



An overview of crowdfunding in the European Union. July 2015.

Crowdfunding is a new form of financing which gives owners of projects -often innovative in nature, such as start-ups- access to funding by raising funds from a large number of investors (crowd), who usually contribute with small amounts of money, using a platform hosted on a website or other electronic means through which promoter and investors get into contact with each other. Crowdfunding was initially used for funding charitable projects, but nowadays most legislations on crowdfunding platforms exclude donations from their scope. There are basically two types of crowdfunding: equity crowdfunding, where investors receive, in exchange for their economic contribution, securities issued by a promoter, and peer-to-peer lending, where investors receive earnings in exchange for the money lent.

Some countries in the European Union, including the United Kingdom, the Netherlands, Germany, France, Italy, Finland, Austria and Greece, have already regulated crowdfunding. The Spanish government has recently published Law 5/2015 of 27 April promoting corporate finance, regulating the legal status of crowdfunding platforms. Meanwhile, the European Union has not regulated crowdfunding yet, although some initiatives have already been taken, such as a forum on crowdfunding to be established within ESMA in order to achieve supervisory convergence, as far as possible. The Green Paper that the European Commission (EC) published in February 2015 for consultation on its project for building a Capital Markets Union (CMU) in all 28 Member States of the European Union included medium to long-term measures for developing and integrating capital markets, such as improving access to financing, and described crowdfunding as one of the new alternative means of financing. ESMA has published several documents on crowdfunding, which are described below.

In December 2014 ESMA published two documents on crowdfunding. The first one, an **opinion** addressed to national competent authorities on how the crowdfunding business model, its main actors and related risks fit into the European Union legislation. The opinion describes how the different business models of crowdfunding platforms can be affected by EU law on prospectuses, MiFID, investor-compensation schemes, market abuse, alternative investment fund managers, venture capital funds and European social entrepreneurship funds, distance marketing of financial services and prevention of money laundering. The second one, an **advice** document addressed to the EU institutions -Commission, Parliament and Council-, aimed at achieving greater regulatory and supervisory convergence within the European Union. This report analyses the difficulty of effectively protecting investors if crowdfunding platforms are outside the scope of the regulation, the impact of thresholds in the Prospectus Directive, the applicable capital requirements, the use of the optional exemption in MiFID, and the potential development of a specific crowdfunding scheme in the EU for those platforms currently operating outside the scope of MiFID.

In its **response to the EC green paper on a CMU**, ESMA states that crowdfunding regulations vary across the EU and considers that a Pan-European regulation would provide a real alternative source of funding to the EU economy, which would be especially beneficial for SMEs. ESMA highlights some issues at stake for investor protection and the appropriate development of crowdfunding: the ease with which one can structure business models that fall outside of EU regulation (e.g. through the use of financial instruments which are not regarded as transferable securities and hence fall outside the scope of MiFID); the different thresholds that apply to the obligation to produce a prospectus across Member States; the capital requirements likely to be imposed on platforms and the use of the MiFID optional exemption. ESMA recommends adopting measures to reduce the incentives of using securities that are non-transferable and/or fall outside of MiFID provisions, and adopting proportionate disclosure requirements where the Prospectus Directive does not apply. ESMA also believes that consideration should be given to the possible application in some cases of the Alternative Investment Fund Managers Directive (AIFMD).

In December 2014, ESMA carried out a brief **survey** of national competent authorities on crowdfunding, and its findings are presented in a recently published report (13/05/2015) as an appendix within ESMA response to the EC

on the CMU. The report has provided ESMA with updated information on the regulatory status of investment platforms in the different Member States, the laws regulating them, the types of services they offer, the capital requirements imposed on them, their investment instruments and the fee structures and models they are using. The survey highlights the disparity in the way these platforms are currently regulated in different Member States and the challenges of achieving supervisory/regulatory convergence.

On the date of the survey there were 46 platforms in 7 Member States (the United Kingdom, the Netherlands, Germany, France, Italy, Austria and Spain), of which the United Kingdom accounted for 57% of total regulated platforms, Italy 24%, France 11%, the Netherlands 4% and Germany and Austria 2% each. Spain indicated that one UK-authorized platform was operating and using the passport in its territory. Greece and Finland were in the process of granting authorisations to operate as crowdfunding platforms. Regarding the legal status of these platforms: a) 18 are authorised as investment firms under MiFID (one of which is also authorised as alternative fund manager), and the majority are in the UK, Italy and Germany; b) 15 operate under the MiFID Article 3 exemption, most of them in Italy and France; c) 12 operate as MiFID tied agents of investment firms, most of them in the United Kingdom and one in Austria; and d) one platform was excluded from MiFID scope by virtue of Article 2. The most common service/activity offered by these platforms is reception and transmission of orders. The majority of investment instruments used by these platforms is direct investment in equities, although they also provide bonds or debentures, and some platforms provide indirect investment. Regarding the fee structures of the platforms, some of them are remunerated by the business project owner only, while others are remunerated by investors and others use a mixed model.

ESMA published on 1 July a series of **Questions and Answers** on investment-based crowdfunding and the risks associated with money laundering and terrorist financing. This document is aimed at national competent authorities so that they take into account the characteristics of and risks associated with different aspects of crowdfunding.

At the global level, **IOSCO** published a doctrinal working paper that contained a detailed description of the most important aspects of crowdfunding: concept and types and nature, benefits, key risks, forms of regulation, analysis of potential systemic risks and investor protection concerns, different legal approaches (regulation or not, who can have a platform, etc.), and application of IOSCO principles and objectives to crowdfunding. Standing Committee 3 (Market Intermediaries) is preparing a report that will include the response to a previous IOSCO survey of its members on crowdfunding.

Relevant links:

[ESMA Q&A on crowdfunding in relation to money laundering and terrorist financing](#)

[ESMA Response to the European Commission green paper for building a Capital Markets Union \(May 2015\)](#)

[ESMA Report on insights from regulators on investment-based crowdfunding \(May 2015\)](#)

[ESMA Opinion on investment-based crowdfunding \(December 2014\)](#)

[ESMA Advice on investment-based crowdfunding \(December 2014\)](#)

[IOSCO working paper on crowdfunding \(February 2014\)](#)

[Law 5/2015 of 27 April promoting corporate finance, regulating the legal status of crowdfunding platforms \(in Spanish\)](#)

[University of Cambridge benchmarking report on the European alternative finance](#)