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IMPACT ASSESSMENT

Accompanying the document

Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on European Crowdfunding Service Providers (ECSP) for Business

and

Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Directive 2014/65/EU on markets in financial instruments

{COM(2018) 113 final} - {COM(2018) 99 final} - {SWD(2018) 57 final}

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Glossary

AIFMD	Alternative Investment Fund Managers Directive
CF	CrowdFunding
CMU	Capital Markets Union
EBA	European Banking Authority
ECB	European Central Bank
ECP	European Crowdfunding Providers
ESAs	European Supervisory Authorities
ESMA	European Securities and Markets Authority
FTE	Full-time equivalent
IB	Investment-Based
ICSD	Investor-Compensation Schemes Directive
KIIS	Key Investment Information Sheet
LB	Lending-Based
MiFID	Markets in Financial Instruments Directive
MiFIR	Markets in Financial Instruments Regulation
NCA	National Competent Authority
PD	Prospectus Directive
PSD	Payment Services Directive
PSWFC	Placing of Securities Without a Firm Commitment
RTO	Reception and Transmission of Orders
SAFE	Survey on the access to finance of enterprises
SMEs	Small and medium-sized enterprises

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Introduction

This initiative is part of the Commission's priority of establishing a Capital Market Union (CMU), as announced in the Commission Work Programme 2018. Broadening access to finance for innovative companies, start-ups and other unlisted firms is at the heart of the CMU Action Plan[1]. Investment finance remains difficult for these firms, particularly when they move from start-up into the expansion phase. The plan aims at strengthening a Europe-wide 'equity culture' and at developing alternative means of financing, including crowdfunding and peer-to-peer finance.[2]

As a new form of technology-enabled financial service, crowdfunding carries the potential to help better match investors looking to support innovative business ventures with projects in need of funding. With appropriate safeguards, such as investor protection measures, crowdfunding can become an important source of non-bank financing and thus further the CMU overarching goals of supporting a more sustainable financial integration and public/private investments for the benefit of job creation and economic growth.

Crowdfunding is increasingly establishing itself as an essential part of the funding escalator for start-ups and young businesses. It is often the main funding tool for early stage companies financed by family, friends & own funds up to later development rounds where venture capital or even private equity funds start taking interest in those ventures. Crowdfunding also provides a complement (if not an alternative) to unsecured bank lending, such as bank overdrafts or credit card loans, which are currently the main sources of external finance for SMEs, especially during the initial period of activity.[3] This type of bank lending is often overly expensive for start-ups and more generally less accessible for SMEs due to structural information asymmetries (like the lack of credit and business history). In addition, bank lending volumes to both start-ups and SMEs have been severely affected by the 2008 financial crisis and since then have fallen below pre-crisis levels. CBInsights identified lack of funds to be the second most of important reason as to why start-ups fail,[4] representing 29% of the cases. Funding aside, crowdfunding is also used as a unique marketing tool and has helped businesses build their brand to attract a wider customer base as well as to help pass through the proof of concept phase.

The Commission Services have been monitoring crowdfunding market developments for several years. A staff working document was published in May 2016[5] which concluded that there was no strong case for EU level policy intervention at that juncture. Since then, the Commission Services have gathered additional evidence on the demand for cross-border activity and on the barriers in the

[1] COM(2015) 468 final, 30.09.2015.

[2] This impact assessment uses the term 'crowdfunding' as also including peer-to-peer finance, if not stated otherwise.

[3] See European Commission (2016), Survey on the access to finance of enterprises (SAFE), Analytical Report, Chapter 1. The report also highlights the lack of debt securities finance for SMEs. For a more updated survey, but restricted to Euro area countries, please also see ECB (2017), Survey on the Access to Finance of Enterprises in the euro area, Chapter 3.

[4] https://www.cbinsights.com/research/startup-failure-reasons-top/

[5] SWD(2016) 154 final, available here: https://ec.europa.eu/transparency/regdoc/rep/10102/2016/EN/10102-2016-154-EN-F1-1.PDF

Single Market through stakeholder consultations and external studies.[6] Moreover, the continued concentration of the European crowdfunding sector in a few Member States has underlined the need to make this funding method available more widely, notably for the benefit of fund seekers and investors in smaller Member States.

This initiative is also part of the Commission's FinTech Action Plan which aims to ensure that the EU adopts an innovation-oriented approach towards FinTech by creating a competitive environment where innovative products and solutions can be rapidly applied in a safe and stable environment. As observed through the recent developments related to *Initial Coin Offerings*, technology is bringing about unprecedented changes to the financial sector, creating new opportunities and also risks. In this context, our goal can only be achieved by bringing forth a forward-looking regulatory framework that is fit-for-purpose in an increasingly digital age. Within the newly emerging space of digital finance, it must be ensured that investors are aware of the activities and risks they engage in so that they are able to make sufficiently informed decisions.

The initiative focuses principally on the activity (operation of the platform) rather than the features of the underlying instrument being traded (risk capital, debt or other instrument). It aims to help platforms to scale-up across the Single Market by creating a clear regulatory framework at the EU level that enables cross-border activity and addresses risks in a proportionate manner. In order to create the necessary trust for cross-border investment, investors need to have access to the necessary flow of information to understand underlying risks and platforms need to have the necessary safeguards in place to preserve investor protection and minimise financial stability risks.

1 Policy Context and Problem Definition

The basic function of crowdfunding can be described as an open call via the Internet for the provision of funds by the public at large to support specific initiatives by typically small fundraisers. The investors/lenders can provide the means as a pure donation (intangible reward) or in exchange for some form of reward in order to compensate for the financial risk taken (tangible reward). Crowdfunding platforms play a key role: as technology-enabled platforms/systems they enable interaction between fundraisers and the "crowd" (wide investor community).

The core functionality performed by these platforms is that of matching supply and demand for capital in the form of ownership claims on project/company proceeds or debt claims on borrowers. Platform operations can be small, with less than 10 employees, or reach levels of more than 200 staff and operating with subsidiaries in several European countries.

Although the overall concept of crowdfunding is straightforward (request for money via an open call), various categories have developed depending on the type of rewards offered to investors/lenders. Section 1.1.1.1 provides an overview of the main categories.

1.1 Background and context

Crowdfunding has increasingly developed since the early 2000s, fuelled by the widespread use of the Internet. The crowdfunding industry is thus a relatively young industry. The total online alternative

[6] See Annex 2: Stakeholder consultation

finance market in Europe, which comprises predominantly crowdfunding, grew by 92% over previous year to reach a value of EUR 5.4 billion in 2015.[7] Without the United Kingdom, by far the largest market in Europe, the market size reached around EUR 1 billion. Overall, the European market is still relatively modest compared to the online alternative finance markets in the US and Asia.[8]

1.1.1 Key characteristics of crowdfunding

There is no single comprehensive definition of crowdfunding. Definitions are often limiting in view of the innovative forms that crowdfunding service providers develop (Mollick, 2013). Crowdfunding is an open call for the collecting of resources (funds, money, tangible goods, time) from the wider public through an Internet-based platform for a specific project.[9] Crowdfunding platforms can thus be viewed as 'two-sided' markets, i.e. a matching service that subsidises the (full or partial) cost of offering access to one side (investors) with the fees charged on the other (project owners). Crowdfunding platforms link fund seekers to investors/lenders.

The key characteristics of the crowdfunding platforms change according to the model under consideration. The remuneration model of crowdfunding platforms typically charge the fundraising project with a fee, as a percentage of the total amount raised, while investors are not usually paying to invest on the platform or only if additional services are provided. The platform usually selects the project that can be listed on the platform and either allows investors to pick the projects on their own or it applies some discretion (after having established some key preferences for the investor) on which project the money would be invested. In the case of crowdfunding platforms dealing with financial products, platforms are also not trading with their own balance sheet in most of the cases. Some lending-based crowdfunding platforms also rate the risk of different borrowers and place them into portfolio of loans with similar risks. Investors then set the level of risk they want to undertake, while money is automatically invested in the different portfolios. Therefore, the degree of agency relationship that the platform has with investors might change according to the business model, including the degree of discretion that the platform has in determining the investment decision. Some equity crowdfunding platforms also exercise voting rights on behalf of client that are willing to use a proxy. Similarly, some lending-based platforms also enforce the terms of the loan agreement on behalf of the investor, directly or through debt collection agencies.

1.1.1.1 Business models

The type of fundraising activities varies greatly across the different crowdfunding models. The motivation and type of participants, as well as the resulting relationship between investors/lenders and fund seekers/borrowers, vary as well (Belleflamme, et al., 2012). There are different models of crowdfunding platforms and any categorisation is provisional, as the market develops and integrates new technologies in the service provision. The four main categories of crowdfunding platforms are:

1) Donation;
2) Investment;

[7] "Sustaining momentum, the 2nd European Alternative Finance Industry Report", University of Cambridge Judge Business School, September 2016.
[8] In 2015, the volume for the Asia-Pacific region (mostly China) equalled EUR 94.6 billion and EUR 33.6 billion for the Americas (mostly the US).
[9] See also European Commission, Communication on Crowdfunding, 27 March 2014.

3) Lending; and

4) Reward.

There are then a number of platforms that combine different models or run a model that cannot be immediately classified under these four categories, but they are usually of a much smaller scale compared to main ones. Nevertheless, we can identify a number of common features that are helpful in explaining why economies of scale and market integration matter (see Table 1).[10] Notably, the type of reward that investor are potentially getting is a key distinguishing feature across the different models. It goes from no-tangible reward, like the recognition that donors get in donation-based crowdfunding, to a very tangible reward, like the product or service that company produce in exchange of a price usually lower than the future market value, when the product will be publicly marketed.

Table 1. Typology of crowdfunding business models

	Sub-type	Reward type
Donation Crowdfunding	Pure Donation	No reward
	Reward Donation	Recognition, tokens or other non-tangible rewards
	Other	Low value tangible rewards
Investment-based Crowdfunding	Entrepreneur-led	Equity, bond-like shares, securities, revenue or profit sharing; Projects accessible to all investors
	Investor-led	Securities, revenue or profit sharing; Projects accessible to accredited investors only
Lending Crowdfunding (peer-to-peer finance)	Forgivable Loan	Interest only if project / firms has revenue or profit
	Traditional Loan	Fixed-term interest
	Pre- financing of account receivables	Discounted invoices
Reward-based Crowdfunding	Product/service reward	Reward in form of a finished product or a service

No tangible Reward

Tangible Reward

Source: Commission services.

Donation-based Crowdfunding

Donation-based crowdfunding typically involves investor providing a monetary contribution in exchange of a non-tangible asset (like recognition or a token) or of a tangible asset of far lower value

[10] Agrawal, A., Catalini, C., & Goldfarb, A. (2014); Belleflamme, P., Omrani, N., & Peitz, M. (2015); Belleflamme, P., Lambert, T., & Schwienbacher, A. (2010).

than the contribution (like a t-shirt or a pen). This crowdfunding model relies on philanthropy, whereby people give money towards a 'good cause'. Backers may receive tokens that increase in prestige as the size of the donation increases, but these tokens do not hold any economic value. In 2015 donation-based crowdfunding has the smallest average fundraising size (EUR 2 771). The contribution is typically either directly channelled to the donee or collected by the platform (often a Non-Governmental Organisation), which will then pass them onto the recipient(s).

Investment-based Crowdfunding

ESMA defines 'investment-based' crowdfunding as:

'[..] a call for funds for a specific project, usually through the internet. The people providing funds may do so [..] in return for a right to participate in a share of the revenues or profits of the project, or through the purchase of a debt, equity or other security.' (ESMA, Opinion on Investment-Based Crowdfunding, ESMA/2014/1378, 18 December 2014, p. 6).

The model involves a project owner (fundraiser), an intermediary (the platform) and an investor (the crowd). The number and size of the projects being financed may suggest that the crowd may also include project owners, so the platform stands between a large number of fundraisers and investors. The instrument being marketed can be an equity stake in the undertaking or any other type of financial instruments in the form of a transferable security (e.g. debt securities). The reward relies on a future stream of cash flows. In the case of an equity stake, as would be the case for listed companies, the investing shareholders hold partial ownership of the company or project and stand to profit, if it performs well, or lose everything if it fails. Generally, these instruments have limited marketability on secondary markets, which increases the probability to lose the full investment. However, as the market expands, there are greater chances that demand for trading on secondary market will increase. In 2015 equity-based crowdfunding had the highest average deal size by model at almost EUR 460 000, whereas the average deal size for debt-based securities is just over EUR 190 000. It is expected to see continued growth in average funding size for equity-based crowdfunding (in the UK the average deal size is well over EUR 600 000).

Lending-based Crowdfunding

EBA defines lending-based crowdfunding as:

'Open calls to the wider public by fund seekers through a third party, typically an on-line platform, to raise funds for a project or for personal purposes, in the form of a loan agreement, with a promise to repay with (or in certain cases without) interest. The fund raisers may include individuals, start-up companies or existing SMEs that are seeking an alternative means of funding, rather than the traditional credit market.' (EBA, Opinion on lending-based crowdfunding, EBA/Op/2015/03, 26 February 2015).

Unlike the traditional banking model, lending in crowdfunding platforms is dispersed while borrowing is concentrated among selected project owners. These investments can yield a higher return than savings accounts offered by banks, but can be subject to higher risk. No regulatory safeguards, such as bank deposit guarantee schemes or investor protection schemes, protect these investments, besides the different pecking order compared to financial instruments (investment-based instruments) in case of bankruptcy. If the borrower defaults or the platform becomes insolvent (in case it pools assets on own balance sheet), the lenders risk losing part or almost all of their

investment. The fundraising entity commits to pay interest on the sum lent by each respective investor at regular intervals, as it would be the case for a regular bank loan.

There is a variety of business models that could be defined as lending-based crowdfunding. This depends mostly on the constellation of relationships between the parties involved, for example business-to-business lending, peer-to-business, business-to-peer and peer-to-peer. Although many hybrid models are emerging (as well as increasing participation by institutional investors), two main models according to the recipient of the funds are observed:

1) Consumer lending; and
2) Business lending.

Consumer lending involves lending to natural persons for consumption purposes (e.g. travel, cars, mortgage), while business lending involves providing funds to legal and natural persons for business purposes. Business lending can also take the form of individuals or institutional investors purchasing invoices or receivable notes from a business at a discount, holding it for the duration and receiving a financial return.[11]

Average deal size approaches EUR 100 000 for peer-to-peer business lending and peer-to-peer consumer loans are on average EUR 10 000 per loan. Automation (automatic selection and automatic bidding of small & large funding amounts) plays a key role in the development of this market segment. Cambridge Centre for Alternative Finance reported that in 2015, 82% of consumer-lending and of 38% business peer-to-peer lending[12] were funded through automation.

Reward-based Crowdfunding

Reward-based crowdfunding was the earliest form of modern day crowdfunding to develop. This model is based on providing the investor (usually called 'backer') with a non-monetary reward, in the form of the product or service that the fundraiser offers or is going to offer in the future. Backers usually get a discount on the future market price, which increases with the distance in time between contribution and finalisation and public marketing of the product. Contributors are not accredited investors to participate in any financial returns. The only commitment of the fundraiser is to deliver the service or the good at a future date. Average fundraising size is EUR 4 266.

Mixed models

In recent years, new operators have entered the market, which may offer mixed elements of the different business models. For example, equity investors may, in addition to their equity stake, receive additional non-monetary rewards. A further new crowdfunding approach is to sell a portion of future sales (royalty) in return for an investment. This can be attractive for investors as they receive regular income from gross revenues, while benefitting the entrepreneur(s) who keeps full ownership of the company. The downside is that royalties are deducted from revenues and therefore add to the expenses of running the business, thereby making this model potentially attractive only for high profit margin businesses.

[11] Due to rapid growth in popularity, invoice trading is sometimes highlighted as a separate business model. Invoice trading has been the fastest growing alternative finance model in continental Europe, growing from EUR 7 million in 2014, up to EUR 81 million in 2015.

[12] "Sustaining Momentum, the 2nd European Alternative Finance Industry Report" op.cit. p.44

1.1.1.2 Economics of crowdfunding and key stakeholders

Crowdfunding can help (innovative) start-ups to provide financing in the early stages of business development. Besides the monetary benefit, crowdfunding can also offer a number of non-monetary benefits,[13] such as:

i. Validation of the business idea;
ii. Product validation (elicitation of customer preferences regarding product features by means of feedback and endorsements);
iii. Market validation (testing the waters before a possible official market launch); and
iv. Market penetration/expansion.

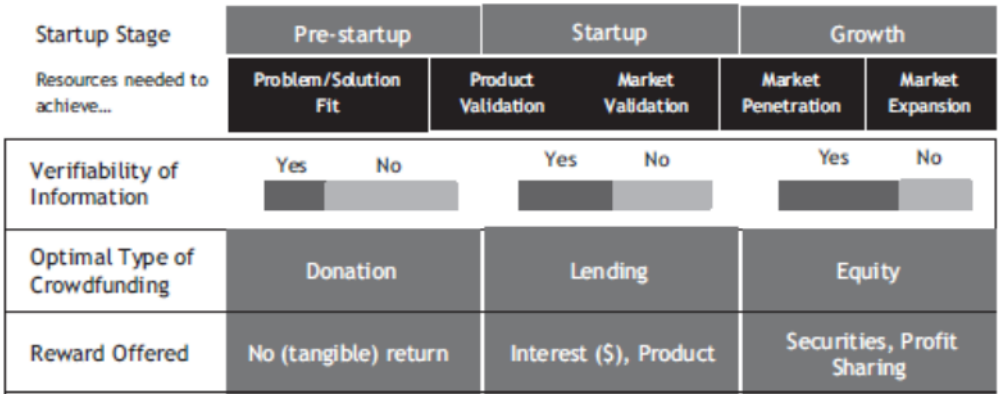
For investors/lenders, the type of financial reward depends on the crowdfunding model. In the lending crowdfunding model, loans plus interest are repaid based on pre-launch conditions in case of traditional lending, contributions are only repaid if and when a project generates revenue or profit in case of forgivable loan type lending. Equity crowdfunding attempts to raise money from the crowd in exchange for a stake in the firm.

Peer-to-peer business lending is used particularly by young SMEs and micro-companies that have established early cash flows but are in need of additional funding to expand or bridge short-term funding gaps. The high growth rate suggests that there is a strong demand for this type of funding and that these companies are either unable to attain a standard business loan from a bank or achieve preferable financing conditions on P2P business lending platforms. While peer-to-peer consumer lending has started to enable people to balance their time spending directly without a bank or other intermediary acting as an indirect facilitator, this type of crowdfunding does not contribute to the alternative funding of firms. The same applies for donation-based crowdfunding, which is mainly aimed at charities and other philanthropy or artistic enterprises. In view of financing young innovative firms peer-to-peer business lending and investment-based crowdfunding are the most relevant types.

Investment-based crowdfunding is usually less attractive for very young companies as low revenues and total profit-levels tend to limit the ability to raise sizeable funds. Super-fast growing companies can mark an exception in this regard. Investment-based crowdfunding is generally more aimed at firmly established companies that are too small to access public capital markets but wish to finance substantially larger projects compared their current operations in order to drive further expansion. Selling equity stakes not only acts as a funding source but it also distributes business risk across a larger number of stakeholders and can bring experienced partners into the business.

[13] Paschen (2017) and references herein (p.181)

Table 2. Start-up crowdfunding: crowdfunding model, rewards and information asymmetries



Source: Paschen (2017)

Network effects

A platform with a high number of active investors will be more attractive for an entity seeking to raise funds, as the additional investors will increase the likelihood to raise sufficient funds for the project. Likewise, a platform with a lot of accessible fundraising projects will be more attractive for investors. It provides them with a wider choice and allows for greater diversification of investments where the investor engages in multiple projects.

Demand on both sides of the market give rise to network external effects, both across investors/lenders and fund seekers/borrowers (*cross-group external effects)* as within the investors/lenders' or fund seekers/borrowers' group (*within-group external effects*). Overall, platforms will exhibit positive cross-group externalities from investors/lenders to fund seekers/borrowers and positive within group externalities for investors/lenders (Belleflamme, P., Omrani, N., & Peitz, M., 2015).

This interaction creates demand side-economies of scale, also referred to as network effects. Each new investor/lender or fund seeker/borrower creates additional value across the user group on the other side of the platform respectively i.e. a positive externality from the consumption of the service. Similarly, there are network effects that act within a single user group. A larger number of informed investors on a platform may, for example, act as a form of guidance for other investors and thus improve their returns (positive externality). Likewise, a larger number of fund seekers/borrowers competing for potential investors may reduce the chances of attracting funds (negative externality). This externality acts simultaneously with the cross-group positive externality for investors so that the overall effect in terms of social welfare remains positive in most scenarios.

The above described network effects become significant once a certain number of subscriptions are achieved often referred to as 'critical mass'. Given that the size of the user base on a platform is positively correlated to the value of the service, more users imply a higher value and thus increase demand. However, in order for this interaction to work, a platform needs a certain number of users to create sufficiently strong network effects.

Table 3. External effects of crowdfunding platforms

	Increase number of campaigns (fund seekers/borrowers)	*Increase number of investors/lenders*
Investor/lender	• more choice • harder to reach sufficient funding	• easier to reach sufficient funding
Fund seeker/borrower	• more competing projects	• easier to reach sufficient funding

Source: Commission services.

The network effects stimulate concentration in the crowdfunding market. Big platforms become even bigger, while small platform will not reach the critical size and will be forced out of the market. Finance is in general considered a distance-sensitive business, especially when it comes to small fundraising projects. However, crowdfunding can overcome this proximity bias given its reliance on the Internet to match investor/lender with fund seeker/borrower. Current research indicates that crowdfunding has partially overcome this proximity bias (Agrawal, Catalini and Goldfarb 2011; Mollick 2014), while geographic clusters exist and proximity may still impact the type and success rate of projects.[14] Nevertheless, the crowdfunding market differs along crowdfunding model and sector allowing for specialisation, so opposing forces may counterbalance this concentration trend (Belleflamme, Lambert, and Schwienbacher 2010).

Information asymmetries

Information asymmetries are another key feature of crowdfunding markets, besides network effects, due to its highly dispersed investor structure. Ex-ante, adverse selection problems could arise given that investors/lenders lack the necessary information to assess the likelihood of success of projects. Hence, platforms risk attracting only low-quality projects, given that high-quality projects may not find the required funding at adequate conditions, due to investors' inability to assess their quality.[15] Ex-post, a moral hazard problem might face difficulties to ensure that fund seekers/borrowers deliver what they have promised.

From the investor/lender perspective, an investment could be riskier than expected due to risk/return profile not being properly disclosed and/or more costly than expected due to costs (direct and indirect) not properly disclosed. For the fund seeker/borrower, the funding could be more expensive than expected when costs (direct and indirect) and risk/return profile are not properly disclosed, which could also lead to reputational risk for the platform (lack of transparency / misleading information). Moreover, invested capital (partly or completely) may be lost or not reclaimable due or the fund seeker/borrower may be faced with the inability to repay dues due to platform failure (counterparty risk). The project may not get funded or the investment lost due to fraud (risk of fraud) or a delay or mistake in the information flow, processing, safekeeping or administration (e.g. computer breakdown, mistake) (operational risk). All these risk can also lead to reputational risk for the platform.

[14] 'The average distance between artists and investors is about 3,000 miles, suggesting a reduced role for spatial proximity.' (Agarwal, Catalini, Goldfarb 2011).

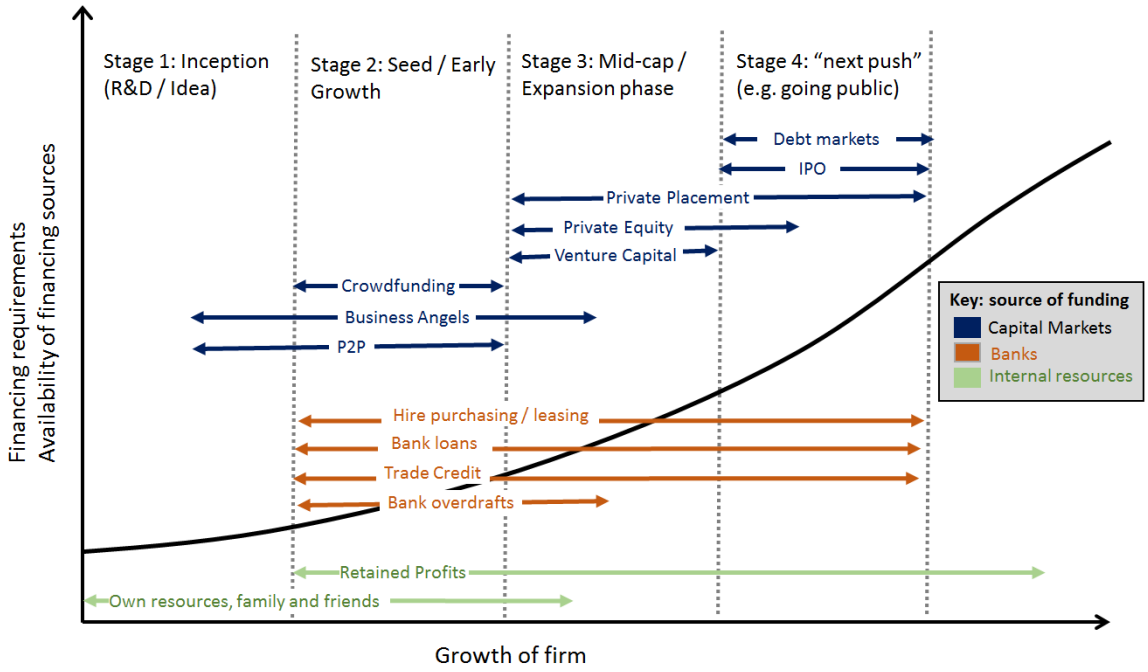
[15] This is known as the 'lemon problem' (Akerlof, 1970).

Belleflamme and Thomas (2016) suggest five governance strategies for crowdfunding platforms to deal with these asymmetric information problems: (i) information dissemination; (ii) fraud prevention; (iii) provision point mechanism, whereby fundraisers only receive money if a minimum threshold is reached; (iv) facilitate information exchange among investors/lenders; (v) establish trust in the platform. Essentially these strategies attempt to increase the amount and quality of available information; built reputation signalling high-quality platforms and projects; and reduce monitoring costs due to moral hazard.

Although crowdfunding is still relatively small compared to the complete alternative finance market, it is considered to be an essential chain to allow innovative SMEs to develop and to bridge the 'death valley' between own resources, friends and family and attracting financing from sophisticated investors like business angels and venture capital providers. Crowdfunding provides an alternative to traditional sources of finance which aren't available due to information asymmetries (lack of credit and business history) or often overly expensive for start-ups to access (Tunguz, 2013).

The alternative financing methods of crowdfunding has shown a significant potential for financing firms, in particular for SMEs and micro-enterprises, and bridge existing funding gaps. SMEs will attract different types of financing depending on their stage of development as mirrored by the funding escalator (see Figure 1). Crowdfunding is particularly interesting for start-ups that are trying to develop and maintain a viable business from an initial business idea (Stemler, 2013). Crowdfunding has also been identified as being important for the development of innovative firms (Stanko and Henard, 2017).

Figure 1. Funding escalator



Source: Commission services.

Each crowdfunding model brings specific monetary and non-monetary benefits that can be matched with start-up needs as they grow over the start-up life stage. Paschen (2017) shows that lending

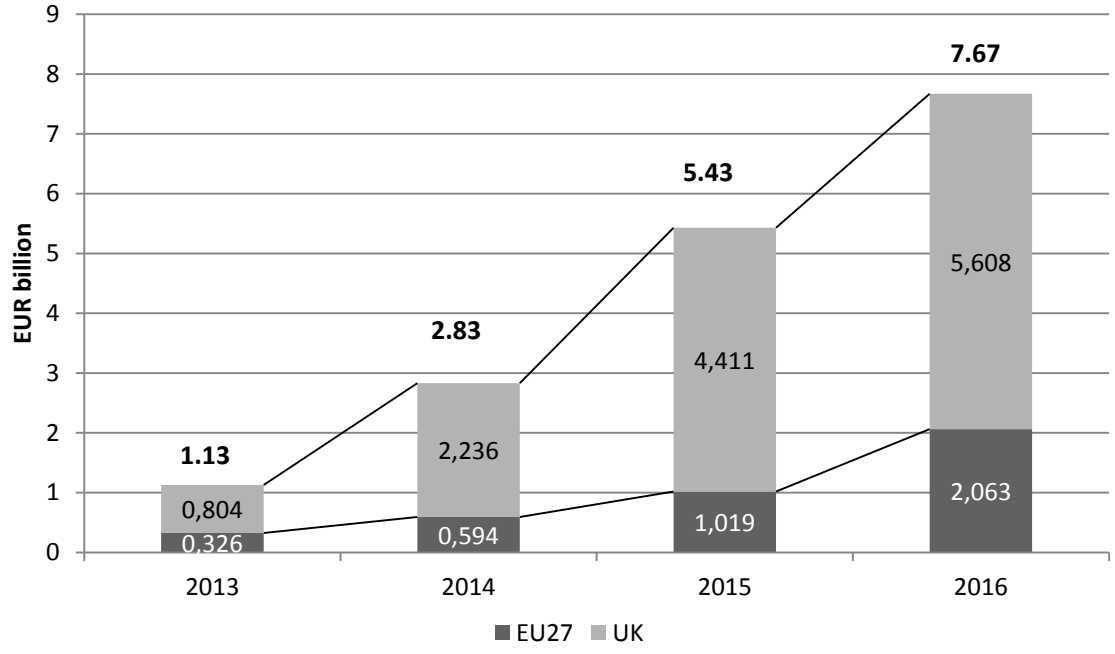
based and investment based crowdfunding are associated with SMEs that are in the start-up and growth phase respectively.

1.1.2 Size, geographic overview and trends

The European alternative finance market as a whole raised a total of funds of EUR 5.43 billion in 2015. This represents an annual growth rate of 92%. The market remains heavily dominated by the UK which constituted a market share of 81% with EUR 4.41 billion in 2015. The rest of the European market raised a total of EUR 1.2 billion and grew at a lower rate of 72% in that year. In 2015, a total of EUR 4.2 billion were raised through crowdfunding in the EU. This makes crowdfunding the most important sub-market of the alternative finance sector. Excluding the UK, the countries with the largest total market volumes in 2015 were France, Germany, the Netherlands, Finland and Spain.

Examining the market share in more detail, peer-to-peer consumer lending has the largest market share, followed by peer-to-peer business lending and equity-based crowdfunding. In 2015 peer-to-peer consumer lending had a market share of 35.9% worth EUR 366 million, excluding the UK. It is the most established market segment, with growth between 2014 and 2015 declining to 33% from 75% between 2013 and 2014.

Figure 2: European Alternative Finance Market Volumes 2013-2016 in EUR billion

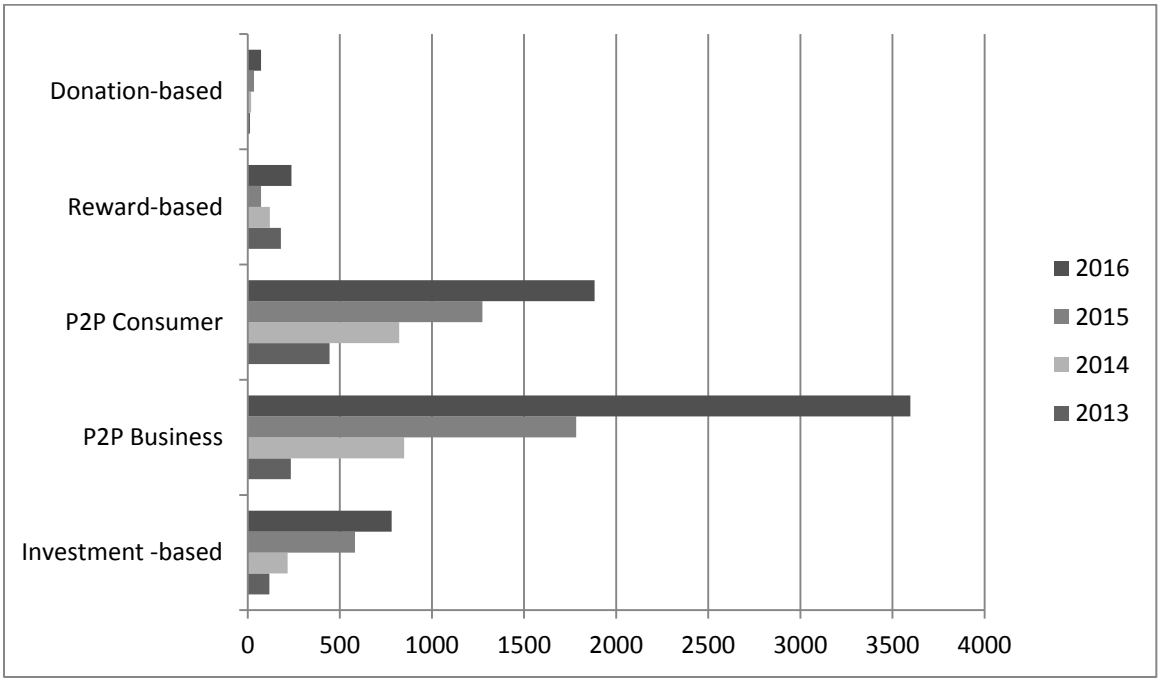


Source: University of Cambridge (2017)

Peer-to-peer business lending had a market share of 20.8% in 2015 worth EUR 293 million and experienced the highest annual average growth rate of 223% between 2013 and 2015. While EU investment-based crowdfunding did not grow quite as strongly as P2P business lending, it nonetheless achieved a 3-year growth rate of 128%. Reaching a market share of 15.6% worth EUR 222 million, the European equity-crowdfunding market is significantly larger in relative terms than the American and Asian market. As for P2P business lending, the high growth rate indicates that

smaller firms in the EU are in need of additional funding and manage to realise good conditions via crowdfunding platforms.

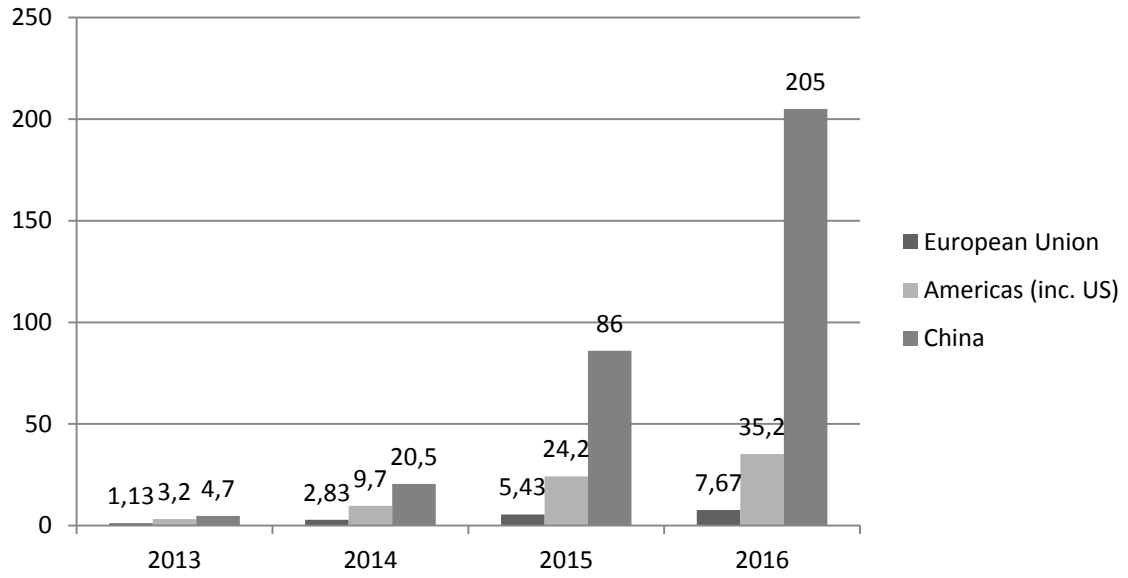
Figure 3: European Alternative Finance Market by category Volumes and average growth rates 2013-2016 in EUR million



Source: University of Cambridge (2017).Note: P2P Business includes 'p2p property lending', which is used to finance property development projects.

Despite the relatively fast development of the European market for crowdfunding, the continent has not kept pace with other major regions around the world. As seen from the figures below, even when including the UK, the EU market has not been developing as fast as in other areas. Given that the growth rate in Europe has already started to slow, it is possible that the gap in contrast to other regions will continue to grow over the coming years.

Figure 4: World Online Alternative Finance Volumes 2013-2016, by regions (bn EUR)



Source: University of Cambridge (2017).

The European market has grown asymmetrically and remains heavily concentrated in a few large countries, specifically the UK, France and Germany in terms of the number of platforms and volumes of capital raised. Excluding the UK, the countries with the largest total market volumes in 2015 were France (EUR 319 million), Germany (EUR 249 million), the Netherlands (EUR 111 million), Finland (EUR 64 million) and Spain (EUR 50 million).

The expansion of crowdfunding remains heavily domestically oriented in the EU with little cross-border activity. Between 2013 and 2014, there was EUR 180 million of cross-border funding for successful projects which amounted to 8% of the total EUR 2.3 billion raised for successful projects. However, this was predominantly raised through non-EU platforms. Cross-border activity within the EU amounted to EUR 16.9 million, a mere 0.73% of the total raised in this period.

A recent survey[16] indicates that for almost half of the platforms none of the funds raised came from foreign investors; moreover, more than three-quarters of the platforms indicated that they had raised less than 10% from foreign investors. With regard to foreign outflows, only a quarter of platforms raised funds for projects outside the national borders.

While crowdfunding was only a marginal trend being embraced by early adaptors a few years ago, the sector has grown at an extremely rapid pace over the last years and is seeing increasing interest in all levels of society. The European crowdfunding market has experienced more institutional involvement recently in terms of funding and platform ownership suggesting that the market is beginning to mature. Participation rates of institutional investors in crowdfunding grew by 83% between 2013 and 2015, with institutional investors providing around one quarter of funds in peer-to-peer lending and 8% in equity-based crowdfunding. The increasing rate of institutional investors demonstrates a rise in trust levels vis-à-vis crowdfunding investments. Given the large sums of

[16] "Sustaining momentum, the 2nd European Alternative Finance Industry Report", University of Cambridge Judge Business School, September 2016 (University of Cambridge (2016))

institutional money potentially available for the further development of the market, it will be crucial to maintain trust by establishing standards that act to uphold high levels of integrity. Inability to curtail risks of fraud or other illicit activity could be a major setback for the development of the European market. The European crowdfunding market is also showing early signs of consolidation with the first platforms merging or attempting to take over platforms and unsuccessful platforms exiting the market. Moreover, enabling regulation in Member States has been shown to correlate with high market volumes in the industry. At the same time, existing laws de facto impede certain types of crowdfunding to develop in some Member States. While the market continues to grow quickly, regulatory barriers are limiting the potential of the European crowdfunding market. More cross-border activity would spur the further development of the industry and access-to-finance for early-stage firms, especially in small Member States and those Member States with less developed national markets.

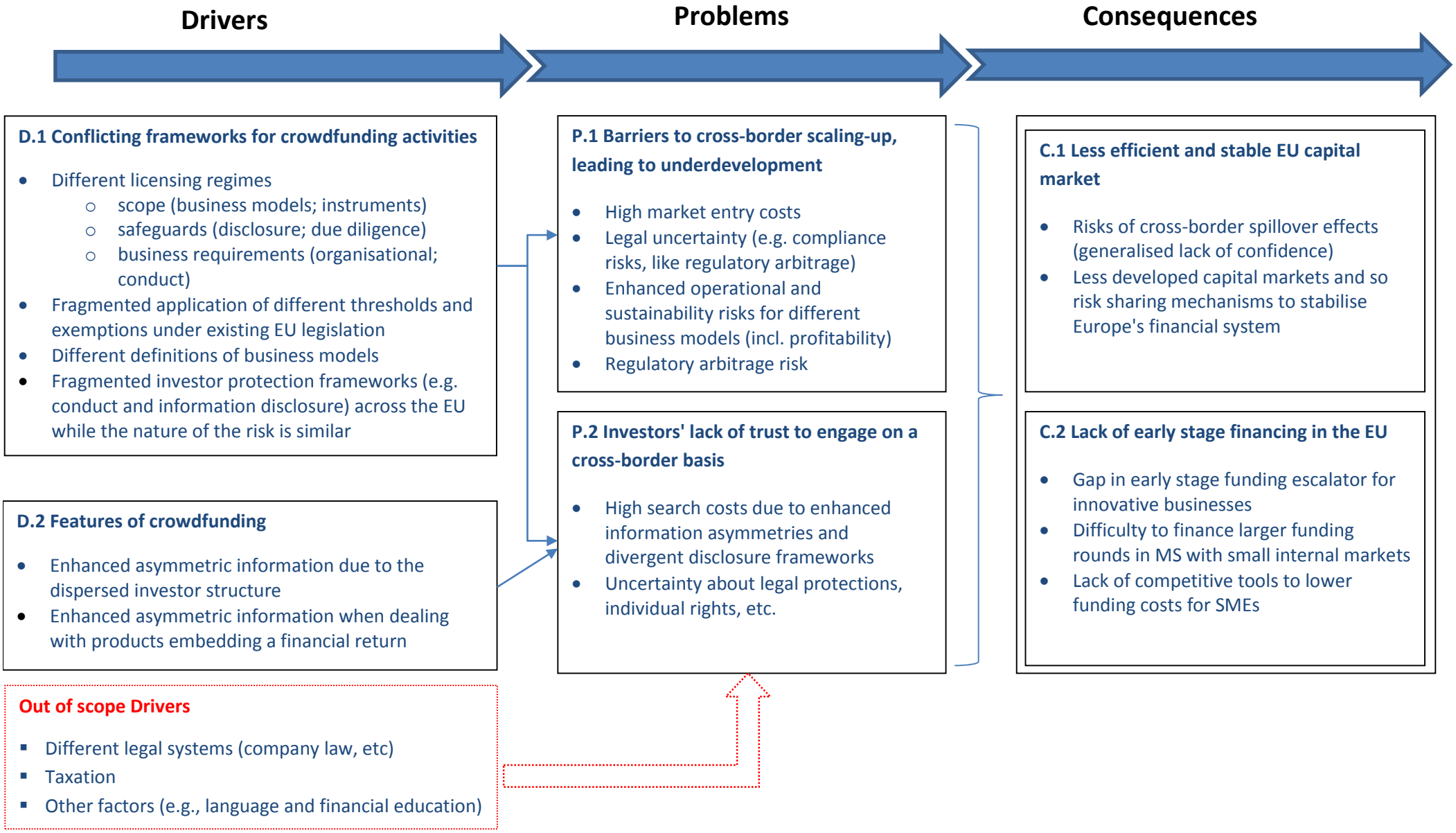
1.2 Problem definition

The following section explores two main problems in the European market for crowdfunding: one, the inability of the crowdfunding market to scale up at a level that would provide a meaningful boost to early stage funding for businesses across Europe; two, the lack of trust by investors to engage in cross-border activity.

While some domestic crowdfunding markets are developing rather fast, the size to finance these platforms can raise is too small compared to the overall early-stage financing needed by non-financial corporations. Cross-border activity is almost absent and platforms struggle to scale up enough to be able to undertake cross-border activities. Most notably, while project owners are willing to fund themselves cross-border, the cross-border accessibility and demand on crowdfunding platforms is fairly limited, beyond what the local origins and the limited international exposure of the project may naturally determine. A major consequence, among others discussed in the following sections, is the inability to create a solid pool of early-stage financing across Europe, which would serve very young businesses irrespective of their place of establishment.

Concerns about the reliability of crowdfunding platforms are considered as key risks for the future growth of the industry. The biggest risks perceived are loan defaults or business failures, fraudulent activities or the collapse of platforms due to malpractice. This reflects concerns about weak governance practices, notably in areas such as risk management or the prevention of conflict or misalignment of interests. Moreover, investors appear not to have sufficient information or to be misinformed about the potential risks of projects or about the operation of platforms. Requirements to ensure an adequate disclosure of offers intermediated through crowdfunding platforms do not exist or vary considerably which complicates comparability. Moreover, from a financial integrity perspective, platforms remain vulnerable to issues concerning the security of client data and the use of crowdfunding for illicit activities.

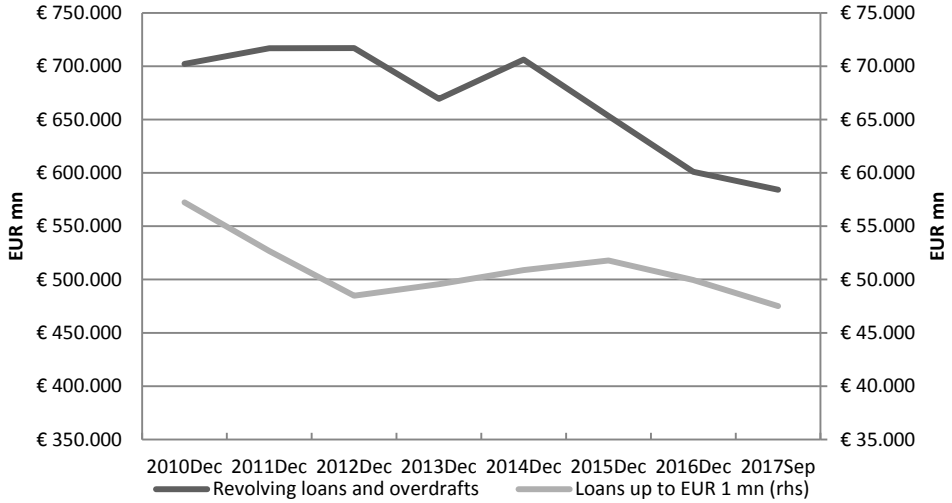
The problem tree below provides an overview of those two major problems, with its underlying drivers and consequences.


Drivers
Problems
Consequences
D.1 Conflicting frameworks for crowdfunding activities
Different licensing regimes
scope (business models; instruments)
safeguards (disclosure; due diligence)
business requirements (organisational; conduct)
Fragmented application of different thresholds and exemptions under existing EU legislation
Different definitions of business models
Fragmented investor protection frameworks (e.g. conduct and information disclosure) across the EU while the nature of the risk is similar
D.2 Features of crowdfunding
Enhanced asymmetric information due to the dispersed investor structure
Enhanced asymmetric information when dealing with products embedding a financial return
Out of scope Drivers
Different legal systems (company law, etc)
Taxation
Other factors (e.g., language and financial education)
P.1 Barriers to cross-border scaling-up, leading to underdevelopment
High market entry costs
Legal uncertainty (e.g. compliance risks, like regulatory arbitrage)
Enhanced operational and sustainability risks for different business models (incl. profitability)
Regulatory arbitrage risk
P.2 Investors' lack of trust to engage on a cross-border basis
High search costs due to enhanced information asymmetries and divergent disclosure frameworks
Uncertainty about legal protections, individual rights, etc.
C.1 Less efficient and stable EU capital market
Risks of cross-border spillover effects (generalised lack of confidence)
Less developed capital markets and so risk sharing mechanisms to stabilise Europe's financial system
C.2 Lack of early stage financing in the EU
Gap in early stage funding escalator for innovative businesses
Difficulty to finance larger funding rounds in MS with small internal markets
Lack of competitive tools to lower funding costs for SMEs

1.2.1 Barriers to cross-border scaling up leading to underdevelopment

SMEs are heavily reliant on short-term unsecured bank funding. Currently, the weight of crowdfunding over the total SME funding is still fairly small, with bank funding to SMEs in the order of hundreds of billion euros, compared to the EUR 7.671 billion of the whole European crowdfunding market in 2016. Nonetheless, as banks restructure and consolidate, there is a structural downward trend in the availability of the most used bank financing tool for SMEs, as well as bank loans below EUR 1 million (see Figure 5). The development of crowdfunding markets as a stable funding tool for businesses is increasingly becoming a key element for Europe's financial system and partially replacing short-term unsecured bank funding.

Figure 5. Bank lending to businesses in the Euro area (EUR million; end of the year, outstanding amounts)



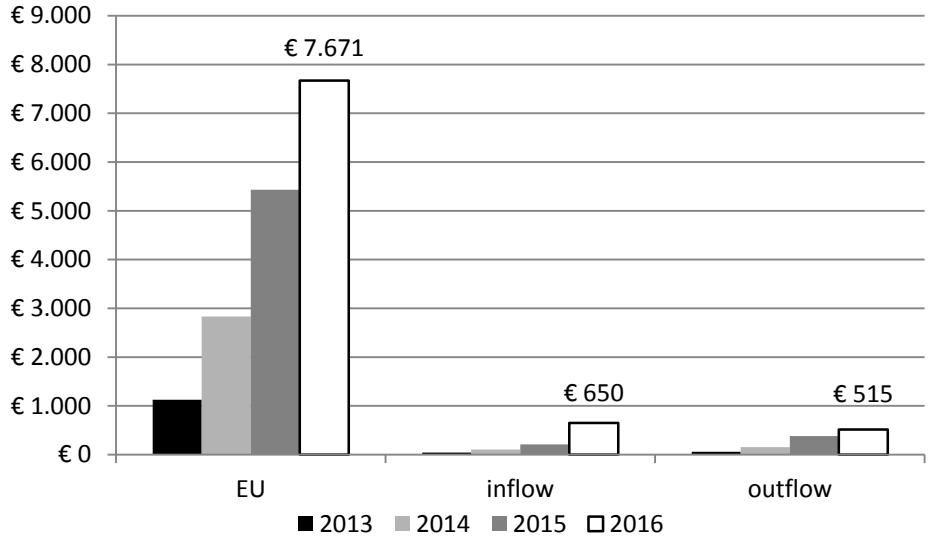
Source: ECB Data Warehouse.

While the European crowdfunding market has skyrocketed over the recent years, with annual growth rates exceeding 100% in some sub-sectors, there are increasing indications that the rapid expansion phase may significantly slowdown in coming years. Establishment of new platforms seems to have peaked and is foreseen to decrease further, as 2016 started to show a phase of consolidation within MS. The growth rate in the most established market segment of peer-to-peer lending, dropped by more than half to 33% in 2014-15 (75% in the previous year). Furthermore, the European crowdfunding sector remains strongly fragmented along national borders, despite crowdfunding is less sensitive to distance than traditional finance (Agarwal, Catalini and Goldfarb 2011). More than two thirds of European platforms collected 5% or less of their total funds from cross-border investors. 76% of platforms reported that no project listed on their platform comes from outside the national border. 16% of platforms indicated that less than 10% of funds raised left the country of origination. Only 10 Member States[17] have active investment-based crowdfunding platforms operating in multiple jurisdictions.[18] While the survey reported the existence of 33 platforms with some form of MiFID license, only 5 tied agents related to those firms were reported to have been operational in another Member State. As all of them were reported in the UK, this indicates that – given the high regulatory costs involved with entering a new market – platforms focus their efforts on large domestic markets, thus depriving less-developed and smaller Member States from the benefits of alternative finance.

[17] France, Germany, Italy, Netherlands, Spain, United Kingdom, Finland, Norway and Sweden, Czech Republic.

[18] Please, see ESMA Response to the CMU Mid-Term Review consultation https://www.esma.europa.eu/sites/default/files/library/esma31-68-147_esma_response_to_cmu_mid-term_review.pdf

Figure 6. Total crowdfunding volume, average size of inflows and outflows, 2013 -2016 (EUR million)



Source: Commission services' estimates from University of Cambridge (2017) . Note: the estimates are based on the assumption that outflows and inflows are similarly distributed across all categories of platforms.

While some platforms are receiving cross-border investments, they are often not actively marketing in those countries, mostly because of the regulatory implications, as reported in case studies reviewed in Annex 7. The regulatory environment confronting the crowdfunding industry is very diverse, presenting considerable complexity for those platforms keen to extend operations on a cross-border basis without a passport and high compliance costs due to different requirements in national jurisdictions.[19] Licensing requirements in many Member States create additional cost barriers not just through licensing and local advisory fees, but also due to the rising legal uncertainty. Platforms are often not allowed to operate under the same business model and have to adjust their models according to separate jurisdictions. One platform indicated that often even the local law offices from the target Member State cannot assure them that they could operate within the market without the possibility of legal sanctions as the.

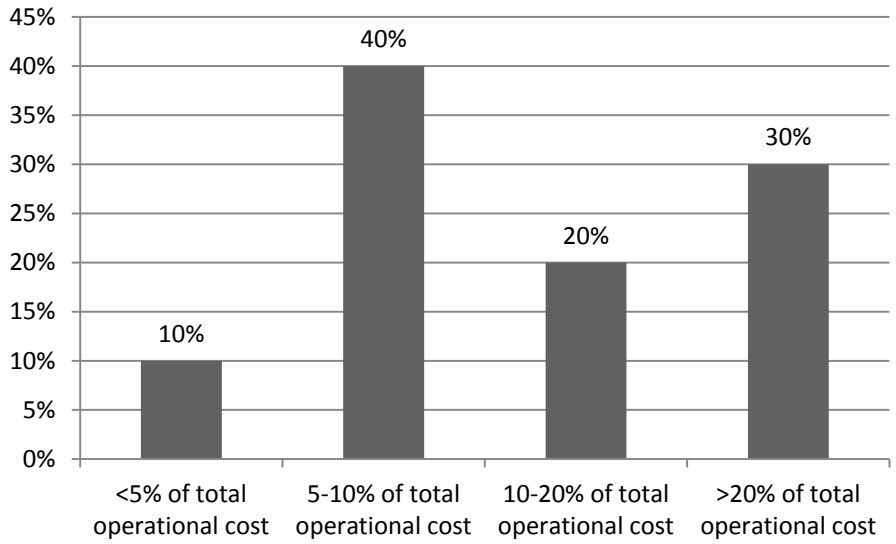
A number of platforms have noted that bespoke national regimes are one of the major hurdles to cross-border activity. As Member States do not coordinate their actions whilst implementing tailored regulatory frameworks for crowdfunding activity, these tend divergence in a number of aspects such as permitted activity, instruments, thresholds and other requirements – making it increasingly difficult for businesses to simultaneously comply with a number of different requirements. These platforms also highlighted that EU action should not be delayed because an increasing number of Member States are coming forward with their own locally tailored regimes and are also reviewing them to add further detail to the requirements. This continues to create even greater obstacles for cross-border activity and may in the end create a great number of entrenched local frameworks and heavy resistance towards convergence by local market incumbents that want to preserve their existing business models.

Market observations indicate that there are currently no platforms that actively operate at a pan-European level. Platforms that do operate cross-border generally choose to do so only within a limited number of (often neighbouring) countries. A platform notes[20] that "…*operating in seven different countries requires compliance with seven different crowdfunding regulations or, in the absence of those, with other local rules.*" Platforms that accept cross-border fundraising projects and investments state that they are facing significant legal uncertainties in terms of

[19] "*The use of a MiFID license doesn't seem to make the cross-border experience easier. The different national regulatory regimes don't allow for the full passporting of the license in the MS and they imply high compliance costs too.*" European Crowdfunding Network & Osborne Clarke, "Barriers to the cross-border development of crowdfunding in the EU", June 2017, p18.
[20] Idem, p19

whether this could stand in conflict with national legislation applying in their home MS. For a third of the platforms in the survey[21], compliance costs can make up more than 20% of total operational cost in cross border business and for 50% they make more than 10% of operational costs (see Figure 7).

Figure 7. Impact of regulatory costs on operational costs



Source: European Crowdfunding Network and Osborne Clarke

These costs can have negative consequences for the level of competition, leading to market concentration, higher costs and less choice for clients with a lower drive for innovation. As platforms continue innovating their business models, expansion into other markets would also support profitability and ensure platforms can develop on a sounder footing and, as the market matures, can consolidate at European level. As they mostly rely on a remuneration-based model, i.e. charging project owners as a percentage of the capital raised (according to the 'two-sided' characteristic of the market discussed in section 1.1.1). Cross-border is also a necessary step for platforms developed in smaller member states, where the size of the domestic market (in terms of number of domestic project owners as well investors with a suitable risk profile) may not be sufficient enough to ensure long-term sustainability or even emergence of such a market. Statistics collected by ESMA show that investment-based crowdfunding platforms are pre-dominantly concentrated within the largest and more developed European markets that have the capacity to raise significant funding amounts. On the other hand it is well-recognised that there is a very significant gap for early stage investments in small European States.

Market fragmentation also reduces the benefits of network effects on funding costs and pushes the market into a vitious circle that could constraint crowdfunding markets for a long time. Furthermore, in targeted consultations, the industry has highlighted that profitability remains an issue for the sustainability of their business models due to insufficient scale, even for established platforms in large markets. ESMA highlights that the fees charged by investment-based platforms have been increasing – as indicated by the 2016 survey, reaching on average 5-8% of the total fundraising amount, which puts the total revenues for the whole European crowdfunding industry between EUR 272 and 434 million. One of the largest investment-based platforms in the UK has helped businesses raise GBP 358 million since 2011. Given that they charge 7% of the total amount, revenues to cover 6 years of operations and around 80 staff thus equals GBP 25.06 million (a bit more than EUR 4 million per year).

Respondents to the FinTech Consultation[22] generally argued that the existing national regimes for crowdfunding have a significant impact on sector development. The vast majority of national competent authorities stated that the

[21] Idem, p32

existence of multiple regimes and the lack of a common EU regulatory regime create barriers for cross-border expansion of crowdfunding platforms. None of them mentioned proximity between investor and fundraiser as a reason for platforms not to develop cross-border. Almost half of the other respondents equally noted that national regulatory regimes hinder cross-border activities for crowdfunding and peer-to-peer finance. They noted that harmonisation at the EU level could reduce fragmentation of the EU market, mainly attributable to divergences in the regimes adopted by different Member States. It was also highlighted that the MiFID passporting regime, despite its high cost, is often ineffective in facilitating activities across the EU, as some Member States require separate authorisation under the respective bespoke national regimes, regardless of whether firms hold a MiFID license in another MS. Respondents likewise stressed (in line with EBA) that the EU passport under the Payment Service Directive could never cover the full range of activities, also in the case of lending-based crowdfunding platforms. According to most respondents, the lack of an EU framework and the lack of passporting rights make it complex and costly for crowd and peer-to peer platforms to scale up across the EU.[23]

Moreover, there is additional uncertainty weighing on platforms' decision to go cross-border. EBA highlighted that *'[..]the lending-related aspects are not covered by EU law, leaving several risks and risk drivers that the EBA had identified unlikely to be addressed. [..]the EBA concludes that the business models of lending-based crowdfunding platforms do not fall inside the perimeter of credit institutions and their typical business model as defined in the EU legislation. The funds provided by lenders with crowdfunding platforms would therefore not qualify as deposits eligible for protection under a deposit guarantee scheme, taking into account the definition of 'deposit' in Article 2(1), point 3, of Directive 2014/49/EU (the Deposit Guarantee Schemes Directive).'*[24] It suggests that the risk of regulatory circumvention or uncertainty, due to a patchy framework of national regulations, may discourage further cross-border activity, both for platforms and investors.

Other barriers to cross border expansion were identified during a workshop with platform representatives. One platform found the lack of reliable data such as access the creditworthiness of foreign SMEs to considerably limit the countries towards which a cross border expansion is possible. Another platform recalled that, besides the substantial national rules they have to comply with within each jurisdiction and the licencing process itself often proves to be a long, tedious and disheartening process.

Moreover, as it was pointed out by a respondent, the general absence of a clear regulatory framework may inhibit new market entrants. They would be concerned with the consequences of sunk costs and future potential regulatory costs when acting without a basic guiding regulatory pathway for making jurisdictional and legal choices.

The study by ECN and Osborne (2017) produced a number of case studies on major European platforms operating cross-border. *Annex 7: Case Study extracts* provides examples of the different issues that these platforms faced when attempting to operate in other EU Member States. The main report of the study also highlighted six different methods [25]that platforms currently have to resort to for cross-border transactions, highlighting the disadvantages of each and concluding that no suitable framework currently exits. It is worth noting that two of these methods are not comprehensive as they do not permit active cross-border marketing of services and provide only a partial solution

[22] See Annex on Stakeholder Consultations.

[23] A more detailed analysis of the consultation responses in provided in the Annex.

[24] EBA, Opinion on lending-based crowdfunding, 2015, available at https://www.eba.europa.eu/documents/10180/983359/EBA-Op-2015-03+%28EBA+Opinion+on+lending+based+Crowdfunding%29.pdf

[25] Identified methods for cross-border operations: i) Operation via distinct business in each Member State under local legislation; ii) Operation via a partner platform to collect investment from investors outside the home Member State; iii) Operation via EU (MiFID) license for the platform as a financial service provider; iv) Operation via a special purpose vehicle (SPV); v) Accepting cross-border investments (for predominantly local deal-flow); vi) Brokering cross-border investments to local (and other) investors

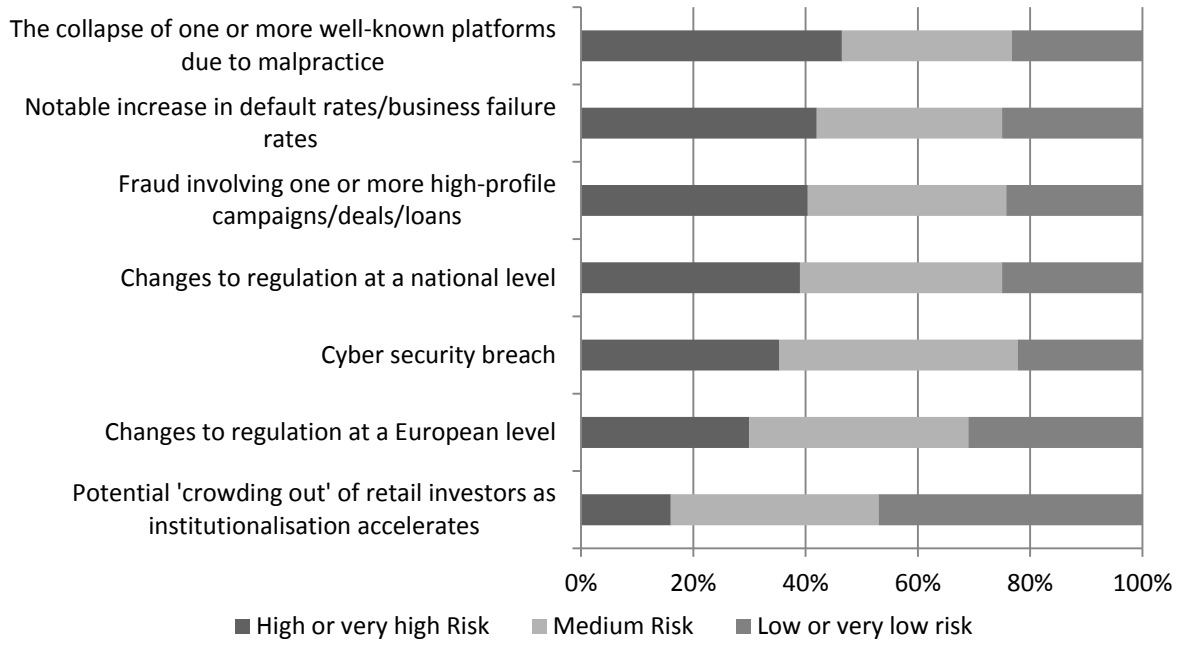
for some business models in certain Member States. As for the other four options, the study underlines that the most significant obstacles are separate, lengthy and thus costly national regulatory approval procedures (up to one year), time-consuming processes for identifying suitable partnerships in other Member States, costly compliance with MiFID as well as the cost of setting up special purpose vehicles and their recognition within different local regulation.

To conclude, besides the uncertainty for platforms and investors, the high costs for the crowdfunding industry to scale up and overcome low profitability may increase pressure towards domestic concentration, leading to rent-seeking behaviours and higher costs for fund raisers that may actually reduce the appetite for this funding tool for small businesses.

1.2.2 Investors' lack of trust to engage on a cross-border basis

Even though crowdfunding has been rapidly expanding, the vast majority of investors remain cautious about its risks. As suggested in Figure 6, the level of cross-border inflows (cross-border investments) is only a small fraction of total volumes, even lower than the outflows, i.e. how much fundraising goes to non-domestic projects. Its size relative to the total has not changed since inception in 2013.. The share of cross-border activity has remained stable at very low level (roughly 4% for inflows and 7% for outflows) between 2013 and 2015. A full understanding of the project risk associated with crowdfunding is often constrained by the lack of metrics, due to the modern nature of this financing tool.[26] Nonetheless, a survey conducted by the Cambridge Centre for Alternative Finance shows that the chief concern for the platforms is the reliability of crowdfunding platforms themselves. The graph below shows that three most perceived threats for investors are the collapse of a platform due to malpractice, project fraud and an increase in project failure-default rates. Only the latter can be directly assessed through metrics. In case of frauds or malpractice, the platform could be victim itself of the fraudulent behaviour of the project promoter, especially without obligations and liability for the latter.

Figure 8. Industry perceived risks to future growth of the alternative finance sector

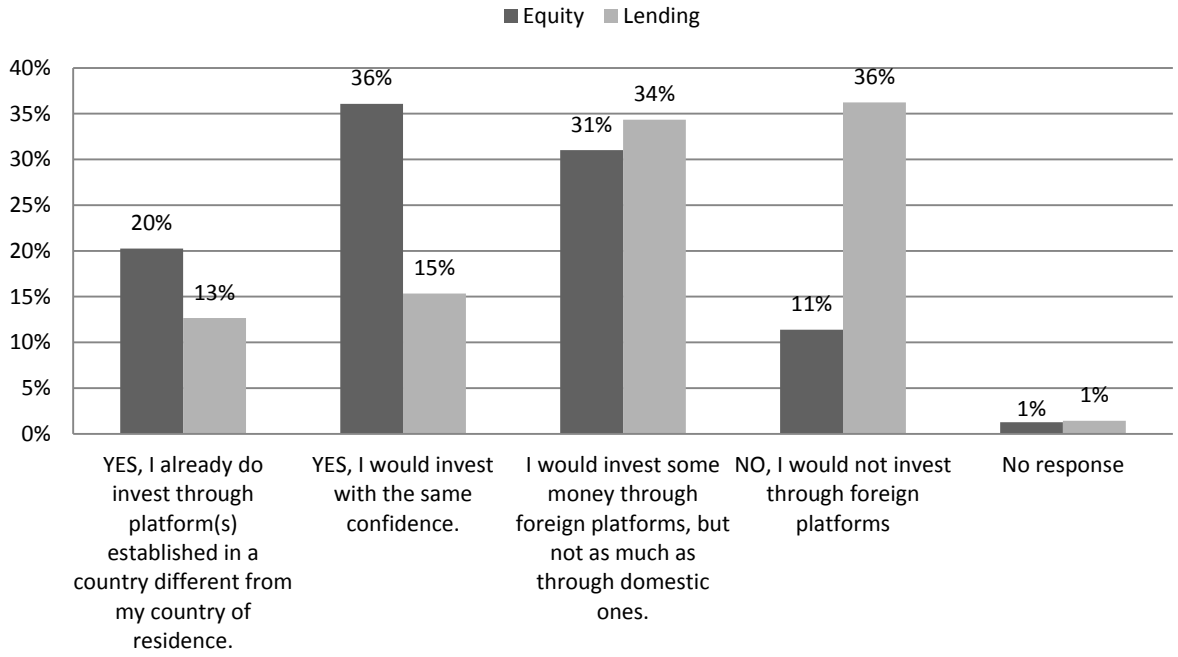


Source: University of Cambridge (2017).

[26] There is, nonetheless, some preliminary evidence that the returns from investment-based platforms may resemble those of venture capital investment.

Research indicates that there is limited confidence for cross-border investment in particular. As reflected in a targeted survey designed by the Financial Services Users Group and the European Crowdfunding Stakeholders Forum, there is a clear lack of trust towards platforms established in neighbouring Member States. Figure 9 illustrates that 71% of lending-based platform users and 42% of equity platform users would not invest with the same confidence, if the platform was not established within their home jurisdiction.

Figure 9. Percentages of responses to the question: "Would you invest with the same confidence through platforms established in another EU Member State?"



Source: European Crowdfunding Network and Osborne Clarke (2017), "Identifying market and regulatory obstacles to cross-border development of crowdfunding in the EU"

The mistrust towards foreign platforms may reflect concerns about weak governance practices, notably in areas, such as risk management or the prevention of conflict or misalignment of interests. Continuous monitoring of the sector and the independent initiatives adopted by the Member States have shown[27] that authorisation, organisation and conduct of business requirements for crowdfunding platforms within the Member States vary considerably (please Annex 1 for an overview of selected Member States). Targeted consultations with lending-based platforms also pointed out differences in the treatment of professional investors, who may be required to check compliance with know-your-customer rules in multiple (EU) legislations that are implemented nationally (such as anti-money laundering legislation or the E-Commerce Directive). As the investor would be facing high cost, vis-à-vis the size of the investment, platforms shall be allowed to discharge these obligations, but this is not always the case. In some Member States, there is currently no or unclear application of Anti-money laundering rules to lending-based or investment-based (in non-transferable securities) crowdfunding platforms, which are in some cases shifted onto professional investors investing on these platforms (from their home authority). This complexity fosters uncertainty that increases investors' distrust to engage cross-border via these platforms.

An analysis of the different disclosures & safeguards applied by the Member States was carried out in a recent report commissioned by the European Commission. [28] The study showed that, although most countries have a certain system for safeguarding against these risks in place, the approaches can be very different and thus the systems

[27] Commission Staff Working Document, "Crowdfunding in the EU Capital Markets Union" May 2016.
[28] European Crowdfunding Network and Osborne Clarke, "Identifying market and regulatory obstacles to cross-border development of crowdfunding in the EU", 2017.

diverge. The divergence of the national approaches towards authorising and monitoring platforms creates uncertainty regarding the level of scrutiny they are subject to within a neighbouring jurisdiction. Given that a different system is applied within each regime of the EU28, the average retail investor may not be able to devote sufficient resources to finding and validating information on the applicable safeguards. As a result, he may choose to remain and invest within his home jurisdiction. Furthermore, there are reputational risks which may result in scandals within one jurisdiction creating mistrust towards the whole crowdfunding sector. The Trustbuddy Scandal of 2015 [29]is said to have had a reputational effect on other Scandinavian platforms as a whole.

Concerns regarding transparency and project fraud are well-grounded, as investors may not have sufficient information (and often capability) to make proper risk assessments. Although widely spread, fears of direct fraud have not manifested, it remains uncertain as to whether investors receive sufficient information on the projects prior to investing and whether platforms perform sufficient pre-screening. A solid approach would be to rely on other measures such as risk warnings, funders' categorisation and funders' tests, due diligence as well as softer disclosure requirements.

Although with the same objective, Member States have taken different approaches towards reaching this goal. For example, as regards fundraisers' disclosure to funders - platforms are expected to follow certain procedures regarding this information flow. Common basic information is that fundraisers are obliged to disclose information to funders concerning their ID and business in a fair and not misleading way. However, differences exist in the way this disclosure is filed and the information disclosed. Two Member States have designed a template which must be filed by fundraisers. In another Member State, fundraisers are obliged to file a three-page fact sheet, if no prospectus is required, where they disclose information about their business. In some other countries, the regulators authorize platforms to check for the complete and accurate information provided by fundraisers. Similar principals apply to prescribed due diligence procedures by the Member State. As highlighted in the recent report on barriers to cross-border crowdfunding, these can vary considerably.[30] This creates an issue of scalability as due diligence and other procedures are often an essential part of a platforms' business model. It has also been observed that some platforms carry out high-level due diligence on their listed projects, however do not disclose the information due to fears of legal suit.

Diverging measures of investor protection create unnecessary confusion for retail investors that have to familiarise with different systems. Prospective and current investors demonstrate a lack of trust, as they may not receive sufficient information about the returns and risks of the projects. This uncertainty is further increased as the conducted due diligence and presented information are often carried out in different ways. This results in high search costs that defer investors who would otherwise be willing to invest in other Member States. The issue of trust is also highly applicable in defining the selection criteria used in cases where automatic decisions on investors' money are taken by the platform. The issue of liability of the platform, when provide discretionary services, goes down to delineate the responsibility of fair representation between the project owner and the platform. Uncertainty

[29] In 2014 Trustbuddy, a Scandinavian peer-to-peer lending platform filed for bankruptcy. The company had been a novel success story in the lending space and had become the first publicly traded crowdfunding platform as they listed on the NASDAQ OMX Nordic exchange. With the appointment of a new CEO and an overhaul of the management team just months later, a review of the books uncovered a 44 million SEK (EUR 4,6 mil) discrepancy that had likely been there since the companies early days. Not soon after the funds that the company held were frozen (including the nearly EUR 2 mil that were funded by lenders, but not yet assigned to any borrowers), the National Authorities forced the company to shut down operations and just days later the company had filed for bankruptcy.

[30] In one Member State, 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. In another Member State, platforms are obliged to predefine the due diligence criteria they follow. In a third & fourth Member State, platforms must inform potential funders about the due diligence process they follow. In a fifth Member State, platforms are restricted from performing and sharing due diligence under the crowdfunding exemption, but need to publish relevant information to investors to enable their informed decision making

regarding investor rights, the responsible governing authorities and tax treatment in a cross-border setting will also further deter potential investors. Some platforms in targeted consultations also voiced investors' concerns about the need to ensure a minimum regulatory framework to create sufficient trust in a platform, especially for professional investors. Risk of regulatory arbitrage can have a direct impact on investors' trust, leading to underinvestment.

This conclusion was shared by some of the respondents to the Inception Impact Assessment, one of which, representing a consumer protection organisation, observed that divergent or even absent national approaches create regulatory loopholes and spur regulatory arbitrage, bounding consumers to invest in projects they shouldn't, whereas a clearer regulatory environment would provide more choice, grant higher standards of consumer protection and thus encourage investments.

2 Why should the EU act?

The legislative action to be examined would lay down uniform rules on crowdfunding platforms for certain crowdfunding activity when operating cross-border. It aims at ensuring that such platforms are subject to consistent rules across the EU and that they are identifiable as such by investors throughout the EU. At the same time it also aims at ensuring a level playing field between different crowdfunding providers, irrespective of market size or legal framework applicable in their home market. It aims therefore at establishing uniform conditions for platforms operating with an EU label. This proposal thus harmonises the operating conditions for relevant players in the crowdfunding market, for the benefit of fundraisers and investors. Legislative action to establish an EU framework for crowdfunding services examined in this report is based on Article 114 of the TFEU.

2.1 The necessity of an EU action

While many Member States leave the activity unregulated, others have put in place stringent bespoke national frameworks to cater specifically for crowdfunding activities. Large differences in regulatory standards adopted by Member States continue to increase market fragmentation resulting in a lack of economies of scale and inconsistent approaches to transparency and financial risks, as explained in section 1.2. Different regulatory approaches in this area create an un-level playing field, erecting additional barriers to a Single Market in financial services and products. Member States have already taken divergent and uncoordinated action to develop national crowdfunding regulation, and it is likely that this development will continue. Divergences in such rules increase costs and uncertainties for platforms, fund raisers, and investors, and represent an impediment to the further cross-border development of the market. These divergences represent an obstacle to the establishment and smooth functioning of the Single Market. Transparency and prudential rules may be necessary to ensure investor protection and financial stability across the EU, while ensuring a level playing field among the different platforms established in the different Member States.

While there is no coordination effort undertaken so far among Member States on rules for lending services by non-deposit-taking institutions, the application of MiFID rules to investment-based crowdfunding platforms is insufficiently uniform, as MiFID was not constructed to ensure proportionality to crowdfunding services and the use of discretions to ensure that proportionality by Member States (such as article 3 exemption) has resulted in further divergences and impediments to cross-border activity via a MiFID passport. In effect, many countries have decided to adopt an ad hoc regime, to use the article 3 MiFID exemption for two specific investment services, or not to regulate at all this area. In one Member State, 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. In another Member State, platforms are obliged to predefine the due diligence criteria they follow. In other ones, platforms must inform potential funders about the due diligence process they follow. In one more, platforms are restricted from performing and sharing due diligence under the crowdfunding exemption, but need to publish relevant information to investors to enable their informed decision making

This situation restricts access to early stage capital markets financing only to bigger EU countries and investors have limited accessibility and ability to diversify risk in the same way irrespective of where they are geographically located. In effect, there are important and innovative sectors, like technology, whereby the geographical proximity is not a key factor to invest, hence the reliance on an international investor base. This cross-border investor struggles to emerge on European crowdfunding platforms due to cross-border barriers highlighted above, despite the fast growth of domestic markets. As a result, the inability of investors to engage cross-border is capable to generate extra costs for businesses. In effect, anecdotal evidence and desk research show that many micro firms decide to incorporate the legal entity in the country where the crowdfunding market is more developed (like the United Kingdom). While this could be influenced also by other factors, such as the local financial ecosystem, this also means that small businesses in sectors that do not allow mobility of production factors would not be able to access these

funding opportunities, unless an efficient domestic crowdfunding market already exists. Hence, the inability of platforms and investors to move cross-border may inhibit access for companies in a large set of sectors, especially in capital intensive ones (e.g. manufacturing), cutting them out of this market.

These variations also create an un-level playing field for platform providers depending on their location, and by fragmenting fund models along national lines erect additional barriers to a Single Market in financial services and products. Key drivers include different interpretations and treatment of crowdfunding service providers as well as additional mistrust that this creates for investors in a cross-border setting. Investor preference for platforms within a familiar environment is thus preferred.

2.2 The value added of an EU action

EU action would reduce significantly the complexity, financial and administrative burdens for all key stakeholders, i.e. crowdfunding platforms, project owners and investors at the same time ensuring a level playing field among all the service providers using the same EU label. Furthermore, harmonising prudential rules, operational conditions and rules on transparency for all the relevant players would bring clear benefits to investor protection and financial stability. By harmonizing the essential features that constitute a crowdfunding platform, the proposal aims at establishing a uniform framework in relation to the definition of such crowdfunding activity, clearly setting common rules in specific areas.

Newly emerging evidence in stakeholders' consultations and recent developments, such as the departure of the United Kingdom from the European Union (leading roughly 80% of the European market to move into a third country regime), further justifies action at this point in time. The purpose of the action at EU level is to protect the public interest against these problems by contributing to the effective and efficient development of the crowdfunding services in the EU, protection of investors, stability and effectiveness of the financial system, for the Union economy, its citizens and businesses. This impact assessment accompanying the Commission's proposal contributes to greater understanding of why these objectives are better achieved at Union level.

Therefore, the establishment of an EU framework for crowdfunding services would fall under the competence of the EU according to Article 114 of the Treaty of Functioning of the European Union (TFEU).

3 Objectives: What is to be achieved?

The general objective is to increase the efficiency and diversification of the EU's capital market by eliminating problems to the development of a cross-border pool of financing for businesses. A single market for crowdfunding services would also provide access to alternative financing tools to expensive short-term unsecured bank lending for SMEs, especially for startups and other fast-growing companies, while ensuring a high level of investor protection. Thus, the initiative will support the CMU objectives of establishing a single EU capital market and strengthening market-based finance. In view of the key role of innovative firms for job creation and growth, the initiative also envisions to contribute to the wider EU objective of creating jobs and boosting growth.

In order to achieve the overarching goals above, the following specific objectives need to be achieved:

1. Enabling platforms to scale up (objective 1); and
2. Enhancing investors' trust, by strengthening platforms' integrity (objective 2a) and transparency for investors (objective 2b).

Enabling platforms to scale throughout the EU by creating a more proportionate regime. For instance, proportionate licensing requirements would enable cross-border business without requiring further authorisation in each EU country, thereby facilitating the attraction of a critical mass of investors and fundraisers matching the right investors with the right fundraisers across the EU.

Enhancing trust may require to strengthen platforms' integrity and to increase transparency for investors, for what concerns the project, the instruments being intermediated and the processes performed by the platform. The sector adherence to a common set of standards may promote its reputation and help establish itself as a stable and reliable source of alternative finance. Proper levels of governance requirements, to ensure that management is fit and proper, and adequate internal controls are important step to achieve the second specific objective. Appropriate levels of information disclosures to ensure that prospective and current investors receive sufficient information about the returns and risks of the projects, together with fitting safeguards to prevent fraudulent activities by the platforms as well as by the project owners (fundraisers), are paramount.

4 Policy Options and analysis of impacts

The following section covers the assessment of the scope of the initiative and of the policy options to meet the objectives, with their impacts.

4.1 Scoping the policy action

The policy action would exclude donation, reward and lending to consumers for consumption purposes from the scope. Projects below EUR 1 million would qualify for crowdfunding services under the EU regime, which include reception and transmission of orders and placing of securities without firm commitment. The list of products to be covered includes transferable securities, loan agreements and other credit intermediation products.

The following sections discuss three aspects that help to define the scope of the policy intervention. This initiative falls within the remit of the Capital Markets Union (CMU) Action Plan, which has been recently reassessed with its Mid-Term Review. The target of this initiative is thus to further the European Union's goal to develop a more integrated market for capital to counter-balance overreliance on bank finance and produce more private risk sharing, which can help to stabilise Europe's financial system, as well as more risk capital for European businesses (in particular, SMEs). One of the means of achieving this goal is the development of a viable market for alternative finance, such as crowdfunding. More specifically, the policy action wants to enable crowdfunding to increasingly become a stable source of early-stage financing for businesses, which could complement bank-based short-term funding (e.g. bank overdrafts or loans).

4.1.1 Crowdfunding models

Crowdfunding models can be clustered in four groups: donation, reward, lending and investment-based.

The investment and lending-based crowdfunding models offer a product with a financial return, which by nature relies on a future cash flow stream. This characteristic structurally produces additional information gaps that typically require a different regulatory intervention than consumer protection regimes. In this case, the combination of the crowdfunding model with a dispersed investment structure (and small ticket size that offers limited incentives to engage in monitoring) and a financial product calls for a targeted intervention to address risks for cross-border market stability and investor protection, which may not be sufficiently (or too aggressively) addressed under current national regimes.

Crowdfunding via lending platforms (also called peer-to-peer lending platforms) can provide funds to businesses, as well as individuals. A further distinction is needed in the case of lending to individuals, as this can entail both lending to natural persons for business purposes (e.g. for purchasing equipment needed to carry out a business, such as an ice-cream van) or for personal consumption (e.g. travel, goods, etc), also called 'consumer lending'. The involvement of a consumer, receiving a loan for personal consumption and operating outside of professional capacity, places this activity within the remit of the Consumer Credit Directive. In case of a consumer receiving a loan to purchase an immovable property, this activity falls within the remit of the Mortgage Credit Directive. Given that these are already regulated activities (even though only from the lender's perspective) with a clearly local dimension in terms of operations and risk assessment, as well as lower ticket sizes for consumer credit compared to other crowdlending activities (on average – EUR 9 585[31]), inclusion of this business model would not be warranted. Inefficiencies in providing consumer credit (including through the use of crowdfunding platforms) are already being assessed as part

[31] Cambridge Centre For Alternative Finance report.

of the Retail Financial Services Action Plan[32] and will feed into the forthcoming evaluation of the Consumer Credit Directive.

In assessing whether or not to include donation-based crowdfunding, the Commission has pointed out in its Report on the assessment of risks of money laundering and terrorist financing affecting the internal market and relating to cross-border activities, that all forms of crowdfunding are significantly vulnerable to money laundering and terrorist financing –COM(2017)340 and SWD(2017)241. Part of the vulnerability was identified with the lack of a horizontal framework on crowdfunding platforms. For this reason, the Commission has proposed in the same document that Member States should consider applying anti-money laundering rules to crowdfunding platforms.

Nevertheless, donation crowdfunding falls outside the scope of a European action, as it does not entail any 'tangible' return over the investment, whether financial or non-financial. Reward crowdfunding does not entail a financial return, even though it is an attractive funding tool for businesses. To preserve consistency among the European legislative frameworks, the existing consumer protection regime would still apply to those models. Less clear the application of legislation on money laundering and terrorism financing to donation crowdfunding under existing national legislations and supervisory arrangements. Insufficient basic transparency can undermine investors' trust and generate spillover effects on the stability of the Single Market. However, the donation crowdfunding industry is marginal and the average size of these firms is typically below 5 employees. In that respect, while extending the policy intervention applicable to crowdfunding platforms providing investment services over products with a financial return, to ensure application of Anti Money Laundering (AML) and Counter-Financing Terrorism (CFT) rules, would have represented merits in term of level playing with other financial services, it has been considered as too premature at this stage. This position does not prevent the Commission to envisage future policy actions on that matter. While application of AML and CFT is paramount, a targeted regulatory response would be more appropriate. Inclusion of donation services within the current initiative would result in a disproportionate action that would hinder and probably impede completely the provision of the service at domestic and cross-border level.

4.1.2 Fundraising threshold

Crowdfunding is a financial service, so policy intervention does not only need to define the nature of a crowdfunding activity (see previous section), whose core feature is intermediating funding between a dispersed issuer and investor structure, but also the conditions to avoid regulatory circumvention of well-established legislative frameworks for financial services, like investment services legislation (Markets in Financial Instruments Directive, MiFID). On the one hand, a defined 'issuance' or 'fundraising' size limit would narrow the scope to relevant crowd business activity and minimise the risk of circumvention. On the other hand, a limit on issuance size may potentially curtail crowdfunding issuance in specific capital intensive sectors, where the funding size is structurally higher.

This upfront scoping relies on the recent impact assessment of the new Prospectus Regulation[33] (PR), which has introduced a crowdfunding exemption from prospectus requirements for securities offers with a total consideration below EUR 1 million (during a 12 month period).[34] This threshold was developed using data from a public consultation where respondents indicated that offerings fluctuates between EUR 50 000 and EUR 1 500 000 as well as market surveys that indicated average offering sizes to be between EUR 220 000 and EUR 250 000. The final number was decided during negotiations. According to the latest available market data, the average issuance of the

[32] Action 7 of the Retail Financial Services Action Plan.
[33] http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=SWD:2015:0255:FIN
[34] Article 1(3) of the (EU) 2017/1129 New Prospectus Regulation does not apply to an offer of securities to the public with a total consideration in the Union of less than EUR 1 000 000, which shall be calculated over a period of 12 months. If specific conditions are met, Member States can raise this threshold for prospectus up to EUR 8 million.

business models with the largest ticket sizes is below the EUR 1 million threshold (investment-based crowdfunding averaged EUR 459 003 and peer-to-peer business lending averaged EUR 99 985 per fundraiser in 2015).[35]

In order to provide a passporting capability for platforms, as well as to ensure coherence with other financial legislation, the proposal should thus cover security and other products (as defined in the following section) issuances with a total consideration of below EUR 1 million over 12 months. Above EUR 1 million, there is national discretion whether or not to require a prospectus for public issuances (under conditions set by the Prospectus regulation). Also, cross-border offerings for issuances in that range would be under the EU Prospectus Regulation. The Prospectus provides appropriate space for sufficiently large funding rounds to be raised without mandating production of costly legal material and application of burdensome legal obligations, which would be disproportionate to the level of risk, size and activity of crowdfunding platforms.

As this policy option builds upon regulating the provision of the service, the threshold would apply also to non-security-based financial products (e.g. loans), i.e. irrespective of the product actually negotiated on the crowdfunding venue. Any issuance above this threshold, for the provision of services discussed in the following section, does thus warrant the application of more mature and complex regulatory regimes, like MiFID or a more mature credit intermediation regime, because of the spillover effects that this greater amount would generate on risks for investor protection and financial market stability.

4.1.3 Services

Crowdfunding involves several different processes and transactions and an effective regulatory framework needs to be clear about what crowdfunding is and what is not. While preventing regulatory arbitrage risks within the financial sector, a limited number of activities can be identified as distinguishing features of crowdfunding platforms, leveraging on the existing framework for investment services under MiFID,[36] which defines services that can qualify as European crowdfunding services. Upon consideration of different business models, as well as Member State experience in creating their own bespoke regimes, two types of investment services can be used to provide a principle-based definition of crowdfunding, and therefore be potentially subject to a lighter-touch and enabling framework: 1) Reception and transmission of orders (RTO); and 2) Placing of securities without a firm commitment basis (PSWFC).

In several occasions, ESMA has confirmed that almost all investment-based crowdfunding platforms mainly offer reception and transmission of orders as core service.[37] In addition, placing of securities without a firm commitment basis is also included, because, as ESMA pointed out,[38] in the case of crowdfunding the reception and transmission of orders and placing of securities without a firm commitment can appear as the same activity, since the distribution element of the offer is embedded in the platform. Other services/activities, such as portfolio management, investment advice and execution of orders on behalf of clients, are usually added on top of the core service and

[35] University of Cambridge Judge Business School, "Sustaining momentum, the 2nd European Alternative Finance Industry Report", September 2016.

[36] Please, see Directive 2014/65/EU, Annex I, section A for the list of investment services and activities.

[37] Please, see ESMA responses to the CMU Green Paper (2015) and CMU Mid-term Review (2017), available at respectively https://www.esma.europa.eu/sites/default/files/library/2015/11/esma-2015-856_ann_1_esma_response_to_ec_green_paper_on_cmu_-_crowdfunding_survey.pdf and https://www.esma.europa.eu/sites/default/files/library/esma31-68-147_esma_response_to_cmu_mid-term_review.pdf. Please, see also ESMA, Opinion on Investment-based crowdfunding, ESMA/2014/1378, 18 December 2014, p. 4 '[..]the fundamental MiFID service/activity in the 'typical' investment-based crowdfunding platform is reception and transmission of orders[..]'.

[38] 'In the case of crowdfunding, it appears that the same activity could potentially be considered as reception and transmission of orders or as placing without a firm commitment basis.' See ESMA, Advice on Investment-Based Crowdfunding, ESMA/2014/1560, 18 December 2014.

would be subject to the full MiFID regime and other existing EU regimes. As the definition of *advice* is still not sufficiently narrow across member states, its inclusion in the list of crowdfunding services would create risks of regulatory arbitrage. If a platform wishes to provide additional services, it would then be subject to specific financial services regulations (i.e. MiFID, AIFMD, PSD2). For lending-based platforms, the lack of any European regime (as discussed in section 1.2.1) leaves space for the policy action to define the most suitable definition of lending activities that would suit the spirit of the chosen option. The EBA definition, discussed in section 1.1.1.1, i.e. an 'open call to the wider public by fund seekers through a third party, typically an on-line platform, to raise funds for a project, in the form of a loan agreement, with a promise to repay with (or in certain cases without) interest',[39] could be a workable broad-enough definition to capture lending-based platforms in our policy options.

An alternative option would be to use only the EUR 1 million threshold to define the scope of the policy action, so regulating all kinds of investment services (beyond the two identified above) and lending activities under a common EU crowdfunding regime (below the threshold). On the one hand, this would increase the possibility for crowdfunding to develop multiple variations of business models under one set of rules. On the other hand, this possibility would raise two important issues that leads to exclusion upfront. First, it would heighten risks of regulatory circumvention of the established European financial services regulatory framework, as it would lead to more fragmented issuance below EUR 1 million to be intermediated via crowdfunding structures and additional enforcement issues with more complex services (e.g. portfolio management), for which it would be difficult to monitor the application of the EUR 1 million threshold. Second, it would increase set off significant investor protection issues, by allowing complex services to be marketed in the same way very simple ones, like RTO, are. The high risk of frauds and misselling leads us to exclude this sub-option upfront.

4.1.4 Instruments

For what concerns the instruments traded on crowdfunding platforms, they can be either (transferable) securities, loan agreements or other credit intermediation instruments. National platforms currently face scalability challenges due to the specific instruments they use in their home market. Furthermore, in many Member States companies (project owners) are structured as a limited company (e.g. GmbH) or a limited partnership (e.g. KG) whose shares do not constitute 'securities' within the meaning of MiFID, but they are constructed as a loan. Hence, the relevant European legislation (e.g. the Prospectus Regulation and the Markets in Financial Instruments Directive) may not apply to some instruments in certain jurisdictions. It is thus important to adopt a sufficiently comprehensive approach towards instruments in order to ensure both scalability of operations and mitigation of circumvention risks. The definition of products that are intermediated on crowdfunding platforms (e.g. business loans, securities, royalties, among others) is thus fairly broad in order to cover a sufficient number of business models, while ensuring legal certainty via a strict definition of the services that the platform can perform. The exclusion of non-transferable securities lie in the structure of the product that should not allow transferability, plus the risks that these products may have in terms of investor protection, by locking in investors with limited exit options. The exclusion is also coherent with the established EU legal framework and pre-empts the legal constructs that may hide risks for investors due to their complexity.

4.2 Baseline scenario – no EU framework (option 1)

In line with the overview of legislative frameworks (see annex 5 for a summary overview), the policy baseline scenario is enshrined in a list of national regimes (for those countries that regulate crowdfunding), which embeds the following key features:

1. The authorisation procedure;

[39] EBA, Opinion on lending-based crowdfunding, EBA/Op/2015/03, 26 February 2015.

2. The governance and operations of a crowdfunding platform; and
3. The information disclosure to investors and business conduct.

The baseline scenario assumes that no policy action(s) are taken at the European level, which would aim to address the problems set out in section 1.2. While the baseline would allow for flexibility to act at a later stage, when the market is more mature and has found a stable structure, this implies that a fragmented and complex regulatory framework for crowdfunding platforms would persist across Member States (or further fragment as a growing number of Member States are considering bespoke regulation). Extra costs for businesses and operators may continue to increase to even higher levels. In terms of authorisation for investment-based crowdfunding, some Member States would continue to draw on MiFID article 3[40] to carve out crowdfunding from the Directive's scope and preserve (or set-up) their bespoke national regimes. Other Member States would cover crowdfunding under their respective transpositions of the MiFID. In theory, the latter approach opens the possibility to passport crowdfunding activities across the EU. In practice, however, MS with national bespoke regimes would continue to disallow crowdfunding platforms to avail of such passporting rights in their jurisdictions. Similar situations would persist across other relevant regulatory regimes, such as Payment Services Directive, Prospectus Directive and Alternative Investment Fund Managers Directive, in that member states would choose whether or not to apply certain provisions with regard to crowdfunding. As a result of the heavily diverging regulatory approaches taken, there would be no single market for crowdfunding in the EU and operators would be inhibited from growing and expanding their platforms seamlessly across MS. The regulatory fragmentation would generally prevent platform operators to expand their offerings into other MS without making substantial modifications to operating protocols, consumer protection measures and/or other administrative aspects. These changes are not only costly but also make it difficult or, at times, even impossible to channel investments and fundraising projects in different MS through a common platform. For lending-based platforms, the implementation of quite different national regimes, especially when combined with the regime for investment-based platforms, will make the system more complex and unable to overcome (if not magnifying) the problems highlighted in section 1.2.

Operators would not only face substantial operational and compliance costs on cross-border market entries but would also fail to reap increased network externalities if they cannot on-board projects and investors onto their initial platform. These costs and missed network effects would continue to severely limit the incentives for operators and investors to engage in cross-border activities. An additional hindrance is that investors would face varying degrees of legal uncertainty, if and where investors and/or fund-seekers access platforms from another Member State. Operators may also find that the fragmented regulatory framework supresses the cross-border demand for their services, lowering the incentives for such offerings yet further. As authorisation, organisation and conduct of business requirements for crowdfunding platforms within the Member States would continue to vary considerably, investors and fund seekers will have difficulties to compare offerings and assess any associated risks. Different standards in terms of transparency, investor protection and due diligence requirements would furthermore contribute to already existing home and familiarity biases and lower the trust of consumers in cross-border offerings. This is especially true on the investor side, which will generally be less proficient in assessing and evaluating associated risks beyond the standard investment risks.

These hurdles to cross-border business operations and consumption imply that the EU crowdfunding market will remain heavily fragmented. Neither platform operators nor fund seekers or investors would be able to benefit from a functioning single market. Crowdfunding networks would essentially remain limited to their national markets, which is of particular importance for the future growth of operators based in small MS. Investors and fund seekers would be unable to benefit from increased competition, choice and innovation. Overall, the EU market would not

[40] This article allows member states to exempt firms from the MiFID regime when providing only reception and transmission of orders and/or investment advice (but not holding client funds). Some member states, like Germany, France and Italy, have used this exemption to carve out a bespoke regime for crowdfunding.

converge into a single integrated market. It would thereby not operate as efficiently as it could under conditions of intensified cross-border competition. A fragmented market would furthermore hinder platform operators to scale up and keep pace with larger platforms established in the US and Asia.

Inaction would also interfere with important market and policy developments. First, most of the market (roughly 70-80%) is concentrated in one country, the United Kingdom. Without a functioning third country regime, the departure of the UK from the EU poses the risk of leaving the EU with even lower scale to deal with the cross-border provision of early stage financing for businesses across Europe. It also raises questions about the need for a more uniform approach to provide a framework to assess the equivalence of a third country regime. Second, even though the review of the European Supervisory Authorities (ESAs) aims at improving the capability to analyse risk for consumers and investors and promoting more regulatory and supervisory convergence to enable more sustainable cross-border integration, inaction would still hinder the ability of the ESAs to promote meaningful supervisory convergence due to the severe market fragmentation. Third, inaction would hinder the activity of the FinTech sector, which increasingly offers support to the development of crowdfunding services, through the outsourcing of separate functions (e.g. payment services). A fragmented approach would result in multiple regimes that may or may not be supportive of FinTech services, so diluting the 'single market network effect'.

None of the stakeholders taking part to the Inception Impact Assessment consultation found option 1 to be preferable, all agreeing on the need for an EU action to ease the scale-up of the platforms' operations.

4.3 Building on reputational capital: minimum standards with best practices (option 2)

This option would introduce minimum standards for crowdfunding activities, in relation to transparency (with the Key Investor Information Sheet, KIIS) and authorisation (notification only with ex post review by NCAs). Organisational and conduct requirements are left to either self-regulation or national requirements (where available).

This policy option builds upon the regulatory approach applied in some Member States, whereby minimum regulatory standards are combined with self-regulatory efforts by the industry. A 'softer' non-regulatory action can be excluded upfront, as it won't solve the first problem driver, which lies with different national regimes without a minimum level of harmonisation.

4.3.1 Rationale and key characteristics

The rationale for this option is that crowdfunding is still an industry in its infancy and should be allowed to develop with the least 'regulatory touch', relying as much as possible on industry's best practices and the reputational capital that platforms have to stay in business. The policy action would thus foresee to establish minimum disclosure requirements in order to ensure that investors have sufficient information concerning the investment risks they are undertaking. Given considerations of reputational capital, platform operators already have an incentive to ensure information disclosure between fund seekers and investors. This policy action would only ensure that minimum harmonised standards are upheld across all platforms in the EU to deal with the second key problem driver of the dispersed investor structure. The disclosure regime could take the form of a Key Investment Information Sheet (KIIS), which would offer a standardised template with the minimum information necessary about risk and characteristics of the instruments sold to investors (whether a share or a loan agreement, the document will adapt its content accordingly). This document could be issued without pre-approval, but only with ex post monitoring by the competent authority about its key characteristics (and request to make adjustments, if necessary).

The first problem driver, concerning with fragmented (licensing) regimes, is dealt with a notification-only procedure. No ex ante authorisation would be necessary, except for a notification to the competent authority that business has started. The competent authorities would only monitor the implementation of the disclosure standards and ensure that the adopted best practices do not clash with other existing regulatory regimes.

Table 4. Key requirements – Option 2

Authorisation procedure	**Governance & operations**	**Information disclosure & conduct**	**Harmonisation tool**
Ex post review of best practices & ongoing supervision of disclosure requirements	Best practices	Key Investment Information Sheet (KIIS)	Directive

Other aspects, such as organisational and business conduct requirements of platforms, would be based on industry best practices agreed on by industry (via, for instance, a code of conduct) and providing a lighter intervention to address further areas under the problem drivers identified in section 1.2.[41] It could be envisaged that there would be some light initial screening in this regard carried out by NCAs, after the platform notifies the commencement of the business activities.

The establishment of minimum disclosure obligations would require the adoption of a Directive. The threshold in the Prospectus Regulation for the exemption from prospectus requirements will still apply, with member states deciding how to implement it and whether to carve out an additional exemption for crowdfunding offerings between EUR 1 million and EUR 8 million.[42]

4.3.2 Impacts

This policy option holds the benefit that the crowdfunding industry would be given space and time to further develop its business models without meeting stringent regulatory requirements or authorisation procedures. It would keep compliance costs at a minimum (cost-efficient), especially for those platforms which today are already complying with various national regimes, which would remain in place. A harmonised approach on disclosure requirements would ensure that investors and fund seekers can rely on the same minimum standards on a cross-border basis. This would help to facilitate greater trust in cross-border activity as investors could rely on the same standards when accessing platforms cross-border. Likewise, it would aid cross-border fund seekers in that the information requirements would be largely aligned, meaning that different platforms could be tapped throughout the EU without requiring substantial changes in this regard. Platform operators would benefit as well, given that they would need to implement fewer changes to their platform setup when entering another Member State. Furthermore, as the sound provision of information and disclosure to investors' lies in the interest of platform operators, there will be few operators that would be required to make substantial changes to their arrangements. This means that the compliance costs would be kept to a minimum.

The policy action however insufficiently addresses the current regulatory fragmentation, for instance with regard to authorisation requirements. While the option does not hold any detrimental impacts in this regard, it would not solve the current issues arising from regulatory fragmentation. Operators would still need to apply for national authorisations in Member States with bespoke regimes already in place, thereby hindering cross-border market entry. Without EU rules granting passports to the platforms, authorisation requirements are likely to remain significantly different across Member States. There is also uncertainty as to how compliance with industry standards would be handled and/or supervised. Such standards would not be binding and would take the form of guidance. Member States would still have the possibility to impose binding standards at national level on top of these,

[41] The European Crowdfunding Network is a Brussels-based professional network promoting adequate transparency, (self) regulation and governance. Their Code of Conduct is available at: http://eurocrowd.org/about-us/code-of-conduct-2/.
[42] Regulation (EU) 2017/112.

maintaining or amending the national bespoke regimes. In this situation, with major jurisdictions that have already implemented a national crowdfunding regime, a self-regulatory approach developed by the industry may also result in additional complexity. The difficulty and costs associated with this option would thus not be likely to help improve cross-border transactions. Investor confidence would also not be likely to improve under this policy option as a high amount of legal uncertainty would remain.

The precise compliance costs arising from this policy option are very difficult to assess, given that they will vary across operators, depending on the current platform specifications. Assuming that 200-250 platforms are captured by the initiative[43] we estimate total one-off compliance costs to lie in the range of EUR 888,800 – 2,222,000[44] or EUR 4,444 – 8,888 per platform for the necessary IT changes.[45] The costs of compiling a single KIIS are estimated at EUR 3,000 of which EUR 1,000 are regulatory costs. There may also be certain costs imposed on NCAs. The level of these costs will however depend on how compliance with the disclosure requirements would be monitored. These costs would be minimal and not exceed supervisory costs of monitoring the operators of a pure order transmission broker regulated under MiFID. It should be noted though, that similar costs also arise under the current regulatory approach. In fact, depending on the national regime, these costs may be higher than those implied by the policy option. Unfortunately, there is not firm level data available that would give possibility to go in greater detail.

7% of respondents to the Inception Impact assessment found option 2 to be preferable, expressing a view that collection of best practises would be more favourable to a legislative initiative. An association for digital development suggested that the mapping of best practices (for the industry and the local regulatory regimes) with the intent to recommend a set of non-binding standards would be able to achieve the desired effects. According to a respondent representing the financial services industry,, a good collection of best practices could be used for setting minimum standards and thus enable cross border operations. An organisation representing SMEs argued that the benefits of harmonisation are not clear, in the sense that is uncertain whether the initiative seeks to protect investors or the enterprises and regulatory competition between Member States is desirable.

[43] Based on figures in 'ESMA response to the Commission Consultation Document on Capital Markets Union Mid-Term Review 2017' & Commission calculations based on ECN crowdfunding volumes

[44] Based on the assumption that firms would require, on average, 2-4 weeks work of an IT professional to implement the necessary changes, assuming an annual cost of EUR 100,000 per IT professional.

[45] It should be noted that many platforms already have arrangements in place providing information on elements which would be in the KIIS. Therefore these estimates should be seen as an upper limit.

Table 5. Key benefits and costs, by stakeholder type – Option 2

	Investors	**Platforms**	**Firms**	**Competent authorities**
Benefits	- Lower cross-border access costs in the form of greater transparency (direct) - Greater choice of funding products (indirect)	- Greater ability for platforms to adapt their business models (if no conflicting national regimes; indirect) - Low compliance costs on authorisation and organisational requirements (direct) - Lower cross-border market entry costs in some countries (direct) - Use own reputational capital to attract more volumes (indirect)	- Small cost reduction for access due to limited pass-on of higher revenues for platforms that can benefit from a larger investor base (indirect) - Greater choice of funding tools (direct)	- Lower administrative and enforcement costs due to simplified authorisation and monitoring of operations (direct)
Costs	- Reliance on self-regulatory mechanisms for service provision (excluding disclosure)	- Higher enforcement costs to implement new disclosure requirements (direct) - Regulatory uncertainty in areas where national regimes are in place (indirect) - Limited regulatory license effect to attract more investors (indirect)	- Higher compliance costs to implement new disclosure requirements (direct)	- Limited tools to identify and manage wrongdoing of regulated entities leading to potential new enforcement costs (indirect)

4.4 A product-based approach: bringing crowdfunding within the existing EU single rulebook (option 3)

This option brings crowdfunding within the existing EU single rulebook, under different regimes for investment and lending-based crowdfunding activities. Under NCA's authorisation, passport is provided within the perimeter set by the existing legislation (MiFID) for investment-based platforms and under a new regime mirroring MiFID passport for lending-based platforms. The regime foresees capital requirements to deal with continuity risk for both lending and investment-based, plus MiFID-like organisational requirements. Some degree of transparency is ensured by the individual regimes, in line with current pre-contractual disclosure obligations.

This option would imply amendments to existing financial services legislation to carve-in proportionate provisions for crowdfunding activity, according to the type of financial product which is the object of the crowdfunding services (e.g. issuance of equity, granting of loans). The option would ensure an efficient interplay between several other EU legislations (Prospectus Directive, Payment Services Directive, Investor-Compensation Schemes Directive and Alternative Investment Fund Managers Directive). Nonetheless, credit intermediation for business purposes (irrespective of the natural or legal subjectivity of the borrower), which is currently not regulated at European level, would require the creation of a separate regime, specifically crafted for this credit intermediation service.

4.4.1 Rationale and key characteristics

The rationale of this option is that products provided on a crowdfunding platform may require a targeted regulatory response, according to the nature of such product. Investment services, i.e. reception and transmission of orders in transferable securities (like equity or debt securities), and credit intermediation are different in the magnitude of the market failures identified in the problem definition, so subject to two different regulatory regimes. For instance, crowdfunding investment-based instruments (e.g. transferable securities) would be captured under the Markets in Financial Instruments (MiFID) regime and subject to the licensing requirements for investment firms with some proportionate adjustments.

Investment services do typically trigger stronger fiduciary duty (and also obligations) compared to credit intermediation. The assumption behind this different approach is that lending provides access to a financial product that has some distinguishing characteristics compared to securities, warranting a different set of regulatory requirements, like:

- Less junior claim than most investment-based products in the ranking in case of bankruptcy (greater legal protection); and
- Clear payoff structure, often subject to more systematic issuance over time, as it comes in smaller amounts (so greater reputational commitment by the borrower to support relationship).

Investment-based financial instruments, mainly securities like shares or debt instruments would instead warrant a different policy intervention because of the following distinguishing features:

- More junior ranking in case of bankruptcy (less legal protections);
- More complex information than most of the lending products on payoffs structure or returns over time;

- Relatively less frequent compared to lending, but raising much higher capital (less reputational capital involved).

As a result, the option foresees amendment(s) to current EU legislation to enable the crowdfunding platforms to scale under the existing passporting framework, with proportionate rules. By building on the existing single rulebook, the regulatory framework can make good use of established solutions to governance and operations of the platforms (organisational requirements), as well as disclosure that is more tailored to the risk profile of the services provided and its typical investor. The policy option would introduce amendments to existing legislation that currently touches upon the various crowdfunding business models, as identified within the EU28. The goal would be to ensure that the requirements imposed under the respective legislations are proportionate to the level of activity undertaken by a crowdfunding platform and that certain exemptions are available if necessary. This would also require issuing clarifications and guidance to Member States with regards to crowdfunding activity in relation to current EU legislation – ensuring coherent definitions and interpretations of platform activities, categorisation and treatment of business models. Furthermore this option would require a separate regime for lending-based crowdfunding activities, whose instruments could not qualify as *transferable securities* under the MiFID definition. This option would provide platforms with more legal certainty and a more proportionate European framework that could be followed to expand business their businesses. There would however be a risk of diminishing innovation of business models within the sector as all platform operators would have to adhere to a common set of rules determined at the European level.

Table 6. Key requirements – Option 3

	Authorisation procedure	Governance & operations	Information disclosure & conduct	Harmonisation tool
Investment-based CF platforms	• Passporting regime under existing legislation (MiFID), so is NCA's possibility to act unilaterally for investor protection reasons (implemented by NCAs)	• Adjusted capital requirements • Conflict of interest policy • Shareholders' vetting • Management with high repute, requirements on management qualified shareholders with prior notifications/checks	• Duty to act fairly, transparently and professionally in the best interest of clients (fiduciary duty) • Evaluation with sound standards • Appropriateness test • Ongoing disclosure on the project • Outsourcing rules • Safeguarding assets (if go through the platform) • Skills, knowledge and expertise required for the staff and the management body • Appropriate and sound resources, procedures and arrangements for the provision of services/activities • Reasonable steps to ensure continuity and regularity in the performance of investment services/activities. • Internal control mechanisms, sound administrative and accounting procedures. • Recording obligations • Membership of an investor compensation scheme • Security mechanisms to guarantee the security and authentication • Identification of a target market of end clients	• Omnibus Directive (amending legislations)
CF Lending platforms	• Passporting regime under new EU legislation (implemented by NCAs)	• Adjusted capital requirements • Conflict of interest policy • Fit & properness requirements • Shareholders' vetting • Management with high repute, requirements on management qualified shareholders with prior notifications/checks	• Pre-contractual information disclosure (credit characteristics, interest rate, duration and number of instalments etc.) • Assess borrowers' creditworthiness • Limit on individual exposures	• Regulation (maximum harmonisation)

Note: 'CF', 'IB', 'LB' and 'NCAs' stand for 'crowdfunding', 'investment-based', 'lending-based' and 'National Competent Authorities' respectively.

With regard to authorisation procedures (within the first problem driver), investment-based crowdfunding platforms would be required to obtain an investment firm licence, considering the services provided, under MiFID (title II, chapter I). For lending-based platforms a new ad-hoc regime would be needed under this policy option, also with passport. However, a MiFID licence would imply that a passport would be available, but it would not prevent Member States from imposing additional requirements for investor protection. In practice, a MiFID-licensed platform would still need to comply with different national investor protection regimes.

MiFID rules for governance and operations would include an initial capital endowment to protect the customers of investment firms or credit intermediation platforms from the risk of insolvency of the firm and to ensure operational continuity, their management (high repute, qualifications), rules on qualified shareholders with prior notifications/checks, compulsory participation in an authorised investor compensation scheme, etc.[46]. Under legislation for investment services (MiFID), the initial capital requirements are EUR 730,000 or, if firm receives and transmits orders and/or executes orders and/or manages portfolio and holds client money but does not deal on its own account, EUR 125,000. Member States may lower the initial capital requirement of EUR 125,000 to EUR 50,000 if the firm is not authorised to hold client money. In addition, MiFID sets out a number of requirements in relation to safeguarding client assets, including requirements to make organisational arrangements ensuring that client assets can be distinguished from those of the platform in case of insolvency.

Disclosure and conduct requirements would include general disclosure (including disclosure of fees and costs) and requirements pertaining to the communications with the client would be applicable, as would be an inducements regime. To ensure that investors understand the features and risks of the investments, the operators of the platforms are subject to application of suitability and appropriateness tests: such as, to the extent investment advice is provided, the requirements include an appropriateness test and a Know Your Costumer assessment of the client's knowledge and experience, person's financial situation, risk tolerance, etc. When the platforms provide services that do not involve "investment advice" there is also an appropriateness test. Moreover, there are additional safeguards for the clients/who can invest including the relevant caps on the amount invested. There is a best execution duty where the provider has to take all sufficient steps to achieve the best available results, when deemed executing orders, in terms of costs, price, speed, etc. and should handle prompt client orders. The Prospectus Regulation requires a document to be approved by the national competent authority of the home Member State and published when securities are offered to the public or admitted to trading on a regulated market. This requirement only applies to transferable securities as defined in MiFID. Therefore, an obligation to publish a prospectus could apply to offerings of securities through crowdfunding platforms.

4.4.2 Impacts

Using well-established and tested regulatory frameworks would ensure the continuation of a coherent financial system that is tailored for both large and small firms alike. This would also reduce the risk of regulatory arbitrage as similar activities would be governed under the same rule book as well as potential inconsistencies in terms of overlapping legislation. The option would eliminate major regulatory barriers currently preventing cross-border activity by ensuring that Member States

[46] Please, see Directive 2014/65/EU, articles 9, 10, 11, 15.

have coherent definitions, interpretations and thus honour passporting rights without imposing additional requirements. This option also embeds a more stringent investor protection, which would also greatly enhance investor trust towards crowdfunding. Including crowdfunding activities into the single financial rule-book would ensure investor protection and provide more clarity as to what the level of risk that is being undertaken. It would also help ensure that these characteristics are consistent across all platforms within the EU28.

Crowdfunding is about smaller capital raising activities for new start-ups or small scale up businesses. The type of MIFID II/MIFIR obligations (organisational, disclosure, and business conduct rules) might be disproportionate. The specific compliance cost increase that would arise from a general obligation for investment-based crowdfunding operators to hold an investment firm licence are very difficult to estimate. Approximately 40% of investment-based platform operators already hold a MiFID licence at this stage[47] (either directly or via their parent firm) meaning that no additional costs would arise for these entities. For other platform operators the costs will heavily depend on the precise requirements that they already fulfil under their current regulatory status. In most cases, they will need to hold additional regulatory capital in order to comply with MiFID. This will be in the range of EUR 25,000 – 50,000, whereby the higher estimate assumes that no regulatory capital is currently held and that the requirement under MiFID will be limited to EUR 50,000 (otherwise EUR 125,000). In terms of compliance costs arising from organisational and business conduct rules it is estimated that one-off costs will range from EUR 25,000 – 50,000 with recurring costs lying in the range of EUR 12,000 – 20,000[48]. It should be noted though that these costs may be significantly lower for some nationally licensed platforms that already apply organisational and business conduct rules and therefore (almost) meet the respective MiFID requirements. The cost impact on lending-based platforms is even more difficult to estimate. For those lending-based platforms licensed under a national bespoke regime the costs appear to be in a similar range as those discussed above. The costs will depend on the precise requirements set out in the new ad-hoc legislation as well as current internal practices and rules of those platforms.

At the same time, these rules may not be fit for purpose. Crowdfunding encompasses many different business models, which might not all be addressed, and could therefore have unpredictable regulatory spillover effects. In particular, separate regimes for investment-based and lending-based crowdfunding would treat differently the provision of services that are very similar in a crowdfunding context (despite the services are applicable to intermediation of different products). As a result, this option may be unable to capture, in a proportionate way, a growing number of platforms mixing different business models, which may involve lending and investment-based dealings (so de facto putting a big constraint on the ability of the industry to keep innovating). Also, as discussed in the following section, the provision of a loan with a dispersed lending structure does look like a provision of a financial instrument.

[47] ESMA response to the Commission Consultation Document on Capital Markets Union Mid-Term Review 2017
[48] Based on MiFID II Impact Assessment and EC calculations

Table 7. Key benefits and costs, by stakeholder type – Option 3

	Investors	**Platforms**	**Firms**	**Competent authorities**
Benefits	- Lower access costs in the form of greater transparency (direct) - Greater protection against wrongdoing (direct) - Greater geographical reach allowing for more risk diversification (direct)	- Less regulatory uncertainty, which may reduce compliance costs (direct) - Lower cross-border market entry costs (direct)	- Medium cost reduction due to some cross-border level playing field (indirect) - Greater choice of funding tools (direct)	- Lower administrative costs for those member states that would need to rol back their bespoke national regime (direct) - Lower enforcement costs, as the regulatory regime is streamlined and aligned with Single Rulebook, as well a tailored to (direct)
Costs	- Less choice of funding products (indirect) - Risk of overinvestments if investors are overprotected on legal risks, but still face same market risk (indirect)	- Lower ability for platforms to adapt their business models over time (indirect) - Greater compliance costs, especially for domestic players (direct)	- Higher compliance costs to implement new disclosure requirements (direct)	None

4.5 A complementary service-based solution: a regime for 'European Crowdfunding Services Providers' (ECSPs; option 4)

This option creates a European-wide definition of crowdfunding (combining investment and lending-based crowdfunding activities under a single regime). Under ESMA's authorisation, this regime allows providers to passport the services in this scope and operate domestically and cross-border. The regime would co-exist with national ones, however the entity of a crowdfunding service provider could only hold one license at a time (i.e. either ECSP, either national, either MiFID). This would allow platforms that are not operating under 'ECSP label' to continue providing services above the EUR 1 million threshold in the domestic market. The comprehensive passport regime is coupled with no capital requirements, but MiFID-like organisational and conduct requirements. A tailored transparency regime for projects is set out under the Key Investor Information Sheet (KIIS), as for option 2.

This option would entail a stand-alone voluntary European crowdfunding regime under the label of a European Crowdfunding Services Provider (ECSP), which platforms would choose when wishing to conduct cross-border business. This would leave the tailored national crowdfunding frameworks unchanged, whilst providing an opportunity for platforms that want to scale their operations at a European level and wishing to conduct cross-border business. If a platform operator decides to provide crowdfunding services via the ECSP label, a comprehensive passport regime would be granted, so to give access to the full European market.

It should be noted that an entity holding an ECSP license would not be permitted to hold another license with the exception of a license for the provision of Payment Services (as regards PSD2). In practical terms this would mean that a platform would have choose between a European license or a national license for local activity. ECSP license holders would be permitted to provide the essential crowdfunding services, that allow for enabling and less burdensome regulatory requirements. Platforms wishing to provide services outside of those outlined below would have to comply with the existing framework for financial service providers (i.e. MiFID, AIFMD), thus ensuring a level-playing field between all financial service providers.

4.5.1 Rationale and key characteristics

The rationale of this option is that problem drivers are largely unrelated with the type of financial product or service that is actually intermediated on these platforms, but it is rather the combination of (i) crowdfunding business (services) with dispersed investor base and (ii) products with a financial return that magnify the problems discussed in section 1.2. In effect, the distinction between some financial products, whether an unsecured loan or a debt security, is arguably limited in economic terms, when it comes to financing startups or small businesses. As a consequence, the 'crowdfunding service', combining a dispersed ownership structure with a product embedding a financial return, and not 'the product' itself, would be the object of this policy intervention.

The ECP regime would determine an authorisation system, whereby platforms would be authorised once and be able to passport this authorisation (either through secondary establishment or provision of services) across the EU internal market and providing a powerful tool to overcome problem driver 1. The authorisation would check compliance with requirements in the area of governance, operations, information disclosure and conduct. This authorisation is without prejudice to the

obligation to be authorised for other activities that are outside the scope of this Regulation, such as authorisation for the provision of payment services under PSD2 legislation. The authorisation body would be ESMA, whether the instruments traded are respectively transferable securities or loan-type agreements because the scope captures the provision of investment services in any type of financial product, in line with the objective to promote sufficient supervisory convergence in the CMU. For instance, the scope does not capture platforms directly providing loans to private entities or individuals through pooling of investors' assets. ESMA would also maintain a public register with authorised platforms and the services they are authorised to perform in the EU.

Table 8. Key requirements – Option 4

Authorisation procedure	Governance & operations	Information disclosure & conduct	Harmonisation tool
• Comprehensive passporting regime under ESMA authorisation	• Conflict of interest rules • No capital requirements • Communication channel between investor & fund seeker • Rules on protection of personal data (if not captured by GDPR)[49] • Fit and properness requirements • Light record keeping • KYC due diligence (investors and fundraisers)	• Key investment information sheet (KIIS) • Ongoing information disclosure • Rule on the functioning of the platform & rules on due diligence process • Disclosure of measures to manage risks • Disclosure of aggregate information about activities on the platform	• Regulation

Rules dealing with governance and operations of crowdfunding platforms include requirements like conflict of interest policies. This policy would ensure that platforms identify and manage potential conflicts of interest, ensuring that any conflict is disclosed to the platform's clients. This option does not foresee capital requirements, as the platform operates services that do not warrant prudential treatment for minimal operational and continuity risk. This is also in line with the objective to create a regime that enables cross-border business activity, which would make this requirement fairly disproportionate considering the operational risk undertaken and risk of disruption in the market.

For what concerns conduct and information disclosure to address problem driver 1 and 2, a key feature of the regime is the Key Investment Information Sheet (KIIS), which offers a standardised template with the minimum information necessary about risk and characteristic of the instruments sold to investors (whether a share or a loan agreement, the document will adapt its content accordingly). This document could be issued without pre-approval, but only with ex post monitoring by the competent authority about its key characteristics and request to adjust (if necessary). Potential alternatives could be either to leave disclosure to voluntary action (current baseline in many member states) or to go deeper into the application of the prospectus regulation. The former does not provide any minimum guarantee that the information to investors will be sufficient to understand the risk of their investments, so not addressing the enhanced information asymmetry of the second problem driver. The latter, instead, is more invasive and would not meet the attempt of this regime to be proportionate. The regime would foresee the obligation on platforms to apply KYC rules both for investors and fundraisers. This is also in line with the requirements foreseen with AML and CCD.

The ECP regime leaves crowdfunding platforms, intermediating projects above EUR 1 million over 12 months, with the need to apply for a licence to provide the abovementioned services or additional

[49] General Data Protection Regulation (GDPR), Regulation (EU) 2016/679.

ones at national level (with no passport). The attractiveness of the national regime, whether an ad hoc regime or based on existing EU legislation (MiFID), would be preserved for market projects that are above EUR 1 million consideration and below EUR 8 million (so outside the ECP regime), in alignment with conditions set by the Prospectus regime. [50] As a result, the ECP regime would well co-exist with national ones, since the latter would still have value in providing the framework for issuances up to EUR 8 million.

4.5.2 Impacts

This policy option would determine a rather swift and sizeable reduction of market entry costs (regulatory and supervisory costs) for crowdfunding platforms operating (or intending to operate) cross-border, since they would only be authorised once and the regime is lighter and more proportionate than extending the MiFID one. The proposed regime would also allow for flexibility in capturing platform activities combining multiple business models, as it provides a single regime that applies to both investment-based and lending-based models (reducing regulatory uncertainty). The foreseen safeguards for investors may also produce a moderate regulatory license effect that would attract more investors. National competent authorities would also be affected by a lower amount of directly authorised entities at national level. Firms may benefit from greater cross-border competition among ECPs that would potentially emerge. Investors would also benefit from lower market access costs in the form of greater transparency, lower monitoring costs and greater geographical reach in diversification. Businesses, in addition, would be able to access a cheaper funding tool than traditional unsecured bank funding.

The EU regime would co-exist with current national regimes for projects up to the EUR 1 million threshold. The national regimes would retain their exclusive relevance above the EUR 1 million threshold or for platforms that provide additional services not captured by the EU regime.

Domestic platforms may also face some additional compliance if they are operating in a country with no or light bespoke regime (very limited number and mostly small member states). Firms that are raising funds on ECP platforms would most likely encounter a reduction in costs for the service and easiness of access to alternative funding tools to expensive short-term bank finance. However, they would also have to face some costs for the preparation and publication of the Key Investor Information Sheet, which stands around EUR 3 000 (plus EUR 1 600 to ensure regular updates).

[50] Regulation (EU) 2017/112.

Table 9. Key benefits and costs, by stakeholder type – Option 4 (see quantification in Annex 3)

	Investors	**Platforms**	**Firms**	**Competent authorities**
Benefits	- Lower access costs in the form of greater transparency (direct) - Moderate protection against wrongdoing (direct) - Greater geographical reach allowing for more risk diversification (direct)	- Less regulatory uncertainty, which may also reduce compliance costs (direct) - Significantly lower cross-border market entry costs (direct) - Greater ability for platforms to adapt their business models over time (indirect)	- High cost reduction due to some cross-border competition putting pressures on margins or due to increase in volumes passed on clients (direct) - Greater choice of funding tools and lower funding costs (direct)	- Lower administrative burdens because of the reduction in directly authorised entities (direct) - Lower enforcement costs, as the regulatory regime is streamlined and aligned with Single Rulebook (direct)
Costs	None	- Greater compliance costs, especially for domestic players (direct)	- Higher compliance costs to implement new disclosure requirements (direct)	- One-off and recurrent costs on ESMA to set up authorisation capability (direct) - Regulatory uncertainty in the ability to co-exist with national regimes (indirect)

5 Comparing the policy options

This section reviews the three options and assesses them against the benchmark of effectiveness and efficiency (cost effectiveness), compared with the baseline. Policy options are assessed against the baseline, unless stated otherwise.

Table 10. Key characteristics of the policy options

	Authorisation	**Governance & Operations**	**Conduct & Transparency**	**Legal tool**
Option 2	Notification only No passport NCA supervision	Best practices	KIIS	Regulation (KIIS)
Option 3	**IB =** Passport, if foreseen by existing legislation **LB =** New EU passport regime NCA supervision	Capital requirements Conflicts of interest policies	NO KIIS General fiduciary duty Ongoing disclosure Strong conduct obligations Safeguarding rules	**IB =** Amendments to MiFID II **LB =** Regulation
Option 4	Comprehensive passport regime ESMA supervision	No capital requirements Conflicts of interest policies	KIIS No general fiduciary duty Ongoing disclosure No major conduct obligations No safeguarding rules	Regulation (single regime)

Note: 'CF', 'IB','LB' and 'NCAs' stand for 'crowdfunding', 'investment-based', 'lending-based' and 'National Competent Authorities'.

The evolution of the baseline, under current market and policy dynamics, would see a worsening of the problems identified in previous chapters. Crowdfunding platforms will be even less able to scale-up cross-border and the increasing conflicts between national regimes may create loopholes for investor protection (via disclosure requirements) and the integrity of the market.

Option 2 would ensure flexibility and adaptation to new business models, but it would create uncertainty surrounding the self-regulatory enforcement mechanism and its interaction with national regimes already in place. It would not provide a passport. As a result, the option would be relatively effective in achieving objective 1 and 2b (see

Table 11 for full comparison), but with the problem of the regulatory uncertainty for platforms moving cross-border and for investors, with negative spillover on the overall investor protection framework. The transparency issue concerns with the reliance on reputational capital for what concerns conduct and organisational requirements that allow to know how the platform is governed and operated, whereas disclosure of the marketed instrument/project would be aligned to the other two options (at highest level). The option would have a neutral impact on its effectiveness towards objective 2a, as it will be left to self-regulation (negative impact) and in some countries to national regimes (positive impact). The option would be also cost effective in achieving the objectives, because it would reduce costs compared to the baseline, but at the same time improve the score on reaching objectives 1 and 2b.

Option 3 carves-in the crowdfunding regime in the Single Rulebook. Therefore, it strengthens the enforcement and investor protection framework, at the expense of flexibility for platforms and choice and lower funding costs for firms. As a consequence, option 3 performs best with strengthening integrity, due to strict governance and organisational requirements, as well as greater enforcement tools. The option performs well also in terms of transparency, but not at the highest level due to the application of the ongoing disclosure requirements foreseen under the existing Single Rulebook (based on the fiduciary duty relationship that would require the intermediary to provide some degree of ongoing disclosure about the project), rather than the tailored template (KIIS) under harmonised regimes for option 2 and 4. The option would be also more effective in enabling cross-border scale-up, because it provides for some reduction in market entry cost but with the caveat of the gold plating possibility, which constraints the possibility to be even more enabling. The efficiency of the option in achieving this objective is at best neutral, as the gold plating and the different approach to investment and lending-based platforms are achieving, in the same way than option 2, two out of three objectives, but at much higher cost.

Option 4 creates a voluntary EU label for crowdfunding provider that combines flexibility (firms choose if they want to apply for it) with proportionate investor protection and organisational rules. Platforms intending to operate cross-border may apply for the label due to significant cost reductions (see Annex 3). This option thus performs best in terms of effectiveness for two out of three specific objectives. For objective 1, it provides a common regime for investment and lending-based platforms (which provides flexibility to adapt business models), as well as a comprehensive passporting regime (which may enable active selling). The combined effect of the two would boost cross-border expansion and perhaps consolidation too. For objective 2a, the option builds similar safeguards tailored for crowdfunding platforms, but not as far as option 3 goes. For objective 2b, it offers the same level of high-quality tailored transparency that option 2 provides (KIIS), but it also offers a more harmonised enforcement mechanism under a single authority and common rules providing transparency on the operations and governance of the platform (like option 3). In terms of efficiency, option 4 is very cost effective because it achieves more than option 3 (the second best) with significantly lower costs for investment-based platforms.[51] Furthermore it preserves the existence of a variety of business models and potential for innovation that currently exists under the tailored national regimes. In addition, it enables more cross-border scale-up, as it reduces regulatory uncertainty giving clear allocation of task on supervision, which at the same time lowers administrative costs for competent authorities.

Table 11. Benchmarking policy options

Objectives / Policy option	**EFFECTIVENESS**			**EFFICIENCY**
	Enabling cross-border scale-up (objective 1)	**Strengthening platforms' integrity (objective 2a)**	**Promoting transparency for investors (objective 2b)**	**(cost-effectiveness)**

[51] For lending-based platforms, the costs would be similar as a new regime would need to be created for crowdfunding service in these products.

Option 1: No policy change	0	0	0	0
Option 2 Building on reputational capital	≈	≈	+	+
Option 3 Existing Single Rulebook	+	++	+	≈
Option 4 ECP regime	++	+	++	+

As result of the above benchmarking, option 4 is preferred over the other options. It is more effective than option 3, as a greater enabler of cross-border scale-up and transparency for investors, and option 2 in all respects, as it provides a powerful passporting regime, a tailored transparency of projects and platform processes and greater integrity with more effective organisational requirements. Option 4 is also more efficient than option 3, but as cost effective as option 2 (which imposes very minimal costs to improve the transparency framework against the baseline). Option 4 would be also coherent with the legislative framework, as it allows coexistence of established financial frameworks (like MiFID) with this regime, with a carve out in line with the parameter of EUR 1 million set in another key piece of legislation (Prospectus Regulation). The framework set out in option would minimise risks of regulatory arbitrage, while being enabler of cross-border activities in line with a solid investor protection and financial stability framework.

Finally, the design of Option 4 is also more future-proof as it integrates both investment-based and lending-based models within one regulatory framework. This provides flexibility for platforms wishing to operate hybrid models as well as allows the possibility to offer more innovative products, not limited to equity or loans. In light of recent developments within the area of *Initial Coin Offerings* that are still currently, this may ensure the possibility to include such innovations within the scope of the regime at some point in the future if deemed necessary. Focusing on service provision whilst accordingly adapting the Key Investment Information Sheet would provide a forward looking approach towards the rapidly changing market.

6 Overall impact of the preferred option

This section reviews the overall impact of the preferred option of establishing a regime for European Crowdfunding Providers (ECPs). As discussed in section 4.2, the EU regime would be based on three pillars:

1. Authorisation with comprehensive passporting regime;
2. Governance and organisational rules; and
3. Conduct and disclosure rules, including the 'Key Investor Information Sheet'.

The European passport for platform operators would allow them to pursue their core activities across Member States and seamlessly intermediate projects throughout the EU. It thereby addresses the issues of prohibitive regulatory costs currently witnessed by platform operators when attempting to enter certain EU markets, particularly those markets whereby a national bespoke regime for crowdfunding is applicable. The costs of non-Europe in crowdfunding services can be estimated at around EUR 20 to 25 billion in terms of market activity that markets can potentially generate in the medium term (see Annex 3 for more details).

Notably, this regime would reduce complexity and the interaction with investment-based crowdfunding under MiFID, by introducing a common definition of crowdfunding, and establishing common rules in terms of how platforms should handle the intermediation of security and non-security-based products (including loans). As a result, also lending-based platforms will fall under this regime. The new ECP regime will significantly lower the barriers to cross-border market entry for platform operators, investors and project owners alike. Operators would then channel EU investments and projects through few pan-European platforms, regardless of the geographical location of the users. On the one hand, this will increase the competitive pressure on platform operators with beneficial effects for both investors and fund seekers in terms of price, choice and innovation. The heightened competitive pressure will facilitate a more rapid consolidation of the sector and may lead less competitive platforms that are currently protected from cross-border competition to leave the market. On the other hand, the competitive platform operators that remain in the market will benefit in terms of increased network effects, which thus make their respective platform more attractive to potential users. Ultimately, this would generate benefits for small businesses in terms of greater access to early stage financing and flexible funding tools.

At the same time, the ECP regime avoids imposing certain obligations that arise from a general MiFID license in order to make the regime more proportionate given the types of core activities of ECPs. This includes omitting minimum capital requirements, lowering organisational requirements (e.g. no requirements placed on shareholders and members with qualifying holdings) and limiting business conduct requirements to those appropriate for operating a primary market like a crowdfunding platform (e.g. no best execution requirement and reporting, no circuit breakers etc.). In effect, crowdfunding platform operators that choose to apply for the ECP label will face lower compliance costs, not only in comparison to MiFID but also to some of the more stringent national regimes. For currently MiFID regulated firms, the ECP regime implies total potential cost savings of approximately EUR 4 – 7.75 million in terms of one-off costs[52] and EUR 27,500 – 60,500 in terms of recurring costs per year. The estimated one-off costs savings for platform operators regulated outside of MiFID

[52] Including capital requirements under MiFID

(including bespoke regimes) lie in the range of EUR 15 – 29 million with recurring cost savings of 195,000 – 240,000 per year[53].

ECPs already holding a MiFID licence are likely to face certain additional costs, if they choose the EU label but they decide not to go cross-border. If the commercial activities of an operator are covered by the ECP, a MiFID licenced firm may be granted a passport with negligible costs related to the initially notification to the NCA and ESMA of the decision to ask for the label. Operators that also engage in activities that continue to require a MiFID licence, however, may be required to establish a second legal entity in order to take advantage of the ECP. The ECP will only cover the core activities of operators meaning that other ancillary services cannot be provided, unless the entity holds a respective licence. This will normally be a MiFID licence in the area of investment-based platforms (AIFM licence is also possible depending on the business model) and a PSD2 licence for lending based platforms, needed for the provision of payment services.

The ECP regime will also benefit investors by establishing a common disclosure mechanism concerning the characteristics of respective investments and associated risks. A standardised template in form of the KIIS will enable investors to directly compare potential pay-offs and risks associated with projects across platforms and Member States. This will allow for better informed investment decisions and, in effect, increase the overall efficiency of capital allocation through CFPs. At the same time, the highly tailored nature of the KIIS transparency regime avoids placing unnecessary high costs on fund seekers and platforms, as it would be the case under more stringent requirements than those imposed by the KIID. Moreover, the ECP transparency requirements in terms of operations and governance of platforms will facilitate investors and fund seekers to compare ECP market offerings more accurately. This should give rise to increased competitive pressure in the market, thereby benefitting both user groups.

Increased cross-border competition between platforms will work to the advantage of fund seekers in particular, as they carry the majority of the costs associated with the funding process. The option will thereby help to reduce the funding costs for businesses, including SME's and micro companies who are the dominant users of ECPs. These fund seekers will benefit furthermore from the wider geographical reach of platforms, as offerings are made available to a larger group of potential investors. This may increase the level of funding achieved on the one hand, while simultaneously decreasing the time needed to reach the envisioned funding sum(s). ECPs will thereby be even more effective in helping to bridge the funding gap of SME's and micro companies, often experienced at an early stage of development.

The preferred option also holds implications in terms of costs and administrative burden on ESMA, which will be potentially reflected on the EU budget. In order to authorise ECPs, it is estimated that there will be a one-off costs of approximately EUR 500,000 in order to setup respective IT systems and arrange for a team to take charge of the authorisation process[54].

Given that the regime will only cover a limited breadth of commercial activities, however, the cost implications for ESMA will be lower than those arising from a respective MiFID authorisation with NCAs at national level. Bespoke regimes that also cover advisory activities will similarly imply higher

[53] See Annex 3 for breakdown of costs and assumptions made in the calculations
[54] Estimate based on cost estimation from ESMA and European Commission calculations

costs for NCAs. While it is difficult to provide concrete estimates as to the costs level, it can be assumed that the supervisory costs will be comparable to those associated with national regimes that only cover the activity of 'order transmission'. On this basis, and based on cost estimation provided by ESMA, it is expected that the authority will face total costs of approximately EUR 2 320 000 – 2 840 000 annually. These costs mainly arise from additional staffing needed to ensure an effective supervisory system, examination of KIIS's, and translation of documents. Meanwhile, ECPs falling under the supervision of ESMA will be required to pay an annual fee in order to offset a part of these costs. These fees will be capped at 0.5% of annual revenues of respective ECPs, in order to assure that fixed fees do not hinder smaller platforms from opting into the new regime.

The initiative may furthermore give rise to positive social externalities. Given that the ECP regime will impose common transparency and conflict of interest obligations on platform operators, investors will be better protected against fraudulent activities and misselling. Likewise, mandatory risk warnings will help to avoid that investors take on risks that are inappropriate for a respective investor's risk aversion and will facilitate greater diversification of investments. There may also be beneficial (indirect) effects in terms of job creation and innovation. SMEs currently employ 67% of the European workforce[55] and are a significant driver of innovation. At the same time, SME's continue to experience significant problems to raise funds (i.e. lack the ability to expand and invest in R&D to the extent they would ideally want to). The 2016 ECB SAFE study shows that this is a particularly pressing problem in Greece, Ireland, Italy and Portugal. In addition, the 2016 European Commission's Innobarometer survey confirms that access to funding is a key obstacle for spurring R&D and the commercialisation of innovative products or services.

Beyond this, there is a limited impact expected to arise from the initiative on third countries. After the departure of the United Kingdom from the European Union, it may be necessary to ensure that crowdfunding service provision is not abruptly interrupted, perhaps via third country rules.

No relevant environmental impacts are expected. There may however be beneficial indirect impacts, for example, where crowdfunding platforms help to fund environmental projects or new innovative green technologies. A more competitive European market will help to reduce the funding costs for such projects, as well as facilitate increased funding levels and reduced time-to-fund.

[55] Source: Eurostat

7 Monitoring and evaluation

Given the pace at which the crowdfunding market evolves, providing for a robust monitoring and evaluation mechanism is very important. The monitoring and evaluation mechanism should ensure that the envisaged network effects are realised while maintaining the necessary safeguard regarding consumer protection.

The Commission could establish a detailed programme for monitoring the outputs, results and impacts of this initiative. The monitoring programme shall set out the means by which and the intervals at which the data and other necessary evidence will be collected. It shall specify the action to be taken by the Commission, by the Member States and by the ESAs in collecting and analysing the data and other evidence.

The Commission services would monitor the effects of the retained policy option on the basis of the following non-exhaustive list of indicators:

1. Impacts on the platforms:
    a. Number of countries where platforms opt-in
    b. Yearly volume of crowdfunding in EU countries
    c. Investor base by type of investors
    d. Number and volume of projects funded cross border
    e. Cross border investments
    f. Inward and outward investment from third countries
2. Direct Costs
    a. Licensing fees
    b. Supervisory and regulatory fees
    c. Enforcement costs
3. Indirect costs/benefits
    a. Evolution of fees paid to finance projects / to invest
    b. Evolution of average ticket size

Concerning the first set of indicators, while the Commission will be in charge of monitoring the take up of the legislation according to EU law, the other indicators from 1.b to 1.f are to be collected through the help of the Member States, the ESAs and market associations such as the ECN. Concerning the second set of indicators, the involvement of supervisors is necessary. Surveys among Member States' competent authorities will be used for this purpose. However, indicator 2.b will likely need the involvement of stakeholders. Finally, concerning the last set of indicators, the ESAs, supervisors and market associations, such as the ECN, would be best placed to monitor the development of these factors.

Annex 1: Procedural information

1. Lead DG, Decide Planning/CWP references

Lead Directorate-General: Directorate-General for Financial Stability, Financial Services and Capital Markets Union (FISMA).

The initiative is included in the **Commission Work Programme 2018** as agenda planning item PLAN/2017/1676.

2. Organisation and timing

Organisation and timing of Inter Service Steering Group's meetings: three meetings on 9 March, 6 October and 10 November 2017. The Inter Service Steering Group included representatives of the Economic and Financial Affairs (ECFIN), Competition (COMP), Internal Market, Industry, Entrepreneurship and SMEs (GROW), Justice and Consumers (JUST), the European Political Strategy Center (EPSC), the Legal Service (LS) and the Secretariat General (SG).

3. Consultation of the RSB

The Regulatory Scrutiny Board (RSB) has delivered its opinion on a draft of the Impact Assessment on 15 December 2017.

4. Evidence, sources and quality

The impact assessment draws on an extensive amount of desk research, external studies, targeted consultations, interviews, focus groups, workshops and other. The material used had been gathered since the Commission Services started monitoring the market in 2013. This includes meetings with stakeholders, studies carried out on behalf of the Commission and by industry stakeholders, staff working documents, opinions and advice by the supervising authorities, as well as other studies, including academic research papers. These include, but are not limited to the following:

- Three regulatory workshops with Member States were held in December 2014, February 2016 and in November 2017, in the framework of the Expert Group of the European Securities Committee (EGESC)[56];
- Four meetings of the European Crowdfunding Stakeholder Forum (ECSF), of which the most recent was held on 17 February 2016[57];

[56] Minutes of the meetings are available at: http://ec.europa.eu/finance/securities/egesc/index_en.htm.

[57] Agendas, minutes and meeting documents are available at: http://ec.europa.eu/finance/general-policy/crowdfunding/index_en.htm#maincontentSec6.

- A study crowdfunding markets in the EU (both platforms and projects) in the period 2013-14 and analysing selected national legislative interventions on crowdfunding, including market trends before and after those interventions (published in November 2015)[58];
- In April 2016 the Financial Services Users Group (FSUG) published a study (prepared by Oxera) assessing (i) the level of awareness among the general population of potential (and actual) users of crowdfunding as a form of seeking a financial return; and (ii) among those who are aware of crowdfunding, the level of awareness of the associated risks[59];
- A study on "Crowdfunding innovative ventures in Europe - The financial ecosystem and regulatory landscape", published in February 2015. The study identified the main crowdfunding models, the market development and trends, the positioning in financing market, the potential for innovation, the success factors for campaigns, a regulatory state of play in Europe and in some third countries, and the perspectives for an evolving regulatory landscape. The study provides initial concepts for self- or co-regulation in the sector in order to spur the development of the industry, whilst enhancing consumer protection and transparency[60];
- A report by the Joint Research Centre of the Commission on "Understanding crowdfunding and its regulations", published in 2015[61];
- A study on " Assessing the potential for crowdfunding and other forms of alternative finance to support research and innovation", which is expected to deliver a more comprehensive picture of the potential for crowdfunding investors to improve access to risk finance in the EU for, in particular, SMEs and small mid-caps.
- A project that aims at identifying, analysing and publicising best practice in Europe's crowdfunding market in relation to the cultural and creative sectors.
- A Commission Guide on Crowdfunding for SMEs in 23 languages[62].
- The advice and an opinion on investment-based crowdfunding published by the European Securities and Markets Authority (ESMA) in December 2014[63];
- The opinion on lending-based crowdfunding published by the European Banking Authority in February 2015[64].
- The reports of the Cambridge Centre for Alternative Finance, Judge Business School[65].
- Study commissioned by DG FISMA on *identifying market and regulatory obstacles to cross-border development of crowdfunding in the EU*[66].

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[58] "Crowdfunding: Mapping EU markets and events study". Available at: http://ec.europa.eu/finance/general-policy/crowdfunding/index_en.htm#maincontentSec1.

[59] "Crowdfunding from an investor perspective". Available at: http://ec.europa.eu/finance/general-policy/docs/crowdfunding/160428-crowdfunding-study_en.pdfhttp://ec.europa.eu/finance/general-policy/docs/crowdfunding/160428-crowdfunding-study_en.pdf.

[60] Available at https://ec.europa.eu/digital-single-market/en/news/crowdfunding-innovative-ventures-europe-financial-ecosystem-and-regulatory-landscape-smart.

[61] Available at http://publications.jrc.ec.europa.eu/repository/bitstream/JRC92482/lbna26992enn.pdf.

[62] Available on the Europa website: http://ec.europa.eu/growth/access-to-finance/funding-policies/crowdfunding/index_en.htm.

[63] ESMA's Opinion and Advice are available at: https://www.esma.europa.eu/sites/default/files/library/2015/11/2014-1378_opinion_on_investment-based_crowdfunding.pdf and https://www.esma.europa.eu/sites/default/files/library/2015/11/2014-1560_advice_on_investment-based_crowdfunding.pdf, respectively.

[64] EBA's Opinion is available at https://www.eba.europa.eu/documents/10180/983359/EBA-Op-2015-03+(EBA+Opinion+on+lending+based+Crowdfunding).pdf.

[65] The reports are available at: https://www.jbs.cam.ac.uk/faculty-research/centres/alternative-finance/publications/

The material used to inform this impact assessment comes from reputable and well-recognised sources that act as benchmarks and reference points for the crowdfunding industry. Findings were cross-checked with results in other publications in order to ensure biases caused by outliers in the data or vested interests by the author.

[66] Once publication arrangements are finalised, the study will be published on the Commissions' webpage: https://ec.europa.eu/info/business-economy-euro/growth-and-investment/financing-investment/crowdfunding_en

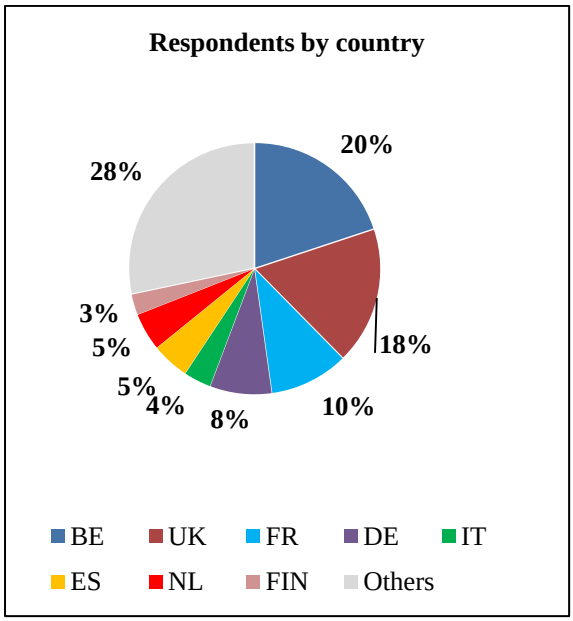
Annex 2: Stakeholder consultation – Synopsis Report

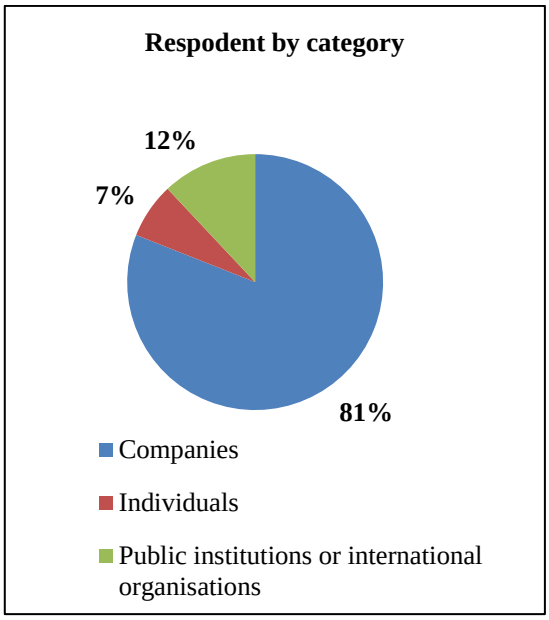
1. European Commission's public consultations

Over the last four years, the evolution of crowdfunding and peer-to-peer lending in the EU has been thoroughly monitored by the Commission services. Crowdfunding and peer-to-peer markets have been the object of four public consultations as well as of external studies. Furthermore, the Commission Services engaged in regular dialogues with European Supervisory Authorities, Member States and operators of the crowdfunding and peer-to-peer sectors, such as crowd-platform providers as well as organisations representing crowdfunding and peer-to-peer lending market operators.

1.1. 2017 FinTech consultation

In 2017, stakeholders were consulted through a public consultation[67] on *'Fintech: a more competitive and innovative European financial sector*'. The consultation remained open for 13 weeks and received feedback from 226 respondents covering individuals, industry (from a variety of market participants), national and European regulators and supervisors, users and trade unions. A summary of the contributions together with a detailed summary of individual responses to the public consultation were published as a feedback statement by the Commission services on 12 September 2017[68].





The consultation raised the following three questions on crowd and peer-to-peer finance- related activities, which aimed at assessing if stakeholders' perceptions on the potential impact of crowdfunding and peer-to-peer lending on consumer protection, collection and use of personal data and financial stability have evolved over time:

[67] European Commission, Public consultation on '*Fintech: a more competitive and innovative European financial sector',* available here

[68] European Commission, '*Summary of the contributions to the Public Consultation on Fintech: a more competitive and innovative European financial sector',* published on 12 September 2017, available here

- Text of question 1.6 – Are national regulatory regimes for crowdfunding in Europe impacting on the development of crowdfunding? In what way? What are the critical components of those regimes?
- Text of question 1.7 – How can the Commission support further development of Fintech solutions in the field of non-bank financing, i.e. peer-to-peer marketplace lending, crowdfunding, invoice and supply chain finance?
- Text of question 1.8 – What minimum level of transparency should be imposed on fund-raisers and platforms? Are self-regulatory initiatives (as promoted by some industry associations and individual platforms) sufficient?

In addition, two general questions were inquiring about existing regulatory barriers and licensing needs more globally (questions 3.3[69] and 3.4[70]).

In total, 724 responses to these questions were received, with an average of 145 responses to each question. The geographical distribution of the responses as well as the variety of responding stakeholders provided the Commission services with a comprehensive overview of the status of the crowd and peer-to-peer market in the EU. The consultation included specific questions on crowdfunding-related activities, on automated matching platforms that apply innovative technologies and their relative impact. On a total of 226 responses to the public consultation, on average, 66.4% of stakeholders responded to the specific questions on crowdfunding, peer-to-peer/marketplace lending. Around 68% of respondents to the specific questions were supportive of the fact the specific changes should be made.

The key messages emerging from the assessment of the responses to the consultation were:

1. **National regimes hinder the development of the crowdfunding / peer-to-peer lending markets at the EU level** - More than half of the respondents considered that current national regulatory regimes for crowdfunding / peer-to-peer lending in Europe have a direct impact on the development of these markets and on the sector's development. This belief was shared across by all types of respondents (private individuals, private organisations, public authorities and international organisations).
2. **EU regulatory intervention needed to harmonise the regulatory framework, counter market fragmentation, preserve financial stability, ensure a level-playing field and limit regulatory arbitrage** - Almost half of the respondents believed that national regulatory regimes hindered cross-border crowdfunding / peer-to-peer lending activity and that harmonisation at the EU level was required in particular to counter the fragmentation of the EU market mainly attributable to divergences in the regimes adopted by different Member States.
3. **National regimes limit competition -** Some stakeholders argued that hindering cross-border activity by juxtaposing national regulations impeded real competition, and made it difficult for platforms to scale up and reach the necessary size to be profitable in the longer term.
4. **EU regulatory intervention needed to reduce lack of trust and information asymmetry** - For some stakeholders, a EU regulatory intervention is needed mitigate the lack of trust and information asymmetry (e.g. investors need to better understand the level of risk that they incur into when using foreign platforms). In the same vein, stakeholders emphasised that higher degrees of transparency

[69] Text of question 3.3 - *What are the existing regulatory barriers that prevent FinTech firms from scaling up and providing services across Europe? What licensing requirements, if any, are subject to divergence across Member States and what are the consequences? Please provide details.*

[70] Text of question 3.4 - *Should the EU introduce new licensing categories for FinTech activities with harmonised and proportionate regulatory and supervisory requirements, including passporting of such activities across the EU Single Market? If yes, please specify in which specific areas you think this should happen and what role the ESAs should play in this. For instance, should the ESAs play a role in pan-EU registration and supervision of FinTech firms?*

could help reducing financial integrity risks. In crowdfunding / peer-to-peer lending platforms, different types of risks are likely to appear: insolvency of the platform operators, misappropriation of client funds or assets, conflict or misalignment of interest, security of client data, etc.

What clearly emerged from the assessment of the responses was that a legislative intervention is considered necessary first to reduce market fragmentation and to remove obstacles to cross-border expansion. 73% of respondents replied positively to the fact that a EU intervention would be also needed to harmonise the existing definitions of crowdfunding / peer-to-peer lending at the EU level, to reduce divergent national licensing requirements as well as to diminish uncertainty in the application of current national bespoke regimes preventing the scaling up of crowdfunding / peer-to-peer lending activities at EU level.

1.2. Feedback on the inception impact assessment

A public consultation on the Inception Impact Assessment was launched on the 30 October 2017 and closed on the 27 November 2017, in which stakeholders were asked to provide views concerning the context, problem definition, objectives and policy options of possible EU action. The Commission Services received 41 feedbacks from individuals, companies, public organisations and governments coming from 16 Member States. The feedback focused predominantly on the four policy options and can be summarised as follows:

1) Respondents generally welcomed the initiative and agreed on the need for EU action, stressing that further development of the crowdfunding market to be capped under the laws in force. No respondent supported option 1 (status quo).

2) Three respondents (two competitors and a crowdfunding industry association) expressed their preference towards option 2, arguing that the industry is still young, and it should be given the possibility to freely develop in an enabling regulatory environment: therefore a light touch approach would be preferable.

3) Eleven respondents (four competitors, two consumer protection associations, one platform, one SME organisation, one academic institution and a Member State Ministry) argued that option 3 would be desirable, as it strikes an optimal balance between securing reliability and trust among investors and creating a level playing field: especially the latter was indicated as a vital issue for allowing crowdfunding platforms to effectively compete with other funding providers and raise the crowdfunding market volume. Such a level playing field could be only achieved, according to these respondents, by directly intervening on the national legislations, so to eliminate those inconsistencies in the implementation of the EU legislation preventing the cross-border scale-up of operations.

4) Eight respondents (four crowdfunding platforms, two SME organisation, a competitor and a EU citizen) suggested the European Commission to go ahead with option 4, for two main reasons: on one hand this option would allow platforms that are not willing to scale up their operations to continue operating under the national regulations those are already compliant with, whilst platforms eager to go cross border could do so by opting in the EU regime. On the other hand, being this a standing-alone regime, there would be no gold-platting risk, hence its consistent application would be granted.

5) Ten respondents (seven from crowdfunding industry, one business association, one SME organisation and one EU citizen) declared to appreciate both options 3 and 4. One of them found option 4 to be a fall back of option 3, to be chosen if the latter takes too long to be enforced of if proves impossible to implement, and this view was also shared by one more respondent, who found option 4 would provide for a balanced

framework in case option 3 was not chosen. Another respondent found that option 3 is the best choice in a long term period, but that option 4 is the most viable in the short term.

6) Three crowdfunding industry organisations proposed a tailored option, in between options 3 and 4, proposing a harmonisation of national regimes such to grant a level playing field and, at the same time, such to prevent Member States from goldplating in the implementation phase.

The Commission Services also discussed the inception impact assessment with the Expert Group of the European Securities Committee on 10 November 2017. Most of the Member States recognised the need for regulatory intervention at EU level to address the cross-border issues that platforms face. While some Member States considered that a choice between options 3 and 4 would depend on further clarifications and the exact requirements that are set out under each, some other Member States expressed a preference for harmonisation of national regimes (option 3). Two Member States were sceptical about the usefulness of EU legislation in this field. Three Member States also suggested that it might be useful to consider action on Initial Coin Offerings.

1.3. Previous public consultations

In addition to the recent Fintech and the Inception Impact Assessment public consultations, the Commission services collected stakeholder views through three previous consultations:

- a public consultation on the '*Capital Markets Union mid-term review*' (2017) to which many of the respondents argued in favour of the development of a proper legal framework for crowdfunding / peer-to-peer lending across the EU. In particular, developing a pan-European harmonised disclosure regime for crowdfunding / peer-to-peer lending amounts that are below the exemption thresholds of the recently agreed Prospectus Regulation was also described as essential by some national regulators. In addition, respondents sated that the application of FinTech innovations must ensure appropriate investor and consumer confidence and protection
- a public consultation on '*Building a Capital Markets Union*[71]*'* (2015)*,* whose main aim was to consult all interested parties on the Commission's overall approach to improving access to financing for all businesses across the EU, increasing and diversifying the sources of funding and making the markets work more effectively. From the assessment of the responses to question 9[72], it emerged that the development of the crowdfunding market has been quite different across the EU across. Some Member States have taken legislative measures to enhance the potential of crowdfunding / peer-to-peer lending; while these national approaches might encourage crowdfunding / peer-to-peer lending activity locally, but may not be necessarily compatible with each other in a cross-border context. Furthermore, respondents to the CMU Green Paper consultation identified a number of barriers to the development of appropriately regulated crowdfunding / peer-to-peer lending platforms: regulatory barriers, poor availability and quality of information, and other barriers such as a lack of secondary markets and taxation barriers. Some respondents considered that EU intervention would facilitate cross-border transactions at lower costs

[71] The European Commission, *Green Paper on Building a Capital Markets Union,* COM(2015) 63 final, {SWD(2015) 13 final}, 18.02.2015, available here

[72] Text of question 9 - *Are there barriers to the development of appropriately regulated crowdfunding or peer to peer platforms including on a cross border basis? If so, how should they be addressed?*

- a public consultation on *'Crowdfunding in the EU – exploring the added value of potential EU action*[73]' (2013), which received 893 responses and whose aim was to explore how EU action could promote crowdfunding / peer-to-peer lending in the EU. Also in this case, from the assessment of the responses to the consultation, it emerged that most stakeholders considered desirable higher level of harmonisation across the EU and, in this regard, a EU legislative action was supported by most stakeholders

2. Further targeted consultations

The Commission Services also consulted through workshops, bilateral meetings and other means with the European Supervisory Authorities, National competent authorities, Member States, trade bodies and their members as well as consumer groups. Three regulatory workshops on crowdfunding / peer-to-peer lending with Member States were held in December 2014, February 2016 and in November 2017, in the framework of the Expert Group of the European Securities Committee (EGESC).[74] Experts pointed to a number of issues that could be addressed in order to avoid legal barriers and promote crowdfunding / peer-to-peer lending activity in the EU, such as information sharing, data gathering, establishing a common taxonomy, supporting passporting, and more convergent information disclosure requirements for securities issues below the prospectus threshold.

The Commission has also set up a European Crowdfunding Stakeholder Forum (ECSF) in 2015 as the expert group of representatives of associations of concerned stakeholder groups and national authorities. Workshop was held on cross-border crowdfunding in June 2017 on the study "Identifying market and regulatory obstacles to the cross-border development of crowdfunding in the EU". Finally, the Commission engaged in a series of bilateral calls and discussions with platforms that engage in cross-border activity to discuss the issues they are facing. It was clearly identified that even platforms with a MiFID passport have difficulties in expanding operations across borders.

3.Overview by stakeholder groups from the consultations

Following the open public consultations, targeted discussions, and the inception impact assessment, stakeholders are generally supportive of an EU initiative:

- Member States tend to support EU regulation in this area and some suggested we should propose a harmonisation of national regimes, as long as the rules are proportionate.
- Industry: Platforms generally considered that the fragmentation of national crowdfunding regulation significantly increased the time and cost for expanding abroad and that this either reduces

[73] The European Commission, *Consultation document on crowdfunding in the EU – Exploring the added value of potential EU action,* 03.10.2013, available here

[74] Minutes of both meetings (held on 18 December 2014 and 10 February 2016, respectively) are available at: http://ec.europa.eu/finance/securities/egesc/index_en.htm.

significantly cross-border ambitions or discourages to engage with it in the first place. Enabling regulation at the EU level should help remove barriers in some Member States that currently prevent or render severely more complicated the development of platforms on a cross border basis, but again as long as the rules are proportionate.

- Investors: concerns about the reliability of the investment and the lack of regulation of platforms are the two most important reasons not to invest for both forms of crowdfunding.
- SMEs would welcome a regime that would provide for more alternative finance opportunities; trust in platforms for fund raisers is as important as for investors.
- Supervisors (ESMA, EBA) underline that the risks in the sector need to be adequately addressed.

4. European Commission's publications

The Commission published a Staff Working Document "*Crowdfunding in the EU Capital Markets Union*[75]" in 2016. The Staff Working Document assesses national regimes, identifying best practice, and presents the results of the Commission's monitoring of the evolution of the crowdfunding / peer-to-peer lending sectors. The report demonstrated that that crowdfunding / peer-to-peer lending remain relatively small in the EU but is developing rapidly. It has the potential to be a key source of financing for SMEs over the long term.

5. External studies

The Commission Services commissioned a number of studies aimed at improving the general knowledge, collecting data and evidence on the developments in crowdfunding / peer-to-peer lending markets, business models and regulatory frameworks. In this respect, the following four studies provided the Commission Services with additional element in support to the development of an impact assessment:

- In November 2017, a study from the European Crowdfunding Network and Osborne Clarke "*Identifying market and regulatory obstacles to the cross-border development of crowdfunding in the EU*", providing an assessment of the potential for development of cross-border crowdfunding / peer-to-peer lending business and illustrating the market and regulatory barriers that platforms currently face when attempting to transact across borders. It also illustrates the ways in which platforms are currently attempting to overcome these barriers and that this involves very high transaction costs. Furthermore, it provides an analysis of the disclosures and safeguards currently mandated at national level, recommended by industry code of conduct as well as voluntarily applied by the platforms themselves. Finally, it provides an analysis of 6 main European markets for crowdfunding and an overview of all EU markets.
- In January 2017, a study (prepared by EY, Open Evidence, Politecnico di Milano and European Crowdfunding Network) assessing whether alternative finance has the potential to help finance for innovative companies to support research and innovation[76].
- In April 2016, the Financial Services Users Group (FSUG) published a study (prepared by Oxera) assessing (i) the level of awareness among the general population of potential (and actual) users of crowdfunding /

[75] The European Commission, *Crowdfunding in the EU capital markets union,* CWD(2016) 154 final

[76] Assessing the potential for crowdfunding and other forms of alternative finance to support research and innovation". Available at: https://publications.europa.eu/en/publication-detail/-/publication/3190dbeb-316e-11e7-9412-01aa75ed71a1

peer-to-peer lending as forms of seeking a financial return; and (ii) among those who are aware of crowdfunding / peer-to-peer lending, the level of awareness of the associated risks[77].

- In November 2015, a study (prepared by Crowdsurfer and EY) mapping crowdfunding markets in the EU (both platforms and projects) in the period 2013-14 and analysing selected national legislative interventions on crowdfunding, including market trends before and after those interventions.[78]

6. Other EU institutions and authorities' work on crowdfunding / peer-to-peer lending

The European Commission has also benefitted from the work done by the European Supervisory Authorities (ESAs), which have also carried out work on crowdfunding / peer-to-peer lending. In particular, the ESAs published:

- An opinion[79] and an advice[80] issued by the European Securities and Markets Authority (ESMA) on *investment-based crowdfunding.* In its considerations, ESMA highlighted that significant risks potentially affecting crowdfunding / peer-to-peer lending are not currently addressed at the EU level. In this respect, ESMA concluded that the development of a EU-level regime for crowdfunding / peer-to-peer lending could be considered[81]
- An opinion issued by the European Banking Authority (EBA) on *lending-based crowdfunding*[82]. EBA started its analysis of lending-based crowdfunding in autumn 2013, with a view to determine the potential risks to participants in this markets (i.e. lenders, borrowers and platform providers); the driver of these risks and to assess the extent to which regulation would be required to ensure that market participants can have confidence in this market innovation. The EBA concluded that '*the convergence of practices across the EU for the supervision of crowdfunding is desirable to avoid regulatory arbitrage, create level-playing field, ensure that market participants can have confidence in this market innovation, and contribute to the single European market*'[83].

[77] Crowdfunding from an investor perspective". Available at: http://ec.europa.eu/finance/general-policy/docs/crowdfunding/160428-crowdfunding-study_en.pdf

[78] Crowdfunding: mapping EU markets and events study. Available at: https://ec.europa.eu/info/sites/info/files/crowdfunding-study-30092015_en.pdf

[79] https://www.esma.europa.eu/sites/default/files/library/2015/11/2014-1378_opinion_on_investment-based_crowdfunding.pdf

[80] https://www.esma.europa.eu/sites/default/files/library/2015/11/2014-1560_advice_on_investment-based_crowdfunding.pdf

[81] https://www.esma.europa.eu/sites/default/files/library/2015/11/2014-1560_advice_on_investment-based_crowdfunding.pdf , p.5 point 9

[82] ESMA's Opinion and Advice are available at: https://www.esma.europa.eu/sites/default/files/library/2015/11/2014-1378_opinion_on_investment-based_crowdfunding.pdf and https://www.esma.europa.eu/sites/default/files/library/2015/11/2014-1560_advice_on_investment-based_crowdfunding.pdf , respectively; EBA's Opinion is available at https://www.eba.europa.eu/documents/10180/983359/EBA-Op-2015-03+(EBA+Opinion+on+lending+based+Crowdfunding).pdf .

[83] https://www.esma.europa.eu/sites/default/files/library/2015/11/2014-1560_advice_on_investment-based_crowdfunding.pdf , p.2, points 8 and 9

Annex 3: Who is affected and how?

Practical implications of the initiative

There will be no direct implications for enterprises falling under the scope of the initiative due to the element of optionality. The regime will provide an opportunity to adopt an optional label if found needed for cross-border expansion into the Single Market. However if platforms wish to remain under their current regime, this initiative will not have any direct implications on them. Indirectly, these platforms may become subject to higher levels of competition from other platforms within the Single Market that will adopt this label and thus freely expand across borders.

For platforms that choose to adopt the European label, this initiative will provide a legal framework for them to freely provide their services across European borders. The regulatory requirements under this framework will be less costly then under MiFID. However, they may, depending on the home country, be more restrictive and demanding than the national regime. This will however still be beneficial as platforms will be able to operate under legal certainty throughout the EU, something which was previously unavailable, required costly legal consultations and in some cases, changes in the core business model that prevented scalability. One advantage however, will be the fact that a platform will have to give up its' national license if it chose to operate under the EU regime in order to ensure that requirements under the two licenses do not clash and that the platform can enjoy full passportability.

Investors will first of all enjoy the benefits of a clear pan-European framework that will provide for certainty when investing on crowdfunding platforms in different Member States. A coherent and commonly recognised EU label will decrease their search costs when selecting platforms and reduce misinterpretations of the terms and conditions applicable to an investment. Saved time will potentially be used for better evaluation of particular investments and thus may result in better returns. Furthermore, this will provide investors with advanced sectoral and geographical diversification opportunities for their investments, thus decreasing risk exposure.

Local administrations that frequently interact with platforms attempting to enter their home market place will save time and resources. As the European label will be authorised by a central European authority, there will be limited opportunities for arbitrage and risk of loose interpretation by other jurisdictions that the host country would have to prevent. This will also to some extent reduce the administrative burden and increase efficiency as platforms will not have to set up a different platform in each Member State they wish to operate in.

The proposal will also have practical implications for the European Securities Markets Authority (ESMA). Holding the authorisation and supervisory powers, ESMA will likely have to hire additional staff (2-3 individuals) that would carry out the functions foreseen in Option 4 and would thus result in additional costs for the Authority. This would however ensure consistent interpretation of rules and business models.

Summary of costs and benefits

I. Overview of Benefits (total for all provisions) – Preferred Option			
Description	*Type of entity*	*Amount*	*Comments*
Direct benefits			
Compliance cost reductions	MiFID licensed platforms	As the Regulation does not foresee any minimum capital requirements for ECPs, there would be a reduction of minimum capital of EUR 50,000 – 125,000 per firm (depending on the type of MiFID license). This would bring about a total potential one-off cost reduction of EUR 550 000 –1 375 000. This figure is based on the assumption that all currently MiFID authorised ECPs who hold a licence only for 'order transmission' and 'placing without firm commitment' (11 firms currently[84]) would apply for the ECP licence and drop out of MiFID. It is furthermore estimated these MiFID licensed platform operators could save EUR 2 500 – 5 500 on recurring compliance costs (business conduct & operational requirements). Assuming again that all 11 MiFID licenced ECPs that engage only in 'order transmission' and 'placing without firm commitment' would opt into the new regime, this would imply a cost reduction of EUR 27 500 – 60 500 across the industry per year. In addition, all MiFID licenced ECPs (42 in total including platforms that act as tied agents of MiFID firms) would save authorisation fees and compliance costs when entering markets that currently have a bespoke national crowdfunding regime in place. The total one-off compliance costs to access markets with national regimes are estimated to lie in the range of EUR 17 750 – 34 000.[85] This	The costs saving estimates with regard to the national bespoke regimes assume that MiFID regulated platforms would offer services in half of the Member States that currently require additional authorisation (9 Member States)[86] i.e. the 42 MiFID licenced ECPs would save EUR 17,750 – 34,000 times 4.5. This cost saving figure is strongly dependent on the assumption regarding ECPs planned cross-border expansion. It should also be noted that the costs arising from entering national regimes will vary strongly across Member States and that there is a lack of accurate cost data in general. The figure represented here is based on a survey which only produced broadly reliable figures for ES, FR and the UK.

[84] Source: ESMA Crowdfunding survey and input from targeted consultation
[85] Average based on ECENTRCOLLAB survey

		assumption implies a (one-off) cost saving in the range of EUR 3 354 750 and EUR 6 426 000 across the industry.	
	Other platforms	Platforms would save authorisation fees and compliance costs when entering markets that currently have a bespoke crowdfunding regime in place. The total one-off costs under national regimes are estimated to lie in the range of EUR 17 750 – 34 000[87]. Assuming that respective operators are regulated under one existing bespoke regime already, this would imply total potential cost savings of EUR 13 490 000 – 25 840 000 based the current number of platforms regulated outside of MiFID (190) and assuming that they would offer services in half of the other Member States with a bespoke regime (9 in total but already holding authorisation in one of them). In addition, equity based platform operators regulated outside of MiFID (60 in total) would save the costs of acquiring a MiFID licence which they would currently need to hold in order to access Member States that do not have a bespoke regime in place. This would bring costs savings of: EUR 1 500 000 – 3 000 000 (capital requirements) EUR 195 000 – 240 000 (recurring cost saving annually compared to estimated costs under MiFID)	The costs savings in relation to MiFID only apply to investment-based platforms that currently do not hold a MiFID licence (60). It is assumed that half of these firms would decide to also hold a MiFID license in order to access Member States applying MiFID to investment-based crowdfunding. The saving potentials do not account for other costs such as cost of establishment, legal costs or other technical assistance.
Lower	SMEs	SMEs would benefit in terms of reduced funding costs compared to other forms	Funding costs are the result of both market (macro) interactions

[86] This will depend on the business model of the platform operator, the instruments on the platform as well as the national regulatory and supervisory approach. Given the current setup of national bespoke regimes, it is assumed that platform operators holding a MiFID licence may potentially face problems concerning recognition of their MiFID passport in 9 Member States (AT, BE, ES, FR, IT, DE, PT, FI, LT)

[87] Average based on ECENTRCOLLAB survey and input from targeted consultation

funding costs for SMEs		of financing currently used. It is estimated that financing via crowdfunding platforms can reduce funding costs of SME's significantly. Average fees for equity crowdfunding issuance range between 5% and 7%, compared to interest rates on bank overdrafts and short-term unsecured bank lending (which are key financing tools for SMEs).[88]	and bilateral contractual relationships. They are also idiosyncratic, as depending on the individual risk of the firm. As a result, it is not possible to make a total estimate of the benefits (in terms of funding costs) that will trickle down to businesses.
Indirect benefits			
Portfolio diversification	Investors	A small fraction of EUR 720 billion.	Crowdfunding platforms would enable alternative finance as an alternative investment vehicle for European investors who sit on a large stock of cash that could be allocated in other ways (EUR 720 billion).[89]
Network effects (scaling up effect)	Platforms	Between EUR 20 and 25 billion	Platforms would be able to expand within the single market and enjoy the network effects, as described in section 1.1.1.2. When using the size relative to GDP of the crowdfunding market in the US (which has a more mature crowdfunding market) as a measure of potential network effects in a Single Market, the crowdfunding cost of non-Europe can be estimated as much as EUR 29 billion (i.e. the difference between the crowdfunding market size today and what it could have been if the market was developed cross-border like the US).

[88] See SAFE survey available at https://ec.europa.eu/docsroom/documents/26641.
[89] This estimate suggested by the

II. Overview of costs (per entity) – Preferred option									
		Consumers -Investors		Businesses				Administrations[90]	
		One-off	Recurrent	One-off		Recurrent		One-off	Recurrent
		-	-	Investment-based	Lending-based	Investment-based	Lending-based		
Authorisation	Direct costs	-	-	EUR 5, 000 – 10 000 per license[91] Does not apply to already MiFID authorised firms. This implies that total cost on industry would be in the range of EUR 300 000 – 600 000[92] (if all platforms are assumed to opt-into the ECP regime)	EUR 5, 000 – 10 000 per license fee Total costs on industry would be in the range of EUR 650 000 – 1 300 000[93] (if all platforms are assumed to opt-into the ECP regime)	EUR 1 000-2 500 Estimate to account for potential updates to authorisation and/or requests from the regulator (infrequent i.e. estimated annual average)	EUR 1 000 - 2 500 Estimate to account for potential updates to authorisation and/or requests from the regulator (infrequent i.e. estimated annual average)	EUR 500 000[94] These costs will be mainly arise from the necessary IT changes in order to set up an authorisation as well as supervisory system. These fixed costs are expected to arise over a one year preparatory phase and 1st year of full implementation of the new regime.	EUR 520 000 – 650 000 [95] This assumes that ESMA would need 4-5 FTE in order to deal with authorisation requests

[90] The recurrent administrative costs represented in this table reflect costs estimates once the Regulation is fully implemented in 2020

[91] Estimate based on average direct authorisation costs in Member States under bespoke regimes (EUR 4,900 for investment-based; EUR 5,200 for lending-based - Source: ECENTRCOLLAB survey, costs only available for AT, NL, FR, MT,NL and UK) and MiFID authorisation costs for 'moderately complex firms' (estimated in the range of EUR 5,500 - 15,000)

[92] Based on ESMA figures on number of platforms already MiFID regulated (33 of a total 99 platforms)

[93] Based on ESMA figures and ECN volumes we estimate that there are currently a total of 130 lending-based platforms

[94] Estimate based on cost estimated provided by ESMA and DG FISMA estimations

[95] Based on salary calculations provided by ESMA and DG FISMA estimations

	Indirect costs	-	-	EUR 10 000 – 25 000[96]	EUR 10 000 – 25 000[97]	N/A		N/A	
Organisational rules (governance & operation)	Direct costs	-	-	EUR 5 000 – 25 000 Magnitude will heavily depend on current organisational setup of the platform operator and required changes needed. The estimates cover the costs to meet requirements as regards: - Communication channel between investor & fund seeker - Protection of personal data - Fit and properness - Record keeping - KYC due diligence The costs mainly arise from changes needed to the IT systems. Does not apply to already MiFID compliant firms.	EUR 7 500 – 30 000[98] Magnitude will heavily depend on current organisational setup of the platform operator and required changes needed. The estimates cover the costs to meet requirements as regards: - Communication channel between investor & fund seeker - Protection of personal data - Fit and properness - Record keeping - KYC due diligence The costs mainly arise from changes needed to the IT systems.	EUR 7 500 – 10 000[99] These recurrent costs relate mainly to maintaining the IT systems and storage of data	EUR 7 500 – 10 000 These recurrent costs relate to maintaining the IT systems and storage of data	EUR 7 500 – 10 000 These recurrent costs relate to maintaining the IT systems and storage of data	EUR 390 000 - 520 000[100] This assumes that ESMA would need 2-3 FTE in order supervise and monitor for compliance with organisational and conduct rules
	Indirect costs	-	-	-	-	-		-	-

[96] Estimate based on assumption that one person working full-time will spend 1 -3 months on the preparation of the authorisation (at EUR 75,000 annual salary) plus other additional costs such as technical and legal assistance, meeting potential national audit requirements etc.

[97] Same assumptions as for investment-based platforms

[98] Lending-based platforms are estimated to have EUR 2,500 – 5,000 higher one-off costs to account for less stringent conduct rules for lending based platforms currently in place

[99] Based on one-off costs for meeting organisational requirements in MiFID IA, assuming that costs would be lower given more proportionate / less stringent requirements in ECP regime

[100] Based on salary calculations provided by ESMA and DG FISMA estimations

Conduct rules		-	-	EUR 1 500 – 4 000[101] Will depend on exact requirements and current business conduct procedures of operator. Does not apply to already MiFID compliant firms	EUR 2 500 – 6 000[102] Will depend on exact requirements and current business conduct procedures of operator.	EUR 1 000 – 2 000	EUR 1 000 – 2 000	EUR 390 000 - 520 000[103] This assumes that ESMA would need 2-3 FTE in order supervise and monitor for compliance with organisational and conduct rules	
KIIS	Direct costs	-	-	The estimated one-off administrative burden of a KIIS are[104], given the online technology and the foreseen regulatory regime, EUR 3 000 of which EUR 1 000 regulatory cost.		Ongoing estimated costs of a KIIS (for updating documents) are EUR 1 600 (EUR 1 000 for preparation and dissemination and EUR 600 for regulatory costs).		-	EUR 520 000 – 650 000[105] This assumes that ESMA would need 4-5 FTE in order check new KIIS[106]
	Indirect costs	-	-	-		-		-	-
Additional Costs						Supervisory fees EUR 10 000 [107]			Translation for authorisation and communication with ECPs EUR 350 000 Mission expenses and other operational costs EUR 100 000 Recurrent IT costs EUR 50 000
TOTAL COSTS						**EUR 19 500 - 24 500[108]**	**EUR 19 500 – 24 500 [109]** Plus EUR 1 600 per updated KIIS (i.e. depends on number	**EUR 500 000**	**EUR 2 320 000 – 2 840 000**

[101] Based on one-off cost estimate for previously MiFID exempt firms under Art. 3 and assuming that costs would be lower given more proportionate / less stringent requirements in ECP regime

[102] Same assumptions as for investment-based but adding a further EUR 1 000 – 2 000 to account for less stringent conduct rules for lending based platforms under national regimes / consumer credit licenses (as platforms are only seen as credit intermediaries, requirements are generally less stringent)

[103] Based on salary calculations provided by ESMA and DG FISMA estimations

[104] The estimated cost is extrapolated from the estimated burden as stated in SWD(2012) 187 "Key information documents for investment products" Final (p95).

[105] Based on salary calculations for FTE in the ESA Review Impact Assessment

[106] This figure assumes that there will be approximately 12,000 projects annually with half an hour spent on each KIIS and 200 working days per year, leaving spare capacity for future increase in the number of projects

[107] It is foreseen that supervisory fees will be capped at 0.5% of revenues of respectively supervised ECPs. Assuming an average revenue of EUR 2 000 000 this would imply supervisory fees of 10 000

[108] Depending on revenue of the respective ECP and supervisory fees incurred

(per firm)						Plus EUR 1 600 per updated KIIS (i.e. depends on number of KIIS to be updated as well as possible costs division between platform and fundraiser)	of KIIS to be updated as well as possible costs division between platform and fundraiser)		

[109] Depending on revenue of the respective ECP and supervisory fees incurred

Annex 4: Overview of Crowdfunding regulatory Frameworks [110] in a selection of EU Member States

	Austria	Belgium	Spain	France	UK	Italy	Germany	Portugal	Finland	Lithuania
Bespoke regime	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Scope	Shares, bonds, business shares in limited companies and cooperatives, participation rights, silent partnerships and subordinated	Securities and lending (to businesses) In Belgian law terms: "Investment instruments issued by companies or by investment vehicles ("one-to-one" vehicles)"	Securities and lending	Bespoke regime: ordinary shares and plain vanilla fixed rate bonds.	Securities and lending	Equity	Profit-participating loans, subordinated loans, or other investment products (which grant the right to interest and repayment, or in exchange for the temporary provision of funds, grant a claim for cash settlement).	Financial Instruments granting rights to share capital, a share in dividends or a stake in profit, lending, reward and donation	Securities and lending (to businesses)	Securities and lending (to businesses)
Entry into force	1 September 2015	1 February 2017	29 April 2015	1 October 2014	1 April 2014	17 December 2012 (Law) and 26 June 2013 (Consob Regulation).	10 July 2015	Crowdfunding law: 24 August 2015. Will enter into force when CMVM issues relevant regulatory rulings.	1 September, 2016	1 December, 2016

[110] It should be noted that the collected material reflects a simplified summary of the applicable regime as self-reported by the Member States or interpreted through translations of dedicated regulation within the Member State.

Passport[111]	Yes if MiFID platforms (for transferable securities)	BE Entities that get authorized under the bespoke regime do not benefit from the EU passport. Platforms that are authorized in the EEA can apply for the BE bespoke regime MiFID firms (BE or EEA) can by right manage a crowdfunding platform as defined in the bespoke regime	No (because platforms do not provide MiFID services)	Yes if MiFID platforms No for platforms registered under exemption (Art.3 MiFID)	Yes if MiFID platforms (for transferable securities)	Yes if MiFID platforms No for platforms registered under exemption (Art.3 MiFID)	Yes if MiFID platforms (for transferable securities)	No. Bespoke regime not adopted under exemption of Art. 3 MiFID except for tied agents. Platforms are therefore not authorized to provide MiFID services unless the platforms are managed by a financial intermediary. Bespoke regime has specific requirements also for the latter.	Yes if MiFID platforms No for platforms registered under exemption (Art.3 MiFID)	Yes if MiFID platforms No for platforms registered under exemption (Art.3 MiFID)

[111] The table may not reflect practical nuances and different interpretations by national authorities when certain business models are deemed to fall outside the scope of certain legislation or fall within the scope of other.

Authorisation	Authorisation for business investment consulting according to section 136a of Austrian Trading Act. Or Authorisation for Investment Services Undertakings according to section 4 (1) of the Securities Supervisory Act.	Authorisation and registration by the FSMA	Authorisation and registration by the National Securities Market Commission (CNMV).	For MiFID and non-MIFID platforms: authorisation by AMF.	Authorisation by FCA. MiFID authorisation but firms will also need to consider whether they are performing other activities set out in the Regulated Activities Order.	Authorisation by Consob (banks and authorised investment companies do not need authorisation but must be enrolled in the Register of platforms)	Platform must be an investment service enterprise providing investment advice or investment brokerage services (MIFID) pursuant to Section 32 of the Banking Act (Kreditwesengesetz) or must obtain an authorization pursuant to Section 34f of the Trade, Commerce and Industry Regulation Act (Gewerbeordnung – GewO) from the competent authorities of the federal states (Länder), usually the trade office (Gewerbeamt). .	Authorisation by the CMVM	Registration with the Financial Supervisory Authority. Does not apply if registered in another EEA state and operations in Finland are only temporary.	Registration with the Bank of Lithuania.
Minimum capital requirements	For business investment consulting: none. For MiFID platforms: Depending on the MiFID investment services and activities	Professional liability insurance of at least €750,000 per claim and insurance year; this amount increases to €1.25 million when investment advice is given or when instruments are issued by an investment vehicle	Initial: € 60,000 (share capital), or a professional liability insurance or a combination of both. If funds that are raised exceed €2 million, minimum equity will amount to €120,000 (and increase in proportion to the funds raised, up to €2 million).	None for non-MiFID platforms. For MiFID platforms: Depending on the MiFID investment services and activities.	CRD IV minimum capital requirements. The minimum requirement is own funds of €50,000.	None	For MIFID platforms: Depending on the MiFID investment services and activities. For platforms with a commercial license: professional liability insurance.	€50,000 or liability insurance up to such amount.	€50,000 or appropriate professional liability insurance policy, bank guarantee or other corresponding collateral.	€40,000 or professional liability insurance (not less than €100,000 for a single liability claim and €500,000 in total); capital requirements to be re-calculated at the end of each year and must equal 0.2% of the amount of loans that have yet to be repaid.

Services provided	N/A	"Alternative funding service", which is defined as the "commercialization, through electronic means, of investment instruments issued by entrepreneurs or investment vehicles", and is not a MiFID-service Platforms can also provide investment advice or RTO (MiFID Art. 3 exemption)	Reception, selection and publication of projects; Development, establishment and exploitation of communication channels to facilitate the fundraising between investors and promoters. Ancillary services.	Investment advice	MiFID services (mostly "reception and transmission of orders").	Reception and transmission of orders	Investment advice or reception and transmission of orders	N/A	Reception and transmission of orders and investment advice.	N/A
Financial instruments	To benefit from the prospectus exemption, instruments must be: "alternative financial instruments" (shares, equity shares, bonds, shares in cooperative, participation rights, silent partnerships and subordinated loans) issued by SMEs (as defined by Recommendation 2003/361/EC (i.e. transferrable securities)	All types of investment instruments (which is larger than MiFID "financial instruments") fall under the prospectus law	Transferable securities, limited liability company's shares (provided that the company's by-laws ensure their transferability)	Platforms authorised under bespoke regime: ordinary shares and fixed rate bonds (i.e. transferable securities). Mini-bons (up to 2.5 million per issuer per year). MiFID platforms: financial instruments (Annex 1 C MiFID)	Equities and debt securities, transferable and non-transferable. Bespoke set of rules for non-readily realisable securities (NRRS).	Shares or units (quotas) of the equity capital of innovative start-ups and innovative SMEs; units or shares of collective investment undertakings or other companies investing at least 70% in innovative start-ups and innovative SMEs	To benefit from the prospectus exemption, instruments must be: profit-participating loans, subordinated loans, other investment products which grant the right to interest and repayment, or in exchange for the temporary provision of funds, grant a claim for cash settlements.	No limitation as to the financial instruments to be used for funding purposes.	Transferable securities and other financial instruments.	Financial instruments.

KYC rules (suitability or appropriateness; AML checks)	Platform to establish identity of both issuer and investors. Compliance with anti-money-laundering and terrorism financing legislation	Checks regarding the appropriateness of the investment for the investor; issue warning (can be standardised) if investment is not suitable or if investor chooses not to provide information If platform provides an investment advice service, it must also comply with MiFID and test the suitability of the investment AML check must be done since transposition of AMLD4	Platforms must assess the experience and knowledge of its clients and verify that they can take their own investment decisions and understand and prioritise information risks. Platforms must ensure that no promoter has simultaneously published more than one project on a platform; and that the fundraising amount per project does not exceed €2 million (or €5 million when projects are exclusively targeting accredited investors).	Access to platforms restricted to registered investors who have been warned of and expressly accepted the risks. Suitability test. Platforms to ensure that investment is in line with investor's experience, financial situation and risk appetite. In case of mismatch, platform to refuse investor's subscription. Compliance with money laundering and terrorism financing legislation.	Money Laundering Regulations: due diligence about their customers. Platforms may not make direct offer financial promotions (except for: professional client or eligible counterparty; high net worth retail client; certified sophisticated or self-certified sophisticated retail client; a retail client who is taking regulated advice; a restricted investor, who commits not to invest more than 10% of their net investable assets in this type of security). Where regulated advice is not provided: appropriateness test. Where regulated advice is provided: suitability test.	For retail investors: Appropriateness test by platforms (facultative: in alternative the appropriateness test is made by banks or investment firms which receive the orders). Investors must read the financial investor education material published on Consob's website and state one's awareness that the entire investment may be lost. AML checks performed by banks receiving the orders and payments.	Checks regarding the suitability or appropriateness of the investment for the investor pursuant to the Securities Trading Act or the Financial Investment Brokerage Ordinance; AML/CFT rules in case platforms qualify as obliged entities under the AML/CFT Act (depends on their business activities)	Investors should declare that they understand business conditions, including risks. Among organization duties, platforms must draft, make available online and implement policies and procedures to prevent money laundering and terrorism financing.	Investors should declare that they understand business conditions, including risks. Compliance with money laundering and terrorism financing legislation	Suitability test for first-time engagement with each product. Risk warnings must be issued if product is deemed unsuitable.

Size of offer (limitations or prospectus requirements)	Simplified prospectus for total considerations of more than €1.5 million but less than €5 million over a seven year period, and for public offers of bonds or shares of at least €250,000 but not more than €5 million. 3) If more than €5 million in capital has been raised, a prospectus is required.	The general prospectus rules apply to crowdfunding offers: a prospectus is required for offers of €100,000 or more. However, there exists a crowdfunding exemption for offers below €300,000, submitted to some conditions (see below),	€2 million per project, per platform, in a given year. €5 million, if the offer is limited to accredited investors	€2.5 million per year per project	Lower than €5 million	Lower than €5 million.	Exemption from the full prospectus requirement for offers of profit-participating loans, subordinated loans or other investment products below €2.5 million. This exemption is not available where an investment of the issuer is being publicly offered using the exemption of Section 2 para. 1 no. 3 of the Capital Investment Act.	€1 million per year and per project. €5 million if the offer is limited to professional ((i.e. person with an annual income above €100,000)/legal persons only.	Lower than €5 million over a 12 month period.	Lower than €5 million over a 12 month period.

Maximum investable amounts	€5,000 per individual investor per year. This limit does not apply to: (i) legal persons, (ii) professional investors. Exceptionally, individual investors can invest more than €5,000, but no more than either the double of their monthly net income or 10% of their financial assets.	In case the issuer wants to benefit from the crowdfunding exemption for offers below €300.000, the individual amount that each investor can invest is limited to €5,000.	Non -accredited investors: €3,000 per project and maximum €10,000 a year. Accredited investors: no limit. Accredited investors are (i) Institutional investors; (ii) Companies with €1 million of assets, €2 million of annual turnover or €300,000 of equity; (iii) Individuals with €50,000 of annual income or €100,000 of financial assets.	No restriction with regard to the type of investors, the number of investors, or maximum investment limits.	No hard investment limit. Retail investors who do not take advice, are not high net worth and are not sophisticated: not to invest more than 10% of their net investable assets.	No limit. Exemption from appropriateness test for investments under the following thresholds: (i) Natural persons: €500 per individual order and €1,000 in annual total orders; (ii) Legal persons: €5,000 per individual order and €10,000 in annual total orders. Based on self-declaration by investors.	If the investor has freely available assets of at least €100,000: up to €10,000 in an issue. If the investor does not have freely available assets of at least €100,000: twice the investor's monthly income, but in any case not more than €10,000 In all other cases (particularly if the investor does not provide a statement on assets and income): €1,000 No limits for corporate entities.	€3,000 per project and a total of €10,000 per year. This limit does not apply to: (i) legal persons and (ii) professional investors.	Mandatory appropriateness tests for investments above €2,000.	No limit – appropriateness test and risk warning.

Disclosure to investors by the issuer	For total considerations of at least €100,00 but less than €1.5 million, or offers of bonds and shares of more than €100,000 but less than €250,000: Issuer must provide information on issuer, alternative financial instruments and risks, annual report, opening balance sheet business plan, terms and conditions (information investment sheet).	The usual disclosure requirements are imposed on the platform. In case a prospectus is issued, the issuer must disclose the usual prospectus information. In case the issuer wants to benefit from the crowdfunding exemption for offers below €300.000, it must provide an information document about the offer (amount, type of investment instruments, reasons for the offer), that is not ex-ante approved by the FSMA	All disclosure requirements and risk warnings are directly imposed on the platforms. Complete, clear and detailed project description. Information about the promoter and the securities. Project owner is liable to investors for the information provided.	Mandatory document with information provided by the issuer and the platform (AMF template): procedures for transmission of subscription orders to the issuer; details of fees charged to the investor and indication that it is possible to request a description of the services provided to the issuer and the associated costs; description of the specific risks linked to the business and to the project owner.	Firms to: disclose sufficient information in a fair, clear and not misleading manner; provide appropriate information about designated investments so that the client is reasonably able to understand the nature and risks and to take investment decisions on an informed basis. Issuers encouraging investment in their own securities are prohibited to communicating financial promotions in the course of business, unless an authorised person has approved the promotion or an exemption exists in secondary legislation.	Publication of information (in a short, correct and clear way, using the Consob standard form). All the information is provided by the offeror under own responsibility and there is no requirement of prior approval by Consob. Offerors allowed to use other communication tools such as films, interviews, slides, pitches.	If no prospectus is required: Issuer must prepare an investment information sheet (VIB) and submit it to BaFin. 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 offeror or issuer; warn about the risks. Investors must confirm that they have taken note (signature or equivalent). Civil liability of offeror if VIB is misleading or inaccurate. Issuer must comply with rules on marketing of investments (warning of risks).	Issuer must prepare a document called "Key information for investors in crowdfunding investment"	The following has to be disclosed: information on the company, on the investment project and the investment instrument. Timely disclosure of true and sufficient information on factors affecting its' value and repayment capability.	The following information has to be disclosed: project & project owner characteristics, proportion of own funds used, details of the offering, security measures, existence of secondary markets. Information document needs to be prepared when the amount is between €100,000 and €5 million. At least 10% of the project has to be financed using own-funds.

Information requirements & risk warnings by platforms	Information on the platform operator. Information about issuer selection requirements. Information about type, amount and frequency of collected payments. Platform to inform about risk of loss and that investors should preferably invest assets which will not be needed in cash in the near future.	Information about: the platform itself (identity, licence,...), costs, conflicts of interest policy, due diligence (if applicable), nature and risks of investment instruments	Warnings on: risks entailed in investing in the projects published by the platforms; platforms are not investment firms or credit institutions; projects are not subject to the authorisation and supervision, information provided by promoters has not been reviewed by supervisor and does not constitute an approved prospectus. Requirements on investor's information and representations prior to the investment.	Platforms must have a restricted-access website with the following characteristics: access to details of the offers reserved to potential investors who have given personal details, read the risks and expressly accepted them; website shall propose several projects; The projects shall have been selected on the basis of criteria and in accordance with a procedure that have been predefined and published on the website.	Requirement not to disguise, diminish or obscure important items, statements or warnings.	Information about: activities performed; investors' fees; taxation benefits; general risks related to crowdfunding investments For each offer, information on: risks; issuer and the financial instruments offered; the offer; services offered by the platform in relation to the offer.	If platform provided investment advice: must provide the VIB (see above) to potential investor in good time prior to purchase of the investment.	Detailed information available on products "key information for investors in crowdfunding", information on the platform itself, and ongoing information on the funded entities and projects.	Basic information document on risks, crowdfunding recipients, investment instrument and offering, guarantor and collateral, other information.	Information on the platform itself, investment risks associated with crowdfunding, project selection criteria, crowdfunding information booklet (fees, taxes, procedures). Monthly and yearly progress updates.

Due diligence	No requirement but platform must check the completeness, comprehensibility and consistency of issuer's information.	There is no obligation to conduct a due diligence of projects, but platforms must inform investors whether this is the case or not. If there is a due diligence, the platform must inform clients about criteria and procedures used for the selection of projects.	Platform shall verify that the information about the project required under the law to be disclosed to investors is complete.	Platforms must perform due diligence in selecting the projects and disclose the pre-determined criteria used in the selection process. Issuer is responsible for the completeness, accuracy and balanced nature of the information provided, while the platform monitors that the issuer provides consistent and clear information.	No obligation on what due diligence procedures must be followed. Firms must disclose the nature of their service and appropriate information about it.	Platforms must provide detailed information on strategies for the selection of the offers to be presented on the platform.	N/A	N/A	N/A	Platform shall conduct project due diligence as well as publicly display the applicable criteria.

Conflict of interest	Operator cannot issue on own platform. Operator allowed to invest through own platform but only to a very small extent to facilitate information flows between issuers and investors.	All reasonable steps must be taken to avoid conflicts of interests. If a conflict cannot be avoided, it must be identified and managed. If there is no guarantee that there won't be any consumer detriment, consumers must be informed of the sources of the conflict of interest. Platforms required to disclose any fees, payments or other monetary benefits that they receive, and must disclose the policy regarding conflicts of interest.	Platform to publish a policy on conflict of interests; Platform's directors, managers, employees to avoid conflict of interests; Platform, directors, managers and significant shareholders can invest in a project (max. 10%) and can act as an issuer (max. 10% of funds raised through the platform)	Platforms are subject to rules relating to the management of conflicts of interest (General Regulation of AMF).	Platforms to identify possible conflicts of interest that may entail a material risk of damage to the interests, to keep a record of these possible conflicts and take all reasonable steps to avoid the conflict leading to loss for clients. Where the risk cannot be managed, it should be disclosed to clients.	Platforms must follow specific rules of conduct similar but lighter than ones provided for investment firms. Platforms must work with diligence, fairness and transparency, avoiding any conflicts of interest which could arise in the management of the platform that may affect the interests of the investors and the issuers, and ensuring equal treatment of the beneficiaries of the offers who are in identical conditions.	Platforms 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	Platforms to be organised to avoid conflict of interests; Platforms ' officers and employees cannot have interests opposed to those of investors. Platform cannot offer advice on projects published on its website.	Crowdfunding intermediaries must act honestly, fairly, professionally and in the interest of consumers. Financial instruments or cash belonging to customers must be recorded and kept separately.	Platforms must disclose the fee structures for investors and project owners as well as provide applicable tax information.

Professional requirements	Depends on the authorisation (either business investment consulting or Investment Services Undertaking)	Platforms managers and administrators must provide evidence of the required level of professional skills	Recognised knowledge, experience and professional repute of directors and managers	Platforms managers or administrators must provide evidence of the required level of professional skills (requirements examined by AMF) prior to the platforms registration. Appropriate professional skills and good repute requirements of crowdfunding investment advisers.	FCA threshold conditions (e.g. appropriate resources; employ people who are competent, fit and proper for their role; suitable business model). Employees controlling the business must have honesty, integrity and good reputation; must be financially sound and have appropriate competence and capability for their role.	Integrity requirements for the controlling shareholders. Integrity and professional requirements for the persons who perform managerial and supervisory functions.	Reliability, expertise shown by passing exam conducted by the Chamber of Industry and Commerce.	Platform should have necessary human, technical, material and financial resources. Assessment of platforms' officers by CMVM	Familiarity with the operations of financial markets for the board as a whole. Reliability requirement for platform operators, board members and significant stakeholders. Must comply with good crowdfunding practice by belonging (directly or indirectly) to an independent body established in the EEA that represents a wide range of industry stakeholders and following their code of conduct.	Criminal record check for platform operators, board members and significant stakeholders.

Overview of domestic regulatory frameworks on lending-based crowdfunding

	Spain	**France**	**UK**	**Portugal**
Bespoke regime	Yes	Yes	Yes	Yes
Entry into force	29 April 2015	1 October 2014	1 April 2014	Q1 2016 (expected)
Scope of lenders and borrowers (Consumers-to-Consumers, Consumer-to-Business, business-to-consumers, business-to-business)	Consumer-to-Business; Business-to Business; consumer-to-consumer. Loans can be solicited for a business, education or consumer project.	Consumers-to-Businesses; Business-to-business; Consumer-to-consumer (only if loan application for educational project)	Consumer-to-Consumer; Business to consumer; Consumer-to – Business; Business-to-business if the borrower is a sole trader or a partnership consisting of two or three persons or an unincorporated body of persons and the loan amount does not exceed £25,000.	Consumer-to-businesses; Businesses-to-business. Funds must be collected for funding entities or their projects and activities.
Authorisation	Authorisation and registration with CNMV after mandatory and binding opinion from Bank of Spain.	Registration with ORIAS (association in charge of a single register of finance intermediaries). The ORIAS has to check if the platform responds to the legal requirement (knowledge and competence, duty and professional indemnity insurance). Checks are carried out on a declarative basis. Platforms regulated by the ACPR and supervised by the DGCCRF for consumer protection purposes. No ex-ante authorisation required.	Authorisation by FCA. Platforms may also need other permissions, depending upon the activities they undertake	The same applies as for investment-based crowdfunding

	Spain	France	UK	Portugal
Money handling	Platforms might only receive funds on behalf of investors or borrowers if they do have the purpose of payment and the platform has been granted an authorization as hybrid payment institution. They should segregate their own funds and their clients' funds into separate accounts.	Platforms may provide payment services and, when doing so, must follow the specific rules applying to their other status allowing for such a service (credit institution, payment institution, electronic money institution…)	Where firms are responsible for client money, they are subject to rules in the FCA Client Assets Sourcebook (CASS), especially the client money rules (CASS 7), which ensure adequate protection of client money.	The same applies as for investment-based crowdfunding.
Minimum capital requirements	€60,000 (share capital), or a professional liability insurance or a combination of both. If funds that are raised exceed €2 million, equity will amount to €120,000 (and increased in proportion to the funds raised, up to €2 million).	None (but have to take professional indemnity insurance).	€50,000 or a percentage of loaned funds – whichever is higher	The same applies as for investment-based crowdfunding.
Type of loans	Fixed or variable rate loan; profit participating loans; senior and subordinated loans; unsecured and secured loans (but projects shall not be secured by a mortgage on the borrower´s main residence. Furthermore, promotors that qualify as consumers according to the general consumer protection laws may not apply for a mortgage-backed loan).	Loan cannot exceed 1 M€, with a fixed rate and a maximum duration of 7 years. Only natural persons are allowed to lend on an IFP platform, with a maximal amount of 1,000 € per project.	All types of loans, including secured and unsecured loans, loans to businesses and loans to consumers.	Loans whereby the interest rate is determined on the subscription.

	Spain	France	UK	Portugal
Business continuity requirements	Platforms must have effective mechanisms in place that ensure that, in the event of cessation of activity, essential services are provided to those projects that had successfully obtained funding.	IFP must define and organize any arrangements to ensure business continuity, including in the event of the failure of the platform.	Continuity arrangements need to be in place so existing loans can be administered even in the event of a firm running a platform failing.	Platform's organisational duty to draft, publish online and enforce policies and procedures in order to ensure business continuity.
KYC rules (suitability or appropriateness; AML checks)	Platforms must assess the experience and knowledge of its clients and verify that they can take their own investment decisions and understand and prioritize information risks.	Platforms are also subject to anti-money laundering rules. Neither appropriateness nor suitability test is foreseen.	As of 6 April 2016: firms providing personal recommendations to invest in P2P agreements will be providing a regulated activity). No appropriateness test for lending-based crowdfunding Platforms must establish, implement and maintain adequate policies and procedures sufficient to ensure compliance of the firm including it managers, employees and appointed representatives (or where applicable, tied agents) with its obligations under the regulatory system and for countering the risk that the firm might be used to further financial crime.	The same applies as for investment-based crowdfunding.
Size of loans	€2 million per project, per platform, in a given year. €5 million, if the offer is limited to accredited investors	€1 million per year per project (duration up to 7 years).	No maximum	The same applies as for investment-based crowdfunding.

	Spain	France	UK	Portugal
Maximum investable amounts	Non -accredited investors: €3,000 per project and €10,000 max a year. Accredited investors: no limit. Accredited investors are (i) Institutional investors; (ii) Companies with €1 million of assets, €2 million of annual turnover or €300,000 of equity; (iii) Individuals with €50,000 of annual income or €100,000 of financial assets.	Lender can finance up to €2,000 per project if financing is in the form of a loan with interest and up to €5,000 per project for an interest free loan.	No maximum	The same applies as for investment-based crowdfunding.
Disclosure to investors by borrower	Description of project seeking funding and borrowers' main features.	Disclosure requirements imposed on the platform.	Where creditor does not lend in the course of business and borrowers are consumers: platform must provide adequate pre-contractual explanation to the borrower. In addition, all communications by the platform must meet FCA requirements to be clear, fair and not misleading. Where the creditor lends in the course of business the full protections required by the Credit Consumer Act and FCA rules apply.	The same applies as for investment-based crowdfunding.

	Spain	France	UK	Portugal
Information requirements & risk warnings by platforms	Information on the platform itself, (especially on how the projects are selected) and on the loan. General warnings on risks to non-accredited investors.	Warn the lender about the risks an provide to lenders: with tools to assess the possible loan amount they can afford given their income and expenses; the relevant elements enabling them to assess the economic viability of the project, in particular the business plan.	Information on the platform and its services, including: contact details, a statement that the firm is authorised, details of what performance reports the client can expect, and the firm's conflicts of interest policy. General description of the nature and risks of a product, in sufficient detail so the client can take investment decisions on an informed basis. Platform must send a statement at least once a year of the investments and client money held by the firm for the client.	The same applies as for investment-based crowdfunding.
Due diligence	Platform shall verify that the information about the project required under the law to be disclosed to investors is complete.	Platforms must perform due diligence in selecting the projects and disclose the pre-determined criteria used in the selection process.	No obligation on what due diligence procedures must be followed. Platforms must disclose the nature of their service and appropriate information about it. Disclose sufficient information about the nature of service so investors understand what due diligence is undertaken and the need to conduct additional due diligence of their own before investing.	N/A

	Spain	France	UK	Portugal
Conflict of interest	Platform to publish a policy on conflict of interests; Platform's directors, managers, employees to avoid conflict of interests; Shareholders of platforms cannot provide advice on projects. Platform, , directors, managers and significant shareholders can invest in a project (max. 10%) and can act as an issuer (max. 10% of funds raised through the platform)	-	Platforms to identify possible conflicts of interest that may entail a material risk of damage to the interests, to keep a record of these possible conflicts and take all reasonable steps to avoid the conflict leading to loss for clients. Where the risk cannot be managed, it should be disclosed to clients.	The same applies as for investment-based crowdfunding.
Professional requirements	Recognised knowledge, experience and professional repute of directors and managers	Good repute and professional qualifications / experience.	Platforms to have appropriate resources employ people who are competent, fit and proper for their role, and to have a suitable business model. The employees controlling the business must have honesty, integrity and good reputation. They must be financially sound and have appropriate competence and capability for their role.	The same applies as for investment-based crowdfunding.

7.1 Overview of the legislative framework

Crowdfunding comprises a range of different operational structures and business models are evolving. The activities of crowdfunding platforms can thus be subject to different pieces of EU legislation or only subject to national legislation. Member States and NCAs have been working out how to treat crowdfunding, with some dealing with issues case-by-case, some seeking to clarify how crowdfunding fits into existing rules and others introducing specific requirements.[112] Although some regimes address both investment-based and lending-based crowdfunding, some Member States have adopted a regime for investment-based crowdfunding and a separate regime for lending-based crowdfunding. The overview is organised in four sections: (i) authorisation; (ii) organisational requirements; (iii) conduct of business rules and; (iv) transparency.

There are bespoke regulatory frameworks in eleven EU Member States for equity-based crowdfunding and in four Member States lending-based crowdfunding.

7.1.1 Authorisation

Conditions and procedures for authorisation, in particular for those who direct and/or own the business mitigate operational risk, counterparty risk, money laundering and the risk of fraud. Moreover, initial capital endowment reinforces the mitigation of operational risk, counterparty risk, and risk of fraud. These measures aim to mitigate the risks for platforms as well as those facing investors and fund seekers.

Investment-based crowdfunding

There are four broad models of authorisation of investment-based crowdfunding platforms in EU Member States: (i) authorisation under the national laws implementing the Markets in Financial Instruments Directive (MiFID); (ii) domestic bespoke regime under MiFID Article 3 exemption; (iii) authorisation for services and activities in relation to non-MiFID financial instruments; and (iv) authorisation outside the MiFID framework.

Some of these authorisation models are not mutually exclusive and in practice they are combined in certain Member States. For example, in one Member State platforms can be authorised either under model (i) or model (ii), at the firm's discretion. In another Member State, platforms can be authorised both under model (i) and model (iii).

Some Member States impose specific capital requirements for investment-based crowdfunding activities in their bespoke regimes. Typically the levels of the capital requirements are calibrated to the services provided by the platforms and the activities they carry on. In some cases there are no capital requirements or capital requirements start at relatively low levels and they may also be replaced by qualified indemnity insurance. In one Member State, the capital requirements increase proportionally with the financing sum.

Lending-based crowdfunding

Proper credit risk management and money handling are specific to lending-based crowdfunding. Both credit risk management and money handling are vital for the viability of the platform in a longer run and for the protection of lenders and borrowers.

They range from licensing requirements specific to crowdfunding activity under bespoke regimes to general trade licenses needed on national level in order to operate on the market and to provide consumer credit or credit brokerage services. There are also instances when platforms operate under a payment institution license under the Payment Services Directive.

[112] ESMA Advice - Investment-based crowdfunding 18 December 2014 | ESMA/2014/1560

All Member States with bespoke regimes, with one exception, impose or plan to apply capital requirements. Some bespoke regimes also require platforms to have arrangements in place to ensure that loans continue to be administered if a platform goes out of business and impose on platforms the organisational duty to draft, publish online and enforce policies and procedures in order to ensure business continuity. The standards of professional qualification and conduct rules vary by Member States.

7.1.2 Organisational requirements

Organisational requirements on client asset rules and record-keeping requirements aim to mitigate money laundering, operational risk, counterparty risk and risk of fraud. Organisational requirements on conflicts of interest help to alleviate legal risk. These measures aim to mitigate risks for platforms as well as those facing investors and fund seekers.

Investment-based crowdfunding

Rules on platform's organisational arrangements are a common feature of several domestic bespoke regimes. For example, platforms managers may be required to show good repute, professionalism and competence. They need to be able to ensure that investors understand the features and risks of the investments.

Some domestic bespoke regimes also directly address the issue of conflicts of interest. These range from requirements that platforms identify and manage sources of potential conflicts of interest and disclose conflict-of-interest management policy to users, to limitations or outright prohibitions on the extent to which platforms can act as fund seekers or investors. Some Member States extend the conflict of interest rules to platforms' directors or employees.

For platforms not covered by MiFID and the PSD, Member States generally impose rules compliance with legislation on anti-money laundering and terrorist financing in their domestic bespoke regimes.

Lending-based crowdfunding

Approaches to regulating the lending activity vary depending on the business models and by Member State. Rules of different nature apply if lenders and/or borrowers fall into specific categories defined by national laws. These rules distinguish between retail and institutional or professional investors, advised clients, sophisticated retail or high net worth clients, non-accredited and accredited investors. For example, with the likely aim to ensure responsible lending, platforms are obliged to give risk warnings to consumers, rather than being explicitly required to assess their creditworthiness.

7.1.3 Conduct of business rules

Conduct of business obligations on appropriateness test, suitability test and reporting to clients can mitigate lack of transparency/misleading information. Reporting to clients mitigates not only the risk that costs, risks and returns are unclear, but also mitigates risk of fraud, operational risk, and legal risk. For platforms, reporting to clients mitigates the reputational risk coming from legal risk.

Investor/Lender

Some domestic bespoke regimes have rules to ensure that investment offerings through crowdfunding platforms reach investors for whom they are suitable or appropriate. In one Member State, platforms must ensure that investments are in line with the investor's experience, financial situation and risk appetite. In another Member State, platforms must ensure that investors have examined investor education information provided by the regulator; responded positively to a questionnaire on investment features and risks; and are able to economically sustain the complete loss of the investment.

Limiting investment amounts is one feature of the general approach to protect investors that is common to several domestic bespoke regimes. These limitations take different forms and range from fixed maximum ceilings to variable shares of personal income, wealth or financial assets. These ceilings can be calculated per each offering or on the basis of total investment in a given timeframe (for example one year). Typically the ceilings vary on the basis of the categorisation of investors (e.g. retail, sophisticated and professional investors; accredited and non-accredited investors; natural and legal persons).

In one Member State there are no upper limits on the investment in securities through regulated crowdfunding platforms, while in another Member State investors can only invest through crowdfunding platforms if they meet certain criteria. Typically, these limitations (on aggregated limits) are implemented through self-declaration by the investors themselves.

Platforms

Some domestic bespoke regimes have requirements related to a platform's role regarding the offering and the need to conduct some due diligence on the offerings in terms of mandatory review, disclosure and reporting. Platforms may also be required to disclose the pre-determined criteria used in selecting the projects.

Both EU rules and bespoke regimes set out investor protection measures such as: "know your customer rules"; disclosure by fund seekers (in cases of exemption from the Prospectus Directive); risk warnings by platforms; due diligence requirements; limits on maximum investable amounts.

National legislation implementing the Unfair Commercial Practices Directive provides general obligations for the conduct of business and requires traders to act in accordance with the requirements of professional diligence in relations with consumers.

Fund seeker/Borrower

Bespoke regimes on crowdfunding in some Member States were developed as exceptions to the domestic prospectus regime, notably in cases where Member States extend the obligation to publish a prospectus to financial instruments that are not in the scope of the PD (e.g. profit-participating loans or subordinated loans).

For those Member States that have specific exemptions from the obligation to publish a prospectus for offers through crowdfunding platforms, the thresholds under which the exemptions become applicable varies from EUR 300 000 to EUR 5 000 000. In addition, some Member States have different thresholds depending on the categories of investors targeted by the offers.

7.1.4 Transparency

Requirements on transparency, if well-designed, mitigate risk on lack of transparency/misleading information. Information requirements mitigate not only the risk that costs are unclear but also improve the understanding of the risk/return profile. Information requirements also reduce the legal risk.

Platforms need to be able to ensure that investors understand the features and risks of the investments (e.g. sources of funds, scope of the funding and its purpose). Domestic bespoke regimes generally set out specific disclosure requirements, such as mandatory documents containing some key information about the fund seeker, the investment or the project for which funding is sought (including potential risks). There may be a requirement to submit the information document to the supervisor, although the document itself is not necessarily approved by the supervisor. Depending on the Member State the information document may or may not be required to follow a template.

Several domestic bespoke regimes have specific requirements on the information that platforms have to provide in a standardised form, notably in regard to the risks of crowdfunding offerings (e.g. risk of illiquidity, of losing all the money invested etc.), but also on the platform itself. There are also requirements for information to be clear, sufficient, appropriate, accessible, objective and not misleading.

However, at the EU level the Unfair Commercial Practices Directive already prohibits practices where the traders provide untruthful or deceiving information, or omits material information that the consumer needs to make an informed decision and these provisions should have been transposed in national legislation. These information requirements may be complemented by other investor education requirements (for example, the investor must answer positively to a questionnaire demonstrating that she or he understands the features and risks of the investment) or statements signed by investors acknowledging their understanding of the risks.

It is worth noting that the Commission has recently published a Communication[113] where crowdfunding activities are considered as significantly exposed to money laundering (ML) and terrorist financing (TF). While some Member States have decided to address these financial products in their national, overall the anti-money laundering and terrorist financing (AML/CFT) EU legal framework remains inadequate. In its report, the Commission has underlined the variety of risk exposure to money laundering and terrorist financing risks depending on whether crowdfunding is directly linked to financial institutions or left to private initiatives on the Internet.

[113] COM(2017)340 final – Report on the assessment of the risks of money laundering and terrorist financing affecting the internal market and relating to cross-border activities

Annex 5: Interplay with other EU legislation

Crowdfunding platforms may need to have several functional licenses for their operations and might be subject to a variety of EU legislative frameworks. Not all EU legislation will apply to all business models and will depend both on the type of business model, type of project being funded and in some cases the supervising local authority. For instance the Mortgage Credit Directive and Consumer Credit directive would be of particular importance when considering consumer lending-based crowdfunding. As far as the EU AML/CFT framework is concerned, it is not generally applicable to crowdfunding platforms as such - but it is applicable to specific types of crowdfunding services depending on the business models. According to the ESMA,[114] Directive 2005/60/EC (3AMLD) applies to firms including credit institutions and financial institutions, the latter including MiFID investment firms, collective investment undertakings and firms providing certain services offered by credit institutions without being one (including lending, money transmission, participation in securities issues and related services).

Key pieces of EU legislation and an illustrative overview of how they interact with the main crowdfunding business models is provided in the table below. Annex 3 on *EU Legislation* provides a more detailed analysis of how current crowdfunding business models interplay with the below identified acts.

[114]https://www.esma.europa.eu/sites/default/files/library/2015/11/2014-1378_opinion_on_investment-based_crowdfunding.pdf

Table 12. Illustrative summary of EU legal acts

EU legal acts	Investment based models	Lending to businesses	Lending to individuals (business purposes)	Lending to individuals (consumption purposes)	Description
(i) Markets in Financial Instruments Directive	X				Applies to firms carrying out MiFID II services/activities in relation to MiFID financial instruments and not exempt under Art 3 of MiFID II. Article 3 (Optional exemptions) of MiFID II provides for an option for MS to exempt persons that do not hold client money or securities; and only provide investment services of reception and transmission of orders and/or investment advice, given that they are regulated under a national regime.
(ii) Prospectus Regulation	X	X			Applies when securities are offered to the public with a total consideration value above EUR 1 and up to 8 million (depending on the Member State) over a period of 12 months. The regulation shall not apply to securities offerings below a total consideration of EUR 1 million.
(iii) Investor-compensation scheme	X				May apply to persons operating under the article 3 exemptions in MiFID II. MS shall require exempt persons to be covered by an investor-compensation scheme recognised by the 97/9/EC Directive or to hold appropriate professional indemnity insurance.
(iv) Alternative Investment Funds Manager Directive	X	X			The Directive applies to collective alternative investment managers. It mostly concerns cases where special purpose vehicles (SPV) or holding companies are used to finance a single project. Where a chosen financing structure exhibits features of an AIF, regardless of the existing exemptions, they may fall within the scope of the AIFMD and hence require a licenced AIFM to manage them.
(v) Distance Marketing of Financial Services Directive				X	Applies where there is a contract between a supplier and a consumer, which is concluded without the two parties being physically in the same place.
(vi) Fourth Anti-Money Laundering Directive	X	X	X	X	Applies to persons, including credit institutions and financial institutions as well as persons that engage in activities "particularly likely to be used for money laundering or terrorist financing purposes". Implementation by some Member States has not sufficiently covered some crowdfunding models, leaving AML rules not fully applied.
(vii) Capital Requirements [MiFID / Capital Requirements Directive / Capital Requirements Regulation]	X	X	X	X	Applies to credit institutions and investment firms carrying out regulated services/activities.
(viii) Second Payment Services Directive	X	X	X	X	Applies to Payment Service Providers, who conduct payment services (transfers, direct debits, card payments, money remittances, etc.) on a regular basis. Includes initiation service

					providers.
(ix) Electronic Money Directive;	X	X	X	X	Applies to institutions that issue E-money (electronically stored monetary value as represented by a claim on the issuer which is issued on receipt of funds for the purpose of making payment transactions and which is accepted by a different person than the issuer).
(x) General Data Protection Regulation	X	X	X	X	Will apply to platforms where personal data is processed.
(xi) Unfair Commercial Practices Directive	X	X	X	X	Applies to all sectors and regulates business to consumer commercial communications/practises pre- and post- sale, prohibiting misleading or aggressive practices.
(xii) Unfair Contract Terms Directive	X	X	X	X	The Directive requires MS to ensure that there are means available to prevent use of unfair contract terms. However, it does not harmonise the details of how such action should be performed.
(xiii) Mortgage Credit Directive				X	Addresses i) credit agreements concluded with a consumer that are secured either by a mortgage or by another comparable security on residential immovable property or secured by a right related to residential immovable property; and ii) credit agreements, the purpose of which is to acquire or retain property rights in land or in an existing or projected building.
(xiv) Consumer Credit Directive				X	Applies to credit agreements in which credit is granted to a consumer, i.e. a "natural person who (…), is acting for purposes which are outside this trade, business or profession".

EU legislation

Crowdfunding platforms can have several functional licenses for their operations and have been found to be subject to a variety of legislative frameworks. The key directives that currently govern the operations of most of these platforms are:

- *Markets in Financial Instruments Directive*;
- *Prospectus Directive*;
- *Investor*-compensation scheme;
- *Alternative Investment Funds Manager Directive*;
- *Distance Marketing of Financial Services Directive*;
- *4th Anti-Money Laundering Directive*
- *Capital Requirements [MiFID / Capital Requirements Directive / Capital Requirements Regulation];*
- *Payment Services Directive;*
- *Electronic Money Directive;*
- *ELTIF;*
- *EuVECA/ EuSEF;*
- *Data Protection Directive;*
- *Unfair Commercial Practices Directive;*
- *Unfair Contract Terms Directive;*
- *Mortgage Credit Directive;*
- *Consumer Credit Directive.*

Markets in Financial Instruments Directive

MiFID would impose duties on the crowdfunding platform in its capacity as investment intermediary. To be within MiFID scope, a firm needs to be carrying on MiFID services/activities in relation to MiFID financial instruments, and not exempt.

The capital requirements, organizational requirements and conduct of business would apply as for other investment firms depending in some cases on the services provided (such as whether or not investment advice is provided). Key areas for requirements:

a) Financial instruments

MiFID applies in relation to the list of 'financial instruments' set out at Section C of Annex 1 to the Directive. The financial instruments most likely to be used in investment-based crowdfunding are transferable securities e.g. equities or 'mini-bonds', though others such as units in collective investment undertakings would be possible.

Many Member States, including Austria, Belgium, Germany and Sweden, have had experience of investment-based crowdfunding using forms of participation which are not considered to be transferable securities or to otherwise qualify as MiFID financial

instruments, meaning that the platforms do not have to be authorised under MiFID to intermediate in relation to those securities.

Of the instruments specified in the list in Art 19(6) of 2004/39/EC, bonds or other securitized debt, excluding those containing a derivative, could be relevant in the context of crowdfunding. The equity and hybrid instruments through which crowdfunding investment typically takes place have no secondary market and limited other opportunities to dispose of or realize the investment, making them complex instruments.

b) Services/activities

The activity most likely to be carried out by mainstream crowdfunding platforms is the **reception and transmission of orders**: the platform receives orders from investors and transmits them to the issuer or another third party intermediary.

The service/activity of **investment advice** is generally not a part of platforms' business models. However, it was noted that depending on how platforms presented projects they might in fact make such recommendations, inadvertently or otherwise, and would then need to comply with the relevant rules. It was also possible that investors might consider that they had received 'advice' when technically there had been no personalised recommendation. While this risk could arise in many situations, the issue is pertinent in relation to crowdfunding platforms because of the reliance investors may place in the platform's 'due diligence' and where investors have to fulfil certain criteria in order to register in or invest through the platform. One NCA has developed a regime based on the optional exemption in Article 3 of MiFID which requires platforms wishing to benefit from that optional exemption to provide investment advice.

Underwriting/placing on a firm commitment basis is not a mainstream activity of crowdfunding platforms but it is possible that a particular platform would undertake to find a specified level of investment or, failing that, to take that stake itself. Any platform that did so would, in ESMA's opinion, be subject to the full €730k MiFID/CRR capital requirements.

The service of **'placing without a firm commitment basis'** is, like many other MiFID services/activities, one which takes place in a wide range of contexts, some very far removed from crowdfunding. It is therefore important to consider the wider implications of any interpretation of this service/activity. While MiFID may apply to investment services/activities related to the issuance of securities in primary markets, MiFID does not regulate the public offer of securities in the primary market as such. That is done by the Prospectus Directive. The question is therefore what role the platform is playing in relation to the offer. In the case of crowdfunding, it appears that the same activity could potentially be considered as reception and transmission of orders or as placing without a firm commitment basis. The consequences for platforms of the choice of applicable service/activity are as follows:

i. Firms which carry out placing cannot be exempted under the Article 3 optional exemption.

ii. Firms which carry out placing are not within the scope of Article 31 of CRDIV. Article 31 CRDIV allows firms within its scope to hold specified levels of professional indemnity insurance instead of initial capital.

To date, most crowdfunding platforms are operating in primary markets only. As such there is typically only one seller per financial instrument, though there may be multiple buyers. A characteristic of Multilateral Trading Facilities is that they bring together multiple buyers and sellers of a financial instrument. Therefore in general crowdfunding platforms are not operating MTFs. However, it is clear that there is interest in developing secondary markets for these financial instruments. Where such **a secondary market** brought together multiple

buying and selling interests in a system with non-discretionary rules in a way that resulted in a contract, it would be operating an MTF.

c) Exemptions

Article 3 provides the option for Member States to exempt firms, where the firms meet certain conditions. Such firms do not benefit from a passport, but are also not subject to MiFID capital or other requirements. The conditions are that such firms:

i. Do not hold of client money or securities;

ii. Provide only the investment services of reception and transmission of orders and/or investment advice;

iii. Transmit orders only to authorised firms;

iv. Are regulated at national level.

Prospectus Directive

The Prospectus Directive requires publication of a prospectus before the offer of securities to the public, unless certain exclusions or exemptions apply. The Prospectus Directive would be applicable to securities offered to secure investment in projects funded through crowdfunding platforms. However:

a) PD applies only where instruments are transferable securities, as defined in MiFID [Arts 1(1), 2(1)(a)]. If the instrument used were not a transferable security but nevertheless was a MiFID financial instrument, MiFID disclosure requirements would apply. However, where the instrument is not a MiFID financial instrument, any disclosure requirements would depend on national law as MiFID would not be applicable. It should be noted that provided the instruments are transferable securities, the PD would apply to the issue, provided that the size of the offer and/or investor base triggers the application of the PD, even if it were deemed that MiFID did not apply to platforms for other reasons.

b) The size of the offer may not trigger the application of the PD , because

i. Offers with a total 'annual' consideration below €5m are outside the scope of the Directive [Art 1(2)(h)]

ii. Offers with a total 'annual' consideration below €100k are excluded from the obligation to publish a prospectus [Article 3(2)(e)]; however, Member States have discretion to apply national requirements to offers between €100k and €5m and practices in this regard vary

c) Offers are also exempt from the obligation to publish a prospectus if the offer is addressed only to 'qualified investors', which are essentially professional clients under MiFID [Article 3(2)(a), Art 2(1)(e)]

d) Offers are also exempt from the obligation to publish a prospectus if the offer is addressed to fewer than 150 natural or legal persons per Member State other than 'qualified investors' [Art 3(2)(b)]

Even where there is no obligation to publish a prospectus under PD, where MiFID applies there would still be disclosure requirements under MiFID in relation to financial instruments. These

obligations would apply to the platform as the authorised investment firm, rather than directly to the issuer of the securities.

Investor-compensation scheme;

This Directive provides access to compensation up to a specified amount for investors where the investment firm is no longer financially able to meet its obligations and requires all authorised investment firms to belong to such a scheme. It applies to MiFID firms in relation to MiFID financial instruments. Where firms are exempted from MiFID under the optional exemption 2004/39/EC Article 3 the Investor-compensation scheme Directive does not apply, although Member States may require such firms to be members of an investor compensation scheme.

Alternative Investment Funds Manager Directive

Platforms which operate models based on indirect investment may be captured by the AIFMD and require an AIFM authorisation. This mostly concerns cases where special purpose vehicles (SPV) or holding companies are used to finance a single project. Investors buy securities issued by SPV or holding companies, whereas the latter hold securities or other interests in the project. The decision to invest in a project is taken by the investors, however, this investment is further managed by the platform including it taking decisions to sell the investment and/or liquidate the company and potentially how to exercise any rights arising from the holding of securities in the project

The AIFMD is applicable to a platform where it manages a non-UCITS collective investment scheme (CIS) which raises capital from a number of investors with a view to investing it in accordance with a "defined investment policy". Where crowd investments are managed on a discretionary basis such a CIS could be qualified as an AIF and so the platform may be required to be authorised as the AIFM.

The AIFMD does not regulate composition of an AIF, i.e. the investment product, but the fund's manager – the AIFM. The Directive imposes a comprehensive catalogue of obligations for the AIFMs including uniform licencing, organisational and conduct requirements, rules on processes, transparency and on custody of assets as well as common standards of reporting and supervisory oversight.

AIFMs are prevented from carrying out activities other than investment management, administration and marketing of an AIF and certain related activities. There is no provision for authorised AIFMs to carry out MiFID services/activities where the AIF is internally managed. Where the authorised AIFM is a legal person external to the AIF itself, these additional services/activities can include the management of investment portfolios in accordance with mandates given by investors on a discretionary client-by-client basis, and as non-core services the provision of investment advice, safekeeping/administration of shares or units of CISs and reception and transmission of orders in relation to financial instruments. In relation to those activities, it would be subject to the initial capital, organisational and conduct of business requirements under MiFID.

Marketing of AIFs is in principle restricted to professional investors (i.e. professional clients under MiFID) [Articles 31, 32, 4(1)(ag)]. However, Member States may choose to allow marketing of AIFs to retail investors.

Platforms operating with AIFM licence may choose to focus on providing long-term investment opportunities and structure their AIFs as European long-term investment funds (ELTIFs)[115]. These investment vehicles are open to retail investors, however, a number of portfolio composition requirements and investor protection rules apply.

AIFMD contains various exclusions from its scope:

a) holding companies established to carry out the business strategy through its subsidiaries and does not have the primary purpose to generate returns for its investors by means of divestment of its subsidiaries. Platforms grouping together investors' holdings in a company for the latter purpose are not likely to benefit from this exemption as provided in Article 2(3)(a) and could be considered as AIFs.

b) Special purpose vehicles (SPVs). SPVs established by crowdfunding platforms and exhibiting features of AIFs may fall outside the Article 2(3)(g) exemption. As a result the platform managing such SPVs may need to obtain the AIFM licence.

c) AIFMs which manage AIFs with total Asset under Management (AUM) under a specified level. Sub-threshold AIFMs are at least subject to registration by the home MS NCA and provide to the NCA information on the AIFs they operate and their investment strategies. The levels of AUM are €100m where there is leverage, and €500m where there is no leverage and no redemption rights are exercisable for 5 years after the initial investment [Article 3(1)-(4)]. Reaching these thresholds would imply a significant growth relative to the typical scale of assets invested through most crowdfunding platforms.

Sub-threshold AIFMs may operate two other types of European CISs, such as EuSEF and EuVECA funds which predominantly invest in small firms and social enterprises respectively. The managers are subject to a number of organisation requirements but these are fewer than compared to those imposed on the AIFMs following the AIFMD.

Distance Marketing of Financial Services Directive;

The Directive applies where there is a contract between a supplier (anyone acting in a commercial/professional capacity who in that capacity provides contractual services where the contract is concluded without the simultaneous presence of the supplier and consumer) and a consumer (any individual not acting in such a capacity) which is concluded without the two parties being physically in the same place. As such, it would be likely to apply in principle to the investment contract and to any separate contract with the platform, because the investor's counterparty would be a supplier. [Arts 1, 2]

Where it applies, the Directive requires information disclosures about the supplier and the financial service, whether there is a right of withdrawal and any applicable out-of-court redress/complaints/compensation mechanisms. [Art 3]

[115] Regulation (EU) 2015/760 of the European Parliament and of the Council of 29 April 2015 on European long-term investment funds, OJ L 123/98, 19.05.2015.

The Directive also provides for a 14 day right of withdrawal (longer for life insurance and pensions) but states that this right shall not apply to financial services "whose price depends on fluctuations in the financial market outside the supplier's control, which may occur during the withdrawal period". This exclusion from the obligation to provide for a right of withdrawal explicitly covers transferable securities and units in collective investment undertakings. [Art 6(1),(2)] Where the securities in question are not transferable securities, consideration would need to be given as to whether the price of the particular security was capable of fluctuating within the withdrawal period before determining whether the right of withdrawal should not apply.

4th Anti-Money Laundering Directive (EU) 2015/849;

The 4th AMLD prohibits money laundering and terrorist financing. [Art 1] It applies to firms including credit institutions and financial institutions, the latter including MiFID investment firms, collective investment undertakings and firms, other than credit institutions, which carries out one or more activities listed in Annex I to Directive 2013/36/EU (including lending, payment services, money broking, issuance of electronic money) [Art 3(2)]. Member States are also required to extend it in full or in part to other categories of institution which engage in activities "particularly likely to be used for money laundering or terrorist financing purposes", and to notify the Commission when they use this power. [Art 4]

The Directive requires firms to carry out a risk assessment of their money laundering and terrorist financing risks, and to adopt customer due diligence (CDD) measures commensurate to the level of risks. The CDD measures could be enhanced, normal or simplified [Arts 10-24] and to have in place appropriate record-keeping and other internal procedures [Arts 40, 45 and 46]. The fulfilment of CDD measures could rely on third parties, although the ultimate responsibility for meeting those requirements shall remain within the firms, which relies on the third party [Article 25-29]. Firms have an obligation to report any suspicious activity, to co-operate with any investigations by relevant public authorities, and not to disclose the report or any investigation. [Arts 32-39] Member States may impose stricter requirements. [Art 5]

Capital Requirements [MiFID/ Capital Requirements Directive/ Capital Requirements Regulation];

All investment firms carrying on MiFID services/activities are to hold initial capital of €730,000 [2013/36/EU, Article 28(2)] unless they meet the conditions for lower initial capital or an exemption[116]:

1) €125,000: firms which receive and transmit orders and/or execute orders and/or manage portfolios and which hold client money but do not deal on own account, underwrite/place issues on a firm commitment basis, operate an MTF, or operate a UCITS/AIFM. [2013/36/EU, Art 29(1)]
2) €50,000: where firms meets the conditions to be a €125,000 firm except that they are not authorized to hold client money, Member States may reduce the initial capital requirement to €50,000. [2013/36/EU, Art 29(3)]

[116] "investment firm" defined in point (1) of Article 4(1) of Directive 2004/39/EC, which are not authorised to provide the ancillary service referred to in point 1 of Section B of Annex I to Directive 2004/39/EC, which provide only one or more of the investment services and activities listed in points 1, 2, 4 and 5 of Section A of Annex I to that Directive, and which are not permitted to hold money or securities belonging to their clients and which for that reason may not at any time place themselves in debt with those clients, are not subject to capital requirements set out in CRR/CRD (see the definition of an investment firm in point (2) of Article 4(1) of Regulation (EU) No 575/2013));

3) Article 31 firms: firms which are not authorized to provide safekeeping services or to hold client money or securities and which provide only one or more of the services of reception and transmission of orders, execution of orders, portfolio management and investment advice have to hold either initial capital of €50,000, or professional indemnity insurance (PII) against liability from professional negligence or a comparable guarantee of at least €1m for each claim and €1.5m for all claims, or a combination of the two. [Directive 2013/36/EU, Art 29(3)]

Table 13. Cases where MiFID/CRD/CRR provide for initial capital of less than standard €730,000

Activity/service carried out		Initial capital required		
		€50k or PII*	€50k (MS option, otherwise €125k)	€125k
A	Hold client money	N	N	Y
B	Reception and transmission of orders	Y	Y	Y
C	Execution of client orders	Y	Y	Y
D	Dealing on own account	N	N	N
e	Portfolio management	Y	Y	Y
f	Investment advice	Y	X	X
g	Underwriting and/or placing on firm commitment basis	N	N	N
h	Placing without firm commitment basis	N	X	X
i	Operation of MTF	N	N	N

Key:

- Y = firm must offer one or more of these services to be eligible for the stated capital requirement
- N= service that must not be offered to be eligible for the stated capital requirement
- X= service that may be offered without affecting the initial capital requirement

*Less if firm is also authorised insurance intermediary

Payment Services Directive;

The revised Payment Services Directive (Directive (EU) 2015/2366), which will be applicable from 13 January 2018, regulates the provision of payment services throughout the Union by six different categories of payment services providers (PSPs), including credit institutions, electronic money institutions and payment institutions. While credit institutions and electronic money institutions remain subject to the prudential requirements laid down in their respective applicable legislation, the first Payment Services Directive introduced in 2007 payment institutions as a new category of payment institutions, subject to a set of comprehensive requirements and conditions to obtain an authorisation, in order to remove legal barriers to market entry to those providers of payment services which are not connected to taking deposits or issuing e-money. Additionally, the revised Payment Services Directive (PSD) creates a new licensing/registration regime for providers of new types of payment services such as the payment initiation service providers, who normally establish a software bridge between a merchant website and the online banking platform of the payer´s PSP in order to initiate a payment on the basis of a credit transfer, and the account information service

providers who provide the users with aggregated online information on one or more payment accounts held with one or more PSPs. The application of this legal framework should be confined to PSPs who provide payment services as a regular occupation or business activity (depending on the nature of the business undertaken by a crowdfunding platform, it is possible that the provision of payment services could not be its regular occupation or business activity).

Where those platforms are considered to provide payment services as their regular occupation, the provisions of the revised PSD shall be considered, especially in relation to the following payment services listed in its Annex I that may fit into their operational model:

- services enabling cash to be placed on or withdrawn from a payment account, as well as all the operations required for operating a payment account (points 1 and 2 of Annex I);
- execution of payment transactions (direct debits including one-off, payment transactions through a payment card or similar device, credit transfers), including transfers of funds on a payment account with the user´s payment service provider or with another payment service provider (point 3);
- execution of payment transactions (direct debits including one-off, payment transactions through a payment card or similar device, credit transfers), where the funds are covered by a credit for a payment service user (point 4);
- issuing of payment instruments and/or acquiring of payment transactions (point 5)
- money remittance (point 6);
- payment initiation services (point 7).

The revised PSD does not apply to payment transactions from the payer to the payee through commercial agents (platforms included) who are authorised to negotiate or conclude the sale or purchase of goods or services via an agreement where those agents or platforms act on behalf of only the payer or only the payee. This exclusion from the Directive´s scope implies that when agents or platforms act on behalf of both the payer and the payee they will fall under the revised PSD, unless they do not, at any time, enter into possession or control of client funds.

In addition, article 3 of the revised PSD includes other exclusions that could be relevant for crowdfunding business models:

- payment transactions with a view to placing funds at the disposal of the payee based on paper cheques or paper-based vouchers;
- payment transactions related to securities asset servicing, including dividends, income or other distributions, or redemption or sale;
- services provided by technical service providers, which support the provision of payment services, without them entering at any time into possession of the funds to be transferred, including processing and storage of data, trust and privacy protection services, data and entity authentication, IT and communication network provision, and provision and maintenance of terminals and devices used for payment services;
- services based on specific payment instrument that can be used only in a limited way, allowing the holder to acquire goods or services only in the premises of the issuer or within

a limited network of service providers under direct commercial agreement with a professional issuer;

- services based on specific payment instrument that can be used only in a limited way and only to acquire a very limited range of goods and services.

Based on the above, when the crowdfunding platforms provide payment services under the revised PSD and are not licensed as credit institutions or e-money institutions and do not fall under one of the exclusions, they will have to obtain the relevant authorisation as payment institutions from the national competent authority of their home Member State.

In this case, they will be subject, among other requirements, to initial and ongoing capital requirements. Where only the service of money remittance is offered, the initial capital requirement is €20,000. Where providing payment initiation services, the initial capital is €50,000. For the rest of payment services mentioned above, these initial capital requirements are €125,000. There are also additional ongoing capital requirements, to be determined in accordance with one of the methodologies set out in Article 9, which reflect the size and, in some cases, the nature of the business undertaken. Article 8(2) requires Member States to take the necessary measures to prevent firms from double-counting the same elements when determining capital requirements within a group or where payment institutions have a hybrid character and carry out other activities. For the provision of payment initiation services there are no own funds requirements, but to hold a professional indemnity insurance or some other comparable guarantee to ensure their liabilities.

Among the requirements that payment institutions have to comply with and provide in the application, we can point out the description of measures for safeguarding the user´s funds received to execute a payment transaction as specified under Article 10, the need to have governance arrangements and internal control mechanisms, including administrative, risk management and accounting procedures, description of intended use of agents and branches, identity of persons holding qualifying holdings, identity of directors and managers, the identity of statutory auditors and audit firms, etc. an authorisation granted to a payment institution allows to provide the payment services covered by it throughout the EU, under the freedom to provide services or the freedom of establishment.

Article 32 of the revised PSD allows Member States to exempt certain entities from the application of all or part of the authorization procedure and conditions, where:

- the monthly average of the preceding 12 months´ total value of the payment transactions does not exceed a limit set by the Member State that cannot be above EUR 3 million, and
- none of the natural persons responsible for the management and operation of the business has been convicted of offences relating to money laundering, terrorist financing or other financial crimes.

These exempted entities will be treated as payment institutions, and will have to be included in the public register of their national competent authority and of EBA. They will not benefit from the possibility of providing their services in other Member States through the freedom to provide services or the freedom of establishment.

Electronic Money Directive;

This Directive may also be relevant for crowdfunding platforms as it lays down the rules for the taking up, the pursuit and the prudential supervision of the business of electronic money (e-money) institutions. E-money is defined as electronically, including magnetically, stored monetary value as represented by a claim on the issuer which is issued on receipt of funds for the purpose of making payment transactions under PSD and which is accepted by a natural or legal person other than the e-money issuer.

The E-money Directive recognises five categories of e-money issuers, including credit institutions and e-money institutions, which need to be licensed and supervised in accordance with the prudential, own funds, activity and safeguarding requirements regulated therein. E-money institutions are entitled to engage in other activities, such as the provision of payment services under PSD. They shall not take deposits or other repayable funds and any funds received by them from the e-money holder shall be safeguarded and exchanged for e-money without delay.

EuVECA/EuSEF

The **EuVECA** Regulation lays down conditions which managers have to meet if they want to use the designation "EuVECA" in marketing material relating to qualifying funds, which are established in a Member State and which intend to invest at least 70% of assets in small firms that do not issue listed securities and meet certain other conditions. [Arts 1-3] Such funds may not be leveraged [Art 5] and they may only be marketed to certain types of investors: those who are or choose to be treated as professional clients under MiFID, or who commit to investing at least €100k, or who state in writing in a separate document from the investment contract that they are aware of the risks of the commitment envisaged. [Article 6] Once registered as having met the conditions, AIFMs can market qualifying funds throughout the EU, using the designation EuVECA.

In principle, it would seem attractive for a platform using an AIF as a vehicle for indirect investment in projects to seek to do so within the parameters of an EuVECA because the capital requirements are likely to be much lower than for an AIFM authorised under AIFMD and potentially lower than those applicable if a different structure were used requiring authorization under MiFID, and the qualification would bring with it a passport which is not available to registered AIFs.

The **EuSEF** Regulation follows the approach of the Venture Capital Regulation in relation to managers of funds investing in social enterprises, which where the requirements are met may be marketed as "EuSEF"s and benefit from a passport. The same restrictions on the clients to whom the funds may be marketed apply as in the Venture Capital Funds Regulation. [Art. 6]

Data Protection Directive

In crowdfunding there is likely to be significant processing of personal data. The rules of the **Data Protection Directive** will apply to platforms and issuers/borrowers where personal data are processed. For example, data controllers should ensure that all data protection obligations are met, including right of access of data subjects (individuals) to their personal data. In addition, the Data Protection Directive has liability and compensation provisions for unlawful processing of or incompatible acts relating to the processing of personal data, which are separate from the other

liability regimes. Crowdfunding platforms need to ensure the awareness of and compliance with the obligations for data controllers and data processors and the rights of data subjects (individuals)[117].

Unfair Commercial Practices Directive 2005/29/EC (UCPD)

This Directive regulates business to consumer commercial communications/practices pre- and post-sale, in particular those which are misleading or aggressive. It applies to all sectors including financial services. Whilst the UCPD is generally based on the principle of full harmonisation, it expressly allows Member States to impose more restrictive or prescriptive requirements in relation to financial services. Having regard to the robust set of EU sector-specific legislation that exists in the field of financial services, the 'safety net' character of the UCPD is particularly apparent for this sector. The Commission guidance of 25 May 2016 concerning the application of the UCPD, SWD(2016)163, addresses specifically issues related to its application to financial services. In particular, traders must not provide misleading information or omit material information to consumers who borrow or 'invest' money. The UCPD could therefore be relied on to determine that advertising/marketing was misleading (including through omission of material risks, misleading impression of the service the crowdfunding platform was offering including e.g. in relation to professional diligence), aggressive or otherwise unfair.

Unfair Contract Terms Directive 93/13/EEC (UCTD)

The Directive protects consumers against the use by traders of standard (not individually negotiated) contract terms which, contrary to the requirement of good faith, create a significant imbalance in the parties' rights and obligations to the detriment of the consumer. Unfair terms are not binding on the consumer. The safeguards of the UCTD are particularly relevant in the field of financial services as demonstrated by the rich case-law of the CJEU in this respect.

The Directive requires Member States to ensure that there are means available to prevent the continued use of unfair contract terms and specifically requires that consumers or organisations must be able to take action before courts or before an administrative authority to obtain a decision as to whether the contract terms are unfair so that the court or authority can apply appropriate and effective means to prevent the continued use of such unfair terms. The Directive does not, however, harmonise the details of how people and organisations can go about taking such action.

Mortgage Credit Directive

The Mortgage Credit Directive (MCD) addresses (i) credit agreements that are secured either by a mortgage or by another comparable security on residential immovable property or secured by a right related to residential immovable property; and (ii) credit agreements the purpose of which is to acquire or retain property rights in land or in an existing or projected building.

Under the Directive, consumers entering into credit agreements relating to immovable property must benefit from a high level of protection. To this end, the Directive sets out obligations for lenders to provide consumers with clear and detailed pre-contractual information regarding the loan conditions, including in any advertisements, and to assess their creditworthiness according to

[117] Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data

common EU standards. The Directive also lays down common quality standards and business conduct principles for all mortgage credit lenders in the Union, including specific requirements on staff remuneration, knowledge and competence and standards for advisory services.

The Directive gives European consumers a number of specific rights. These include, inter alia, the right to repay credit earlier than determined in a contract or, in the event of default, the right to a reasonable and fair treatment before and after foreclosure proceedings are initiated.

The Directive also provides for an EU passport scheme that allows credit intermediaries authorised to operate in one Member State to deliver their services across the EU. This aims to limit the barriers to the taking-up and pursuit of credit intermediation activities in the internal market, while ensuring a high level of professionalism and service, subject to adequate and ongoing supervision. In addition, Member States shall ensure adequate admission and supervision of non-credit institutions that engage in provision of mortgage loans within the scope of the Directive.

Where the platform would be considered to provide mortgage credit in the course of their trade, business or profession, it could be acting as a creditor to whom the obligations of the Directive apply. Where the function of the platform is simply to provide a meeting point, it could potentially be subject to the Directive requirements on credit intermediaries unless its actions are limited to 'merely introducing' the consumer and the creditor.

Consumer Credit Directive

The Consumer Credit Directive (CCD) ensures a high level of consumer protection by focusing on transparency and consumer rights. It requires lenders to provide consumers with pre-contractual information in a standardised form (Standard European Consumer Credit Information), and with the Annual Percentage Rate of Charge ("APR"), i.e. a single figure representing the total cost of the credit.

Under the Directive, consumers are allowed to withdraw from the credit agreement without giving any reason within a period of 14 days after the conclusion of the contract. Furthermore, they are entitled to repay their credit early at any time.

CCD applies to credit agreements in which a creditor, defined as a "natural or legal person who grants or promises to grant credit in the course of his trade, business or profession", grants or promises to grant credit to a consumer, i.e. a "natural person who (...), is acting for purposes which are outside his trade, business or profession".

CCD may apply to peer-to-peer platforms, depending on their activities and business model. For instance, should a platform itself provide credit to borrowers, the CCD's provisions concerning creditors would apply.

Conversely, wherever a platform does not lend money, but rather (i) presents or offers credit agreements to consumers; (ii) assists consumers by undertaking preparatory work in respect of credit agreements other than as referred to in (i); or (iii) concludes credit agreements with consumers on, behalf of a creditor, it may be considered a credit intermediary, as defined in letter (f) of Article 3 of

CCD. In this case, the pre-contractual information requirements and some additional information concerning the intermediation apply.

CCD does not apply where an investment firm or credit institution lends fund to a consumer for the purposes of investing in a MiFID financial instrument, where the firm providing the credit would be involved in that transaction. So, if a platform were authorised under MiFID and provided credit to investors to provide funds for them to invest in projects offered on that platform, the CCD would not apply.

Codes of conduct

In addition to regulatory frameworks put in place by governments, several industry associations have introduced systems of self-regulation, notably codes of conduct which may set minimum requirements and best practices for platforms in terms of transparency and good business conduct, among other aspects. For example, the European Crowdfunding Network (ECN) has published some guiding principles as its Code of Conduct for observation and application by its members and the European crowdfunding industry at large. These guiding principles are: act with integrity and in fairness; keep your promises; disclose conflicts of interest; foster data transparency; maintain confidentiality; do not harm the industry, society or environment; use, at all times, adequate and appropriate human and technical resources that are necessary for the proper management of a crowdfunding platform. The Code of Conduct also sets out specific compliance procedure, such standardised information sheets and reporting requirements.[118] It should be noted that the Unfair Commercial Practices Directive provides a role for codes of conduct (as defined in the Directive) to enable traders to apply the principles of the UCPD effectively in a specific economic field. For example, non-compliance by a trader with the commitments contained in certain codes of conduct by which the trader claims to be bound may constitute a misleading commercial practice under the UCPD.

[118] The European Crowdfunding Network is a Brussels-based professional network promoting adequate transparency, (self) regulation and governance. The Code of Conduct is available at: http://eurocrowd.org/about-us/code-of-conduct-2/.

Annex 6: Case Study extracts

I. Invesdor

A. Introduction

Invesdor is a leading Nordic equity crowdfunding platform, a representative of which was interviewed in person on 20 March 2017. The interview lasted for around one 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.

The platform operates in Finland, it is MiFID licenced and its type of crowdfunding model is both equity and lending-based, the main product being mini-bonds.

B. Cross-border experience

Invesdor was forced to comply with MiFiD through a shift in the interpretations of existing laws by the Finish regulator. Once compliant, after around one year of preparations, the platform went on to passport the license successfully into the remaining 27 member states. When looking at executing its business model beyond its home market, the platform however realised that despite the passporting this was not possible due to other legal frameworks that related to crowdfunding. The platform therefore chose to focus on the markets it had an affinity to and believed to be able to achieve relevant scale, while no significant regulatory hurdles stood in its way, i.e. Scandinavia and the UK.

The main obstacles to such expansion towards other MS have been identified both in the MiFID authorisation process, which makes the transactions slower because of the screening and authorisation process to be performed over every transaction, and in the fragmented tax laws.

On the latter issue, they found that a harmonized approach on what is tax deductible and what is a tax benefit would make a notable difference in cross-border crowdfunding.

II. Lendahand

A. Introduction

Lendahand is a still young lending-based platform that was established in 2014. It is based in The Netherlands. A representative from the platform was interviewed on the 3 May 2017. The interview lasted for one hour. In addition to the interview, desk research was conducted.

B. Cross-border experience

The platform operates mainly cross-border, by receiving fund inflows from the EU with the aim to invest in emerging markets outside Europe.

The use of a MiFID license does not make the cross-border experience easier for the platform. The different national regulatory regimes do not allow for the full pass porting of the license in the MS - especially in Germany and UK - and they imply high compliance costs too.

The Dutch investment structure used, however, does allow investing across the world. Compliance cost remains a key hurdle for the platform to address cross border expansion.

As a result, the platform currently only allows investments from other two EU member states, Belgium and Finland, by using a MiFID brokerage licence, while it does not actively markets its products in other MS.

For the platform the selection of a MiFID licence to operate cross-country has proved to be a challenging experience, resulting in burdensome and less flexible investment processes.

Furthermore, complying with different national regulation implied high compliance costs, both in monetary and in human resources terms: one out of eight employees work in compliance.

III. Lendix

A. Introduction

A telephone interview with one representative of the platform was conducted on 20 May 2017 and lasted for one hour and 20 minutes. Additional sources were collected from the platform's website, press releases and press articles about the organization.

Lendix is based in France; it is a lending platform that uses debt as its main product.

B. Cross-border experience

The platform is currently operational in France, Italy and Spain. Italy and Spain were chosen because of their potential in term of credit available and number of SMEs.

In order to operate cross-border the platform had to obtain, at each national level, the necessary registration/authorisation to operate as a Marketplace Lender for putting in contact, through its website, companies carrying projects and people financing such projects by way of loans. This status, indeed, 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.

The main challenge in complying with the individual national crowdfunding regulations has been 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.

Generally, the 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 license/authorisation/exemption and complies with the local regulation (including other local rules such as employment law, taxation, contracts). In the absence of specific regulation, the law firm usually advises on the legal matters related to the setup of the business.

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 to hold a banking license or at least partner with a bank that holds such license. As a result, lending platforms have sought markets that provide relevant size and limited compliance efforts.

VI. LUMO

A. Introduction

One representative from Lumo participated in the focus group discussion about croudfunding that was conducted on 25 April 2017 in Amsterdam. In addition to this data gathering, desk research took place, while the the platform's website served as a source of information, as well as press releases and press articles about the organization.

Lumo is a lending-based platform that was established in France in 2012, its main products are loans and subordinated convertible loans.

B. Cross-border experience

The main cross-border experience for Lumo has been a partnership with the Duch platform OnePlanetCrowd to raise funds for the solar park Torreilles, in southwestern France.

Under French law, such a crowdfunding campaign would have required MiFID compliance, but Lumo decided to circumnavigate MiFID requirements and related cost.

For the crossborder transaction with Dutch investors, both platforms, Lumo and OnePlanetCrowd, worked under their own existing local licenses. Lumo offered bonds to their investors, while OnePlanetCrowd offered 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.

After extensive efforts to seek a regulatory approach for the platform to 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 with defined rules directly applicable below all the existing exemptions thresholds of current European legislations 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 would need to keep the national regulators aligned across MS through direct application.

Operating co-investment partnerships such as 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 willingness to engage and adapt. The platform does not believe this model can be replicated given the operational effort and cost it brings 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 exemption, though might seek to replicate it if another relevant transaction should arise.

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

V. 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 around 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.

Seedrs is based in the UK, it is an equity based crowdfunding platform and its main offerings are equity, equity funds and convertible equity.

B. Cross-border experience

The platform is UK based, but it operates in Lisbon, Berlin and Amsterdam as well through its representative offices. In order to simplify cross-border transactions the platform operates via a nominee structure, with the investors represented by a nominee under UK law, which then can make investments outside the UK.

The hurdles faced by the platform in cross-border operations were identified in the different prospectus obligations and in the investors' identity verification.

Having regard to the latter issue, here it needs to be clarified which electronic verification methods can be used by the financial services industry, and it remains costly to adjust the platform operations to different national aspects, moreover, difficulties were faced in accessing a comparable database of information with regard to KYC across MS.

VI. Crowdcube

A. Introduction

The platform was interviewed on 6 June 2017. The interview lasted around 45 minutes and was conducted by phone.

Further data was collected through the examination of the platform's website, as well as press releases and press articles about the platform.

Crowdcube is a UK-based crowdfunding platform, which follows an equity based model, while offering equity as well as mini-bonds as their main product.

B. Cross-border experience

Crowdcube is one of the largest equity crowdfunding platforms in the UK; it currently operates in the UK and Spain and soon in The Netherlands and France.

With the aim to test new markets, the platform has tried in the past to pursue cross-border business in Spain, Italy, Poland and Sweden under the structures of joint-ventures. Those previous expansion attempts have been halted by regulatory and commercial problems such to make an investment in those countries not economically viable.

In a cross-border setting, fragmentation of regulatory frameworks across MS 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, 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 also legal uncertainty in a cross-border setting (e.g. the use of a notary in the issuance of shares is required by some MS, the nominee structure for holding shares on behalf of the investors is not allowed in all MS). Last but not least, the fragmented interpretation of cross-border investments and lack of guidance by the European and national regulators creates a great deal of legal uncertainty which prevented the platform from actively marketing its products across borders.

VII Abundance

A. Introduction

Abundance is a UK-based crowfunding platform focusing on renewable energy projects. Together with two other crowdfunding platforms, Abundance participated in a focus group about cross-border crowdfunding on 25 April in Amsterdam. Further data was collected through desk research from publicly available sources, including the company website.

B. Cross-border experience.

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, in practice, it is not easy due to fragmentation of national interpretation of MiFID framework. As it was phrased, "the ability to seamlessly operate across Europe does not exist".

Between 2014 and 2017, the platform was part of Citizenergy, an EC funded project aimed to enable cross border crowdfunding for renewable energy. The platform's existing MiFID licence and operational structure was proposed to be the backbone of the project expansion. 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 researches, it found that it was extremely difficult in most of the cases, both at an operational and legal level.

The attempt was stopped due to lack of funding and economic considerations, based on the incompatible national regulations regarding crowdfunding.

VIII Companisto

A. Introduction

Companisto is the largest equity crowdfunding platform offering subordinated loans in Germany both by volume and by value. A telephone interview with Companisto was conducted on 2 June 2017

and lasted for 1 hour and 30 minutes. Further data was collected through desk research from publicly available sources, including the company website.

B. Cross-border experience

The platform launched an English web site early in its history in order to attract business across borders, but has remained centred around its home market, with to date only minor cross-border activities.

Due to the particularities of 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 MS. Member states that allow for equity to be offered by crowdfunding platforms do not recognize the German profit-participating loans as a tradable security.

This means that to establish its business in another MS the platform has first to examine whether the structure of its investment products is accepted as crowdfunding products under the host MS regime.

As a result, even if expansion across the border was an early goal for the platform and investor on boarding was enabled by offering an English web site, offerings from outside Germany remains low. The specific German crowdfunding regime that has been implemented over the past years has made further activities complex.

Unless the German legislation does not change the platform does not consider cross border expansion an economically viable model.

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