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COMMISSION STAFF WORKING DOCUMENT

Crowdfunding in the EU Capital Markets Union

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COMMISSION STAFF WORKING DOCUMENT ON CROWDFUNDING IN THE EU CAPITAL MARKETS UNION

1. INTRODUCTION

Broadening access to finance for innovative companies, start-ups and other unlisted firms, including SMEs, is at the heart of the Capital Markets Union Action Plan.¹ On average around 60% of start-ups survive the first three years of activity, and those that do contribute disproportionately to job creation.² Young firms account for an average of only 17% of employment, but they create 42% of new jobs.³ Therefore, the success of these firms is crucial to the future of jobs and economic growth in Europe.

However, in today's economic environment securing investment finance is challenging for these firms, particularly when they move from start-up into the expansion phase. As stated in the CMU Action Plan, the Commission's top priority is to stimulate investment to create jobs and increase Europe's competitiveness. The Capital Markets Union will reinforce the third pillar of the Investment Plan for Europe.

Access to finance for young, innovative firms is a problem even in countries where access to bank finance has remained stable throughout the crisis. Thanks to their strong local networks and relationships, banks will continue to provide the majority of funding to SMEs. However, only 41% of all SMEs in the EU perceive no limitations in their access to future financing.⁴ To complement bank financing, the CMU Action Plan seeks to strengthen the different sources of alternative finance, including crowdfunding.

In addition to providing an alternative source of financing directly, crowdfunding can offer other benefits to firms: it can give a proof of concept and idea validation to the project seeker; it can help attract other sources of funding, such as venture capital and business angels; it can give access to a large number of people providing the entrepreneur with insights and information; and it can be a marketing tool if a campaign is successful.

By providing an online marketplace to match investors and investees or lenders and borrowers, investment-based and lending-based crowdfunding can bring more competition into retail and capital markets. Crowdfunding can be seen as one part of the broader universe

¹ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *Action Plan on Building a Capital Markets Union*, COM(2015) 468/2, 30.09.2015.

² OECD (2015), *OECD Science, Technology and Industry Scoreboard 2015: Innovation for growth and society*, OECD Publishing, Paris.

³ Calvino, F., C. Criscuolo and C. Menon (2015), (2016), "No Country for Young Firms? Start-up Dynamics and National Policies", OECD Science, Technology and Industry Policy Papers, No. 29, OECD Publishing, Paris.

⁴ European Commission (2015), *Survey on the Access to Finance of Enterprises (SAFE): Analytical Report*, p.5.

of the technological innovations with potentially transformative implications for the financial system, its intermediaries and users ("FinTech").⁵

As with all investments, crowdfunding also entails a number of risks (such as project and liquidity risks, platform failure, cyber-attack) and concerns (for instance investors' inexperience, reliability of the investment, lack of regulation or different regulatory regimes) for retail investors and microenterprises. But with appropriate safeguards concerning investor protection, crowdfunding can be an important source of non-bank financing in support of job creation, economic growth and competitiveness.

The European Parliament has also taken an active interest in crowdfunding. The European Parliament resolution of 9 July 2015 on Building a Capital Markets Union⁶ states that "the CMU should create an appropriate regulatory environment that enhances cross-border access to information on the companies looking for credit, quasi-equity and equity structures, in order to promote growth of non-bank financing models, including crowdfunding and peer-to-peer lending". The European Parliament resolution of 19 January 2016 on stocktaking and challenges of the EU Financial Services Regulation⁷ underlines the potential of innovative market-based funding, in particular the opportunities of financial technologies, including crowdfunding and peer-to-peer loans, and stresses the need to streamline the respective regulatory requirements. The resolution asks the Commission to give breathing space for the emergence of these new models and to explore and promote them, giving priority to their cross-border dimension and ensuring the reduction of market entry barriers

The purpose of this report is to assess national regimes, identify best practice, and present the results of the Commission's monitoring of the evolution of the crowdfunding sector. It shows that crowdfunding can give a significant contribution to the CMU Action Plan objective of helping mobilise capital in Europe and channel it to all companies, including SMEs. Its share of the total funding of European businesses is still relatively small, but it has been growing fast, especially in some Member States.

At the same time, cross-border project funding is still limited. Because crowdfunding remains to a large extent a regional or local phenomenon, several Member States have already introduced or are planning to introduce domestic bespoke regimes on crowdfunding. Overall, these domestic regimes are consistent in their broad approach, as they aim at enabling the development of this source of funding while addressing key risks that may arise, notably for investors. But Member States are tailoring their regulatory frameworks to the characteristics

⁵ The European Commission intends to present a Communication on the collaborative economy in the second quarter of 2016.

⁶ European Parliament resolution of 9 July 2015 on Building a Capital Markets Union (2015/2634(RSP)). Available at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2015-0268+0+DOC+XML+V0//EN>.

⁷ European Parliament resolution of 19 January 2016 on stocktaking and challenges of the EU Financial Services Regulation: impact and the way forward towards a more efficient and effective EU framework for Financial Regulation and a Capital Markets Union (2015/2106(INI)), available at: <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P8-TA-2016-0006&language=EN&ring=A8-2015-0360>.

and needs of local markets and investors, which results in differences on how the rules are designed and implemented.

In light of the situation, the Commission Services will continue to monitor market and regulatory developments, and encourage closer alignment of regulatory approaches and sharing of best practice.

The staff working document is structured as followed:

- Section 2 takes stock of the work that has been carried out by the Commission Services since the adoption of the 2014 Communication on crowdfunding⁸;
- Section 3 reviews the current status of crowdfunding in the EU, with a particular focus on market developments and innovative business models;
- Section 4 gives an overview of domestic regulatory and supervisory arrangements in EU Member States;
- Section 5 appraises the extent of cross-border crowdfunding activities;
- Sections 6 sets out some conclusions.

2. UPDATE ON COMMISSION SERVICES' WORK ON CROWDFUNDING

In its 2014 Communication the Commission committed to report on developments in crowdfunding. The purpose of this section is to give an overview of the work carried out since then.

2.1. The Capital Markets Union Green Paper and Action Plan

In February 2015 the Commission adopted a Green Paper on building a Capital Markets Union which sought stakeholder views on whether there are barriers to the development of appropriately regulated crowdfunding or peer to peer platforms, including on a cross border basis, and how these barriers should be addressed.

Respondents to the CMU Green Paper consultation⁹ identified a number of barriers to the development of appropriately regulated crowdfunding platforms: regulatory barriers, poor availability and quality of information, and other barriers such as a lack of secondary markets and taxation barriers. In particular, differences in market condition and legal status lead to difficulties to assess risks across borders.

⁸ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *Unleashing the potential of Crowdfunding in the European Union*, COM(2014) 172 final, 27.3.2014.

⁹ All responses that were authorised for publication can be viewed at: http://ec.europa.eu/finance/consultations/2015/capital-markets-union/index_en.htm.

A number of respondents called for some form of intervention at EU level, ranging from light touch intervention to calibrating existing requirements, to introducing a fully harmonised regime. Some respondents argued that "soft" measures, such as coordination or sharing of best practice, were the best way forward. Those calling for EU legislative intervention most often referred to the need to ensure investor protection. Some respondents also considered that EU intervention would facilitate cross-border transactions at lower costs. Other respondents clearly stated that no action was necessary at EU level, and that it would be better to follow a market-led approach.

In light of this feedback, the CMU Action Plan commits the Commission Services to take stock of the situation of European crowdfunding markets and of the regulatory landscape as a basis for a future decision on how to best enable this funding channel to serve the European economy while appropriately address any potential risks.

2.2. Workshops, studies, and awareness-raising initiatives

Two regulatory workshops with Member States were held in December 2014 and in February 2016, in the framework of the Expert Group of the European Securities Committee (EGESC).¹⁰

At the first workshop, Member State experts reported varying degrees of cross-border transactions, mainly on the basis of anecdotal evidence. Experts also pointed to a number of issues that could be addressed in order to avoid legal barriers and promote crowdfunding activity in the EU, such as information sharing, data gathering, establishing a common taxonomy, supporting passporting, applying a principles based regime, and more convergent information disclosure requirements for securities issues below the prospectus threshold.

The second workshop showed that several Member States have introduced or are planning to introduce bespoke national regimes on crowdfunding. All these regimes aim at enabling the development of crowdfunding as an alternative source of funding while addressing key risks to investors. However, there are some divergences in the approaches that Member States have taken to reach those objectives. For example, some Member States consider that platforms must be authorised under their bespoke regimes to operate as crowdfunding platforms irrespective of the fact that they may have a MiFID passport; other Member States consider that a MiFID-authorised investment firm should be allowed to carry out crowdfunding activities in other Member States through its passport on the basis of the principle of mutual recognition.¹¹

The Commission has also set up a European Crowdfunding Stakeholder Forum (ECSF) as the expert group of representatives of associations of concerned stakeholder groups and national authorities. The objective of this group is to contribute to raising awareness, providing information and training modules for project owners, promoting transparency and exchange of best practice, and identifying issues that may need to be addressed in order for

¹⁰ 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.

¹¹ See section 4.1.1 on the authorisation of investment-based crowdfunding platforms and section 4.2.1 on the authorisation of lending-based crowdfunding platforms.

crowdfunding to flourish while taking into account the interest of contributors. Four meetings of the ECSF have been held since its creation, of which the most recent was on 17 February.¹² Most experts agreed that it would be useful to: (i) clarify the applicability of existing EU law, especially in regard to cross-border activities; (ii) encourage self-regulation at national and EU level; and (iii) create a voluntary transparency label.

The Commission launched projects or commissioned a number of studies to improve the general knowledge of developments in crowdfunding markets, business models and regulatory frameworks:

- A study (prepared by Crowdsurfer and Ernst and Young) 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 (published in November 2015)¹³.
- 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 risks¹⁴.
- 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. The study is also expected to produce recommendations for action at EU, national and regional levels.
- A project that aims at identifying, analysing and publicising best practice in Europe's crowdfunding market in relation to the cultural and creative sectors. One of the outputs of the project will be an action plan with recommendations at European level, including regulatory aspects.

In order to increase the awareness of small and medium-sized enterprises on the potential of crowdfunding as an alternative source of finance, the Commission published a Guide on Crowdfunding for SMEs in 23 languages.¹⁵ The guide explains what crowdfunding is and how to use it. It offers information on different types of crowdfunding and gives practical tips on how to access it. The guide will be updated in 2016. Further communication initiatives will

¹² Agendas, minutes and meeting documents are available at: http://ec.europa.eu/finance/general-policy/crowdfunding/index_en.htm#maincontentSec6.

¹³ "Crowdfunding: Mapping EU markets and events study". Available at: http://ec.europa.eu/finance/general-policy/crowdfunding/index_en.htm#maincontentSec1.

¹⁴ "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.

¹⁵ Available on the Europa website: http://ec.europa.eu/growth/access-to-finance/funding-policies/crowdfunding/index_en.htm.

raise awareness on crowdfunding among SMEs, mainly through a media campaign, a workshop and the Enterprise Europe Network.

2.3. Work by the European Supervisory Authorities

The European Supervisory Authorities (ESAs) have also carried out work on crowdfunding in their respective areas of responsibility. Most notably, in December 2014 the European Securities Markets Authorities (ESMA) published advice and an opinion on investment-based crowdfunding, and in February 2015 the European Banking Authority (EBA) published its opinion on lending-based crowdfunding.¹⁶

3. CURRENT STATUS OF CROWDFUNDING IN THE EU

3.1. Crowdfunding business models

Crowdfunding refers to an open call to the public to raise funds for a specific project. Crowdfunding platforms are websites that enable interaction between fundraisers and the crowd. Financial pledges can be made and collected through the platform.

The different business models that are used by crowdfunding platforms can be grouped under the following broad categories (see Annex 1 for more details about the different business models):

- Investment-based crowdfunding: Companies issue equity or debt instruments to crowd-investors through a platform.
- Lending-based crowdfunding (also known as crowdlending, peer-to-peer or marketplace lending): Companies or individuals seek to obtain funds from the public through platforms in the form of a loan agreement.
- Invoice trading crowdfunding: a form of asset-based financing whereby businesses sell unpaid invoices or receivables, individually or in a bundle, to a pool of investors through an online platform.
- Reward-based crowdfunding: Individuals donate to a project or business with expectations of receiving in return a non-financial reward, such as goods or services, at a later stage in exchange of their contribution.
- Donation-based crowdfunding: Individuals donate amounts to meet the larger funding aim of a specific charitable project while receiving no financial or material return.

¹⁶ 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](https://www.eba.europa.eu/documents/10180/983359/EBA-Op-2015-03+(EBA+Opinion+on+lending+based+Crowdfunding).pdf).

- Hybrid models of crowdfunding: those that combine elements of the other types of crowdfunding.

This staff working document mainly addresses crowdfunding models that entail a financial return, notably investment-based crowdfunding and lending-based crowdfunding. However, this is not to deny the important role that donations or rewards may play for innovators and early-stage entrepreneurs, especially in certain areas such as research, science, and cultural and creative sectors. For example, they may be useful to support a single project where the fund-seeker needs to finalise the prototype of a product or service. A fund-seeker may also use a reward-based crowdfunding campaign as a pre-sale to test her or his product or service.¹⁷

3.2. Current status of the EU crowdfunding market

Crowdfunding has been developing rapidly in some Member States. It is estimated that EUR 4.2 billion were successfully raised through crowdfunding platforms in 2015 across the EU, of which EUR 4.1 billion were raised through crowdfunding models entailing a financial return.¹⁸ Table 1 shows details of total and average amounts pledged, number of campaigns, and number of platforms for each type of crowdfunding.

The study commissioned by the Commission analysed data from crowdfunding platforms across the EU. Data coverage was approximately 68% by EUR volume of the estimated total market size for the time period under consideration (2013-14).¹⁹ Data covered loans, equity, rewards, donations and other crowdfunding models. However, the coverage of the study varies considerably between Member States, due to the number of active platforms, and the accessibility and suitability of data.

The study identified 510 live platforms as active in the EU as at 31 December 2014. Of these, 502 platforms were located in 22 Member States, while 8 platforms were located in other countries (Australia, Canada, China, New Zealand and the United States). Most platforms were located in the United Kingdom (143), followed by France (77) and Germany (65). The majority of platforms were involved in reward-based crowdfunding (30%), followed by platforms involved in equity crowdfunding (23%) and loan-based crowdfunding (21%).²⁰

¹⁷ Gabison (2015), *Crowdfunding and its Regulation: How can Crowdfunding help ICT Innovation?*, Luxembourg: Publications Office of the European Union.

¹⁸ Data from the Crowdsurfer Dashboard (www.crowdsurfer.com). Crowdfunding models entailing a financial return include equity, loans, bonds and debentures, invoice trading, revenue sharing, community shares, and micro-loans. Coverage is estimated to exceed 68% of the market in 2015.

¹⁹ Coverage of both loans crowdfunding and equity crowdfunding was estimated at 81%.

²⁰ The study covered only two projects (EUR 4,276 in total) that involved fundraising through the emission of bonds, and they were classified as "Other".

Table 1: Crowdfunding in the EU in 2015

	Total raised (EUR)	Average raised (EUR)	Number of campaigns	Number of platforms
Equity	422,039,462	504,832	836	60
Bonds and debentures	103,368,785	1,590,289	65	8
Loans, of which:	3,209,368,439	15,688	204,575	77
<i>Secured business loans</i>	453,423,956	79,132	5,730	6
<i>Unsecured business loans</i>	728,839,337	58,154	12,533	16
<i>Secured individual loans</i>	63,497,821	35,834	1,772	3
<i>Unsecured individual loans</i>	1,266,723,276	7,082	178,854	14
Revenue- sharing	69	69	1	1
Invoice trading	348,547,943	59,898	5,819	1
Community shares	7,183,406	478,894	15	2
Microloans	5,186,566	739	7,014	5
Rewards	96,899,235	4,573	21,538	127
Donations and microdonations	25,264,527	2,938	8,634	63

Source: Crowdsurfer Dashboard (www.crowdsurfer.com)

Note: Some loans are not classified by the platform as to their secured/unsecured status. To avoid potentially inaccurate assumptions, they are left unclassified, hence the breakdown is less than the sum of the total.

Project data from the platforms covered by study showed a total of EUR 2.3 billion successfully raised in 2013-14.²¹ The largest single projects raised EUR 6.1 million (equity) and EUR 5.0 million (loan). Across the EU between 2013 and 2014, amounts raised through equity crowdfunding platforms grew by 167%, and amounts raised through loan crowdfunding platforms grew by 112%.

In 2014 the average amount raised was EUR 260,000 for equity crowdfunding and EUR 11,000 for lending-based crowdfunding. The average size of offers seems to be increasing. For example, the average amount raised through equity platforms grew by 21% (from EUR 215,000 to EUR 260,000). This trend is confirmed by the 2015 UK Alternative Finance Report, which shows that the average deal size in the United Kingdom stood at GBP 523,978, a considerable increase from the 2014 average of GBP 199,095.

Crowdfunding is an EU-wide phenomenon, as crowdfunding projects were identified in every Member State in 2013-14. However, there are significant differences in levels of activity between Member States. For equity crowdfunding projects located in the EU covered by the study, in 2013-14 the United Kingdom was the largest market by total amount raised (EUR 89 million), followed by France (EUR 19 million) and Germany (EUR 18 million). For loans crowdfunding projects covered by the study, in 2013-14 the United Kingdom was by far the largest market with EUR 1.6 billion, followed at a distance by Estonia (EUR 17 million) and France (EUR 12 million).²²

By defining cross-border activity as crowdfunding where the project country differs from the platform's most active country, the study identified almost EUR 180 million of cross-border funding for successful projects by participating platforms in the scope period (compared to a total of EUR 2.3 billion for all successful projects, i.e. 8% of the total). Most cross-border activity was on non-EU platforms operating within the EU, and EU platforms operating outside the EU. Cross-border activity within the EU amounted to EUR 16.9 million of projects by participating platforms in 2013-14.

However, it is likely that these amounts understate the true level of cross-border activity, as they only account for situations where both the platform and the project are located in two different Member States (thus excluding situations where the provider of funds and the platform are located in two different Member States).

Recent evidence for the United Kingdom shows that there is little to no funding raised through alternative finance platforms going to individuals, projects or businesses based outside the UK. However, more than half of the surveyed platforms reported a certain degree of funding that came from overseas, with around 17% registering medium (approximately 25%) to high levels (55%) of funding (as % of total funding volume) from foreign countries. For peer-to-peer business lending platforms, there has been little or no cross-border activity

²¹ Given the market coverage of the study, it can be estimated that a total of approximately EUR 3.4 billion was raised through crowdfunding across the European Union during 2013 and 2014 taken together, and EUR 2.2 billion was raised through equity and loans crowdfunding.

²² Caution should be used when comparing figures across countries, as coverage varies considerably between Member States. This is due to: the number of active platforms; the accessibility of data; the suitability of data.

reported. Whereas, for equity-based crowdfunding, the weighted funding from overseas and the funding going to individuals, projects or business abroad was reported at 12% and 5%, respectively.²³

In fact, at the present time, gathering reliable data on and making robust estimation of cross-border transactions is very challenging, and the results depend to a large extent on the methodologies being used.²⁴

Regarding global trends, the most recent estimates show that crowdfunding expanded by 167% in 2014 and reached USD 16.2 billion from USD 6.1 billion in 2013. North America continued to be the first region in terms of crowdfunding volumes, growing by 145% and raising a total of USD 9.46 billion. Asian crowdfunding volumes grew by 320%, to USD 3.4 billion raised, ahead of Europe (estimated at USD 3.26 billion).²⁵

3.3. Emerging trends in crowdfunding

Since crowdfunding is a relatively new funding instrument, a great deal of innovation is going on in the sector. Although it is impossible to forecast how such a fast-changing phenomenon will evolve in the future, expert views²⁶ give an idea of emerging trends and innovative business models.

Crowdfunding can be seen as one part of the broader universe of financial technology innovations. FinTech is increasingly coming into the focus of regulatory attention.²⁷ However, financial technology innovations can be found across different segments of financial markets (e.g. payment systems, post-trading infrastructures, and investment advice, to name but a few), and the implications of FinTech for investor protection and financial stability are likely to be very different depending on the type of products and funding channels. For example, the 2014 Opinion and Advice on investment-based crowdfunding of the European Securities Markets Authority did not identify significant potential risks to financial stability arising from crowdfunding, given the small scale of the market and its nature. Likewise, the 2015 Opinion on lending-based crowdfunding of the European Banking authority identified risks to borrowers, to lenders and to platforms, rather than to the financial system as a whole.

²³ 2015 UK Alternative Finance Industry Report.

²⁴ The difficulty in collecting transparent, comparable and reliable data may also be partly due to regulatory differences across EU Member State.

²⁵ Massolution, 2015CF – Crowdfunding Industry Report, March 2015.

²⁶ Including exchanges of views at ECSF meetings. Also, a study prepared for the European Commission gave an overview of emerging ongoing and future trends on the crowdfunding market and business models (*Crowdfunding innovative ventures in Europe: The financial ecosystem and regulatory landscape*, Study prepared for the European Commission by SpaceTec Capital Partners, 2014).

²⁷ For example, the Financial Stability Board is evaluating the potential financial stability implications of emerging financial technology innovation for the financial system as a whole, and working to understand better the potential impacts on financial stability of operational disruption to core financial institutions or infrastructure.

A growing trend that is expected to become more prominent in the future is the institutionalisation of crowdfunding, notably in terms of the investors. This trend is supported by a recent study which found that 45% of platforms in the United Kingdom reported institutional involvement, compared to 28% in 2014 and just 11% in 2013.²⁸ Institutional involvement is particularly strong in consumer loans crowdfunding, while in equity-based crowdfunding a growing number of venture capital and angel investors are co-investing alongside or in parallel with 'crowd investors'. The 'institutional investor' category is quite broad and includes banks, mutual funds, hedge funds, pension funds, asset management companies, but also local authorities and national development banks.²⁹

Another observed trend is the consolidation of crowdfunding platforms. In total, 510 live platforms were identified as active in the EU on 31 December 2014.³⁰ The total number of platforms at that date rose by 23.2% compared with its level in 2013, with growth in identified platforms slowing from a peak of 74.3% in 2010.³¹ The total number of new platform launches fell from 133 in 2013 to 96 in 2014. The trend is confirmed by the 2015 UK Alternative Finance Industry Report which shows that since previous years' studies, a number of alternative finance platforms have either 'gone quiet' or disappeared altogether. In the United Kingdom, the absolute year-on-year growth rate is slowing down, from 161% between 2013-14 to 84% between 2014 and 2015.

This consolidation is also happening across borders, where first experiences with public listing for crowdfunding platforms are being observed. In this context, stock market fluctuations may have an impact on some listed crowdfunding platforms as well as on the attractiveness of crowdfunding vis-à-vis public listings.

Although there are examples of fund seekers using a platform for more than one round of capital-raising, it will be challenging for existing platforms to maintain a sufficient pipeline of projects which would enable them to grow at current rates. A recent study shows that of the 367 businesses that attracted investment via the United Kingdom's five major crowdfunding platforms during 2011-13, only 22% have gone on to raise funds at a higher valuation, or realised a return for their investors, through a sale or other exit.³²

²⁸ Cambridge Centre for Alternative Finance and NESTA, *Pushing Boundaries: the 2015 UK Alternative Finance Industry Report*, February 2016.

²⁹ For example, in December 2015 the European Investment Bank approved a pilot project to provide financing to SMEs in the United Kingdom via an online peer-to-peer lending platform (approximately GBP 100 million). Source: <http://www.eib.org/projects/pipeline/2014/20140307.htm>.

³⁰ Crowdfunding: Mapping EU markets and events study.

³¹ Growth of live platforms in the EU has been on a declining trend from the 2010 peak: 54.1% in 2011; 49.5% in 2012; 47.3% in 2013; and 23.2% in 2015.

³² Alfi Data and Nabarro, *Where are they now? A report into the status of companies that have raised finance using Equity Crowdfunding in the UK*, November 2015. This report surveys the companies that have raised equity finance on the most significant online platforms based on origination volume since the industry began in 2011: Crowdcube, Seedrs, SyndicateRoom, Venture Founders, CrowdBnk. This report has tracked every campaign funded through the above platforms since the industry's inception in 2011 until June 30th 2015. The status of each campaign was reviewed as at 30th September 2015. That amounts to 431 equity crowdfunding rounds by 367 companies.

More specifically in the P2P lending space, a small number of consumer lending platforms already have a large share of the market, while there is more room for consolidation on the business lending segment. This consolidation is also happening across borders.

Indeed, the internationalisation of crowdfunding platforms is another emerging trend, which is driven by the need to increase economies of scale and thus expand both the investor base and the pipeline of projects seeking funding. Cross-border crowdfunding activities are more likely to take place where the platform or project are based in smaller Member States, whose markets may not be large enough to ensure the sustainability of platforms' activities. The extent of cross-border activities is analysed in more detail in section 5 of this document.

In terms of new market segments in the securities-based crowdfunding space, campaigns focus more on traditional sectors beyond investments in technology start-ups and seeks to facilitate disintermediation in existing sectors (such as real estate). The Crowdsurfer / Ernst&Young study found that few participating platforms operated with multiple funding types, but there is trend of increasing activity in more "niche" segments such as renewable energy, student loans, and real estate.

Another trend is the emergence of organised secondary markets for securities or loans in crowdfunding projects, although this service is not provided systematically. There are some examples of different models and forms to provide such secondary marketplaces.

One model entails the direct involvement of the crowdfunding platform. For instance, a platform may provide an online bulletin board connecting investors who intend to sell their investments with potential buyers who are looking to invest in previously funded projects. Investors can offer or bid on securities and negotiate a price directly; once the sale is agreed, the security is transferred from investor account to another. In another example, a crowdfunding platform itself may operate a marketplace for its securities (although such marketplace may be extended to other unlisted securities and not limited those financed through the crowdfunding platform). In some cases these venues are multilateral trading facilities (MTFs). Unlike a bulletin board connecting sellers and buyers, this type of secondary market would bring together multiple buying and selling interests, in a system with non-discretionary rules, in a way that resulted in a contract.

In another model, crowdfunding platforms may team up with existing marketplaces for unlisted companies and thus enable investors to buy and sell securities that had been offered through crowdfunding platforms.

Another important trend to be observed concerns the awareness of the opportunities and risks of crowdfunding among potential investors. The Oxera study sheds some light on the level of awareness of crowdfunding in three countries (Germany, Spain and Poland).³³ A greater

³³ Awareness levels are highest in Germany (21.5%), followed by Spain (17.4%) and then Poland (16.6%). The difference between the latter two is not statistically significant. Awareness rates among males are higher than among females. With the exception of Poland where the age group with the highest awareness is the 34–44-year olds, there is a tendency for the youngest age groups (the 18–34-year olds) to have higher awareness rates. In all three countries the awareness rate of the 18–34-year olds exceeds that of the age group 45+ by a statistically significant level. Finally, education and income are broadly positively correlated with awareness levels for all countries considered. In some instances there are no statistically significant differences.

number of respondents report that they have invested in equity crowdfunding than in P2P lending, and around 60% of the respondents who report that they have invested state that they have invested less than 10% of their savings in equity crowdfunding or in P2P lending.

Being interested or excited about a specific company or project is the most important reason to invest for equity crowdfunding. Respondents who consider ‘taking advantage of a new form of investment/increased diversification’ to be important tend to consider ‘higher expected financial returns’ and ‘disappointment/mistrust of traditional finance’ to be important as well. For P2P lending, no single motivation for investing appears to be more important than any other.

Concerns about the reliability of this form of investment, as well as the lack of regulation of platforms, are rated as the most important reasons not to invest for both forms of crowdfunding. Respondents seem mostly concerned that the fundraiser/borrower might be fraudulent. For both equity crowdfunding and P2P lending, the second most highly rated source of concern is that the platform might be fraudulent.

Preliminary results³⁴ of a survey on crowdfunding from the user's perspective conducted by the University of Brighton show that that investors in P2P lending care more about returns while interest and excitement is a more important drive of investment through equity crowdfunding. Poor returns or losses are the most important risk factors. Overall, platforms seem to have gained investors’ trust, and this implies that it will be very important for platforms to maintain a good reputation vis-à-vis their actual and potential users

The preliminary results of the survey also show that it is too early for a large majority of investors in P2P lending to return on past returns mainly. Some investors in equity crowdfunding have already started receiving dividends or similar returns; many investors in equity crowdfunding have not received returns yet but are conscious that it will take time. In terms of future returns, investors in P2P lending expect around 4% to 6%, while investors in equity crowdfunding expect around 1% to 15% (although 1 in 5 is afraid of losing money).

A second round of the survey (with an expanded questionnaire) has just been launched. The questionnaire refers to potential respondents that are already aware of crowdfunding with financial returns (equity crowdfunding and P2P lending), even if they have not invested yet³⁵.

3.4. Potential risks related to crowdfunding

As highlighted in the introduction, crowdfunding, while currently relatively small, has the potential to bring significant benefits to the EU economy in terms of jobs and growth,

³⁴ One important caveat is that the results of the survey are not yet robust, given the limited number of respondents and the fact that the results may be biased (especially in p2p lending where more than half of responses come from the United Kingdom).

³⁵ The Commission Services would be grateful for any additional responses to the survey, which only takes 15 minutes to answer. All the information provided stays anonymous. It is possible to respond to the survey here: <https://ec.europa.eu/eusurvey/runner/EQUITYcrowdfundingCONSUMERsurvey2016> (equity crowdfunding questionnaire) and <https://ec.europa.eu/eusurvey/runner/LENDINGcrowdfundingCONSUMERsurvey2016> (lending crowdfunding questionnaire).

especially by providing an alternative funding source for start-ups, SMEs and unlisted companies. At the same time, as with any type of investment, the promotion of these benefits needs to be pursued in parallel with ensuring appropriate safeguards.

The risks that may be posed by investment-based crowdfunding are common to those more generally related to investing in the types of securities that are offered (e.g. unlisted shares or bonds), or to those that may arise through other financial intermediation channels. These risks³⁶ can also manifest themselves in the context of the crowdfunding business model (i.e. securities offered to investors, often non-professional ones, through an online intermediary).

These risks may include: investors losing part or all of their capital or not getting the returns they expect; dilution in the case of equity crowdfunding (if the company engages in further rounds of capital raising); inability to exit investments (e.g. for lack of a secondary market); insufficient information or inability to price correctly the securities invested in, or misinformation (both in the pre-investment phase and over the lifetime of the investment); conflict and misalignment of interests between issuers, platforms and investors³⁷; insolvency of the platform operators, in particular as regards the continuous servicing of existing claims (e.g. dividend and interest payments) and protection of clients' assets; security of client data; platforms may be used for illicit activities; fraud (both for the investors and for the project) and related reputational risk for platforms.

Lending-based crowdfunding may also give rise to some of the risks listed above: investors may not have sufficient information or may be misinformed; insolvency of the platform operators; conflict and misalignment of interests; security of client data; platforms are used for illicit activities; fraud and related reputational risk.

Other risks may be specific to lending, and manifest themselves in the context of the crowdfunding business model (i.e. money handling and credit intermediation through an online platform).³⁸ A non-exhaustive list of risks includes the following: credit risk for the lender (e.g. lender may lose the capital invested and the related interest); lenders may not be able to exit their investment in the absence of a secondary market for loans; borrowers may not have sufficient information to assess their ability to repay the loan, or borrowers may be misinformed.

³⁶ The study from Nabarro and AltFi Data shows that 20% of the 367 UK businesses that attracted investment through five major equity crowdfunding platforms between 2011 and 2013 were no longer trading as of November 2015. At the same time, the study shows that investments through crowdfunding platforms do not seem to underperform other benchmark investments. In the United Kingdom, a 2014 study by the insurer RSA suggested that 55% of SMEs fail in their first five years of existence. Furthermore, a 2009 Nesta report suggested that 56% of angel investments failed to return capital.

³⁷ For example, a misalignment of interest may arise due to the remuneration model of many crowdfunding platforms, which are based upon the completion of successful crowdfunding campaigns and are completely independent from the outcome of the funded project. A potential misalignment of interest may also emerge on the side of issuers if the company seeking funding is free to choose the method to evaluate the investment prospects that will be communicated to potential investors.

³⁸ For example, a recent case of non-segregation of clients' money led to the failure of a marketplace lending platform.

4. THE REGULATORY ENVIRONMENT FOR CROWDFUNDING ACTIVITIES

As a basis for enabling crowdfunding to develop, while ensuring that risks are appropriately mitigated and investors are sufficiently protected, seven EU Member States have introduced bespoke regulatory frameworks for crowdfunding activities, with requirements for issuers/borrowers, platforms and investors/lenders. In addition, a number of Member States are either preparing or planning to introduce a bespoke regime. Overall, these domestic regimes are consistent in their approach, as they aim at enabling the development of this source of funding while addressing key risks that may arise, notably for investors.

In general, business models such as peer-to-peer or business-to-consumer involve the application of national rules implementing several EU consumer protection directives notably the Unfair Commercial Practices Directive and the Unfair Contract Terms Directive.³⁹ They bring in several important consumer protection standards that benefit both retail investors and borrowers in the area of crowdfunding. In addition, bespoke regulatory frameworks go beyond minimum harmonisation obligations in financial services provided by EU consumer law.

In crowdfunding there is likely to be significant processing of personal data. The rules of the Data Protection Directive⁴⁰ 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).⁴¹

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. The potential for a transparency label for platforms was also discussed by experts in the ECSF.

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

³⁹ Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive') and Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts.

⁴⁰ 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

⁴¹ The Data Protection Directive will be replaced by the General Data Protection Regulation (applicable across the EU in May 2018) which modernises the data protection rules, and provides tools, such as data protection by design, to assist data controllers to comply with the data protection rules.

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.⁴²

The United Kingdom is currently the most developed market for peer-to-peer lending, with a trade association (UK peer-to-peer finance association) representing 90% of the lending market in the United Kingdom. Its members must apply so called Operating principles setting out the standards of business conduct, such as clarity and transparency, including on bad debt rates, returns performance and full loanbook availability, risk management and reporting. These align with, and in some areas supplement, requirements of the Financial Conduct Authority.⁴³

The following sections describe the main characteristics of domestic regulatory and supervisory arrangements that are in place to promote crowdfunding as an alternative source of finance while addressing the risks. Annex 2 includes an overview of domestic regulatory frameworks on investment-based crowdfunding and lending-based crowdfunding in a selection of Member States.⁴⁴

4.1. Regulation of investment-based crowdfunding

4.1.1. Getting authorised

There are four broad models of authorisation of crowdfunding platforms in EU Member States, as explained in greater detail in the overview of national regulatory regimes on investment-based crowdfunding in Annex 2 (especially the rows on authorisation, services provided, financial instruments, and passport). 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 (1) or model (2) at the firm's discretion. In another Member State, platforms can be authorised both under model (1) and model (3).

(1) Authorisation under the Markets in Financial Instruments Directive (MiFID)⁴⁵

⁴² 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/>.

⁴³ <http://p2pfa.info/wp-content/uploads/2015/09/Operating-Principals-vfinal.pdf>

⁴⁴ This is the Commission Services' understanding of the national legal framework based on the information in their possession.

⁴⁵ Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC (MiFID).

Investment-based crowdfunding platforms generally have to be authorised under MiFID, and therefore benefit from a passport to carry out regulated services and activities throughout the EU. This is the case where crowdfunding platforms provide investment services (as listed in Annex 1 Section A of MiFID) in relation to financial instruments listed in Annex 1 Section C of the same directive, in particular transferable securities⁴⁶ (such as shares and bonds) or units of collective investment undertakings.⁴⁷

(2) Domestic bespoke regime under MiFID Article 3 exemption

In two Member States, platforms can be authorised under a domestic bespoke regime developed under the exemption in Article 3 of MiFID.⁴⁸ In these cases, authorised platforms can carry on crowdfunding-related services and activities at national level also in relation to MiFID financial instruments. However, these platforms are not allowed to passport their activities across the EU, unless they seek a full MiFID authorisation (in such a case, they would not be authorised under the national bespoke regime). In one Member State, platforms regulated under the Article 3 exemption are authorised to provide the MiFID service of "reception and transmission of orders" (RTO), in which case platforms can only transmit orders to authorised entities. In another Member State, platforms are required to provide the "investment advice" service.

(3) Authorisation for services and activities in relation to non-MiFID financial instruments

Some Member States' domestic regimes focus on regulating the services and activities of crowdfunding platforms which intermediate instruments that do not qualify as financial instruments under MiFID (for example, 'non-readily realisable securities'). When platforms do not provide services in relation to transferable securities or other MiFID financial instruments, they need not be authorised under the directive for that intermediation.⁴⁹ However, platforms can be authorised under the relevant bespoke

⁴⁶ Transferable securities are defined in MiFID as 'classes of securities which are negotiable on the capital market, with the exception of instruments of payment'.

⁴⁷ In its final report *Investment-based crowdfunding- Insights from regulators in the EU* (13 May 2015, ESMA/2015/856 Ann1) ESMA notes that some crowdfunding platforms operate as MiFID tied agents of an investment firms, and therefore are not directly authorised but operate under the responsibility of an authorised firm.

⁴⁸ Under Article 3 of MiFID, Member States may choose not to apply the Directive to any persons for which they are the home Member State that: are not allowed to hold clients' funds or securities; are not allowed to provide any investment service except the reception and transmission of orders and the provision of investment advice; in the course of providing that service, are allowed to transmit orders only to authorised entities; and provided that the activities of those persons are regulated at national level.

⁴⁹ For example, company laws in certain Member States may consider that stakes in private firms are not transferable, and therefore would not fall within the scope of MiFID as transferable securities. In these cases, when there is no domestic bespoke regime, crowdfunding platforms may either fall outside the scope of regulation or be subject to other domestic rules (e.g. trade intermediation or promotion of financial services).

regime to intermediate non-MiFID instruments at national level, while seeking a MiFID authorisation to carry on services and activities in relation to transferable securities and other MiFID financial instruments.

(4) Authorisation outside the MiFID framework

Other Member States have developed their domestic bespoke regime outside the MiFID framework because they consider that investors may have access to MiFID financial instruments through platforms which are not in the scope of MiFID because such platforms do not carry out any MiFID service or activity.

4.1.2. *Conduct of business, conflict of interest and organisational rules*

Depending on the type of authorisation, different capital requirements, conduct of business rules, conflict of interest rules and organisation requirements apply:

- *Minimum capital requirements on platforms*

Under MiFID, the initial capital requirements are €730,000⁵⁰ 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, €125,000.⁵¹ Member States may lower the initial capital requirement of €125,000 mentioned above to €50,000 if the firm is not authorised to hold client money.⁵² One of the purposes of regulatory capital requirements in MiFID is to protect the customers of investment firms from the risk of insolvency of the firm and to ensure operational continuity.⁵³

As shown in the row on "minimum capital requirements" in the overview table of investment-based crowdfunding regimes in Annex 2, some Member States made specific revisions of capital requirements for investment-based crowdfunding activities in their bespoke regimes. Generally speaking, the rationale is that platforms should comply with proportionate capital requirements or similar mechanisms for safeguarding operational continuity. 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.

⁵⁰ Article 28(2) of Directive 2013/36/EU.

⁵¹ Article 29(1) of Directive 2013/36/EU.

⁵² Article 29(3) of Directive 2013/36/EU.

⁵³ 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. The European Parliament and Council Directive 97/9/EC of 3 March 1997 on investor-compensation schemes also applies to MiFID-authorized crowdfunding platforms in relation to MiFID financial instruments. 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.

- *Conflict of interest rules on platforms*

MiFID authorised platforms must maintain and operate effective organisational and administrative arrangements with a view to taking all reasonable steps designed to prevent conflicts of interest from adversely affecting the interests of its clients.

Alternatively, for platforms not authorised under MiFID, some domestic bespoke regimes also directly address the issue of conflicts of interest (for additional details, see the row on conflict of interest in the table on investment-based crowdfunding in Annex 2). These range from requirements on platforms to 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 issuers or investors. Some Member States extend the conflict of interest rules to directors or employees of platforms.

- *Conduct of business requirements and organisational rules on platforms*

Where platforms operate within the scope of MiFID, a range of organisational and conduct of business requirements applies (for example to ensure that client assets are protected and that platforms act in the interests of the clients).

Where platforms operate outside the scope of MiFID, targeted proportionate rules on platform's organisational arrangements and conduct of business are a common feature of several domestic bespoke regimes (see the row on professional requirements in the table on investment-based crowdfunding in Annex 2). 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.

Moreover, 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.⁵⁴

4.1.3. Investor protection measures

In addition, both EU rules and bespoke regimes set out investor protection measures such as: "know your customer rules"; disclosure by issuers (in cases of exemption from the Prospectus Directive⁵⁵); information requirements and risk warnings by platforms; due diligence requirements; limits on maximum investable amounts.

- *"Know your customer" rules:*

Platforms operating within the scope of MiFID may be required to carry out a suitability test or an appropriateness test, depending on the services they provide in relation to financial instruments.

⁵⁴ Article 5, Directive 2005/29/EC.

⁵⁵ Directive 2003/71/EC on the prospectus to be published when securities are offered to the public or admitted to trading.

Some domestic bespoke regimes have rules to ensure that investment offerings through crowdfunding platforms reach investors for whom they are suitable or appropriate (more details can be found in the row on know-your-customer rules in the table on investment-based crowdfunding in Annex 2). 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.

In addition, platforms that operate under MiFID are automatically subject to anti-money laundering and terrorist financing rules under the Anti-Money Laundering Directive (AMLD)⁵⁶. Even when they operate outside MiFID, platforms may provide certain payment services within the meaning of the Payment Services Directive (PSD)⁵⁷, and therefore subject to the AMLD.

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.⁵⁸

- *Disclosure requirements on issuers:*

The Prospectus Directive (PD)⁵⁹ requires a prospectus 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.⁶⁰ Therefore, an obligation to publish a prospectus could apply to offerings of securities through crowdfunding platforms.

However, the obligation to draw up a harmonised EU prospectus only becomes applicable from a total consideration of EUR 5 million. For offers below EUR 5 million, issuers or offerors willing to offer securities through crowdfunding platforms may or may not need to produce a EU prospectus depending on whether the Member States concerned have chosen to extend the EU-prospectus obligation below EUR 5 million in their national

⁵⁶ Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing.

⁵⁷ Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC.

⁵⁸ The AMLD requires Member States to extend some or all of the AMLD provisions to other professions and categories of undertakings that those explicitly listed in the Directive, which engage in activities “which are particularly likely to be used for money laundering or terrorist financing purposes”

⁵⁹ Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC.

⁶⁰ Except for money market instruments having a maturity of less than 12 months, which are out of the scope of the PD in spite of being transferable securities.

rules, and on what lower "national" threshold, if any, they have chosen for that purpose. For offers with a total consideration below the "national" threshold set out by each Member State, the Member State may impose specific national disclosure requirements for offers intermediated through crowdfunding platforms (see the row on the size of offers in the table on investment-based crowdfunding in Annex 2).

The Commission's legislative proposal for the Prospectus Regulation⁶¹ exempts the smallest capital raisings from the prospectus obligation, under the premise that imposing an EU-prospectus for offers of securities to the public of a consideration below EUR 500,000 (as is often the case on crowdfunding platforms) is disproportionately costly in relation to the envisaged proceeds of the offer. Such a threshold of EUR 500,000 would provide a safe harbour for the development of the vast majority of crowdfunding initiatives, meaning that can set disclosure regimes appropriate to their national markets, as long as they are done in a proportionate way.⁶²

Moreover, the Distance Marketing of Financial Services Directive (DMFSD)⁶³ may also apply whenever a platform, qualifying as a supplier or intermediary, is involved in the conclusion of a 'distance contract' for any financial services products and engages in "business-to-consumer commercial practices". Under the Distance Marketing of Financial Services Directive, consumers have a right to obtain pre-contractual information listed in the Directive as well as right of withdrawal from a distance contract within 14 days without justification. Information items listed in DMFSD cover information of a general nature applicable to all kinds of financial services.

Domestic bespoke regimes generally set out specific disclosure requirements, such as mandatory documents containing some key information on the issuer, the investment or the project for which funding is sought (including potential risks). These are described in greater detail in the row on disclosure to investors by the issuers in the table on investment-based crowdfunding in Annex 2. 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.

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

⁶¹ COM(2015) 583 final.

⁶² Recital 12 of the Prospectus Regulation proposal states that " For offers of securities to the public of a consideration below EUR 500 000, the cost of producing a prospectus in accordance with this Regulation is likely to be disproportionate to the envisaged proceeds of the offer. It is therefore appropriate that the requirement to draw up a prospectus under this Regulation should not apply to offers of such small scale. Member States should refrain to impose at national level disclosure requirements which would constitute a disproportionate or unnecessary burden in relation to such offers and thus increase fragmentation of the internal market."

⁶³ Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services and amending Council Directive 90/619/EEC and Directives 97/7/EC and 98/27/EC.

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.

- *Information and risk-warning requirements imposed on platforms:*

As illustrated in greater detail in the row on information requirements and risks warnings by platforms, 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 provides untruthful or deceiving information, or omits material information that the consumer needs to make informed decision.⁶⁴ 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.

- *Obligations for platforms to perform due diligence:*

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. More details on these domestic requirements can be found in the row on due diligence in the table on investment-based crowdfunding in Annex 2.

- *Limits on maximum investable amounts:*

Limiting investment amounts is one feature of the general approach to protect investors that is common to several domestic bespoke regimes (for more details, see the row on maximum investable amounts in the table on investment-based crowdfunding in Annex 2). 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 applying the MiFID Article 3 exemption for crowdfunding platforms, there are no limitations, but investors are exempt from the appropriateness test if their investments do not exceed certain thresholds.

⁶⁴ Article 6 and 7, Directive 2005/29/EC.

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.

4.2. Regulation of lending-based crowdfunding

Lending-based platforms currently exist in the majority of Member States.⁶⁵ With a few exceptions of platforms with a history of up to ten years, the majority of platforms have only entered in the market in the last five years. Four Member States recently introduced bespoke regimes to regulate crowd-lending as a specific commercial activity. Other Member States have so far opted for a more 'wait-and-see' approach and require lending platforms to comply with existing general rules applicable on a national level.

Crowd-lending business normally entails three main activities: credit intermediation, money handling and debt collection. Lending platforms act as intermediaries providing services that allow borrowers to obtain a, mostly unsecured, loan and lenders to invest in the loan in exchange for a financial return. In particular, these services, for which the platforms charge a fee, include the following: (1) registration and checks of borrowers' identity and eligibility for the loan, including their creditworthiness; (2) online tools enabling lenders either to choose which borrower(s) to lend to or use automated bidding functions to better diversify their risk; (3) setting an interest rate based borrowers' credit profile or enabling online reverse auctions; (4) processing of lenders' money onto borrowers' accounts, and borrowers' repayments according to the agreed terms; (5) debt collection on behalf of lenders if borrowers do not repay on time. Depending on the business model, some of these activities and services may also be outsourced to external suppliers, including authorised payment service providers; accordingly, the platform would no longer need to apply for necessary authorisations.

Unlike the traditional banking model, lenders, rather than platforms, invest in loans to borrowers, unless platforms also choose to invest their own funds. These investments can yield a higher return than saving accounts offered by banks⁶⁶, but can be subject to higher risk. No regulatory safeguards such as bank deposit guarantee schemes or investor protection schemes protect these investments. If the borrower defaults or the platform becomes insolvent, the lenders risk losing part or all of their investment.⁶⁷ Proper credit risk

⁶⁵ To the Commission Services' knowledge, crowdfunding platforms do not appear to exist in six Member States.

⁶⁶ Savings accounts fall within the meaning of deposits under the Article 2(3) of the Directive 2014/49/EU of the European Parliament and of the Council of 16 April 2014 on deposit guarantee schemes, i.e. a credit balance which results from funds left in an account or from temporary situations deriving from normal banking transactions and which a credit institution is required to repay under the legal and contractual conditions applicable, including a fixed-term deposit and a savings deposit.

⁶⁷ As part of their business offering, therefore, some platforms offer provision or contingent funds to cover, mostly in part, lenders' losses from borrowers' defaults. However, the cumulative effect of a short history of a platform and the maturity of loans ranging up to five or more years may render some of these contingent funds incapable to cover the losses in the event of level of defaults higher than predicted.

management and money handling are therefore vital for the viability of the platform in a longer run and for the protection of lenders and borrowers.

4.2.1. Getting authorised

National authorisation requirements differ by Member State. 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.⁶⁸

Under the bespoke regimes, platforms are subject to an authorisation and registration procedure similar to that applicable to financial intermediaries, and supervision by national competent authorities. Depending on the type of authorisation, crowd-lending as a regulated activity under a bespoke regime is subject to additional rules on capital requirements, professional qualification and conduct. All Member States with bespoke regimes either in place or underway, 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.

Similar rules apply if platforms choose to apply for a payment institution license. In order for platforms to get authorized as payment institutions, they must meet the conditions set out in the Payment Services Directive, such as rules on initial capital (the levels of which range from EUR 20,000 to EUR 125,000 depending on the nature of the payment service) and own funds as well as other safeguards in relation to business continuity and contingency plans, notably in case platforms fail and become insolvent.⁶⁹

4.2.2. Lending and credit intermediation

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 clients⁷⁰, non-

⁶⁸ https://acpr.banque-france.fr/fileadmin/user_upload/acp/Communication/Communiqués%20de%20presse/20140930-Sinformer_sur_le_nouveau_cadre_applicable_au_financement_participatif.pdf

⁶⁹ Articles 5, 7, 8 of the Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market; articles 5, 7, 8, 9 of the revised Directive 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market that will repeal the former directive with effect from 13 January 2018.

⁷⁰ In one Member State, rules providing additional consumer protections include, e.g. restricting direct offer financial promotions to professional clients; sophisticated retail clients; high net worth retail clients; retail clients who are advised; or retail clients who commit not to invest more than 10% of their net investable assets. See: <http://www.fca.org.uk/static/documents/policy-statements/ps14-04.pdf>, p. 36

accredited and accredited investors⁷¹. For example, with the likely aim to ensure responsible lending, platforms are obliged to give risk warnings to consumers, rather than explicitly required to assess their creditworthiness. Annex 2 sets out the rules applicable in bespoke regimes in relation to information disclosures⁷², conflict of interest, and due diligence, among others.

Consumer lending business models such as peer-to-peer or business-to-consumer could potentially trigger application of national rules implementing several EU consumer protection directives, applicable to business-to-consumer relations.

The Consumer Credit Directive⁷³ is applicable to credit agreements between creditors who grant or promise credit in the course of their trade, business, or profession and consumers. The most relevant consumer protection standards include the right to withdraw from the contract, the obligation to provide minimum pre-contractual information, to perform a creditworthiness assessment and to determine the total cost of the credit (Annual percentage rate of charge). Furthermore, under the Directive, creditors should have access to databases for assessing the creditworthiness of consumers in case of cross-border credit.

Platforms often carry out activities that normally pertain to creditors, such as credit worthiness assessment and debt collection. In most cases, however, they neither conclude loan agreements with borrowers nor make decisions on behalf of lenders as to which borrowers to lend to. These issues are potentially relevant for applying provisions transposing the Directive as it provides for obligations for creditors and credit intermediaries.

Under the Distance Marketing of Financial Services Directive, whenever a platform, qualifying as a supplier or intermediary is involved in the conclusion of a 'distance contract' for any financial services products and engages in "business-to-consumer commercial practices", consumers have a right to obtain pre-contractual information listed in the Directive.⁷⁴

The Directive on Unfair Commercial Practices protects consumers against unfair commercial practices by traders which are either misleading, including omissions to provide material information to the consumer, aggressive or contrary to the requirements of professional diligence. An invitation to purchase is bound to give a limited number of key items of

⁷¹ In two Member States, limits on maximum investable amounts apply for persons other than professional investors.

⁷² For example, in relation to information disclosure, in one Member State platforms are obliged to disclose the borrowers' data, if they are natural persons, prior to concluding the loan agreements. This may deter potential borrowers as it lifts the anonymity of participants normally inherent in the online market place and acknowledged in another Member State (allowing platforms to disclose the borrowers' identity, if the latter does not repay on time).

⁷³ Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers.

⁷⁴ Articles 4, 5 and 6 of the Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services and amending Council Directive 90/619/EEC and Directives 97/7/EC and 98/27/EC

information which the consumer needs to make an informed transactional decision.⁷⁵ By way of another example, the Directive bans the use of terms such as "free", if used in a misleading way.⁷⁶ The latter example is consistent with the rules in one Member State requiring firms to use terms such as 'protected' or 'secure', or make comparisons of returns to savings accounts, where that is fair, clear and not misleading.⁷⁷

In addition, under the Unfair Contract Terms Directive, if any standard terms and conditions, which are not individually negotiated, create a significant imbalance in the rights and obligations of the parties to the detriment of consumers contrary to the requirements of good faith, they are not binding on the consumers.⁷⁸

4.2.3. *Money handling*

Money-handling is present in all types of crowdfunding loans. The two examples below show the way platforms carry out processing of payments from lenders to borrowers. In a typical model, lenders transfer money in and out of their client account. When the lender's money is not lent out, it is held on trust in a segregated client account at platform's bank account. The funds are treated as separate from the platform's own accounts and are subject to internal control mechanisms and accounting procedures in accordance with national rules on client money handling. In another model, the money does not flow through the platform, as the payment services are outsourced to a partner credit institution; the latter provides a loan to a borrower in order to consequently resell the debt to investor(s).

The provision of payment services is a regulated activity that may be undertaken by specific categories of service providers, such as credit institutions, e-money and payment institutions, and subject to prudential supervision. The national rules implementing the Payment Services Directive could apply to crowdfunding platforms, covering the payment side of their activities, if the latter, depending on their business models, act (i) for both the payer and the payee and (ii) handle their funds. In this case, the platforms are subject to an obligation to safeguard all funds which have been received from the payment service users or through another payment service provider for the execution of payment transactions and deposit them in a separate account in a credit institution.⁷⁹

When platforms receive money from lenders, usually through bank transfers, they might also be subject to applicable anti-money laundering and counter-terrorist financing rules set out in the AMLD, in particular an obligation to carry out a due diligence on the basis of the risk assessment. Relevant for the risk assessment would be the identity of the consumer, payment

⁷⁵ Articles 6 to 9 of the Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market ('Unfair Commercial Practices Directive').

⁷⁶ Annex I, point 20 of the Unfair Commercial Practices Directive.

⁷⁷ <http://www.fca.org.uk/static/documents/policy-statements/ps14-04.pdf>, p. 31

⁷⁸ Articles 3 and 6 of the Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts.

⁷⁹ Article 9 of the Payment Services Directive; Article 10 of the revised Payment Services Directive.

method (as cash transactions give rise to higher risks than cashless ones), geographical risk factor such as country of origin of the credit institution.

5. EXTENT OF CROSS-BORDER ACTIVITIES⁸⁰

The available data suggest that crowdfunding remains largely national, with cross-border activity still very limited. Therefore, those Member States that have introduced bespoke regimes are tailoring regulation to the characteristics and needs of local markets.

Although national regimes are overall consistent in their approach, some stakeholders have expressed the view that divergences in the specific design and implementation of regulatory frameworks could create obstacles to the development of cross-border activities and lead to market fragmentation. There are examples of both investment- and lending-based crowdfunding platforms which have overcome the diverging domestic regulatory frameworks and have successfully set up individual legal entities in each country where they seek to operate. However, the need to comply with different requirements may be costly for platforms. This could prevent smaller platforms achieving the scale necessary to comply with the costs of operating across borders.

5.1. Investment-based crowdfunding

Expert discussions show divergences in Member States' approaches to cross-border activity. These divergences partly stem from the lack of a common definition of what types of services constitute "crowdfunding". Some Member States consider that platforms must be authorised under their bespoke regimes to operate as crowdfunding platforms irrespective of the fact that they may have a MiFID passport. Other Member States consider that a MiFID-authorised investment firm should be allowed to carry out crowdfunding activities in other Member States through its passport. To the extent that certain crowdfunding activities are not covered by secondary EU law and the Treaty provisions on the fundamental freedoms apply, Member States may impose justified and proportionate measures in the general interest such as for investor protection. Expert views also raised questions on the extent to which an offer through an online platform located in another Member State can be considered a domestic offer and under which criteria.

Platforms will need a sufficient pipeline of project owners seeking funding, or of investors, to grow their business. One response to the search for economies of scale by platforms has been to develop cross-border participation, particularly where the platform is located in a smaller Member State. The lack of a passport could make it harder for platforms to achieve the scalability they need.⁸¹ At the same time, some platforms in the ECSF have reported that obtaining a MiFID authorisation may be too costly and burdensome. In its Opinion and Advice, ESMA highlighted that some platforms are structuring business models so as to fall outside the scope of MiFID requirements. Questions have also been raised as to how

⁸⁰ The analysis of this section largely draws on the CMU Green Paper consultation and on discussions held at the meetings of the ECESG and the ECSF of 10 February and 17 February, respectively.

⁸¹ Regimes based on MiFID Article 3 by definition do not allow for cross-border activity.

compatible some other national regimes are with MiFID or with the Treaty provisions on the fundamental freedoms.

5.2. Lending-based crowdfunding

The platforms from smaller countries are more likely to look out for cross-border opportunities to achieve scale, as opposed to those operating in the large markets and having enough opportunities to grow domestically. However, the recent market developments show that even big players look for acquisition opportunities in order to expand outside their home markets.⁸² In addition, several platforms offer on their website and arguably also provide online services to lenders, and sometimes also borrowers, outside their home country.⁸³

In the absence of EU legislation, neither crowd-lending nor credit intermediation are among activities that enjoy EU passporting rights. In the absence of an EU passport, if platforms want to provide services in host Member States, they may need to obtain authorisation from the local authorities. Platforms authorised as payment institutions could use their EU passport to provide services in host Member States. However, as the Payment Services Directive covers only the payment side of the crowd-lending activity, such a platform would likely require, for instance a credit brokerage license and/or an authorisation under a bespoke regime in that Member State. In this connection, one Member State sets out a geographical scope for the provision of crowdfunding activities. Only platforms authorised in that Member State can provide their services to borrowers and lenders legally resident in the country; if foreign platforms' services are solicited by a client, they are not considered to be provided in the Member State.

In addition to a need to apply for local authorisations, barriers may prevent platforms from lending to consumers in host Member States. These are knowledge of the local market conditions, availability of credit data on borrowers, knowledge of local rules in relation to, among others, contractual laws, insolvency procedures and debt recovery in the event the borrowers' defaults, currency exchange risks and so on. The Commission is currently looking into the obstacles to cross-border sales of retail financial services, including loans.⁸⁴

6. CONCLUSIONS

This report demonstrates that crowdfunding remains 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.

⁸² Funding Circle is currently active in the UK, US, Germany, Spain and the Netherlands. <http://www.crowdfundinsider.com/2015/10/75982-funding-circle-goes-global-with-acquisition-of-zencap/>

⁸³ E.g. Finnish platform Fellow Finance accepts investors from all Europe; Estonian platform Bondora accepts investors from all Europe and lends to borrowers in Finland, Estonia, Slovakia and Spain; Swedish platform Trustbuddy accepted investors from other Member States; it is in bankruptcy proceedings and under investigation in relation to mishandling of client money.

⁸⁴ GREEN PAPER on retail financial services: Better products, more choice, and greater opportunities for consumers and businesses, COM/2015/0630 final.

Crowdfunding is one of many technological innovations that have the potential to transform the financial system. Therefore, crowdfunding warrants consideration as part of our broader approach to FinTech and the digitalisation of financial services, which is being looked at further in the Green Paper on Retail Financial Services.

As demonstrated in this report, to promote the growth of crowdfunding and appropriately protect investors, EU Member States have put in place a range of measures to regulate crowdfunding – either using the EU legislative framework where appropriate or via national regimes. These national frameworks are broadly consistent in terms of the objectives and outcomes they seek to achieve, but are tailored to local markets and domestic regulatory approaches.

Given the predominantly local nature of crowdfunding, there is no strong case for EU level policy intervention at this juncture. Crowdfunding is still relatively small and needs space to innovate and develop. Given the dynamism of crowdfunding and the potential for future cross border expansion, it will be important to monitor the development of the sector and the effectiveness, and degree of convergence of, national regulatory frameworks.

The Commission Services will therefore maintain regular dialogue, through twice yearly meetings, with the European Supervisory Authorities, Member States, and the crowdfunding sector to promote convergence, sharing of best practice and keep developments under review. We will assess the development of cross-border business and consider in particular the investor protection aspects. This will ensure the Commission is able to respond in a timely manner if further steps to support convergence of regulatory approaches are needed, both to promote the development of the sector and to ensure appropriate investor protection.

ANNEX 1: MAIN TYPES OF BUSINESS MODELS OF CROWDFUNDING

- Investment-based crowdfunding: Companies issue equity, debt or contractual instruments to crowd-investors, typically through an online platform (although this is not always the case). This model has been developed through a variety of funding mechanisms, often to adapt to different regulatory requirements in EU Member States:
 - For example, when investors invest in the equity of a company through a crowdfunding platform, they can do so either directly and hold shares of a company themselves, or through a nominee account, whereby a third party holds the legal titles of the equity on behalf of the investors who are the beneficial owner of the security.
 - In other models, investors invest indirectly through a participation in a separate legal entity (e.g. special purpose vehicle or collective investment scheme set-up by the platform) which then invests in the crowdfunding project and holds the legal title of the equity. This is used for example in real-estate crowdfunding (where the intermediary vehicle invests in property and investors hold shares of the vehicle).
 - The typical debt investment-based crowdfunding model involves a bond (for example mini-bonds⁸⁵), at a fixed interest rate. There are also examples of crowdfunding models involving convertible bonds (where bonds can be converted into equity at a predetermined conversion rate at a later stage).
 - Finally, in a profit-sharing / revenue-sharing crowdfunding model, businesses can share future profits or revenues with the crowd in return for funding (whereas the investor does not obtain any long-term ownership interest in the company through the securities that the investor has bought). Often these forms of crowdfunding are operated through contractual instruments (e.g. silent partnerships) which would not qualify as a security under company law.
- Lending-based crowdfunding (also known as peer-to-peer lending or marketplace lending): Companies or individuals seek to obtain funds from the public through platforms in the form of a loan agreement. This form of crowdfunding also comprises several variations of the basic business model (often arising from differences in legal structures across Member States):
 - Consumer lending, where individuals (consumer-to-consumer) or institutions (business-to-consumers) lend directly to individuals, typically through unsecured loans, where no collateral is requested from borrowers.
 - Business lending, where individuals (consumer-to-business) or institutions (business-to-business) lend directly to businesses. Loans can be secured or unsecured.

⁸⁵ Typically, mini-bonds have a maturity of three to five years and are an unsecured, unconvertible and non-transferable security.

- In the more typical business model, the loan contract is between the lender and the borrower; the platform would provide the contractual terms and conditions, would send contracts to the parties, and coordinate payments and repayments.
 - In another business model, a platform would cooperate with a credit institution which originates the loans (loan contract is between the lender and the bank, and the lenders/borrowers have an intermediation contract with the platform).
 - In yet another business model, the pledged amounts are transferred to an escrow account, which is managed by the platform or a partner bank. Once the threshold pledge is reached, payments are transferred from the escrow account to the project's account.
- Invoice trading crowdfunding: a form of asset-based financing whereby businesses sell unpaid invoices or receivables, individually or in a bundle, to a pool of investors through an online platform. Typically investors are institutions and high net worth individuals, and rates are set through online auctions.
 - Reward-based crowdfunding: Individuals donate to a project or business with expectations of receiving in return a non-financial reward, such as goods or services, at a later stage in exchange of their contribution. The reward may or may not be proportionate to the backers funding; when it is proportionate, this model is also defined as pre-selling crowdfunding.
 - Donation-based crowdfunding: Individuals donate amounts to meet the larger funding aim of a specific charitable project while receiving no financial or material return.
 - Hybrid models of crowdfunding: Combine elements of the other types of crowdfunding.

ANNEX 2: OVERVIEW OF CROWDFUNDING REGULATORY FRAMEWORKS IN A SELECTION OF EU MEMBER STATES⁸⁶

Investment-based crowdfunding

	Austria	Belgium	Spain	France	UK	Italy	Germany	Portugal
Bespoke regime	Yes	No but "crowdfunding exemption" in the prospectus regime	Yes	Yes	Yes	Yes	Yes	Yes
Scope	Shares, bonds, business shares in limited companies and cooperatives, participation rights, silent partnerships and subordinated	N/A	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
Entry into force	1 September 2015	17 May 2014. A legislative proposal on investment-based crowdfunding is still being discussed.	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.

⁸⁶ In Finland, a Crowdfunding Act has been submitted to Parliament on 7 April 2016. The act covers both investment-based and lending-based crowdfunding. It is planned that the Act will enter into force on 1 July 2016.

	Austria	Belgium	Spain	France	UK	Italy	Germany	Portugal
Passport	Yes if MiFID platforms (for transferable securities)	N/A	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)	No (because bespoke regime developed 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.

	Austria	Belgium	Spain	France	UK	Italy	Germany	Portugal
Authorisation	<p>Authorisation for business investment consulting according to section 136a of Austrian Trading Act.</p> <p>Or</p> <p>Authorisation for Investment Services Undertakings according to section 4 (1) of the Securities Supervisory Act.</p>	N/A	<p>Authorisation and registration by the National Securities Market Commission (CNMV).</p>	<p>For MiFID and non-MiFID platforms: authorisation by AMF.</p>	<p>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.</p>	<p>Authorisation by Consob (banks and authorised investment companies do not need authorisation but must be enrolled in the Register of platforms)</p>	<p>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).</p>	<p>Authorisation by the CMVM</p>
Minimum capital requirements	<p>For business investment consulting: none.</p> <p>For MiFID platforms: Depending on the MiFID investment services and activities</p>	N/A	<p>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).</p>	<p>None for non-MiFID platforms.</p> <p>For MiFID platforms: Depending on the MiFID investment services and activities.</p>	<p>CRD IV minimum capital requirements. The minimum requirement is own funds of €50,000.</p>	<p>None</p>	<p>For MiFID platforms: Depending on the MiFID investment services and activities.</p> <p>For platforms with a commercial license: professional liability insurance.</p>	<p>€50,000 or liability insurance up to such amount.</p>

	Austria	Belgium	Spain	France	UK	Italy	Germany	Portugal
Services provided	N/A	N/A	<p>Reception, selection and publication of projects;</p> <p>Development, establishment and exploitation of communication channels to facilitate the fundraising between investors and promoters.</p> <p>Ancillary services.</p>	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
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)	<p>Platforms authorised under bespoke regime: ordinary shares and fixed rate bonds (i.e. transferable securities).</p> <p>MiFID platforms: financial instruments (Annex 1 C MiFID)</p>	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.

	Austria	Belgium	Spain	France	UK	Italy	Germany	Portugal
<p>KYC rules (suitability or appropriateness; AML checks)</p>	<p>Platform to establish identity of both issuer and investors. Compliance with anti-money-laundering and terrorism financing legislation</p>	<p>N/A</p>	<p>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.</p> <p>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).</p>	<p>Access to platforms restricted to registered investors who have been warned of and expressly accepted the risks.</p> <p>Suitability test.</p> <p>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.</p> <p>Compliance with money laundering and terrorism financing legislation.</p>	<p>Money Laundering Regulations: due diligence about their customers.</p> <p>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).</p> <p>Where regulated advice is not provided: appropriateness test.</p> <p>Where regulated advice is provided: suitability test.</p>	<p>For retail investors:</p> <p>Appropriateness test by platforms (facultative: in alternative the appropriateness test is made by banks or investment firms which receive the orders).</p> <p>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.</p> <p>AML checks performed by banks receiving the orders and payments.</p>	<p>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)</p>	<p>Investors should declare that they understand business conditions, including risks.</p> <p>Among organization duties, platforms must draft, make available online and implement policies and procedures to prevent money laundering and terrorism financing.</p>

	Austria	Belgium	Spain	France	UK	Italy	Germany	Portugal
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.	A prospectus is required if an offer exceeds €100,000. Under the "crowdfunding exemption", this amount is raised to €300,000. Note that this exemption applies to all types of offer, thus not only to those made through crowdfunding platforms	€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	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.

	Austria	Belgium	Spain	France	UK	Italy	Germany	Portugal
Maximum investable amounts	<p>€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.</p>	<p>Under the "crowdfunding exemption", individual amount that each investor can invest is limited to €1,000.</p>	<p>Non -accredited investors: €3,000 per project and maximum €10,000 a year.</p> <p>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.</p>	<p>No restriction with regard to the type of investors, the number of investors, or maximum investment limits.</p>	<p>No hard investment limit.</p> <p>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.</p>	<p>No limit.</p> <p>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.</p> <p>Based on self-declaration by investors.</p>	<p>If the investor has freely available assets of at least €100,000: up to €10,000 in an issue.</p> <p>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</p> <p>In all other cases (particularly if the investor does not provide a statement on assets and income): €1,000</p> <p>No limits for corporate entities.</p>	<p>€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.</p>

	Austria	Belgium	Spain	France	UK	Italy	Germany	Portugal
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).	N/A	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"

	Austria	Belgium	Spain	France	UK	Italy	Germany	Portugal
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.	N/A	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.

	Austria	Belgium	Spain	France	UK	Italy	Germany	Portugal
Due diligence	No requirement but platform must check the completeness, comprehensibility and consistency of issuer's information.	N/A	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

	Austria	Belgium	Spain	France	UK	Italy	Germany	Portugal
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.	N/A	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.

	Austria	Belgium	Spain	France	UK	Italy	Germany	Portugal
Professional requirements	Depends on the authorisation (either business investment consulting or Investment Services Undertaking)	N/A	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

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, promoters 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 its 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	<p>Non -accredited investors: €3,000 per project and €10,000 max a year.</p> <p>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.</p>	<p>Lender can finance up to €1,000 per project if financing is in the form of a loan with interest and up to €4,000 per project for an interest free loan.</p>	<p>No maximum</p>	<p>The same applies as for investment-based crowdfunding.</p>
Disclosure to investors by borrower	<p>Description of project seeking funding and borrowers' main features.</p>	<p>Disclosure requirements imposed on the platform.</p>	<p>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.</p> <p>Where the creditor lends in the course of business the full protections required by the Credit Consumer Act and FCA rules apply.</p>	<p>The same applies as for investment-based crowdfunding.</p>

	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.