements, as well as the clearing and guarantee system (locals);
    - i) Other institutional investors:
      1. Stockbrokers;
      2. Large companies that meet at least two of the following minimum requirements:
         a. Balance sheet total: €20 million;
         b. Net sales: €40 million;
         c. Own funds: €2 million;
      3. Institutional investors whose main activity is investment in financial instruments, including entities dedicated to the securitisation of assets or other financial transactions.
- Professional clients on request:
  - At least two of the following requirements must be met:
    - The client has carried out significant transactions in the relevant market at an average frequency of 10 per quarter over the previous four quarters;
    - The value of the portfolio of the client's financial instruments, including cash deposits, exceeds €500,000;
    - The client works or has worked in the financial sector for at least one year in a professional position, which requires knowledge of the transactions or services envisaged.
  - In the case of legal persons, the above assessment is conducted with regard to the person authorised to carry out transactions on their behalf and/or to the same legal entity.
  - The clients defined above may waive the benefit of the detailed code of conduct only after completion of the following procedure:
    - The clients must state in writing to the intermediary that they wish to be treated as professional client, either generally or in respect of a particular investment service or transaction, or type of transaction or product;

[47] CONSOB n. 16190, 29 October 2007.

- The intermediary must warn clients, clearly and in writing, of the protections and investor compensation rights they may lose;
- The clients must state in writing, in a document separate from the contract, that they are aware of the consequences of losing such protections.

B. Code of Conduct

The CONSOB regulation contains the following specific code of conduct[48]:

- The portal manager must work with diligence, fairness and transparency, avoiding any conflicts of interest which could arise in the management of the portal that may affect the interests of the investors and the issuers, and ensuring equal treatment of the beneficiaries of the offers who are in equal positions.
- The portal manager must make available to the investors, in a detailed, correct and not misleading manner and without omissions, all the information regarding the offer that is provided by the bidder so that the investors can reasonably and completely understand the nature of the investment, the kind of financial instrument offered and the risks related to it, and can take decisions on investing with full awareness of this.
- The manager must draw to the attention of the non-professional investors the fact that investments in high risk financial assets should be adequately proportionate to their financial resources.
- The manager must not circulate news that is not consistent with the information published on the portal and must refrain from giving recommendations regarding the financial instruments of individual offers which could influence the level of investment in them.
- The portal manager must ensure that the information provided via the portal is up-to-date, accessible for at least 12 months after the closure of the offers and made available to the interested parties upon request for a period of five years from the date of the end of the offer.
- The portal manager must grant non-professional investors the right to withdraw from the order, without charge, within seven days subsequent to the order.
- The manager must check, for every order received to the offers, that the client has the level of experience and knowledge necessary to understand the essential features and the risks that the investment involves. If the manager maintains that the instrument is not appropriate for the client, they must warn the client of this, including by means of an electronic communications system.

Funder protection

The portal manager must ensure that non-professional investors may access sections of the portal where it is possible to subscribe to individual offers only if[49]:

- They have read the information on investor education[50];

[48] Articles 13-21, CONSOB Resolution no. 18592, 26 June 2013.
[49] Article 15, CONSOB Resolution no. 18592, 26 June 2013.
[50] Article 14, CONSOB Resolution no. 18592, 26 June 2013.

- They have given information regarding their own knowledge, experience and ability to understand the essential features and risks that the financial instruments of the offer involve. This information must include, at a minimum:
  - The types of services, transactions (including those carried out via online portals), and financial instruments with which the investor is familiar;
  - The nature, volume and frequency of the transactions (including through online portals) carried out by the investor, on financial instruments, and the period during which these transactions have been carried out;
  - The investor's level of education, occupation or, if relevant, previous occupation.
- They have declared that they can financially sustain the possible entire loss of the investment they intend to make.

The portal manager must ensure the integrity of the information received and published and ensure that the portal has reliable and secure operating systems[51].
The portal manager must:

- Identify possible operating risks and adopt adequate procedures and controls to avoid these risks and any operational interruptions;
- Install suitable back-up devices.

As mentioned above, for the protection of non-professional investors, at least 5% of the shares in a public offer must be subscribed by professional investors, banks or incubators of start-ups.

Fundraiser protection

No specific information is described in the new regulation regarding the protection of project owners.

C. Individual Platforms

Assiteca Crowd

Assiteca Crowd is an investment-based crowdfunding platform.

About the platform:

- There is no minimum investment amount.
- There are significant tax benefits for both individuals and companies resident in Italy that invest in innovative start-ups through the platform:
  - Individuals: Deduction from their gross tax of 19% of the amount invested, with a maximum annual investment of €500,000. The percentage rises to 25% for investments in innovative start-ups that have a positive social impact.
  - Companies: 20% reduction of the total taxable amount invested in the share capital of innovative start-ups, with a maximum annual investment of €1,800,000. The percentage rises to 27% for investments in innovative start-ups that have a positive social impact or in start-ups

[51] Article 18, CONSOB Resolution no. 18592, 26 June 2013.

that exclusively develop and market innovative high technology products in the energy sector.

The investment must be held for a minimum period of two years in order to enjoy the above tax benefits.

- Professional investors, before registering, must express their interest by e-mail, providing their key business information.

Ecomill

Ecomill is an investment-based crowdfunding platform. Ecomill promotes investments in projects and ventures in energy and sustainability, including:

- Renewables and distributed generation;
- Energy efficiency;
- Smart grids and district heating;
- Sustainable mobility;
- Biotechnology;
- Environmental services.

About the platform:

- There is no minimum investment amount.
- The same tax benefits mentioned above are also offered via this platform.

StartUp

StartUp is an investment-based crowdfunding platform.

About the platform:

- There is no minimum investment amount.
- The platform informs potential investors, for their protection, that the platform:
    - does not hold sums of money belonging to investors;
    - does not execute orders of the securities offered on their portals: they only transmit them to banks or SIMs;
    - refrains from making recommendations concerning the financial instruments covered by the individual bids, in order not to influence the regular flow of the investments;
    - does not circulate news that is not consistent with the information published on the portal;
    - does not prepare initiatives to be taken against issuers if they are non-compliant with the rules of operation of the site, except as may arise from contractual obligations with them;
    - does not update subscribers about the performance of their investments after the transaction is completed and they have become full members of the issuer;
    - does not publish on the website all the offers that are presented for publication;

  - does not prepare the information on the offer: the issuer is solely responsible for the completeness and accuracy of data and information provided.
- Before investing, the platform informs potential investors of the following:
  - Investments in high-risk financial transactions should be adequately proportional to one's budget;
  - Investing in innovative start-ups is highly risky;
  - Potential investors need to be prepared to sustain the entire loss of their investment.
- Non- professional investors have the right to withdraw their offer:
  - without charge within 7 days from the date of the order[52];
  - within 7 days from the date on which significant new information has been brought to the attention of the investors[53].
- The same tax benefits mentioned before are also offered via this platform.

WeAreStarting

WeAreStarting is an investment-based crowdfunding platform.

About the platform:

- There is no minimum investment amount.
- There are no fees for investors.
- The platform informs potential investors that all the investments made through the platform are associated with high risk.
- Non-professional investors have the right to withdraw their offer:
  - without charge within 7 days from the date of the order;
  - within 7 days from the date on which significant new information has been brought to the attention of the investors.
- The platform requires issuers to provide at least two periodic updates within 25 months from the conclusion of the offering and to report to investors the emergence of a situation that could put the business continuity at risk.
- The platform facilitates the communication of updates to investors and encourages issuers to keep subscribers involved in the development of the company.
- The platform offers support to project owners in taking strategic decisions related to the offering, and in carrying out the necessary steps before the launch.

Prestiamoci

Prestiamoci is a lending-based platform. The platform aims to promote the exchange of money between individuals, without the intermediation of banks or other lending institutions.

The basic requirements when applying for a personal loan are:

[52] Article 13, CONSOB Resolution no. 18592, 26 June 2013.
[53] Article 25, CONSOB Resolution no. 18592, 26 June 2013.

- The applicant must be a natural person;
- The applicant must be aged 18 – 75 years;
- The applicant must be an Italian citizen;
- For employed persons: they must have been in work for at least 6 months;
- For self-employed persons: they must have been engaged in the same type of activity for at least 24 months;
- The applicant must have held a bank account in Italy for at least 6 months.

About the platform:

- The platform shall respond to the applicant within 24 hours and inform them about the final interest rate;
- Loans shall be funded (100%) within 7-15 days;
- Loans have a fixed interest rate;
- Loans vary from €1,500 to €25,000;
- Loans have a repayment period of 12-72 months;
- Each applicant is evaluated by the platform and categorised.
- In case of delay in repayments, the platform has structured a debt collection process that involves specialised companies in the sector, which is activated from the first delay in the payment of instalments.
- The platform offers a secondary market where lenders have the opportunity to buy shares of already "paid on time" loans or sell shares of loans before maturity.

VI. Spain

Introduction

The Spanish online alternative finance market is ranked fifth amongst European countries in terms of total volume, growing by a modest 39%, from €36 million in 2014 to €50 million in 2015. According to most recent available figures, Spanish alternative finance platforms generated €103 million over the period 2013-15.

A. Existing Regulation

The new regulatory framework came into force on 27 April 2015[54]. Under this framework, platforms are defined as *Plataformas de financiación participative* (Collective Financing Platforms, CFPs), which are the intermediary companies that connect funders with fundraisers. The new set of rules[55] concerns only lending-based and investment-based crowdfunding. Specifically:

- CFPs must be authorised by the Spanish Stock Market National Commission (CNMV)[56];
- CFPs must be registered with the CNMV Register[57];

[54] Promoting Corporate Financing, Act 5/2015.
[55] Articles 46-93 (Act 5/2015).
[56] Article 53 (Act 5/2015).
[57] Article 54 (Act 5/2015).

- CFPs must have either an initial capital of €60,000 or hold professional liability insurance[58];
- CFPs are entitled to provide specific services[59]:
  - To receive, select and publish crowdfunding projects;
  - To establish communication channels between funders and fundraisers;
  - To guarantee that the above channels are easily visible and accessible to potential funders.
- Investors are categorised as accredited and non-accredited[60]:
  - Accredited investors are:
    - Natural and legal persons, such as financial institutions and other legal persons;
    - Companies who meet at least two of the following criteria:
      - At least €1 million of total assets;
      - At least €2 million of annual turnover;
      - At least €300,000 of shareholder equity.
    - Individuals who have[61]:
      - At least €50,000 of annual income;
      - At least €100,000 of financial assets.
  - Non-accredited investors are:
    - Any investor who does not comply with the above criteria.
- Investment limits:
  - Accredited investors:
    - No limits
  - Non-accredited investors:
    - €3000 per project
    - maximum €10,000 per year
- CFPs must inform accredited investors that they are exposed to greater risks, before they invest for the first time.
- CFPs must require a statement from non-accredited investors, before they invest for the first time, that:
  - They have been warned about the risks of their investment;
  - Their investment shall not exceed the threshold of €10,000 in any one-year period.
- Maximum amount of fundraising[62]:
  - €2 million per project, per platform, in a given year;
  - €5 million if the offer is limited to accredited investors.
- CFPs must inform potential investors about the due diligence process that is followed.
- CFPs must provide warnings:

[58] If the raised funds exceed €2 million then the minimum equity will amount to €120,000 (and increase proportionally).
[59] Article 51 (Act 5/2015).
[60] Article 81 (Act 5/2015).
[61] Individuals who fulfill these criteria must request to be considered as accredited investors in advance.
[62] Platforms must ensure that fundraisers have not simultaneously published more than one project on a platform and that the fundraising amount per project does not exceed the mentioned limitations.

  - About the risk of total or partial loss of the invested capital;
  - About the risk of not getting the expected return;
  - About the risk of illiquidity of the investment;
  - That the projects are not subject to financing authorisation or supervision by the CNMV or by the Bank of Spain.
- CFPs must disclose information about the projects in a clear, complete, non-technical and non-misleading way[63].
- CFPs are obliged to publish a policy on conflicts of interest.
- CFPs can invest in a project (up to a maximum of 10% of the funding target) but cannot control the company.

Funder protection

Investors are categorised as accredited and non-accredited.
Platforms must ensure that non-accredited investors do not exceed the maximum investment limits set by law.
Platforms must inform accredited investors, and require a statement from non-accredited investors, about the investment risks.
Every platform must provide information on the number or percentage of defaults.

Fundraiser protection

Both funders and fundraisers are considered clients[64].
Platforms must provide information to fundraisers about their rights and obligations in a clear and easily accessible way.
Platforms must provide clear information to promoters on how they receive and process the information provided by the promoters and the criteria for publication, which should be uniform and non-discriminatory.

B. Code of Conduct

There is no code of conduct in Spain.

C. Individual Platforms

BolsaSocial

BolsaSocial is an investment-based crowdfunding platform. The platform aims to fund the growth of companies with a positive social and environmental impact.

About the platform:

- Projects run for a period of 2-3 months[65].
- The platform invests in every company that they advertise.
- Each project has a minimum and a maximum goal of capital, which represents a percentage of the company's capital.
- Projects must meet specific minimum requirements:
  - Creditable, positive social or environmental impact;

[63] Article 61 (Act 5/2015).
[64] Article 60 (Act 5/2015).
[65] Upon agreement with the entrepreneur, the campaign can be extended.

  - Economic sustainability and growth potential;
  - Proven business model (demonstrable turnover in the previous year);
  - Personal commitment to the project;
  - Be incorporated under the form of a private limited company or a company limited by shares under the law of an EU Member State;
  - Have a registered office in an EU Member State.
- The investor who makes the largest contribution will have the right to occupy one seat on the company's board of directors and vote in the shareholders' meetings on behalf of all the new shareholders.
- Investors receive updates every six months about the course of the company's business, its performance, relevant facts and reports on its social and environmental impact[66].
- The Selection Committee of the platform runs a selection process which lasts approximately a month and a partner law firm performs the due diligence process.
- The platform offers support in the fundraisers' communication strategies.
- The minimum funding amount for projects is €50,000.
- Projects cannot be edited after publication.
- The shareholder agreement establishes clauses to protect investors: drag-along, tag-along, anti-dilution, preference in case of liquidation of the company.

Capital Cell

Capital Cell is an investment-based crowdfunding platform.

About the platform:

- The platform checks every company and every single one of its associates in public registries, credit rating lists, as well as social security and fiscal databases and conducts private interviews with every entrepreneur.
- The platform uses preferred dividend, non-voting shares as standard:
  - If the company pays dividends, the platform's investors get a cut first, and then take part in the general share-out again.
  - The platform's investors have all shareholder rights except for voting.
- The standard investor agreement may include a clause that would give investors a guaranteed price for their shares but deny them the right to refuse the operation.
- The platform offers a 7-day withdrawal period after the initial investment.
- After the 7-day period, the platform offers the right to investors to negotiate with the company for an investment cancellation.
- Most investor agreements specify future salaries of the company's employees to prevent fraud.
- There is a minimum investment amount of €20.

[66] The company has the obligation to inform investors for at least 5 years.

- The project owners have the option to specify a future buyout clause in the investor agreement.
- The platform communicates projects to professional investors, business angels and equity funds, and assists project owners in advertising their investment opportunity.
- The project owners have the option to set different terms for different investors.

Ecrowd!

Ecrowd! is a lending-based crowdfunding platform. The platform finances investment projects in proven technologies, typically where new technology replaces outdated, less efficient technology.

About the platform:

- For projects smaller than €100,000, the platform requests full payment.
- For bigger projects the platform requests an initial down payment of 10%[67].
- The platform has an offline secondary market, where initial investors can offer their investments to other investors[68].
- The platform offers a referral program. Both the referrer and the referred party receive 0.5% higher interest on their next investment.
- The platform applies linear amortisation to the loans. Loans are amortised more slowly and more interest is paid, which is more favourable for investors.
- There is a minimum investment amount of €50.
- The platform does not finance working capital or invoice discounting and they do not fund research projects or companies seeking capital.

Arboribus

Arboribus is a lending-based crowdfunding platform.

About the platform:

- There is no minimum investment amount.
- The annual interest range is between 4% and 8%.
- Interest payments are made on a monthly basis.
- The platform offers loans ranging from €10,000 to €500,000.
- The loan repayment period ranges from 6 to 36 months.
- Investors can offer whatever interest rate they want to each company[69].
- Companies must meet the following criteria:
    - More than 2 years of activity;
    - Up-to-date financial statements (showing adequate ability to cope with monthly loan payments);

[67] The remaining amount will be requested once enough investors have shown interest in investing and once the external validation has been realised and approved.
[68] The platform charges a 2.5% commission for this service.
[69] Within the allowed range.

  - A stable financial situation in recent years;
  - No judicial or non-payment incidents relevant to their offering investment;
  - Directors with a business background.
- The platform is responsible for managing the loan.
- The platform offers the *Sistema de Inversión Automático* (SIA) which is an automatic investment tool:
  - The investor chooses the interest rate and the maximum amount they want to invest per project.
  - The tool automatically reinvests the interest that the investor receives.

European Commission

Identifying market and regulatory obstacles to cross-border development of crowdfunding in the EU

Annex A5

Surveys

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I. Survey on users' perspective on the effect of regulation in cross-border crowdfunding

Data and Design

The study of users' perceptions of whether and how regulation can aid crowdfunding cross-border development used data from a unique database of answers from users (funders only) of crowdfunding with financial returns, where specific questions are asked regarding the effect of regulation on cross-border activities. The survey was designed in the context of the cooperation of two expert groups of the European Commission: the Financial Services Users Group (FSUG) and the European Crowdfunding Stakeholders Forum (ECSF). Specifically, the main purpose of the survey was threefold: a) to measure perceptions of benefits and risks by users of crowdfunding with financial returns, b) to explore and compare past use of crowdfunding and intentions for future use, and c) to explore certain regulatory issues (i.e., level of awareness and approval of regulation, regulation and trust in the industry, effects of regulatory restrictions, effects of regulation in cross-border activity, etc.). Survey methodology was adopted to collect data from respondents. The final questionnaire was collectively agreed upon by a team of experts, including FSUG members, ECSF members, EC officials and platforms' representatives, and was encoded using the EU-Survey tool.

Regarding dissemination of the questionnaire, the network of the ECSF was used. Specifically, platforms' representatives were asked to disseminate the questionnaire to their members in their countries (i.e., crowdfunding platforms), and ask the platforms to notify their registered users. Thus, the population of the survey was registered users in crowdfunding platforms with financial returns. The survey took place during the period from May 2015 to January 2016, meaning that the questionnaire was publicly available during that period of time, but the majority of responses were collected by mid-August 2015. The final sample consists of 158 respondents to the equity crowdfunding questionnaire (43% from Germany, 20% from Finland, 15% from Italy and the remaining 22% from other countries) and 632 respondents to the P2P lending questionnaire (59% from the UK, 15% from Finland, 7% from Italy and the remaining 19% from other countries).

Results

The study focuses on one part of the aforementioned study; namely, the responses to questions that are directly related to users' perceptions of regulatory aspects of safeguards and disclosures, as well as the effect of regulation on cross-border activity from users' perspective.

The first question discussed was designed to identify the nature of information that users tend to remember. The wording of the question was carefully selected, so that the respondents' answers should not necessarily be taken to mean that the pieces of information they do not remember do not indeed appear on the platforms' websites. Therefore, the approach of the conclusions drawn from this question should be to focus on users' perceptions, not on platforms' information availability.

Question: Which of the following information do you remember having read on the platform's website?

About the platform:

Information on the platform governance/management (platform owners, main investors, directors, etc.)	
Risk warnings (e.g., about possible loss of investment, possible lack of liquidity, etc.)	
Terms and conditions (i.e., user definitions, rights and obligations per type of user, age and possible residence restrictions)	
Information regarding the procedures followed at all levels of financing and returns	
Direct contact information via telephone	
Fees (commissions, lump sums e.g. for legal services, etc.)	
An existing FAQ section	
Repayment conditions	
Compensation policy	

About the platform's projects[1]:

Business plan (i.e., idea, market, objectives, etc.)	
Financial plan (i.e., cash flow estimate, projected P&L, financial ratios, etc.)	
The team behind the project	
General information about the company (VAT registration number, address)	
Shareholders' agreement	
Articles of association	
A section for any updates	

Figure 1 shows percentages of the total number of respondents that noted that they remember having read the respective information on the platform's website. A first conclusion of the comparison between P2P lending and equity crowdfunding respondents is that, on average, no clear differentiation is spotted between the respondents. Terms and conditions and risk warnings gathered the highest positive responses, whereas a compensation policy and direct contact information via telephone were the last two items in the list of information on the platforms' websites.

[1] P2P lending respondents are not asked the second part of the question, namely the "About the platform's projects" part.

Figure 1: Percentages of responses to the question:
Which of the following information do you remember having read on the platform's website about the platform?

	Information on the platform governance/ management (platform owners,...	Risk warnings (e.g. regarding possible loss of investment, possible lack...	Terms and conditions (i.e. user definitions, rights and obligations per type of...	Information regarding the procedures followed in all levels of financing and returns	Direct contact information via telephone
Equity	72.15%	84.18%	85.44%	62.03%	48.10%
Lending	70.73%	87.66%	81.33%	61.23%	49.37%

	Fees (commissions, lump sum, e.g. for legal services, etc.)	An existing FAQ section	Repayment conditions	Compensation policy	No response
Equity	58.23%	81.65%	55.06%	24.05%	1.90%
Lending	75.00%	77.69%	61.71%	45.89%	3.32%

Regarding the project's related information (this part was asked only to equity crowdfunding respondents), Figure 2 shows that the first two pieces of information that the respondents remember having seen are the "team behind the project" and the "business plan", whereas "shareholders' agreement" and "the articles of association" come last.

Figure 2: Percentages of responses to the question:
Which of the following information do you remember having read on the platform's website about the project?

The purpose of the second question was to explore users' level of awareness of how the platforms are regulated.

Question: How are the platforms you use regulated?

The market is self-regulated (code of conduct)	
They are regulated by law	
There is no regulation at all	
I do not know	

The interesting feature here is that about one in four respondents says that they do not know how the market is regulated. Another interesting result is that most of the equity crowdfunding respondents say that the platforms are regulated by law, whereas the highest percentage of P2P lending respondents say that the market is self-regulated.

Figure 3: Percentages of responses to the question:
How are the platforms that you use regulated?

	The market is self-regulated (code of conduct)	They are regulated by law	There is no regulation at all	I do not know	No response
Equity	14.56%	51.27%	2.53%	29.11%	2.53%
Lending	39.87%	28.32%	6.49%	23.89%	1.42%

After respondents had answered the question discussed above, the following question appeared for those respondents who answered "The market is self-regulated" or "They are regulated by law":

Question: Does this regulation increase your trust in equity crowdfunding?

YES, but it does not change my decision on how much to invest	
YES, and it encourages me to invest more than I would invest without this regulation	
NO	

Results are presented in Figure 4. The interpretation of the results is relatively complicated and depends on the evaluation of whether the range of 20%-30% of the respondents (for equity crowdfunding and P2P lending, respectively) is supposed to be relatively small or large. Specifically, this could suggest that the majority of respondents do not seem to be affected by the existence of regulation, regarding the decision on how much to invest, which may also lead to the conclusion that the platforms seem to have succeeded in being trusted by their registered users. On the other hand, the percentage of 20%-30% should not be underestimated, since an implication of this result is that, with the absence of regulation, these respondents may have been more reluctant regarding investing.

Figure 4: Percentages of responses to the question:
Does this regulation increase your trust in equity (P2P lending) crowdfunding?

	YES, but it does not change my decision on how much to invest	YES, and it encourages me to invest more than I would invest without this regulation	NO	No response
Equity	62.50%	20.19%	16.35%	0.96%
Lending	56.15%	30.16%	12.53%	13.69%

The last set of questions discussed refers directly to cross-border activity. The first question is:

Question: Would you invest with the same confidence in projects in another EU Member State if they were offered by the platform(s) you use?

YES, I already do invest in foreign projects	
YES, I would invest in foreign projects	
I would invest some money in foreign projects, but not as much as in domestic ones	
NO, I would not invest in foreign projects	

Results are presented in Figure 8. There seem to be clear differences between respondents' answers, depending on the type of crowdfunding. The main conclusion looking at the results is that users of equity crowdfunding seem to be more open to investing in other EU Member States in comparison to P2P lending respondents. Perhaps the demographic characteristics of the sample are related to this differentiation, since the vast majority of P2P lending respondents come from the UK, whereas the majority of equity-crowdfunding-user respondents come from Germany and Finland.

Figure 8: Percentages of responses to the question:
Would you invest with the same confidence in projects in another EU Member State if they were offered by the platform(s) you use?

The second question in the subset testing cross-border activity is the following:

Question: Would you invest with the same confidence through platforms established in another EU Member State?

YES, I already do invest through platform(s) established in a country different from my country of residence	
YES, I would invest with the same confidence	
I would invest some money through foreign platforms, but not as much as through domestic ones	
NO, I would not invest through foreign platforms	

Results are presented in Figure 9 and are similar to what was shown in the previous question. Specifically, P2P lending respondents seem to be reluctant to invest through foreign platforms in comparison to equity crowdfunding respondents. Again, the dominance of the UK in the European crowdfunding market, with a market share of more than 75%, seems to be a safe explanation of the substantial difference in the responses between the two groups.

Figure 9: Percentages of responses to the question:
Would you invest with the same confidence through platforms established in another EU Member State?

	YES, I already do invest through platform(s) established in a country different from my country of residence.	YES, I would invest with the same confidence.	I would invest some money through foreign platforms, but not as much as through domestic ones.	NO, I would not invest through foreign platforms	No response
Equity	20.25%	36.08%	31.01%	11.39%	1.27%
Lending	12.66%	15.35%	34.34%	36.23%	1.42%

II. Survey on obstacles to cross-border crowdfunding for both lending (P2P) and securities (equity)

Data and Design

To provide additional market input, ECN has published a survey aimed at assessing the operational hurdles in cross-border business and investor protection aspects, targeting interested senior executives of crowdfunding platforms. The survey was primarily placed on its website homepage, included in its newsletter and included in a direct mail to a list of about 600 crowdfunding platforms. The survey was promoted repeatedly via social media and was also published twice by www.crowdfundinsider.com, on 18 June 2017 and on 12 July 2017. The survey was online for four weeks.

We received a relatively low number of answers, N=11, reflecting our general experience with platform engagement in pan-European policy efforts. Two answers came from the same platform, which we also covered through our interview process, but at the same time we were able to collect nine answers from actors not otherwise interviewed through our other activities. The majority were from lending platforms, which skews the results slightly.

Results

Part 1: General introduction

The first part was structured around more general questions on the operations of the participants' companies, historic development and some core principles. Initially, we asked participants to give some personal background first.

Opening: Please provide some background on your personal sector experience, organisation and position. (N=3)

1. CEO of a peer to peer lending platform
2. Managing Director
3. Equity crowdfunding is focus on little investments at early stage of the enterprises, then when they need more capital, more funds, they need venture capitals, because in Spain the essence of crowdfunding is not working due to regulation. for example, it is so heavy that someone could give just one euro to buy a little part of a company, and the administration pretend that person should go to a notary to sign. It is impossible to grow like that. Crowdfunding should be based on web, on blockchain transactions and every movement of money or info. The government needs to liberalize this sector in order to make easier get little funds not only big investors

We then asked participants to indicate the nature of their companies' operations.

1.1: Is your company… (N=11)

A crowdfunding or lending platform	***10***

A financial service advisory firm	***0***
A law firm	***0***
An investment company	***1***

Though only nine platforms responded, we still believe this to be relevant, given that the number of platforms that can or want to operate cross-border in Europe is likely limited to 50-100 at this point (there is no reliable data on this). We went on to clarify what their focus regarding financial instruments was.

1.2: Is your company dealing with… (N=11, possibility to tick multiple boxes)

Securities-based crowdfunding	***5***
Lending-based crowdfunding	***8***
Other forms of crowdfunding	***1***

After establishing the operating environment, with five securities platforms and eight lending platforms (of which one answered twice, so, effectively seven), we established the year of foundation, indicating that most platforms participating are relatively young, having been founded in the past three years.

1.3: What is the year of foundation of your business? (N=11)

2011	***1***
2012	***1***
2013	***1***
2014	***5***
2015	***2***
2016	***1***

We then focused on cross-border investments. In our question set-up we also allowed for the option "other" to capture outliers. However, in the results, we moved these into the relevant category, as there was no relevant reason to keep them separate.

1.4: What is the % of cross-border investments you receive? (N=11)

< 5%	***3***
5-10%	***4***
10-20%	***1***
> 20%	***3***

Results are presented in Figure 10.

Three of the respondents (27%) receive less than 5% cross-border investment out of all of their projects.
For another four (37%) the proportion of cross-border investments ranges from 5% to 10%.
For three respondents (27%), cross-border investment received on their platform accounts for more than 20%.
Two respondents stated the proportion to be 10%-20% and 10%, respectively; these were included in the third and second classification, respectively. The latter

respondent clarified that funds came from local bank accounts owned by people living abroad.

Figure 10: Percentages of responses to the question:
What is the % of cross-border investments you receive?

1.5: What is the % of cross-border deal origination you manage? (N=10)

< 5%	***4***
5-10%	***1***
10-20%	***3***
>20%	***2***

Results are presented in Figure 11.

The largest number of respondents (40%) stated that the percentage of cross-border deal origination they manage is below 5%.
Two respondents (20%) determined the proportion of cross-border deal origination they manage to be less than 20%.
For one respondent, the proportion is between 5% and 10%, whereas for another respondent the proportion is in a range of 10% to 20%.
One respondent stated that they manage nearly 100% of cross-border deal origination, clarifying that the investments are pooled in a local SPV that then makes the cross-border transactions. Another respondent indicated that the proportion is above 20%.

Figure 11: Percentages of responses to the question:
What is the % of cross-border deal origination you manage?

With half of the respondents declaring that they have limited cross-border deal origination, we went on to qualify the feedback and asked participants to provide more specific information about their relevant activity.

1.6: Elaborate on your overall fund inflow from retail and institutional investors; has it changed over time? (N=9)

1. Mostly retail investors
2. It's been very stable over time.
3. No.
4. Institutional investors investment is channelled through a fund which invest on all (no cherry picking) projects a minimum of 51%. Overall Private investors represent 31,5%, Family Offices 33,5% and Institutions 34,9% of investments
5. We raise money from private people with a German bank account but irrespective where the currently live. The money is collected in an SPV in Germany from which it is lend to the project countries in Africa and Asia.
6. All retail so far
7. yes
8. Institutional investors only
9. Yes, it increased, which may relate to the fact that we actually grow as a company.

From the answers, we can deduce that we are looking both at platforms focused on retail investors and those focused on institutions. We also have at least one platform that accepts both types of investors. With regard to noticeable change, no detailed information is forthcoming, but we note that the answers cover both change and non-change. As participant 9 states, platform growth can also impact fund inflow, and it is also difficult for the respondents to clearly identify changes in user behaviour in many cases.

Part 2: Operational barriers in cross-border transactions

In part 2, our questioning focused on the operational barriers perceived in cross-border transactions.

2.1: From which countries do you accept fund inflow? (N=9)

1. All OEDC countries
2. All EU countries
3. EU citizens, who are resident in EU and who hold an EU bank account.
4. European countries
5. German bank accounts
6. Any, except US/Canada, Australia and Japan for debt campaigns
7. UK
8. EU & US
9. EU & US

We notice a trend toward accepting funds from the EU in general, with two exceptions focusing on a single country (home market) and two platforms allowing investments from beyond the EU. This is not an indication as to where platforms market their services to investors.

2.2: From which countries do you accept deal origination? (N=10)

1. EU
2. EU
3. Countries with physical presence
4. France, Spain, Italy although we could legally accept it from all EU countries
5. Focus only on UK deals due to the due diligence cost of non-UK locations
6. France, Spain and Italy
7. Netherlands, Spain,
8. Worldwide (however, our investors invest in a SPV in Germany from which we on-lend)
9. Any in EEA
10. UK

The sample indicates a strong focus on cross-border business. However, we notice a focus on platforms referencing countries where they have a physical presence and operations, but three that are open to all of the EU/EEA.

2.3: What is the % of cross-border deal origination you manage?

Actively	***7***
Passively	***3***

Results are presented in Figure 12.

The majority (70%) stated that they do this actively, while 30% passively manage the origination of the deals on their platform. Given that we can assume that at least 5

respondents have multiple markets of operation, the results of this question support the indications from question 2.2.

Figure 12: Percentages of responses to the question:
For cross-border transactions, do you pursue deal origination…:

2.4: For cross-border investor marketing, do you carry out… (N=10)

Active marketing of services in multiple languages	***6***
Passive marketing of services only in local language	***2***
Other	***2***

Results are presented in Figure 13.

Most of the respondents (60%) actively market their services in multiple languages, whereas 20% passively market their services in their local language only.
The other 20% of the respondents that answered this question either apply other strategies or a mix of both. Platforms with multiple locations are also likely to operate in multiple languages. For platforms with only one location, at a minimum the addition of English is relatively unproblematic (in most legislations).

Figure 13: Percentages of responses to the question:
Cross border investor marketing:

2.5: Why these countries and not others? (geographical/cultural proximity or institutional/regulatory arbitrage)? (N=10)

1. Following the users
2. Starting with these and looking to expand.
3. the financial promotion regulations across EU are not consistent nor do we have a regulatory passport to market retail investments in EU, we only held permissions to market in the UK
4. First countries to be expanded in the future
5. Because access to other countries is operationally difficult
6. We are bound to German investors due to regulations as we use subordinated debt ("Nachrangdarlehen") which is only existing in Germany. We plan to change the financial product and open up to EU markets once the Capital Market Union is in place.
7. Geographical proximity, understanding of marketplace, language capability
8. proximity and regulation
9. Proximity, scoring, hedging
10. geographical and cultural proximity.

The respondents bring to light a mix of regulatory arbitrage and geographical and cultural proximity. This may indicate a balance between regulatory hurdles and operational abilities, in order to expand only where economic viability is possible through adequate cost reductions within regulatory frameworks.

2.6: Do you comply with specific regulatory rules for your cross-border activities? Are these national rules or EU rules? Can you elaborate, please, and provide some experience? (N=10)

1. No EU or national rules in place
2. Both EU (for institutional investors, as our funding depends on a vehicle based on a EU regulation) and national (for retail investors and origination, given the lack of European regulations in that space)

3. the financial promotion regulations across EU are not consistent nor do we have a regulatory passport to market retail investments in EU, we only held permissions to market in the UK
4. As there is no EU framework on crowdfunding, especially lending, we have to comply to a mix of national and EU rules relating to Crowdlending, consumer and data protection, tax and common law
5. For Spain you need to have a so called investment identity to invest in Spain. For Germany you need to have a bank account in Germany (SEPA???), this is similar for Belgium
6. We comply with the rules in Germany but would love to open the platform EU wide.
7. On top of pass portable FCA license, we need to comply with specific regulatory rules for some countries
8. Yes, we can operate in UK
9. Mainly EU rules because at this stage origination is in EU
10. N/A

We find an eclectic mix of regulatory approaches in the answers of the respondents, but can also pinpoint repeated references to a harmonised EU framework potentially being useful. Other regulatory hurdles, such as tax, data protection and common [corporate?] law are mentioned.

2.7: How important are cross-border transactions to your overall business and relative to your domestic activities? Can you outline a learning curve or highlight challenges? (N=9)

1. Important
2. Very important - we aim to build a true Europe of Savings.
3. Focus on getting to break even in UK first. A challenge to expansion would be non-homogeneous regulatory rules for peer to peer lending in EU
4. Our objective is to become a pan European leader in Crowdlending, we are therefore offering projects from the countries we are operating in to our pool of international lenders
5. As investor we are spreading our investments in different ways (Branches, Platforms, Geographically. For spreading our risks it is essential to not only be investing in the Netherlands but also in more countries.
6. Cross border transactions are crucial for us as the business is based on providing finance to projects in Africa and Asia. So far, regulations have been giving us a hard time and we have high transaction costs for our legal structure.
7. Very important. The learning curve has been steep and it has sometimes been difficult to establish exactly what regulatory requirements there are for each market.
8. At this point does not exist
9. We start local in Romania and go cross border when we reach enough volume for securitization

The answers indicate an inherent wish of most, if not all platforms to operate cross-border in the long term as a strategic goal; in some cases this is clearly stated. We can deduce different approaches, from focusing on operational sustainability in the home market first to expansion early on. However, the importance of cross-border transactions is clearly evident in this sample of respondents (we can assume a clear bias as the survey is directed toward the issue of cross-border and those involved).

2.8: Can you estimate the operational cost or impact of regulation in financial terms? (N=10)

<5% of total operational cost	***1***
5-10% of total operational cost	***4***
10-20% of total operational cost	***2***
>20% of total operational cost	***3***

Results are presented in Figure 14.

With regard to the impact of regulation (in terms of operational costs) this chart shows that the largest number of respondents (40%) estimate the costs at between 5% and 10% of the total operational costs.
For 20% of the respondents, the costs related to the impact of regulation lie between 10% and 20% of the total operational costs.
Only one respondent (10%) estimates the costs to be below 5% of the total operational costs.
Three of the ten respondents that answered this question (30%) state the costs related to the impact of regulation to be under 20% of the total operational costs.

Figure 14: Percentages of responses to the question:
Can you estimate the operational cost or impact of regulation in financial terms?

The clear indication is that the cost of compliance with regulation makes up more than 10% of total operational cost for 50% of respondents, with 30% of respondents experiencing this to be above 20%.

2.9a: Do you see national level tax incentives, corporate law, consumer protection or other national rules as a hurdle in cross-border transactions with regard to investors or fundraisers? (N=10)

1. No
2. Yes; but at the same time, having developed the expertise to deal with these issues, it has become a competitive advantage rather than a problem.
3. No. Primary hurdle is regulatory landscape in EU for peer-to-peer lending. The financial promotion regulations across EU are not consistent nor do we have a regulatory passport to market retail investments in EU, we only held permissions to market in the UK.
4. All of the above. This is a virgin territory for which no guidelines exist and which is invented as we speak.
5. No, but as a professional investor we would need [*submission ends here*]
6. Small investor protection law in Germany brings some benefits but also a lot of hurdles. It is much easier in other countries.
7. Mainly consumer protection
8. yes
9. EU consumer data protection is the main barrier
10. Yes, although some new corporate law instruments appear to provide us a new value in the coming years.

The answers indicate that operating different business models in various legal frameworks also creates different focal points when identifying regulatory hurdles. Also, platforms that have already solved a particular legal issue are less likely to list it as a hurdle (see answer 2).

2.9b: Have you addressed regulatory problems of cross-border activities with your national relevant authorities? Can you elaborate about your experience? (N=9)

1. Yes
2. Yes. We have found them to be very willing to provide clear and prompt answers.
3. No.
4. No
5. yes, my experience is that most issues lie within tax challenges per country.
6. Not directly but through the national crowdfuning association.
7. NO
8. We work with specialized division of Deloitte CEE for dealing with regulatory bodies in different countries
9. N/A

The answers show a mix of platforms having engaged and not having engaged with local regulators. Where contact exists, the experience has been positive. In some cases there has only been indirect contact through third parties.

Part 3: Safeguards and disclosure in cross-border transactions

3.1: Are the disclosures and/or safeguards for the protection of both investors and fundraisers used by your platform… (N=10)

Mandated rules by national law	***7***
Mandated rules by MiFID	***1***
Voluntary	***2***

Results are presented in Figure 15.

With regard to the protection of investors and fundraisers, disclosures/safeguards can either be: 1) mandated by national law, 2) mandated by MiFID, or 3) voluntary.
For the majority of the respondents (70%) the disclosure/safeguard regulations mandated by national law apply for the protection of investors and fundraisers.
Only one respondent (10%) stated that the rules mandated by MiFID apply for their platform, whereas two respondents (20%) voluntarily apply rules in this regard.

Figure 15: Percentages of responses to the question:
Are the disclosures and/or safeguards for the protection of both investors and fundraisers used by your platform…

We can clearly see that the respondents are mostly applying national disclosure rules, also where they operate across multiple legislations. Voluntary disclosure remains limited.

3.2: How do disclosure and safeguard requirements influence the scope of your cross-border business in general terms? (N=8)

1. They are a key driver of the business we pursue
2. UK regulatory framework is not the challenge. The challenge is the non homogenous application of financial promotions for retail investors across the EU for peer-to-peer lending. No passport available.
3. To the above question I would add also "Voluntary"
4. As no law exist for Crossborder, all the disclosure and safeguard we have put in place are primarily based on our own decisions on how to better protect private

lenders. Were a piece of specific local regulation can be used or imposes a constraint, it is included.
5. As investor the safeguard show similarities
6. Nothing cross-border specific
7. They have limited the speed of acceleration of our business in Europe
8. a few
9. Not much.

Safeguards are not seen as a hurdle overall, though they have been identified as important by some industry players. Legal requirements are not applicable for cross-border transactions, so in general national frameworks will be applied.

3.3: Do you implement investment restrictions for investors? (N=10)

Yes, upper investment limits per investor	***1***
Yes, lower investment limits per investor	***1***
Yes, both	***4***
None	***4***

Results are presented in Figure 16.

Most of the respondents (40%) apply both lower and upper investment limits per investor, whereas 40% apply neither lower nor upper restrictions.
One respondent applies both upper and lower investment restrictions respectively, whereas for one respondent, restrictions do not apply for the specific crowdfunding model they use.

Figure 16: Percentages of responses to the question:
Do you implement investment restrictions for investors?

3.4: Are those investment ceilings mandated by national law or voluntary? (N=10)

Voluntary	***4***
Mandated	***1***
A mix of both	***3***
Does not apply	***2***

Results are presented in Figure 17.

For only 10% of the respondents, national law applies for investment ceilings.
For 40% of the respondents, investment ceilings are voluntary.
Two respondents stated that they are neither mandated by national law, nor voluntary.

Figure 17: Percentages of responses to the question:
Are those investment ceilings mandated by national law or voluntary?

3.5: Can you describe your use of your risk warnings to investors? (N=8)

1. Full risk disclosure, risk statements, project based risk analysis
2. Extensive and completed by ongoing education (newsletter, blog articles)
3. Extensive risk warnings at each step of the user journey to investment.
4. In France and Spain, we use limits imposed by the law but which we believe are adequate. In Italy where there is no specific regulation, we have voluntarily used the same limit as in the other 2 countries. We have voluntarily imposed a limit for accredited investors in Spain
5. Voluntary detailed risk warning document + mandatory major risk warnings in 3-page investor summary that they must sign that they have read it
6. We have extensive risk warnings on our platform and on all documentation
7. Every legal issue its own website and investor should read and sign conditions
8. We warn about usual risks present at investment platforms: liquidity, no dividend, dilution, diversification etc. We only address private high networth individuals.

Platforms unanimously state that they have extensive risk warnings on their platforms. In one case, investment restrictions are additionally mentioned. However, it is not clear if the understanding of extensive risk warnings is aligned with legal requirements or if they are voluntary (only mentioned in answer 5).

3.6: Are you allowed to perform due diligence and share this with your investors?

Yes, all information	***7***
Some information	***1***
Other	***1***

Results are presented in Figure 18.

The data shows that most of the respondents (almost 80%) perform due diligence and share this information with their investors.
One respondent has outsourced the due diligence process, to get an independent opinion (Other).
The remaining respondent does not share detailed underlying documentation which is provided by the borrower, but does assess (and price) the risk, and informs the investors about this review.

Figure 18: Percentages of responses to the question:
Are you allowed to perform due diligence and share this with your investors?

It remains unclear if platforms refer here to due diligence or a screening. It is also not clear if platforms will pass on all the information or just the results, for example, a rating on lending platforms.

3.7: Do you offer any forms of redress in case of platform default? Which? (N=10)

1. No
2. No
3. No
4. continuity plan with our payment provider
5. We seek to secure the debt against an asset and act as trustee in case of default.
6. Platforms are set up as management company with a separate depot, which guarantees continuation after default of the platform.
7. No, in case of platform default, the financing cash-flow from crowd invested projects continue as the money is channelled through trust fund accounts
8. Yes, selling company
9. We work with local collections companies
10. In general our default does not present any risk to companies or investors, as we never accept any funds from any of the parties.

The issue of redress is addressed by some platforms in the event that the platform ceases operations, via either a third party (collection agency, payment provider) or a security against assets. The majority do not address this issue.

3.8: Do you offer investor insurance? (N=9)

No	***8***
Yes	***1***

Results are presented in Figure 19.

The vast majority of the respondents (89%) do not offer any investor insurance.
Only one respondent (11%) offers some form of guarantee for their investors, though not full insurance.

Figure 19: Percentages of responses to the question:
Do you offer investor insurance?

3.9: What is your company's position on self-regulation of the industry? (N=10, multiple answers possible)

We follow a specific code of conduct (national/international trade association)	***8***
We are actively involved in developing best practices in a trade association	***5***
We share this openly on our website and link to relevant codes	***4***
We don't believe in self-regulation	***0***
We don't have time to engage in this for the time being	***1***
Self-regulation is not enough	***1***

While a large number of respondents acknowledge their use of a specific code of conduct (8) and half (5) claim to actively work on the development of such codes, only four actually publish or provide links to them on their platform's website.

3.10: What other current barriers to cross-border crowdfunding can you identify? Is there anything we should have asked but have not yet covered? (N=6)

1. No passporting in EU, completely different legal environment in different EU countries
2. primary issues outlined in 2.5
3. - KYC : European wide acceptance of "digital" KYC based
   - Creation by the regulators of a Fintech portal comprised of trained and technical staff and being the first point of entry for Fintech for all matters and putting in place a constructive dialog mindset
   - Standardised definition of: Non Performing Loans, statistics to publish, accredited investors, information disclosure

- Guidelines in terms of language and law to apply for Cross Border, bearing in mind that this is a very complex matter with no easy solution. The one we have adopted might appear counter intuitive to a consumer protection body but is the one we believe will protect them most in case of defaults.

4. Our main challenge is that we want to open to EU markets and not only Germany but this makes only sense under a harmonised regulation with prospectus free securities emission up to at least 1 Mio €
5. there will not be any regulation in firsts steps just to grow this market, or some tax discount depends on the amount of the investment
6. We believe the prospectus directive leaves a huge margin for regulatory arbitrage.

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