

Proposed EU regulation and directive on European crowdfunding service providers

Crowdfunding is a growing alternative form of financing that connects those who can give, lend or invest money directly with those needing financing for a specific project. In March 2018, the European Commission presented a proposal for a regulation on crowdfunding service providers.

Currently, access to finance remains a sticking point for companies, which find it difficult to expand their business. Crowdfunding can thus provide an alternative to unsecured bank lending.

The Commission has published a proposal for regulation to facilitate cross-border crowdfunding activity (the “Regulation”). This proposal is aimed at increasing access to finance for entrepreneurs, start-ups and small and medium enterprises (SMEs) in general. On the other hand, this draft regulation does not include consumers lending for non-business purposes.

Some Member States are implementing bespoke national frameworks to cater specifically for crowdfunding activities. This proposal for a European crowdfunding legal framework is not intended to interact with national bespoke regimes or existing licenses, but rather to provide crowdfunding service providers with the possibility to apply for an EU authorization that empowers them to scale up their operations throughout the Union under certain conditions.

The divergent frameworks, rules and interpretations of business models applied to crowdfunding service providers throughout the Union pose a barrier for crowdfunding platforms scaling their operations across the EU as their business models would have to be adjusted according to each jurisdiction.

Today, crowdfunding service providers wishing to offer their services in other Member States are allowed to do so, provided that they obtain a local licence and comply with that Member State’s national crowdfunding regime. In practice, this means that a crowdfunding service provider has to comply simultaneously with several national regimes as well as adapt its business model if it wishes to offer services cross-border.

A stand-alone voluntary European crowdfunding regime would leave the tailored national crowdfunding frameworks unchanged, whilst providing an opportunity for platforms that want to scale their operations at a European level and conduct cross-border business. This would result in a rather swift and sizeable reduction



of market entry costs, since they would only be authorised once.

The proposal seeks to establish uniform rules on crowdfunding at EU level. It does not replace national rules on crowdfunding where they exist. If the provider chooses to apply the EU rules, authorization under the applicable national rules is withdrawn. Authorization granted under the Regulation would allow crowdfunding service providers to provide crowdfunding services under a passport across all Member States.

In addition, the Regulation provides for appropriate safeguards to minimize the risk of money laundering and terrorism. By addressing the obstacles to the functioning of the internal market in crowdfunding services, this Regulation aims to foster cross-border business funding.

Crowdfunding service providers should be given the option to apply for a single Union-wide authorization, in order to ensure their effective supervision.

The European Securities and Markets Authority (ESMA) should be responsible for granting the authorization to provide crowdfunding services. ESMA shall establish a register of all crowdfunding service providers.

On 26 June 2019, the European Council finally concluded its discussions on the European Crowdfunding Service Provider legislative proposal. This enables final discussions with the European Parliament.



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