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EBF reaction to the EU Inception Impact Assessment on a Framework on Crowd and P2P finance

Key points:

The European Banking Federation (EBF) welcomes the Commission's Inception Impact assessment for a legislative proposal for an EU framework on crowd and peer to peer finance, which comes forward as a good starting point considering that crowdfunding has the potential to be a key source of financing for SMEs over the long term.

The combination of crowd-based activities, social media and automated matching platforms that apply innovative technology may significantly change the way consumer/SME credit is contracted and the way equity investment flows into start-ups, scale-ups and SMEs more generally, as **they offer new channels of access to finance for individuals and small companies facing difficulties to tap the traditional banking channels.**

We believe it would be desirable to have a **consistent EU wide regulatory framework** for consumer protection and considering/reviewing whether specific categories of crowdfunding service providers are in fact subject to existing financial regulation appears prudent actions to a positive way forward.

Therefore, the **EBF would support the Policy Option 3** indicated in the Inception Impact Assessment. This option would defines a comprehensive EU framework by introducing a specific license for crowdfunding with passporting rights will contribute the most to: (i) reduce existing divergences across Member States, and (ii) achieve a level playing field in which the same activity is subject to the same regulation.

Options 1 and 2 would not suffice to address the issues that are correctly identified by the European Commission: (i) these would not contribute to crowdfunding reaching a cross-border scale and (ii) would not help in providing an effective risk management framework that ensures sector integrity and trust.

Option 4 could facilitate the scale-up of crowdfunding platforms across countries, but would not go as far as option 3 in achieving a level playing field across borders, and could lead to the prevalence of different standards in terms of investor and consumer protection in those platforms that choose to conduct only national business.

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More generally, the EBF agrees with the Commissions' policy objectives as such, but, nevertheless, the rise of crowdfunding **also raises questions about the potential impact on consumer protection, collection and use of personal data, and financial stability.**

This is especially relevant for consumer protection, as un-regulated markets attract criminals and fraudsters. Consumers often expects the same protections and rights as they would have if they were dealing with a credit institution or an investment firm, when in many cases is not.

The sector may also be vulnerable to fraud, money laundering, terrorism financing and misspelling. In particular, we would like to underline that:

- In crowdfunding and marketplace lending, the threat related to crowdfunding platforms is based on the anonymity offered by the online presence and the worldwide reach of the platforms.
- Crowdfunding platforms are sometimes used for campaigns seeking backers for fictitious charitable initiatives abroad or the use of fake individuals backing a fake company. The money is then removed from the platform and transferred for illicit activities.
- The European Securities and Markets Authority (ESMA) has explicitly said "Investment-based Crowdfunding carries a risk of misuse for terrorist financing, particularly where platforms carry out limited or no due diligence on project owners and their projects. Project owners could use investment-based Crowdfunding platforms to raise funds for terrorist financing, either overtly or secretly."
- National regulatory regimes for crowdfunding in Europe are impacting on the development of crowdfunding. In this regard, several countries have already taken regulatory action to facilitate this new form of financing, while also aiming to adequately protect investors. Requirements differ considerably from one Member State to another (capital required, investor accreditation, funding limits, supervisory authority, due diligence obligations, etc.). The divergent approaches may create legal uncertainty as to what rules apply to which forms, potentially harming the growth of crowdfunding in Europe. Therefore, we think that it is necessary to achieve a certain degree of harmonization in these matters as well as in terms of transparency requirements.
- Regulation should reflect and be proportionate to the characteristics, type, and variety of the financial products and consumers, their rights and responsibilities and be responsive to new products, designs, technologies and delivery mechanisms.
- If crowdfunding is to grow in the extent the Commission seems to wish, it would sooner or later have an impact on the financial stability and measures like capital requirements could be needed.

The new regulation should foster the harmonization of regulation also to **ensure a level playing field** between financial and non-financial institutions (e.g. not all crowdfunding companies make the average default rate available to investors). Future regulation on crowdfunding should also aim to **eliminate any potential asymmetries between financial and non-financial players** (e.g. KYC and AML requirements).

The lack of a regulatory framework also generates uncertainty about the allocation of liabilities, and whether the responsibility lies with the provider or with the platform. As

platforms are not regulated, this would ultimately lead to an overburden of the liability on the providers, which are regulated figures.

Furthermore, the Commission could contribute to spreading standards developed by the industry at national and European level, improving transparency and sharing best practices. This approach should aim at improving the information provided by users (both project owners and contributors), protecting contributors from fraud and ensuring an adequate complaint mechanism.