

Brussels, 12 July 2018

EBF_032842



EBF Position Paper on the proposal of a Regulation on Crowdfunding

The EBF fully supports the proposal of the European Commission to introduce a pan-European label for crowdfunding platforms.

In our reaction to the EU Inception Impact Assessment on a Framework on Crowd and P2P finance, we stated that crowdfunding is, in combination with other financing channels, they offer new channels of access to finance for individuals and small companies facing difficulties to tap the traditional banking channels.

For this, we advocated for a **consistent EU wide regulatory framework** for consumer protection and to consider whether specific categories of crowdfunding service providers are in fact subject to existing financial regulation.

Our main view is that the long-term aim of the Commission should strive to reach a comprehensive EU framework, reducing existing divergences across Member States and achieve a level playing field in which the same activity is subject to the same regulation.

General assessment of the proposal

We acknowledge that the European Commission takes the view that crowdfunding has established itself as an important instrument for promoting start-ups and young companies. The regulation aims to facilitate cross-border activities and enable risks to be adequately addressed by establishing clear disclosure requirements for project owners and crowdfunding platforms, governance and risk management requirements and a coherent regulatory and supervisory regime.

The proposal covers crowdfunding campaigns of up to one million euros over a period of 12 months. We believe this threshold should be clarified, e.g. that it applies cumulatively to comparable investment products (offered by one issuer). This is important to prevent issuers from splitting up issues to avoid the need for a prospectus.

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EU Transparency Register / ID number: 4722660838-23



With regards to the linkages of the Crowdfunding Regulation and MiFID II, we would like to have some clarifications with regards to the proposal of the Commission to limit the possibility of investment service providers under MiFID II license to operate under EU crowdfunding license and vice-versa.

The proposal to amend MiFID II is very restricted in reasoning and in our view does not include a substantial analysis on the matter that would justify the possible effects it would have in the future, effectively affecting banks and investment service providers operating under MiFID II license to be able to provide crowdfunding services not only nationally but also across borders.

We would like to remark that this is a key question related to level playing field and should be taken into account more in detail as for now it leaves the situation unclear for MIFID II license operators.

We especially welcome the requirements concerning risk warnings and the professional qualities of crowdfunding platforms and their management. Their introduction at national level too should possibly be considered.

We would like to flag that it would be important to distinguish more clearly in the proposed regulation between debt-based and equity-based crowdfunding as the requirements, for example, in terms of the need for key information sheets would be rather different given the nature of arrangements, risks and proportionality for providers and customers.

Finally, we would like to reiterate that the fact that providers of crowdfunding services can continue to operate under national law and that the proposed EU regime is only optional may thus lead to uneven investor / consumer protection and may impact on financial stability.

We would like to insist that the Commission should take a long-term aim to reach a comprehensive EU framework and address this issue, ensuring that crowdfunding platforms operating under national law would not be excluded from the scope of the Regulation.

Conflicts of interest (Article 7)

We agree on the need to control and prevent potential conflicts of interest. However, we consider that the ban on investment by the ECSP in any offer on their crowdfunding platforms should be assessed as it could limit the potential and appetite for investment. Therefore, we suggest limiting, and not prohibiting, a percentage of investment.

Authorization (article 10)

In relation to the authorisation of ECSPs, we have the following comments:

The proposed regulation does not contain any corporate or capital requirements for the establishment of such companies. We believe that there should be minimum requirements

to ensure solvency and stability in the market, for example including minimum paid-up capital or a coverage by a professional liability insurance.

Regarding withdrawal of authorisation, the explanatory memorandum indicates that the European authorisation will withdraw the national authorisation that the ECSP may be enjoying to date (page 9, first paragraph, “*If the provider chooses to apply the EU rules, authorisation under the applicable national rules is withdrawn*”). However, there is no indication of how this process will be implemented.

We believe that ESMA’s competences regarding authorisation, should be carefully considered with regards to the overview happening at national supervisory authority level, and a clear benefit for this action must be demonstrated in accordance with the principle of subsidiarity, as the nature of the service providers would require local supervision and the barrier to apply a license could be made easier.

Clients

- Nature of the investment projects

The proposal of the regulation focuses exclusively on the provision of the services but does not analyse the nature of investment projects. We miss the reference to the exclusion of projects aimed at raising funds for subsequent financing. Some national rules expressly exclude professional financing from third parties for the granting of loans or credits.

- Investment limits

Although the amount of the project is limited, we should take into account that it is a very low limit.

The limit restricts the nature and scale of the projects available for investors in a manner which may not be adequate in the remit of investor protection. We should take into account that projects under EUR 1,000,000 sometimes bring attached more uncertain outcomes.

We would like to also note that it is surprising that the maximum amount that each investor can allocate to each project is not subject to any limitation. We believe that the inclusion of limits is desirable to ensure investor protection and to promote responsible lending as well.

Some national regulations lay down thresholds per investor, which allow the possibility for small amounts to be provided without fulfilling any special requirements; while for bigger amounts some collateral needs to be ensured.

The proposal does not set maximum thresholds for individual investments. In the interests of consumer protection, we believe that the regulation should set ceilings for the maximum amount which may be invested per project or issue.

- Key Knowledge test

Although it is compulsory to carry out the test, the customer is not obliged to withdraw from

the investment in the event of an unfavourable result. As the failure of a project can result in a total loss of paid funds, consumer protection should be a key aim of the regulation. The introduction of limits would therefore reduce the risks arising from reckless investment and strengthen investor protection.

- [Key investment information sheet \(article 16.7\)](#)

The decision to translate the offer into different languages should be taken by the project owner, who decides what his target market is. Consequently, the ECSP should not be required to be responsible for the translation.

Money laundering and terrorist financing risks (recital 24 & article 38).

As stated in recital 24 of the proposal, a fundamental risk of crowdfunding services is that these platforms providers could be used for money laundering purposes. The transposition of the AML Directive in some Member States precisely includes these platforms as regulated entities.

In the same way as it is stated that ECSPs are subject to the Payment Services Directive and the General Data Protection Regulation, these providers should also be subject to the [Directive \(EU\) 2015/849 in respect of money laundering or terrorism financing](#). Therefore, instead of being an element to be assessed in the review provided for in Article 38 by the European Commission, it should already be directly applicable upon its entry into force (it could be included in Article 9 or in a new Article).

Further Remarks

The EBF sees positively that the proposal provides a number of definitions of players and services in crowdfunding. However, the EBF would like to draw attention to the fact that the proposal does not address the grey zone between crowdfunding platforms and Initial Coin Offerings (ICOs). ICOs, also called 'token generation events' are a new way to raise funds publicly, through which companies sell tokens to the public and receive crypto tokens or fiat money in return, which could be considered as a crowdfunding platform based on crypto currency. The question of how ICOs should be handled will be increasingly relevant due to the developments in this area.

We would like to refer you to the EBF position on Cryptocurrencies and ICOs, in which we analyse all the possible effects and consequences that the use of this new means of funding that surpasses crowdfunding in terms of speed, reach and presence of a secondary market, and has at the same time entry barriers lower than those of the traditional IPO or venture capital.

Considering the recent uptake of these products, we believe there is merit in taking specified regulatory actions on those to ensure that the regulatory safeguards put in place to protect consumers and the broader financial system are not bypassed or compromise.

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About the EBF

The European Banking Federation is the voice of the European banking sector, bringing together 32 national banking associations in Europe that together represent a significant majority of all banking assets in Europe, with 3,500 banks - large and small, wholesale and retail, local and international – while employing approximately two million people. EBF members represent banks that make available loans to the European economy in excess of €20 trillion and that reliably handle more than 400 million payment transactions per day. Launched in 1960, the EBF is committed to a single market for financial services in the European Union and to supporting policies that foster economic growth.

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